INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT11/**11/1**
Original: ENGLISH	28 October 2011

1992 Fund Assembly	**92A16**	●
1992 Fund Executive Committee	**92EC53**	●
Supplementary Fund Assembly	**SA7**	●
1971 Fund Administrative Council	**71AC27**	●

RECORD OF DECISIONS OF THE OCTOBER 2011 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 24 to 28 October 2011)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Assembly **(92A16)**	Mr Jerry Rysanek (Canada)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee **(92EC53)**	Ms Welmoed van der Velde (Netherlands)	Mr Alan Lim Chun Shien (Singapore)
Supplementary Fund	Assembly **(SA7)**	Vice-Admiral Giancarlo Olimbo (Italy)	Mrs Birgit Sølling Olsen (Denmark) Mr Isao Yoshikane (Japan)
1971 Fund	Administrative Council **(71AC27)**	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

CONTENTS

		Page
	Opening of the sessions	**4**
1	**Procedural matters**	**5**
1.1	Adoption of the Agenda	5
1.2	Election of Chairmen	5
1.3	Examination of credentials – Establishment of Credentials Committee	6
1.3	Participation	6
1.3	Examination of credentials – Report of the Credentials Committee	6
1.4	Request for observer status	7
1.5	Farewell to the current Director, Mr Willem Oosterveen	7
2	**Overview**	**9**
2.1	Report of the Acting Director	9
3	**Incidents involving the IOPC Funds**	**12**
3.1	Incidents involving the IOPC Funds	12
3.2	Incidents involving the IOPC Funds – 1971 Fund: *Vistabella*, *Aegean Sea* and *Iliad*	12
3.3	Incidents involving the IOPC Funds – 1971 Fund: *Nissos Amorgos*	13
3.4	Incidents involving the IOPC Funds – 1971 Fund: *Plate Princess*	17
3.5	Incidents involving the IOPC Funds – 1992 Fund: *Erika*	22
3.6	Incidents involving the IOPC Funds – 1992 Fund: *Prestige*	24
3.7	Incidents involving the IOPC Funds – 1992 Fund: *Solar 1*	26
3.8	Incidents involving the IOPC Funds – 1992 Fund: *Volgoneft 139*	28
3.9	Incidents involving the IOPC Funds – 1992 Fund: *Hebei Spirit*	29
3.10	Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina	33
3.11	Incidents involving the IOPC Funds – 1992 Fund: *King Darwin*	34
3.12	Incidents involving the IOPC Funds – 1992 Fund: *JS Amazing*	34
4	**Compensation matters**	**35**
4.1	Reports of the 1992 Fund Executive Committee on its 50th-52nd sessions	35
4.2	Election of members of the 1992 Fund Executive Committee	36
4.3	Reports on the second and third meetings of the 6th intersessional Working Group	36
4.4	Consideration of the definition of 'ship'	37
4.5	STOPIA 2006 and TOPIA 2006	41
5	**Financial reporting**	**41**
5.1	Report on submission of oil reports	41
5.2	Report on contributions	42
5.3	Report on investments	43
5.4	Report of the joint Investment Advisory Body	43
5.5	Report of the joint Audit Body	44
5.6	2010 Financial Statements and Auditor's Reports and Opinions	46
6	**Financial policies and procedures**	**47**
6.1	Measures encouraging the submission of oil reports – Development of an online reporting system	47
6.1	Improving the accuracy and timeliness of submission of oil reports and the collection of contributions	47
6.2	Election of members of the joint Audit Body	49
6.2	Review of the nomination process for the joint Audit Body	49
6.3	Appointment of members of the joint Investment Advisory Body	53
7	**Secretariat and administrative matters**	**53**
7.1	Secretariat matters	53

7.2	Appointment of the Director	54
7.3	Contingency arrangements for the Director and senior Secretariat personnel	57
7.4	Proposed revised template for Director's contract	59
7.4	Appointment of the Director and term of office	59
7.5	Secretariat matters – Internships within the Secretariat	61
7.6	Appointment of the Director – Contract of the Director-Elect	61
7.7	Appointment of the Director – Oath of the Director-Elect	62
7.8	Document services	62
7.9	Appointment of members and substitute members of the Appeals Board	63
8	**Treaty matters**	**64**
8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol	64
8.2	Winding up of the 1971 Fund	64
8.3	HNS Convention and HNS Protocol	65
9	**Budgetary matters**	**66**
9.1	Sharing of joint administrative costs between the 1992 Fund, the Supplementary Fund and the 1971 Fund	66
9.2	Budgets for 2012 and assessments of contributions to the General Fund	67
9.3	Assessment of contributions to Major Claims Funds and Claims Funds	69
9.4	Transfer within the 2011 budget	70
10	**Other matters**	**70**
10.1	Future sessions	70
10.2	Any other business	70
11	**Adoption of the Record of Decisions**	**72**

ANNEXES

Annex I List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations

Annex II Reply of the Venezuelan Delegation to document IOPC/OCT11/3/4

Annex III Terms of reference – Working Group on issues related to the definition of 'ship'

Annex IV Resolution N°9 on the Appointment of the IOPC Funds' Director – Term of service

Annex V Proposed new template for Director's contract

Annex VI 2012 administrative budget tables for the 1992 Fund, Supplementary Fund and 1971 Fund

Opening of the sessions

0.1 Before opening the sessions, the 1992 Fund Assembly Chairman referred to the distressing news of the earthquake which had occurred in Turkey on 23 October 2011. On behalf of all of the IOPC Funds' governing bodies, the Chairman expressed deepest sympathy to the people of Turkey and its Government for the lives lost and devastation caused.

1992 Fund Assembly

0.2 The Chairman of the 1992 Fund Assembly attempted to open the 16th session of the Assembly at 9.30 but failed to achieve a quorum. At 10.00, however, the following 1992 Fund Member States were present and a quorum was achieved:

Albania	Greece	Poland
Algeria	Grenada	Portugal
Antigua and Barbuda	India	Qatar
Argentina	Islamic Republic of Iran	Republic of Korea
Australia	Israel	Russian Federation
Bahamas	Italy	Saint Kitts and Nevis
Brunei Darussalam	Japan	Saint Lucia
Bulgaria	Latvia	Singapore
Cameroon	Liberia	South Africa
Canada	Malaysia	Spain
China[<1>]	Malta	Sri Lanka
Colombia	Marshall Islands	Sweden
Cyprus	Mexico	Trinidad and Tobago
Denmark	Morocco	Turkey
Estonia	Netherlands	United Kingdom
Finland	Nigeria	Uruguay
France	Norway	Vanuatu
Germany	Panama	Venezuela
Ghana	Philippines	

1992 Fund Executive Committee

0.3 The 1992 Fund Executive Committee Vice-Chairman, Mr Alan Lim (Singapore) opened the 53rd session of the Executive Committee in the absence of the Chairman, Ms Welmoed van der Velde (Netherlands). The Vice-Chairman informed the Executive Committee that Ms van der Velde had given birth to a boy in September 2011 and, on behalf of the Executive Committee, expressed congratulations and wished her and her family happiness for their life ahead.

Supplementary Fund Assembly

0.4 The Supplementary Fund Assembly Chairman opened the 7th session of the Assembly.

1971 Fund Administrative Council

0.5 The 1971 Fund Administrative Council Chairman opened the 27th session of the Administrative Council.

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

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

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/OCT11/1/1**	**92A**	**92EC**	**SA**	**71AC**

The 1992 Fund Assembly, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/OCT11/1/1.

1.2

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

Chairman of the 1992 Fund Assembly

1.2.1 The Chairman of the 1992 Fund Assembly, Mr Jerry Rysanek (Canada) informed the governing bodies that he would be stepping down as Chairman at the end of the current session.

1992 Fund Assembly Decision

1.2.2 The Assembly decided to elect Mr Jerry Rysanek (Canada) to Chair the current session of the Assembly.

1.2.3 The 1992 Fund Assembly also elected the following delegates to hold office until the next regular session of the Assembly:

First Vice-Chairman: Professor Tomotaka Fujita (Japan)
Second Vice-Chairman: Mr Mohammed Said Oualid (Morocco)

1.2.4 The 1992 Fund Assembly decided to postpone the election of the Chairman for future sessions until the end of the current session.

1.2.5 The Chairman thanked, also on behalf of the two Vice-Chairmen, the 1992 Fund Assembly for the confidence shown in them.

Chairman of the Supplementary Fund Assembly

1.2.6 The Chairman of the Supplementary Fund Assembly, Vice-Admiral Giancarlo Olimbo (Italy) informed the governing bodies that he would be stepping down as Chairman at the end of the current session.

Supplementary Fund Assembly Decision

1.2.7 The Assembly decided to elect Vice-Admiral Giancarlo Olimbo (Italy) to Chair the current session of the Assembly.

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

First Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)
Second Vice-Chairman: Mr Isao Yoshikane (Japan)

1.2.9 The Supplementary Fund Assembly decided to postpone the election of the Chairman for future sessions until the end of the current session.

1.2.10 The Chairman thanked, also on behalf of the two Vice-Chairmen, the Supplementary Fund Assembly for the confidence shown in them.

1971 Fund Administrative Council Decision

1.2.11 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 to hold office until its autumn 2012 session.

1.2.12 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/OCT11/1/2	**92A**	**92EC**	**SA**	
Participation				**71AC**
Examination of Credentials – Report of the Credentials Committee Document IOPC/OCT11/1/2/1	**92A**	**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 at 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 Assembly Decision

1.3.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Assembly appointed the delegations of Antigua and Barbuda, Finland, Malaysia, Nigeria and Turkey 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 Assembly.

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/OCT11/1/2/2 that credentials had been received from 72 Member States of the 1992 Fund, including States members of the Executive Committee and the Supplementary Fund, and 71 were in order.

1.3.7 The governing bodies noted that the Credentials Committee had in its Report drawn the attention of Member States to the fact that some States continued to send their credentials to the Secretary-General of the International Maritime Organization instead of to the Director of the IOPC Funds as stipulated in the IOPC Funds' credentials policy (cf circular 92FUND/Circ.75).

1.3.8 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for having dealt with a particularly heavy workload during the October 2011 sessions.

1.4	**Request for observer status**	**92A**		**SA**	

The 1992 Fund Assembly and the Supplementary Fund Assembly noted that no requests for observer status had been received.

1.5	**Farewell to the current Director, Mr Willem Oosterveen**	**92A**	**92EC**	**SA**	**71AC**

1.5.1 Having completed the procedural matters, the Chairman of the 1992 Fund Assembly took the opportunity, before embarking on the work for the week, to remind delegations that since the last sessions of the governing bodies in July 2011, the current Director, Mr Willem Oosterveen, had announced the very sad news that, due to ill-health, at the expiry of his current contract on 31 October 2011, he would not be seeking a second term of office and that, as a result, the current meetings would be the last with Mr Oosterveen as Director.

1.5.2 Mr Oosterveen made the following statement:

'Mister Chairman, Excellencies, distinguished delegates, ladies and gentlemen,

Here I stand before you, five years after holding my acceptance speech. I never could have dreamt it would be over so soon. That is to say, I never could have dreamt it would be over because of this; a little blood clot entering my brain.

It was a sickness, chosen out of a million sicknesses, exactly right, that did it. A sickness to take away my speech, my language; the toolbox of a lawyer. The words do come out, but clumsy, and slow. Not the best words, but the second or even third best; and sometimes not even that. Not very suitable to make a convincing, or forceful impression, as you may need in this job.

You may not notice that here and now, for this speech is written, and I only have to read it out loud. But when I need to intervene or when I am expected to respond quickly, it comes out so slow that the other parties have moved on with the debate. My remarks are, though interesting perhaps, out of order; the brutal consequences of aphasia.

That in a nutshell is why it would not be wise to continue, and why I won't. The Fund deserves better than that, and there are people available who can do it. But I think I dare say that I had your confidence until the end, and I am very grateful for that, and for the fact that you gave me every possibility to recover as good as I could.

There is one person who I would mention; my wife Jolien. She found me after the event in bed, with a right half fully paralysed, not being able to walk, not being able to stand, and not being able to talk at all. Imagine for one second how it must be to go through that. She helped me with everything from the beginning until now, and she still does. I owe her my love and deepest respect for that.

Ladies and gentlemen,

I hope that this disease never hits anyone of you, for I have experienced how hard and brutal it is. I will spare you the details of what I can and cannot do on my own. More important is that, more than a year after the event, I still feel it every day, from daybreak to sunset; day in, day out. I hope I will, but I may never recover from it.

This speech is not about all we have reached over the years. Forgive me for that; it is only about the reason why I could not continue with this wonderful job. I want you to know that is heartbreaking for me to have to disappoint you; but it is how it is.

I want to thank the present staff of the Funds for making sure that the Fund continued its work in my absence, for the benefit of those who were victims of oil pollution. In particular I would like to mention José, Ranjit and Jill, who were there when it was most important; but also I regret that I could only work so little with Akiko, Matthew and Thomas.

I would like to mention the excellent co-operation with organisations like IMO and ITOPF with whom we have resolved many difficult situations and the Fund will continue to do so in the future.

Finally there is you; the Member States of this Organisation. Member States formally, but in reality good friends with friendly faces wishing me all the best. Thank you all very much for your messages, letters, cards and flowers when I was in hospital, for being with me in your thoughts and your prayers, and for giving me the support up to the very end of this hard year.

Thank you.'

1.5.3 All persons present in the room gave Mr Oosterveen a standing ovation.

1.5.4 The delegation of the United Kingdom, as Host Government to the IOPC Funds, made the following statement:

'As Host Government to the IOPC Funds, the United Kingdom would like to place on record its gratitude to Willem Oosterveen for the work he has undertaken over the years.

Mr Oosterveen has a long association with the IOPC Funds, having been Chairman of the 1971 Fund Executive Committee from 1995 to 1998 and of the 1992 Fund Assembly from 1999 to March 2005. He took up office as the new Director of the IOPC Funds on 1 November 2006. He served the post with the integrity and distinction he brought to the other roles he has played for the Netherlands and the IOPC.

We were saddened by the ill health that overtook him.

We, like others, are delighted to see that he is recovering and respect the decision that he has taken not to seek a second term of office.

David Bolomini, a previous Head of the UK delegation, has told me that he and others, notably Frank Wall and John Wren, held him in high esteem.

We wish him well for the future.'

1.5.5 The delegation of the Netherlands thanked Mr Oosterveen for his very brave and moving speech. That delegation stated that the Netherlands had been very proud to have had such an excellent candidate in Mr Oosterveen for the position of Director in 2005; that they had been very proud that he was elected Director; had been very proud of the job he had done in guiding the IOPC Funds; and that they were still proud of him today. That delegation thanked Mr Oosterveen and stated that it looked forward to welcoming him back to the Netherlands for his new job in the service of the Dutch Government.

1.5.6 Many delegations took the floor to pay tribute to Mr Oosterveen, placing great emphasis on the fact that he had never disappointed Member States but had, on the contrary, served as an excellent Director, displaying great integrity, dedication and leadership. Immense gratitude was expressed for the new approach and dynamism he had introduced to the Organisation during his time as Director.

His diplomatic skills were praised and past and present Chairmen of the governing bodies thanked him for his support and calming influence on the podium.

1.5.7 The observer delegation of the International Group of P&I Clubs expressed, on behalf of the observer organisations to the IOPC Funds and on behalf of the 13 member clubs of the International Group, its sincere appreciation and gratitude to the Director for ensuring, during his time as Director, that the international compensation regime functioned as delegates intended.

1.5.8 Many delegations acknowledged what a difficult decision the Director had taken, stating that whilst they were saddened that he was stepping down as Director, they had great respect for his decision.

1.5.9 Tributes were also paid to Mr Oosterveen's wife, Jolien, and his family for all the support and love they had clearly given to him since his illness, with several delegations stating that they had been very encouraged and impressed by Mr Oosterveen's progress. All delegations wished him a continued and speedy recovery.

1.5.10 In concluding the tributes to Mr Oosterveen, the Chairman of the 1992 Fund Assembly expressed, on behalf of all persons present, deep gratitude and wished Willem and Jolien all the best for the future.

2 Overview

2.1

Report of the Acting Director **Document IOPC/OCT11/2/1**	**92A**		**SA**	**71AC**

2.1.1 The Acting Director introduced his report on the activities of the IOPC Funds since the October 2010 sessions of the governing bodies, stressing that the report only covered those 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 dealt with in detail under individual agenda items.

2.1.2 The Acting Director noted with regret that the current Director, Mr Willem Oosterveen, was not seeking a second term of office and that he would therefore be leaving his post on 31 October 2011. He also noted the tributes that had been paid by delegations to Mr Oosterveen for his outstanding contribution to the work of the international oil pollution compensation regime for nearly 20 years, both as a delegate and as Director.

2.1.3 With respect to staffing, the Acting Director was pleased to report the recruitment of six new staff members since the October 2010 sessions of the governing bodies: Mr Matthew Sommerville (United Kingdom) as Technical Adviser/Claims Manager; Ms Eun-Myo (Katrin) Park (Republic of Korea) as External Relations Officer; Mrs Victoria Turner (United Kingdom) (formerly External Relations and Conference Coordinator) as Information Officer; Ms Ellen Leishman (United Kingdom) to a newly-established post of Administrative Assistant in the External Relations and Conference Department; Ms María Alonso (Spain) to a newly-established post of Translation Administrator (Spanish) in the same Department; and Ms Sylvie Legidos (France) as Translation Administrator (French). The governing bodies also noted that Mrs Constanze Rimensberger had resigned as Information Officer earlier in the year.

2.1.4 With respect to compensation issues, the Acting Director reported that the 1992 Fund had recently been informed of an oil spill which had occurred in June 2009 in the Warri River, Delta State, Nigeria. In view of the fact that the incident had not been widely reported outside of Nigeria and very little information was available, the 1992 Fund had instructed lawyers in Nigeria to gather background information concerning the incident, the impact of the spill and any clean-up operations undertaken. The governing bodies noted that the lawyers had met with the shipowner but that he had not provided any information as to whether the vessel was insured for pollution liabilities as required under Article VII.1 of the 1992 CLC and neither had he provided details of any claims received or compensation paid.

2.1.5 The Acting Director also reported that the *Hebei Spirit* incident continued to provide one of the biggest challenges yet faced by the 1992 Fund, with more than 127 000 individual claims submitted so far, mainly from the Korean fishing sector. The governing bodies noted that compensation of some KRW 135 billion (£79 million) had been paid by the P&I Club Assuranceföreningen Skuld (Gjensidig) (Skuld Club), and that the 1992 Fund would soon start to make compensation payments to victims of this spill. In light of the decision by the Korean Government not to set up the bank guarantee as determined by the 1992 Fund Executive Committee at its March 2011 session which would have enabled the 1992 Fund to increase the level of payment to 100% of the established claims, The Acting Director reported that he would be proposing that the level of payment be maintained at 35% to be reviewed at the next session of the Executive Committee.

2.1.6 The Acting Director reminded the governing bodies that problems associated with processing such large numbers of claims, many of them for small sums and not accompanied by sufficient supporting information, in relation to the *Hebei Spirit* incident, had led the 1992 Fund Assembly to establish the 6th intersessional Working Group to look at ways of dealing with such problems. The Acting Director reported that this Working Group had held its second and third meetings in March and July 2011. The governing bodies noted that reports on these meetings would be considered under the relevant agenda item and that it was anticipated that a fourth meeting would take place in the spring of 2012.

2.1.7 The Acting Director recalled that at its October 2010 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had instructed the Secretariat to provide a legal analysis of the extent to which the interpretation of the definition of 'ship' within Article I.1 of the 1992 CLC might include floating storage units, as well as other related issues, and to report back to the 1992 Fund Assembly at its next session. He reported that Professor Vaughan Lowe QC, a practising lawyer and leading academic at the University of Oxford with many years' experience dealing with international treaties and conventions, had been engaged to carry out the study and that his legal opinion and the Director's considerations in relation to this issue were on the agenda for the current session of the 1992 Fund Assembly.

2.1.8 The governing bodies noted that the term of office of the present members of the joint Audit Body would be expiring at the current sessions of the governing bodies and that a new Audit Body would be elected for the next three-year period. The Acting Director took this opportunity to express the gratitude of the IOPC Funds' Secretariat to the Audit Body for all its work over the three years of its mandate and in particular to the outgoing members: Mr Wayne Stuart, Mr Marcel Mendim Me Nko'o and Mr Nigel Macdonald.

2.1.9 The Acting Director also expressed the gratitude of the Secretariat to the members of the joint Investment Advisory Body (IAB) for the wise advice they had provided during the three years of their mandate which had coincided with a period of exceptional global financial instability. He expressed the Secretariat's gratitude in particular to Mr David Jude who had been a member of the IAB since its creation in 1994 and who was stepping down in October 2011.

2.1.10 With regard to external relations, the Acting Director referred to the pilot internship programme which was being offered by the IOPC Funds' Secretariat for the first time in November 2011. He said that candidates from Antigua and Barbuda, Bahamas, Brunei Darussalam, Greece, Ireland, Latvia, Norway, Philippines, Poland and the Republic of Korea would be participating in the pilot programme. He also reported that a Document Services website had been launched by the Secretariat to form part of the IOPC Funds' website, making available all meeting documents and decisions taken by the governing bodies of the IOPC Funds since 1978, as well as providing additional services, including the possibility to register for IOPC Funds' meetings online, and providing access to IOPC Funds' circulars. The governing bodies noted that, following the completion of the Document Services website, work had now commenced on the re-design of the 'public' part of the IOPC Funds website with the intention of providing users with wider and more readily accessible information, presented in a clear, modern and visually enhanced way.

2.1.11 The Acting Director also reported that two further informal lunch meetings had taken place since October 2010 with London-based representatives of Member States and non-Member States from South America and the Caribbean and from the Southeast Asia and the Pacific region. He reported that both gatherings had been very successful and had provided an opportunity for members of the Secretariat to improve their relationships with Member States, 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 intention was to continue to hold such gatherings at regular intervals and that one further lunch meeting was planned before the end of 2011.

2.1.12 The governing bodies noted that three new States (Serbia, Senegal and Palau) had ratified the 1992 Conventions. They also noted that the Secretariat had continued its outreach activities by participating in seminars, conferences and workshops in a number of countries since the October 2010 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. The governing bodies further noted that the Secretariat was also a member of the steering committee which was organising Interspill 2012, the oil spill conference and exhibition, planned for March 2012 in London. It was noted that the detailed programme for the event was expected to be announced shortly and that, in addition to holding a stand at the exhibition, the IOPC Funds' Secretariat would be among the speakers at the conference.

2.1.13 Looking forward, the Acting Director reminded the governing bodies that one of the most important decisions to be taken by them at the October 2011 sessions would be the appointment of a new Director to guide the IOPC Funds through the years to come. He added that, whilst it was comforting to note that the frequency of incidents had reduced over the years, the important role still played by the IOPC Funds had nevertheless been apparent during the past year, particularly as regards the 1992 Fund's involvement in the *Hebei Spirit* incident. He stated that the main priority for the IOPC Funds would continue to be the prompt payment of compensation to victims of oil pollution.

2.1.14 The Acting Director expressed his gratitude to all those without whom the international compensation regime would not function, mentioning in particular the Member States, the P&I Clubs, the oil industry in Member States and the international shipping community. He also recognised the very strong support that the International Maritime Organization continued to provide to the IOPC Funds. He thanked 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.

2.1.15 On a personal note, the Acting Director stated that it had been a privilege for him to have worked under Mr Oosterveen's leadership and that he had learnt a great deal from him. He said that he was very sad to see him leave the helm of the Secretariat but that he was confident that Mr Oosterveen would keep in touch with his colleagues in the Secretariat. He wished Mr Oosterveen well for the future and a prompt and full recovery.

2.1.16 One delegation expressed his gratitude to the Acting Director for the high level of transparency shown in reporting staffing issues but said that the IOPC Funds were intergovernmental organisations and that, in that delegation's view, this needed to be reflected in the geographical representation of the staff in the Secretariat. He noted, in particular, that there were no members of staff from Africa and he encouraged the Secretariat to ensure that the staff members were representative of the Funds' membership and to look for talent more widely. The Acting Director responded that geographical representation in the Secretariat was an important concern and that he would continue to keep it at the forefront of his mind when recruiting new staff.

2.1.17 The delegation of Côte d'Ivoire, a former member of the 1971 Fund, noted that the Acting Director had in his report encouraged States to ratify the 1992 CLC and Fund Conventions and was pleased to report that legislation was underway in its country with respect to the ratification of both Conventions.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/OCT11/3/1**		**92EC**	**SA**	**71AC**

3.1.1 The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT11/3/1, which contained information on documents for the October 2011 meetings relating to incidents involving the IOPC Funds.

3.1.2 The Supplementary Fund Assembly noted that no incidents had occurred since the Supplementary Fund Protocol entered into force on 3 March 2005 that will or may involve that Fund.

3.2

Incidents involving the IOPC Funds – 1971 Fund: *Vistabella, Aegean Sea* and *Iliad* **Document IOPC/OCT11/3/2**				**71AC**

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT11/3/2 concerning the *Vistabella*, *Aegean Sea* and *Iliad* incidents.

Vistabella

3.2.2 It was recalled that the Court of First Instance in Guadeloupe had awarded the 1971 Fund the amount which it had paid for damage caused by the *Vistabella* in the French territories, ordering the insurer to pay FFr8.2 million or €1.3 million to the 1971 Fund plus interest. It was also recalled that the Court of Appeal had confirmed the judgement of the Court of First Instance and that the insurer had not appealed to the Court of Cassation.

3.2.3 It was also recalled that the 1971 Fund had commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal in Guadeloupe.

3.2.4 It was 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 filed defence pleadings opposing the execution of the judgement on the grounds that it had been issued in application of the 1969 Civil Liability Convention (1969 CLC) to which Trinidad and Tobago was not a Party. It was also recalled that the 1971 Fund had submitted a reply arguing that it was not requesting the Court to apply the 1969 CLC, but that it was seeking to enforce a foreign judgement under common law. 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.

3.2.5 It was noted that in separate proceedings between the owners of the *Vistabella* and the insurer, the High Court in Trinidad and Tobago had issued a ruling in 2011 dismissing a claim by the shipowners for indemnity and declaring that the insurer was not liable to the owners of the *Vistabella* under the policy of insurance. It was also noted that this ruling had been brought to the attention of the Court of Appeal by the insurers. The Administrative Council noted that the 1971 Fund had questioned the relevance of the High Court ruling on the summary proceedings brought by the 1971 Fund against the insurer.

3.2.6 It was noted that the Court of Appeal in Trinidad and Tobago had not yet delivered its decision.

Aegean Sea

3.2.7 It was recalled that an agreement had been concluded between the Spanish State, the 1971 Fund, the shipowner of the *Aegean Sea* and the UK Club whereby the Spanish State had undertaken to compensate all the victims who obtained a final judgement by a Spanish court in their favour, which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

3.2.8 It was noted that two claims in the fisheries and mariculture sector (a fish pond owner and a fish processor) were still pending in civil proceedings.

3.2.9 The 1971 Fund Administrative Council noted that the Spanish State would, under the agreement with the 1971 Fund, pay all the amounts awarded by the Courts.

Iliad

3.2.10 It was recalled that the shipowner of the *Iliad* and his insurer had taken legal action against the 1971 Fund in order to prevent their rights to reimbursement from the 1971 Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. It was noted that the hearing of these proceedings had been postponed until December 2012.

3.2.11 It was noted that, taking into account the total claim amount approved by the liquidator appointed by the Court of Nafplion to examine the claims in the limitation proceedings (€2 125 755) and adding the applicable interest, it seemed unlikely that the final adjudicated amount would exceed the limitation sum of €4.4 million. It was also noted that claims representing approximately one third of the liquidator-approved amount, might be found to be time-barred by the Court. It was recalled, however, 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. The Administrative Council noted that the 1971 Fund would therefore have to continue monitoring the legal proceedings.

3.3

Incidents involving the IOPC Funds – 1971 Fund: ***Nissos Amorgos*** **Document IOPC/OCT11/3/3**				**71AC**

3.3.1 The 1971 Fund Administrative Council took note of document IOPC/OCT11/3/3, regarding the *Nissos Amorgos* incident.

Criminal liability

3.3.2 It was recalled that in a judgement rendered in February 2005, the Criminal Court of Appeal in Maracaibo had held that the Master had incurred criminal liability due to negligence causing pollution damage to the environment, but that, since more than four and a half years from the date of the criminal act had passed, the criminal action against the Master was time-barred, without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement.

3.3.3 It was also recalled that the Maracaibo Criminal Court of Appeal had issued a new judgement in February 2008, confirming that the criminal action against the Master was time-barred but preserving the civil action arising from the criminal act. In the judgement, the Court of Appeal decided to send the file to the Criminal Court of First Instance in Maracaibo to decide on the civil action filed by the Republic of Venezuela.

Civil liability – Claim by the Republic of Venezuela

3.3.4 It was recalled that the Republic of Venezuela had presented a claim for pollution damage in the Criminal Court in Cabimas for Bs29 220 619 740 (US$60 250 396) against the Master, the shipowner and the Gard Club. It was recalled that the claim had been calculated by the use of theoretical models.

3.3.5 It was also recalled that in March 1999 the 1971 Fund, the shipowner and the Gard Club had presented to the Court a report prepared by their experts on the various items of the claim by the Republic of Venezuela which concluded that the claim had no merit.

3.3.6 It was further recalled that the Criminal Court had appointed a panel of three experts to advise the Court on the technical merits of the claim presented by the Republic of Venezuela and that in its report presented in July 1999, the panel had unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.

3.3.7 The 1971 Fund Administrative Council recalled that the IOPC Funds had consistently taken the view that claims for compensation for damage to the marine environment calculated on the basis of theoretical models were not admissible and that compensation could be granted only if a claimant had suffered a quantifiable economic loss.

3.3.8 It was recalled that in a judgement rendered in February 2010 the Maracaibo Criminal Court of First Instance had held that the Master, the shipowner and the Gard Club had incurred a civil liability derived from the criminal action and had ordered them to pay to the Venezuelan State the amount claimed, namely BsF 29 220 620 plus indexation, interest and costs.

3.3.9 It was also recalled that in its judgement, the Maracaibo Criminal Court of First Instance denied the shipowner the right to limit its liability, stating that the Criminal Court of Cabimas had been wrong in its decision delivered in 1997 since, at that time, it was not certain that a criminal offence had been committed and the damage had not been quantified.

Judgement by the Maracaibo Criminal Court of Appeal

3.3.10 The Administrative Council noted that in March 2011, the Maracaibo Criminal Court of Appeal had upheld the judgement of the Maracaibo Criminal Court of First Instance and dismissed the appeals by the Master, the shipowner, the Gard Club and the 1971 Fund. It was also noted that the 1971 Fund, the Master, shipowner and Gard Club had appealed to the Supreme Court.

Shipowner's limitation of liability

3.3.11 It was noted that in its judgement, the Maracaibo Criminal Court of Appeal had upheld the judgement of the Maracaibo Criminal Court of First Instance, rejecting the shipowner's request to limit its liability and stating that the Criminal Court of Cabimas was not a suitable forum for admitting a liability limitation fund since, at that time, it was not certain that a criminal offence had been committed and the damage had not been quantified.

3.3.12 It was recalled that Article V.2 of the 1969 CLC provided that the shipowner was entitled to limit its liability *unless there has been actual fault or privity* on its part and that neither the Maracaibo Criminal Court of First Instance nor the Maracaibo Criminal Court of Appeal had held in their judgements that there had been actual fault or privity of the shipowner. It was noted, therefore, that in the Acting Director's view in this instance there were no grounds under the 1969 CLC upon which the shipowner should be denied the right to limit its liability.

3.3.13 It was noted that the judgement by the Maritime Court of Appeal had also stated that it was for the shipowner and its insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund. It was noted that in the Acting Director's view it could be inferred from the above that the Court of Appeal considered that there was no need to hold the 1971 Fund liable, which would not be possible since the 1971 Fund was not a defendant in the proceedings, and that, in the Court's view, the shipowner and its insurer would subsequently approach the 1971 Fund to obtain reimbursement.

3.3.14 It was further noted that, in the Acting Director's view, the Court's decision was not in accordance with the International Conventions.

Time bar

3.3.15 It was noted that in its appeal the 1971 Fund had pointed out that, under Article 6.1 of the 1971 Fund Convention, rights to compensation became time-barred unless an action had been brought under

Article 4, or a notification made pursuant to Article 7.6, within three years of the date when the damage occurred but that in no case should an action be brought after six years from the date of the incident. It was noted that the 1971 Fund had further pointed out that no action had been brought against the 1971 Fund within six years and that the claim by the Republic of Venezuela was, therefore, time-barred.

3.3.16 It was noted that the Maracaibo Criminal Court of Appeal had concluded that the act of notification of the 1971 Fund and presence of the lawyers acting on behalf of the Fund at hearings that had taken place in 1997 was sufficient to interrupt the time bar, irrespective of the fact that no action had been taken against the 1971 Fund within six years of the incident occurring, as required under Article 6.1 of the 1971 Fund Convention. It was also noted that the Maracaibo Criminal Court of Appeal had concluded that, providing the 1971 Fund had been formally notified of an action against the shipowner within three years of the damage occurring, it was not necessary for an action to be brought against the 1971 Fund within six years.

3.3.17 It was also noted that the legal actions by the Republic of Venezuela in the Civil and Criminal Courts had been brought against the shipowner and the Gard Club, not against the 1971 Fund, and that although the Fund had intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund.

Implementation of the Conventions

3.3.18 It was noted that the 1971 Fund had appealed the judgement of the Maracaibo Criminal Court of First Instance on the grounds that those persons and organisations (private individuals, companies and State organisations), who had suffered a loss as a result of the pollution had been compensated for their losses by the Gard Club and the 1971 Fund and that the Venezuelan State itself did not have an admissible claim since it had not suffered any loss and was not, therefore, entitled to compensation as claimed and as awarded by the Criminal Court of First Instance in Maracaibo. It was noted that the 1971 Fund had also appealed on the grounds that the amounts of compensation paid to victims had not been taken into consideration.

3.3.19 The Administrative Council noted that in its judgement, the Maracaibo Criminal Court of Appeal had pointed out that the Maracaibo Criminal Court of First Instance had differentiated between 'direct' and 'indirect' victims, as established by the Environmental Criminal Law of Venezuela (Ley Penal del Ambiente), which provided that the Venezuelan State was the 'direct' victim whereas those natural or corporate persons affected by the pollution were 'indirect' victims. It was noted that the Court had stated that the Venezuelan State, as a 'direct' victim, should be compensated for the environmental damage caused without making any pronouncement with respect to the 'indirect' victims, since their claims had already been satisfied.

3.3.20 The Administrative Council noted that the decisions of the Maracaibo Criminal Court of First Instance and Criminal Court of Appeal appeared to the Acting Director to be based on consideration of the Environmental Criminal Law of Venezuela (Ley Penal del Ambiente) rather than on the provisions of the 1969 CLC and 1971 Fund Convention.

Award of compensation to Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM)

3.3.21 It was recalled that in 1998, ICLAM, a Venezuelan State organisation responsible for monitoring and environmental control of Lake Maracaibo, had submitted a claim in court for the cost incurred in carrying out a program of water, sediment and marine animal life inspection, sampling and testing following the spill and that the claim had been assessed by the Gard Club and 1971 Fund at Bs70 675 468. It was also recalled that the assessed amount had been paid by the 1971 Fund, that ICLAM had subsequently withdrawn their claim from court and that in 2005 the Court had confirmed (homologised) the withdrawal.

3.3.22 The Administrative Council noted that notwithstanding the payment made to ICLAM by the 1971 Fund and the subsequent withdrawal of its claim from the Court, the Maracaibo Criminal Court had condemned the Master, shipowner and Gard Club to pay Bs57.7 million (BsF 57 732). It was noted that the 1971 Fund had appealed on the grounds that ICLAM had already been compensated.

3.3.23 It was noted that the Maracaibo Criminal Court of Appeal had rejected this appeal, stating that a certain amount of money should be paid for the systematic monitoring of the affected area as, even though it was for the same purpose (as the payments made by the 1971 Fund), it was not for the same item, since one sum had been paid in a transaction made in civil proceedings and the other for estimated court costs relating to the reparation of damages arising from the commission of a criminal offence.

3.3.24 The Administrative Council noted that in the Director's view since ICLAM had not, as far as the Director was aware, suffered any costs in connection with the court action in question, it would appear that the payment ordered was equivalent to a fine and, as such, not admissible for compensation under the Conventions.

The calculation of losses

3.3.25 It was noted that the 1971 Fund had also appealed on the grounds that the method of calculation of losses was not applicable under the 1969 CLC and 1971 Fund Convention in that, even if changes in the ecology of the area had occurred, it had not been demonstrated that these were due to the spill and that an abstract mathematical formula had been used in the calculation of the amount claimed and awarded.

3.3.26 It was noted that the Maracaibo Criminal Court of Appeal had dismissed the appeal on the grounds that the 1971 Fund should have indicated at the right time its disagreement with the methodology employed by the experts in whose report the amount of the alleged loss had been calculated. It was noted, however, that the report submitted by the Public Prosecutor had been contested at the time by the 1971 Fund when the Fund had presented the Fund's expert's report at the Criminal Court in Cabimas.

3.3.27 It was noted that, in the Director's view, the Venezuelan Courts had failed to correctly implement the provisions of the 1969 CLC and 1971 Fund Convention with regard to the admissibility of the losses claimed by the Venezuelan State.

The failure to examine the evidence submitted by the 1971 Fund

3.3.28 It was noted that the 1971 Fund had additionally appealed on the grounds that the Maracaibo Criminal Court of First Instance had not examined the evidence submitted by the defendants and the 1971 Fund but had taken into account only the experts' report submitted by the Public Prosecutor in 1997.

3.3.29 It was noted that the Maracaibo Criminal Court of Appeal had dismissed the appeal on the grounds that the Maracaibo Criminal Court of First Instance had examined all the elements on the record and that the judgement was in keeping with the law.

Liability of the 1971 Fund to pay compensation

3.3.30 The Administrative Council noted that the judgement of the Maracaibo Criminal Court of First Instance, as upheld by the Maracaibo Criminal Court of Appeal, was a judgement against the Master of the *Nissos Amorgos*, the shipowner and the Gard Club, not a judgement against the 1971 Fund, which was only a third party to the proceedings, and that the judgement did not order the 1971 Fund to pay compensation.

3.3.31 It was noted that the judgement was subject to appeal to the Supreme Tribunal and, potentially, to the Constitutional Section of the Supreme Tribunal but that if the judgement of the Venezuelan Courts become enforceable on the shipowner and the Gard Club, the question would arise as to whether any

compensation was payable by the 1971 Fund. It was also noted that the Director recognised that the purpose of the 1971 Fund Convention was, *inter alia*, that the 1971 Fund pays victims of oil pollution compensation of established losses in excess of the amount available under the 1969 CLC. It was noted that the Venezuelan Courts, incorrectly in the Director's view, had denied the shipowner the right to limit its liability and ordered the shipowner to pay the full amount of the loss established by the Maracaibo Criminal Court of First Instance and that it could be inferred from the judgement that the shipowner and its insurer would subsequently approach the 1971 Fund to obtain reimbursement.

3.3.32 It was noted that the 1971 Fund Administrative Council might, therefore, have to decide, in the future, whether the shipowner or its insurer had the right to seek compensation from the 1971 Fund in excess of the shipowner's limitation amount as calculated under the 1969 CLC.

Debate

3.3.33 The Venezuelan delegation stated that although the 1969 CLC provided that the owner of a ship had the right to constitute a limitation fund to limit its liability, the shipowner did not have a right to limit its liability in every case. That delegation added that since the criminal proceedings initiated in the Republic of Venezuela had finally concluded that the Master was criminally liable for the incident, the Maracaibo Criminal Court of Appeal had decided that the shipowner had no right to limit his liability in this case. That delegation also added that since the shipowner could not limit its liability, the 1971 Fund had no obligation to pay any amounts in relation to the judgement by the Maracaibo Criminal Court of Appeal.

3.3.34 Other delegations stated that since the 1971 Fund was never a defendant in the proceedings, there could not be a judgement against the Fund and that therefore the Fund did not have to pay. One of those delegations further stated that if the shipowner could not limit his liability, the Fund had no obligation to pay.

3.3.35 Another delegation took the floor to ask for clarification on whether the grounds on which the Maracaibo Criminal Court of Appeal had decided that the shipowner was not entitled to limit his liability, were not based on the Conventions but on Venezuelan internal law.

3.3.36 The Acting Director stated that under the 1969 CLC the shipowner could lose his right to limit his liability if it was proved that the incident resulted from the 'actual fault or privity' of the shipowner. The Acting Director added that the Criminal Court of Appeal had not mentioned that there had been 'actual fault or privity' of the shipowner and that therefore it appeared that the decision not to allow the shipowner to limit his liability was based on Venezuelan internal law.

3.3.37 The International Group of P&I Clubs took the floor to state that whilst they did not wish to make a statement at this stage, they expected to do so in the future, once there was a decision from the Courts.

3.3.38 In his summary the Chairman of the 1971 Fund Administrative Council concluded that no action needed to be taken by the Secretariat for the time being but that the Secretariat should continue to monitor any future developments in this case and advise the Administrative Council at a future date.

3.4

Incidents involving the IOPC Funds – 1971 Fund: ***Plate Princess*** **Document IOPC/OCT11/3/4**				**71AC**

3.4.1 The 1971 Fund Administrative Council took note of document IOPC/OCT11/3/4 containing information on the *Plate Princess* incident.

3.4.2 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.

3.4.3 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.

3.4.4 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.

Developments on the claim by FETRAPESCA

3.4.5 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.

Developments on the claim by Puerto Miranda Union

Court proceedings on liability

3.4.6 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 noted that the method to be followed by the experts was set out in detail in the judgement and was based on data obtained from the receipts presented by the claimants to support their losses. It was noted that the judgement also ordered the defendants to pay interest and costs. It was recalled that the Fund had been notified of this decision, and that the Master, the shipowner and the 1971 Fund had appealed against the judgement to the Supreme Tribunal.

3.4.7 It was further recalled 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.

Appeal to the Constitutional Section of the Supreme Tribunal

3.4.8 It was recalled that in February 2011, the 1971 Fund had submitted an appeal to the Constitutional Section of the Supreme Tribunal, which requested that the decisions of the Supreme Tribunal and the Maritime Court of Appeal be overturned on the grounds that they contravened the applicable Venezuelan Law, principles and constitutional doctrine with regards to, *inter alia*, the time bar of the action against the 1971 Fund, the time bar due to the claim lapsing for lack of prosecution (*perención de instancia*) and the evaluation of the evidence.

3.4.9 It was noted that in June 2011, the Constitutional Section of the Supreme Tribunal dismissed the 1971 Fund's appeal on liability.

Analysis of the judgement of the Constitutional Section of the Supreme Tribunal

3.4.10 It was noted that the issues dealt with in the judgement of the Constitutional Section of the Supreme Tribunal could be subdivided into three main areas namely, time bar, the requirement for the courts to use logic and judgement (Sana Critica), and other issues.

Time bar

3.4.11 The 1971 Fund Administrative Council noted that the Constitutional Section of the Supreme Tribunal had upheld the interpretation by the Supreme Tribunal of the time-bar provisions of the 1971 Fund Convention. It was noted that the Constitutional Section of the Supreme Tribunal argued that Article 6.1 of the 1971 Fund Convention allowed three possibilities as regards the time bar of the claim, and that it was not clear against whom the time bar operated.

3.4.12 It was further noted that the Constitutional Section of the Supreme Tribunal held that it was logical to conclude that the time bar referred to in Article 6.1 operated only if the victim had not taken any action against the shipowner or his insurer within three years of the damage occurring, in which case the 1971 Fund would not be responsible for the complementary compensation required by the lack of financial capacity or reduced compensation obtained from the party that directly caused the damage.

3.4.13 In relation to the 1971 Fund's arguments that the claim by Puerto Miranda Union was not only time-barred under the provisions of the 1971 Fund Convention but also under Venezuelan law as a result of the lack of action by the claimant for a period of twelve months (*perención de instancia*), it was noted that the Constitutional Section of the Supreme Tribunal held that an analysis of this argument was unnecessary, since the use of the time bar defence was inadmissible in relation to environmental matters, under Venezuelan law.

3.4.14 It was noted that the Acting Director disagreed with the decision of the Constitutional Section of the Supreme Tribunal, and was of the opinion that although Article 6.1 of the 1971 Fund Convention did not stipulate against whom the action referred to must be taken within three years, since the 1969 CLC set out the relationship between the victim of pollution damage and the shipowner and his insurer, it was logical that any legal action required under that Convention would be against the shipowner and/or his insurer. Similarly, since the 1971 Fund Convention set out the relationship between the victims of pollution damage and the 1971 Fund, it was logical that any legal action required under that Convention would be against the 1971 Fund.

The application of logic and judgement (Sana Critica)

3.4.15 In respect of the application by the courts of 'logic and judgement', it was noted that the fact that the Constitutional Section of the Supreme Tribunal considered that logic and judgement (*Sana Crítica*) should only have been employed by the Court when determining the quantum of the loss in the absence of any special regulations set out in the Civil Procedure Code.

Court proceedings on the quantum of compensation

3.4.16 It was noted that in March 2011 the Maritime Court of First Instance had issued its judgement on the quantum of the loss, fixing the quantum of the loss as BsF 769.9 million (£110 million). The Court ordered the Master, as agent of the shipowner, to pay BsF 2.8 million (£400 000) and the 1971 Fund to pay BsF 400.6 million (£57.2 million). The Court also ordered the Master and the 1971 Fund to pay costs. The Master and the 1971 Fund appealed the judgement to the Maritime Court of Appeal.

3.4.17 It was also noted that in July 2011, the Maritime Court of Appeal had dismissed the appeals submitted by the Master and 1971 Fund against the judgement of the Maritime Court of First Instance on the quantum of compensation. It was noted that although the 1971 Fund argued in its appeal, *inter alia*, that the quantum was excessive in relation to the normal income earned by fishermen in 1997 and violated Venezuelan procedural law (time bar arising from lack of prosecution (*perención de instancia*)) the Maritime Court of Appeal had rejected the arguments, stating that the experts had followed the parameters specified in its decision of September 2009.

3.4.18 It was noted that the Master, shipowner and the 1971 Fund had applied to the Maritime Court of Appeal for leave to appeal to the Supreme Tribunal, which was denied, and that the 1971 Fund had appealed this decision.

The quantum of assessment

3.4.19 It was noted that the court experts, appointed by the Maritime Court of First Instance, assessed the compensation to be paid to the fishermen represented by the Puerto Miranda Union as BsF 769.8 million (£110 million). Of this amount, BsF 726 million (£105 million) concerned six months' loss of catch income from 849 boats. It was noted that this was equivalent to an income for each boat of BsF 1.7 million (£243 000) per year, and that by comparison, assessment of the claims in

the *Nissos Amorgos* incident indicated that in 1997, the average annual catch sale income per shrimp boat was US$17 400 (£11 000).

3.4.20 It was noted that the amount calculated by the court experts in the *Plate Princess* was therefore 22 times higher than in the *Nissos Amorgos*. Since the fishing concerned was an artisanal activity (the boats were small (in the majority less than 10m in length) and normally crewed by two persons), the Acting Director considered that the assessed loss far exceeded any real loss that could have occurred, even if activity had been suspended.

Calculation of the amount to be paid by the 1971 Fund

3.4.21 The 1971 Fund Administrative Council noted that the limit of liability of the shipowner and the total amount available for compensation had been calculated by the Maritime Court of First Instance using SDR/Bolivar exchange rates applicable on dates differing by 14 years, and that since the Bolivar had depreciated relative to the SDR by some 750% in the intervening period, the amounts awarded by the Court to be paid by the shipowner or his insurer and the 1971 Fund, differed substantially from the amounts that would have applied had the shipowners' limitation amount and the amount of compensation available under the Conventions been converted from SDR to the national currency using exchange rates applicable on the same date.

The provision of reasonable notice and a fair opportunity for the 1971 Fund to present its case

3.4.22 It was recalled that at its March 2011 session, a number of delegations expressed doubt that the 1971 Fund had been given reasonable notice and a fair opportunity to present its case, as required under Article X of the 1969 CLC. It was noted that the Acting Director agreed with those delegations, not only because the documents provided as evidence by the claimants in support of their claim were not available to the 1971 Fund prior to the time limit for submission of defence pleadings, but also because it would have been impossible to adequately investigate and defend a claim submitted in detail some 11 years after the damage occurred even if sufficient time had been allowed by the Court for the documentary evidence to be analysed prior to submission of the defence pleadings.

Intervention by the delegation of Venezuela

3.4.23 The delegation of Venezuela stated its concern about the great length of time taken to indemnify victims of the oil spill and expressed concerns over the Acting Director's document which commented adversely on the documents submitted by the claimants and the legal system of a Member State. That delegation requested that its intervention should be reflected in full in the Record of Decisions. The intervention is set out at Annex II.

Interventions by other delegations

3.4.24 One delegation stated that the 1971 Fund had already made a decision on this incident and the Acting Director's document (IOPC/OCT11/3/4) required no further decision to be made. Furthermore, that delegation expressed surprise to read that the Constitutional Section of the Supreme Tribunal had decided that a time bar defence in relation to environmental matters was inadmissible under Venezuelan Law. That delegation further commented that this indicated that the 1971 Fund Convention had not been correctly implemented into Venezuelan Law. The delegation further commented that, in its view, if the 1971 Fund was not a defendant, there could be no judgement against it. That delegation also stated that it would be very important in the future for the Secretariat to make it clear in what capacity the 1971 Fund had intervened in legal proceedings as, at times, this had been unclear.

3.4.25 Another delegation indicated that they did not wish to go against the 1971 Fund Convention, as this would establish a negative precedent. It stated that if the 1971 Fund did not make payments, this would be the first case of the 1971 Fund going against the decision of the Supreme Court of a Member State. That delegation stated that this was considered a very serious matter by the Latin American group at the IMO, and that it was very important that a proper decision be taken.

3.4.26 Another delegation stated that they fully supported the Acting Director's conclusions and that there were no grounds upon which to change the existing instruction to the Acting Director to not pay compensation in respect of this incident. That delegation stated that it agreed with the previous delegation's comments that the 1971 Fund should abide by the judgements of the national courts in each Contracting State. However, that delegation noted that there was an exception in Article X of the 1969 CLC and in Article 8 of the 1971 Fund Convention, which allowed the 1971 Fund to refuse to adhere to the national court's decisions, upon very narrow grounds, and that these grounds were an issue in this case. While noting that it was unusual to rely on those grounds, that delegation stated that nevertheless, the 1971 Fund was authorised by the Convention to rely upon those grounds. Upon this basis, that delegation stated that it could not authorise the Acting Director to make payment in respect of this incident and fully supported the Acting Director's conclusions. Finally, that delegation submitted that although it was unusual, this was a legitimate refusal.

3.4.27 One further delegation submitted that, at the March 2011 meeting of the 1971 Fund Administrative Council, a large majority of delegations agreed that the due process of law had not been followed and that the 1971 Fund had not been given a fair opportunity to present its case, and for this reason they could not authorise the Acting Director to make any payments in respect of this incident.

3.4.28 One delegation which had intervened previously stated that the decision taken not to pay was based on the fact that there were large deficiencies in the legal proceedings which would not vanish even if the 1971 Fund Administrative Council had to wait for another court decision. In its opinion therefore, there would be no payment.

3.4.29 Another delegation stated that it was very difficult for the delegations to assess the information provided by the Venezuelan delegation as it had arrived late and that it was necessary to consider this further so as to be in a position to make an informed decision at the next session.

3.4.30 Another delegation expressed gratitude to the Acting Director for his document but noted with concern the comments by several delegations and requested the Acting Director to explain the policy of the 1971 Fund when faced with a situation in which a national court appeared to be going against decisions of the 1971 Fund governing bodies.

3.4.31 In response, the Acting Director stated that this was a new situation for the 1971 Fund but, as one of the delegations had stated previously, in accordance with Article X of the 1969 CLC, there were legal grounds to rely upon to establish a defence.

3.4.32 One delegation requested the Acting Director to prepare a document to enable the 1971 Fund Administrative Council to consider the legal basis of Article X of the 1969 CLC.

Summary by the Chairman of the 1971 Fund Administrative Council

3.4.33 The Chairman of the 1971 Fund Administrative Council thanked the Venezuelan delegation for their intervention but stated that it was regrettable that this lengthy response had not been provided in advance. He stated that this had made it very difficult for Member States to consider all the information during this session. The Chairman therefore suggested that the information be considered at the next session of the 1971 Fund Administrative Council.

3.4.34 The Chairman also noted the comments of several delegations regarding the previous instructions given to the Director not to make any payments in respect of the *Plate Princess* incident and to keep the 1971 Fund Administrative Council informed of developments in respect of the legal proceedings in Venezuela. He further stated that, based on the interventions of the majority of delegations that had spoken, the previous decision would remain and therefore the Acting Director was instructed not to make any payments in respect of the *Plate Princess* incident at this time and to monitor developments and advise the 1971 Fund Administrative Council at the next session.

1971 Fund Administrative Council Decision

3.4.35 The 1971 Fund Administrative Council decided to confirm its instructions given in March 2011 to the Acting Director not to make any payments in respect of this incident and that the Acting Director should continue to monitor the outcome of the legal actions in Venezuela.

3.4.36 The 1971 Fund Administrative Council also instructed the Acting Director to prepare a report on the points raised in the intervention by the Venezuelan delegation and on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC, and to report back to the 1971 Fund Administrative Council at its next session.

3.5

Incidents involving the IOPC Funds – 1992 Fund: *Erika* Document IOPC/OCT11/3/5		**92EC**		

3.5.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/OCT11/3/5 and IOPC/OCT11/3/5/1 concerning the *Erika* incident, and of the details of a global settlement signed between the 1992 Fund, Steamship Mutual, Registro Italiano Navale (RINA) and Total.

Legal proceedings involving the 1992 Fund

3.5.2 The Executive Committee noted that thirteen legal actions against the shipowner, his insurer and the 1992 Fund were still pending and that the total amount claimed in the pending actions, excluding the claims by Total, was some €19.9 million.

Criminal proceedings

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

3.5.4 It was also recalled that taking into account the amounts paid in compensation by Total SA to the civil parties following the judgement of the Criminal Court of First Instance, the balance remaining to be compensated by the representative of the shipowner (Tevere Shipping), the president of the management company (Panship Management and Services Srl) and the classification society (RINA) was €33.9 million.

3.5.5 The Executive Committee recalled that the four parties and a number of claimants had appealed against the judgement to the French Supreme Court (Court of Cassation). It was noted that the Court of Cassation was expected to deliver its judgement in 2012.

Global settlement

3.5.6 It was recalled that at its July 2011 session the 1992 Fund Executive Committee had authorised the Acting Director to reach a global settlement between the 1992 Fund, Steamship Mutual (acting on its own behalf and also on behalf of the shipowner's interests), RINA and Total in respect of the *Erika* incident.

3.5.7 It was noted that in October 2011, the Secretariat had been informed that 47 out of 58 civil parties (81%) who had been awarded compensation had either signed a protocol with RINA or expressed their agreement to be paid by RINA the amounts awarded by the Criminal Court of Appeal in Paris and that these civil parties represented 99% of the total amounts awarded by the Court of Appeal.

3.5.8 The Executive Committee noted that since the vast majority of civil parties who had been awarded compensation by the Criminal Court of Appeal in Paris had agreed to receive compensation, on 14 October 2011 the Acting Director had signed, on behalf of the 1992 Fund, a global settlement with Steamship Mutual, RINA and Total.

TERMS OF THE GLOBAL SETTLEMENT

3.5.9 The Executive Committee noted that the global settlement had been formalised in four agreements as follows:

General four party agreement

3.5.10 It was noted that under the general four party agreement, the 1992 Fund, Steamship Mutual, RINA and Total had undertaken to withdraw all proceedings against the other parties to the agreement and that in addition they had waived any rights to bring any claim or action which they might have in relation to the *Erika* incident against any of the other parties to the agreement.

Settlement agreement between Steamship Mutual and the 1992 Fund

3.5.11 It was noted that a bilateral agreement had been signed between Steamship Mutual and the 1992 Fund whereby:

- Steamship Mutual has undertaken to pay to the 1992 Fund a lump sum of €2.5 million as a contribution to the agreement;
- the 1992 Fund has undertaken to waive and renounce all claims against Steamship Mutual and discontinue all pending actions against Steamship Mutual;
- Steamship Mutual has undertaken to waive and renounce all claims against the 1992 Fund and discontinue all pending actions against the 1992 Fund; and
- the 1992 Fund has undertaken to meet any judgements against Steamship Mutual and/or the 1992 Fund and has agreed to indemnify Steamship Mutual if the judgements are enforced against Steamship Mutual.

Settlement agreement between RINA and the 1992 Fund

3.5.12 It was noted that a bilateral agreement had been signed between RINA and the 1992 Fund whereby:

- RINA has undertaken to pay to those civil parties who agree to settlement, the amounts awarded by the decision of the Criminal Court of Appeal in Paris;
- the 1992 Fund has undertaken to waive and renounce all claims against RINA. The 1992 Fund has also undertaken to discontinue all pending actions against RINA; and
- RINA has also undertaken to waive and renounce all claims against the 1992 Fund and discontinue all pending actions against the 1992 Fund.

Settlement agreement between Total and the 1992 Fund

3.5.13 It was noted that a bilateral agreement had been signed between Total and the 1992 Fund whereby:

- Total has undertaken to waive and renounce all claims against the 1992 Fund and discontinue all pending actions against the Fund; and
- the 1992 Fund has undertaken to waive and renounce all claims against Total and discontinue all pending actions against Total.

Director's considerations

3.5.14 It was noted that the main objective of the global settlement was to ensure that civil parties who had been awarded compensation by the judgement of the Criminal Court of Appeal in Paris received compensation as soon as possible and that the vast majority of the civil parties had agreed to receive compensation.

3.5.15 It was also noted that the total amount available to pay compensation for this incident under the 1992 Civil Liability and Fund Conventions was some €184.7 million, that payments of compensation had been made for a total of €129.7 million and that therefore, there now remained some €55 million available for compensation.

3.5.16 It was noted that under the global settlement the 1992 Fund would continue to handle the 13 pending legal actions brought against it, totalling some €19.9 million, and would pay in accordance with judgements.

3.5.17 It was further noted that as a result of the global settlement, and the various contributions of the settling parties, the 1992 Fund would be able to reimburse its contributors.

Debate

3.5.18 The Italian delegation congratulated the Secretariat for the success in reaching a global settlement and stated that it was very pleased with its conclusion. That delegation added that the conclusion of the settlement showed that the 1992 Fund could resolve difficult cases and even save money for its contributors. It further stated that the settlement set a good precedent that could be followed by the 1992 Fund in other incidents.

3.5.19 The delegation of France stated that they were also very pleased with the conclusion of the global settlement and agreed that its conclusion could serve as a precedent for other cases.

3.5.20 On behalf of the Executive Committee, the Chairman congratulated the Secretariat for the successful achievement of this global settlement.

3.6

Incidents involving the IOPC Funds – 1992 Fund: *Prestige* Document IOPC/OCT11/3/6		**92EC**		

3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT11/3/6 dealing with the *Prestige* incident.

Claims for compensation in Spain

3.6.2 It was noted that as at 6 September 2011, the Claims Handling Office in La Coruña had received 845 claims totalling €1 037 million, including 15 claims from the Spanish Government totalling €984.8 million. It was also noted that 90.72% of the claims, other than those of the Spanish Government, had been assessed for €3.8 million and that interim payments totalling €564 976 had been made in respect of 175 of the assessed claims, mainly at 30% of the assessed amount. It was also noted that 429 claims (totalling €38 million) had been rejected, that 19 had been withdrawn by the claimants and that the remaining claims could not be assessed as the documentation submitted so far was insufficient to carry out an assessment.

3.6.3 It was recalled that the claims by the Spanish Government, totalling €984.8 million, had been assessed at €300.2 million.

Claims for compensation in France

3.6.4 It was noted that as at 6 September 2011, 482 claims totalling €109.7 million had been received by the Claims Handling Office in Lorient, including a claim by the French Government totalling

€67.5 million. It was also noted that 94% of the claims had been assessed for €57.5 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 also noted that the remaining claims awaited a response from the claimants or were being re-examined following the claimants' disagreement with the assessed amount, 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 four claims totalling some €63 000 had been withdrawn by the claimants.

3.6.5 It was recalled that the claim by the French Government, totalling €67.5 million, had been assessed at €38.5 million.

Legal proceedings in Spain – Investigations into the cause of the incident

3.6.6 It was recalled that in July 2010 the Criminal Court in Corcubión had decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely the Master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. It was also recalled 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, that their liability was joint and several and that the shipowner, the management company and the Spanish State were vicariously liable. It was further recalled 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.

3.6.7 It was also recalled that the 1992 Fund had requested the Court to reconsider the above decision on the grounds of public policy.

3.6.8 The Executive Committee noted that the Court of Appeal had delivered a decision in which it acknowledged the difficulties of combining the domestic procedural law with the provisions of the Convention and, while confirming the decision of the Court of Corcubión, stated that the amounts already paid by the 1992 Fund would be excluded and that the Fund might be required to put up security for the rest of its limit, if such security were to be considered necessary by the Court.

3.6.9 It was also noted that the proceedings would be transferred to another court, the Audiencia Provincial in La Coruña, who will conduct the criminal trial. It was further noted that it was expected that the hearing on the criminal and civil actions would commence in late 2012.

Legal proceedings in Spain – Civil claims

3.6.10 It was noted that as at 6 September 2011, some 2 285 claims had been lodged in the legal proceedings before the Criminal Court in Corcubión, including a legal action brought by the Spanish Government and 122 claims by French parties. It was also noted that the experts engaged by the 1992 Fund had assessed claims submitted by individual claimants in Spain for a total of €1 144 334 and that interim payments totalling €254 968 had been made at 30% of the assessed amount, taking into account the payments received from the Spanish Government. It was further noted that claimants in 407 of the court actions had received payments as a result of a settlement agreement with the Spanish Government and that the assessment of those claims was included in the subrogated claim submitted by the Spanish Government. It was noted that the claims submitted by French claimants were being assessed.

Legal proceedings in France

3.6.11 It was noted that legal actions by 123 claimants requesting compensation totalling €83.6 million remained pending in French courts. It was also noted that the courts had granted a stay of proceedings in 20 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.

3.6.12 It was further noted that some 122 French claimants, including various communes, had joined the legal proceedings in Corcubión, Spain.

3.6.13 The Executive Committee took note of a judgement by the Court of First Instance in Bordeaux concerning a claim by the owners of a campsite. It was noted that in its judgement the Court had partially agreed with the Fund's assessment of the claim. It was also noted that as the judgement did not involve a question of principle, the 1992 Fund had not appealed and had paid the claimant the sum of €85 931 plus legal costs.

Court action in the United States

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

3.6.15 It was recalled that the District Court had issued its second judgement in August 2010, granting ABS' Motion for Summary Judgement and dismissing Spain's claims against ABS. It was also recalled that the Spanish State had appealed against the judgement.

3.6.16 The Executive Committee noted that the next hearing before the Court of Appeal was scheduled to take place in November 2011.

Legal action by the French Government against ABS in France

3.6.17 It was recalled that in April 2010, the French State had brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of ABS, the classification society that certified the *Prestige*.

Possible recourse action of the 1992 Fund against ABS in France

3.6.18 It was recalled that the Director had been advised by the Fund's French lawyer that in a possible action against ABS in France in the context of the *Prestige* incident, the Court would most likely apply French Law and that, if in the *Erika* incident the Court of Cassation were to uphold the Criminal Court of Appeal's judgement, RINA would be held liable for the pollution arising from the *Erika* incident, which could be a precedent that was likely to be followed by a French court in an action against ABS in the *Prestige* incident.

3.6.19 It was also recalled that under French law a ten-year time-bar period would be applicable for a recourse action, meaning that the 1992 Fund would have until 13 November 2012 to bring an action against ABS in France.

3.6.20 It was noted that since the Court of Cassation was expected to deliver its judgement in 2012, the Director considered that it would be best to wait for that judgement before deciding whether the 1992 Fund should bring an action against ABS in France.

3.7

Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT11/3/7		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of document IOPC/OCT11/3/7, which contained information relating to the *Solar 1* incident.

Claims for Compensation

3.7.2 It was noted that as at 31 August 2011, some 32 466 claims had been received and that payments totalling PHP 987 million (£10.8 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. The Executive Committee noted that all claims had now been assessed and that the local claims office had been closed.

3.7.3 The 1992 Fund Executive Committee noted that some PHP 987 million had been paid in compensation and had been reimbursed by the Shipowner's Club to the 1992 Fund in accordance with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

Claims in court

3.7.4 It was recalled that a civil action totalling PHP 286.4 million (£4.1 million) for property damage as well as economic losses had been filed in August 2009 by a law firm in Manila representing claims by 967 fisherfolk. It was noted that the claimants had not taken any further steps to progress the case and that there had been no further legal developments.

3.7.5 It was noted that 97 individuals, employed by a municipality on Guimaras Island during the response to the incident, had commenced proceedings in court against the Mayor, the ship's Master, various agents, ship and cargo owners and the 1992 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 1992 Fund had filed statements of defence in court, pertaining to the fact that the majority of the claimants were not engaged in activities admissible for compensation, 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. It was noted that there had been no further developments in these proceedings.

3.7.6 It was also recalled that the Philippine Coastguard (PCG) had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations. It was noted that an offer of settlement for PHP 104.8 million (£1.52 million) for both claims had been accepted by the PCG. It was noted that the 1992 Fund's lawyers were liaising with the PCG's lawyer with regard to the compliance steps required by the Philippine Congress, in order to formalise the proposed settlement.

Intervention by one delegation

3.7.7 The delegation of the Philippines requested clarity over the level of control exercised by the 1992 Fund over its lawyer, as they had been surprised to learn that the 1992 Fund's lawyer had attempted to claim that the PCG's claim should be dismissed for lack of jurisdiction. Asking whether this was an isolated incident, the delegation indicated that they wished to work in co-operation with the 1992 Fund and did not wish to be surprised in this manner.

3.7.8 In response, the Acting Director stated that there had been one occasion where the 1992 Fund's lawyer had, in effect, tried too hard to defend the 1992 Fund's interests, but that this was an isolated incident and the application had been withdrawn once it was brought to the 1992 Fund Secretariat's attention.

3.7.9 The Acting Director further stated that the 1992 Fund Secretariat was making efforts to ensure that payment was made but that, in this respect, the 1992 Fund had faced difficulties in identifying who should receive the payment accepted by the PCG.

3.8

Incidents involving the IOPC Funds – 1992 Fund: ***Volgoneft 139*** **Document IOPC/OCT11/3/8**		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT11/3/8.

3.8.2 It was recalled that on 11 November 2007, the Russian-registered tanker *Volgoneft 139* had broken in two in the Kerch Strait between the Russian Federation and Ukraine, that up to 2 000 tonnes of fuel oil had been spilled and that the oil had affected some 250 kilometres of shoreline, both in the Russian Federation and in Ukraine.

Claims situation

3.8.3 The Executive Committee noted that all the 11 claims with supporting documentation had been assessed and that the total established losses amounted to RUB 338.8 million (£7 million).

3.8.4 It was recalled that the largest admissible claims had been submitted by the regional and local government for costs incurred in clean-up operations, including costs for the treatment of waste collected and environmental restoration.

3.8.5 It was noted that a claim had been submitted by the Port of Kerch (Ukraine) even though Ukraine was not a Party to the 1992 CLC or 1992 Fund Convention at the time of the incident, but that only the costs for preventive measures carried out for the purpose of preventing pollution damage in a Member State, ie the Russian Federation, were admissible for compensation. It was noted that the claimant had not agreed with the assessment.

Court decision – 'Insurance gap'

3.8.6 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). It was also recalled that the vessel insurance cover was limited to 3 million SDR (RUB 116.6 million) which was below the minimum limit under the 1992 CLC of 4.51 million SDR. It was further recalled that the limitation amount of 3 million SDR had been confirmed by the Russian courts applying the limits as published in the Russian Official Gazette at the time of the incident and that, as a result, there was an 'insurance gap' of some 1.5 million SDR.

Court decision – Cause of the incident (defence of force majeure)

3.8.7 The Executive Committee recalled that the insurer had raised the defence that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). It was further recalled that in September 2010, the Arbitration Court had decided that the shipowner and its insurer had not shown that the oil spill resulted from a natural phenomenon of exceptional, unavoidable and irresistible character and were therefore liable in accordance with the 1992 CLC.

Court decision – 'Metodika' claim

3.8.8 The Executive Committee recalled that a claim for environmental damage based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika') had been submitted. It was recalled that claims based on theoretical models were not admissible for compensation. It was recalled that in September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region had decided that claims based on 'Metodika' were not admissible.

Meetings with claimants

3.8.9 The Executive Committee noted that at a meeting held in London in October 2011 with regional and local government representatives, agreement had been reached on the quantum of their claims and that this meant that, apart from claims submitted by the Port of Kerch and Rosprirodnadzor (an agency of the Ministry of the Environment of the Russian Federation), all other claimants had agreed their losses with the 1992 Fund.

Outstanding issues

3.8.10 The Executive Committee noted the Director's view that it was important to ensure that the 1992 Fund paid compensation to the victims of the *Volgoneft 139* incident as soon as possible since the incident had taken place almost four years earlier and the claimants had fully cooperated with the 1992 Fund. It was noted, however, that two issues remained which needed to be addressed, namely the payment of compensation by the insurer and the 'insurance gap'.

3.8.11 It was noted that from discussions with the insurer, it seemed that the payment of compensation by the insurer would only take place when the courts had rendered a final judgement in respect of this incident.

3.8.12 With regard to the 'insurance gap', it was noted that some claimants were prepared to pay it from the compensation due to them under the Conventions and that they would request the Court to render a judgement to that effect.

1992 Fund Executive Committee Decision

3.8.13 The 1992 Fund Executive Committee instructed the Acting Director to continue discussions with the claimants and Russian authorities to explore a solution to the 'insurance gap' and revert to the Executive Committee with a proposal at a future session.

3.9

Incidents involving the IOPC Funds – 1992 Fund: ***Hebei Spirit*** **Documents IOPC/OCT11/3/9 and IOPC/OCT11/3/9/1**		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT11/3/9, submitted by the Secretariat and document IOPC/OCT11/3/9/1, submitted by the Republic of Korea.

DOCUMENT IOPC/OCT11/3/9, SUBMITTED BY THE SECRETARIAT

Claims situation

3.9.2 The 1992 Fund Executive Committee noted that as at 25 October 2011, 28 882 claims totalling KRW 2 605 billion had been registered, including 278 group claims, totalling 128 343 claims altogether representing 115 097 individual claimants. It further noted that 20 116 claims had been assessed at a total of KRW 166.6 billion, out of which 16 549 claims had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 142 billion in respect of 2 639 claims, and that the remaining claims were being assessed or additional information was being requested from the claimants.

Legal proceedings against the 1992 Fund

3.9.3 The 1992 Fund Executive Committee noted that legal proceedings against the 1992 Fund had been commenced by one clean-up company, one boat owner, a group of individual fishermen and the former owner of an aquaculture farm. It was noted that in one of the cases the Court had decided to stay the proceedings until the limitation proceedings had been completed and that in another the claimant had decided to discontinue his action against the 1992 Fund. It was further noted that in the

case of the boat owner the Court had decided to stay the proceedings until the Club and the Fund had assessed the boat owner's claim. It was further noted that the 1992 Fund's Korean lawyers were following the rest of these cases.

Limitation proceedings by the owner of the Hebei Spirit

3.9.4 It was recalled that in February 2009, the Limitation Court had rendered an order for the commencement of limitation proceedings by the owner of the *Hebei Spirit*. It was noted that 127 459 claims totalling KRW 4 091 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with them.

3.9.5 The Executive Committee noted that, in February 2011, the Limitation Court had appointed a court expert to assess the claims received by the Court and that the next hearing had been scheduled for August 2012.

Recourse action

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

3.9.7 It was noted that both Samsung C&T and SHI had filed applications objecting to the jurisdiction of the Ningbo Maritime Court and, in the case of SHI, objecting to the attachment. The 1992 Fund Executive Committee took note that, in September 2010, the Ningbo Maritime Court had rejected the objections of Samsung C&T and SHI to its jurisdiction in both recourse actions. It further noted that Samsung C&T and SHI had appealed against the decision.

3.9.8 The 1992 Fund Executive Committee noted that in February 2011, the Court of Appeal had held that the Ningbo Maritime Court was a *'forum non-conveniens'* and that a Korean court would be the appropriate jurisdiction to consider the case.

3.9.9 The Executive Committee noted that in March 2011 the 1992 Fund had lodged an application for a retrial with the Supreme Court in Beijing. The Executive Committee further noted that the Supreme Court had agreed to hear the applications and that it had ordered an adjournment of any application to set aside the attachment order, pending the hearing of the application for a retrial.

3.9.10 The Executive Committee noted that in July 2011 the Supreme Court had started a reconciliation process with the parties, with the aim of exploring a possible settlement of the dispute. The Executive Committee further noted that the 1992 Fund Secretariat had participated in the first reconciliation meeting.

3.9.11 The Executive Committee noted that the possibility of further reconciliation meetings was being considered by the Supreme Court.

Level of payments

3.9.12 The 1992 Fund Executive Committee recalled that in June 2008 the 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 Fund. It was also recalled that in subsequent meetings, the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established claims.

3.9.13 The 1992 Fund Executive Committee recalled that in March 2011 it had authorised the Acting Director to increase the level of payments to 100% of the established claims, subject to a number of safeguards being in place before the 1992 Fund commenced making payments, and that it had further decided that if these safeguards were not provided, the level of payments should be maintained at 35% of the established losses and that it should be reviewed at its next session.

3.9.14 The Executive Committee noted that in August 2011 the Korean Government had informed the Acting Director that, in view of the significant administrative burden that the safeguards determined by the Executive Committee in its March 2011 session would place on the Korean Government, it did not intend to set up the guarantee as determined by the Executive Committee, with the understanding that this would likely result in the 1992 Fund not increasing the level of payment to 100% of the established claims.

3.9.15 The 1992 Fund Executive Committee noted that the most recent estimate of the total amount of the admissible losses caused by the spill as prepared by the Skuld Club's and the Fund's experts was some KRW 283 billion (£164 million). It was noted, however, that although on the basis of the analysis by the experts it could be argued that there was room to revise the level of payments, the Acting Director had also considered the circumstances set out in document IOPC/OCT11/3/9, paragraphs 10.5.9 to 10.5.13 which had led him to the conclusion that, given the remaining uncertainties regarding the position that the Korean national courts would take in respect of the claims, it would be premature to raise the level of payments.

3.9.16 The 1992 Fund Executive Committee noted that the Acting Director had proposed to maintain the level of payments at 35% since this would continue to provide the 1992 Fund with a reasonable protection against a possible overpayment situation.

Debate

3.9.17 The Korean delegation stated that, based on the current estimates of losses, the actual exposure of the Fund could allow for an increase in the level of payments beyond the 35% of the established losses and requested the Executive Committee to increase the level of payments to 50% or 60% of the established losses.

3.9.18 A number of delegations supported the view expressed by the Korean Government that, based on the estimated losses, there was sufficient room for increasing the level of payment, at the same time seeking clarification from the Acting Director on which grounds he had made a proposal to maintain the level of payments at 35%.

3.9.19 The Acting Director responded by explaining that, although the estimates did indeed show that the Fund's experts expected the losses to be within the limits of the amount available for compensation, it was still unclear whether the national courts would accept the Fund's assessments when deciding on claims. The Acting Director pointed out that although the estimates were set below the limits of the 1992 Civil Liability and Fund Conventions, the actual exposure of the Fund, ie the amount claimed against the Fund in this incident, was much higher than the amount available for compensation. The Acting Director further highlighted that, while in the past the Korean Court had accepted the Fund's experts' views when deciding on the quantum of claims, on this occasion the Limitation Court had decided not to accept the Fund's experts but instead decided to appoint independent experts to assess the claims. That being the case, it was difficult at this stage to ascertain whether the Court's experts would follow the Fund's assessment or would assess the claims at a different level. The Acting Director therefore stated that, in his view, maintaining the level of payments at 35% of the established losses, would provide reasonable protection against an overpayment situation.

3.9.20 One delegation requested clarification from the Republic of Korea regarding its view that the actual exposure of the Fund was much lower than that presented by the Secretariat. That delegation also requested clarification on the basis upon which it was requesting an increase in the level of payments to 60% of the established losses.

3.9.21 The Korean delegation clarified that the proposed level of payments corresponded to the original level of payment proposed by the Director to the Executive Committee in its March 2008 session, when the estimated losses calculated by the 1992 Fund's experts allowed a 60% level of payments when the losses had been estimated at a higher level than now. It further stated that the existence of the Special Law for the support of the victims of the *Hebei Spirit* incident should be considered guarantee enough that the Korean Government would pay all claims in excess of the limits of the 1992 Civil Liability and Fund Conventions as awarded by the Korean Courts, therefore avoiding the risk of overpayment.

3.9.22 One delegation requested clarification as to whether the criminal proceedings in the Republic of Korea had been concluded and if the shipowners had been found guilty. That delegation further enquired whether the decision by the Criminal Court might have a bearing on the right of the owners of the *Hebei Spirit* to limit their liability.

3.9.23 The Acting Director confirmed that, although the Fund was not following the criminal proceedings, the right of the owner of the *Hebei Spirit* to limit liability had been confirmed by the Korean Courts. The Acting Director further noted that the owners and insurers of the *Hebei Spirit* had also entered into a cooperation agreement with the Korean Government, by virtue of which, should the Limitation Court request them to deposit the limitation amount in full, ie without discounting the amount already paid in compensation, the Korean Government would deposit in Court the difference between the amount paid and the limitation amount.

3.9.24 A number of delegations asked for further details from the Korean delegation as to the background to their decision not to set up the bank guarantee requested by the Executive Committee at its March 2011 session.

3.9.25 The Korean delegation stated that in view of the fact that the estimated losses prepared by the 1992 Fund were lower than the amount available under the limits of the 1992 Civil Liability and Fund Conventions, there was not the same urgency to have a bank guarantee in place, especially when the bank requested by the Executive Committee was not the bank normally used by the Korean Government.

3.9.26 The majority of the members of the Executive Committee who spoke agreed with the Acting Director's view that, for the time being, it would be premature to raise the level of payments, but that the level should be reviewed once more information had become available.

1992 Fund Executive Committee Decision

3.9.27 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the amount of the losses established by the Club and Fund and that this percentage should be reviewed at the 1992 Fund Executive Committee's next session.

DOCUMENT IOPC/OCT11/3/9/1, SUBMITTED BY THE REPUBLIC OF KOREA

3.9.28 The 1992 Fund Executive Committee took note of document IOPC/OCT11/3/9/1, submitted by the Republic of Korea, which summarised the assessment progress made by the 1992 Fund since the beginning of the incident.

3.9.29 In its intervention, the Korean delegation expressed concern at the time taken to assess claims and requested the Secretariat to continue its efforts to accelerate, where possible, the assessment of claims and to explore the possibility of increasing the number of experts employed by the Fund with a view to completing all assessments before the next hearing of the Limitation Court in August 2012.

3.9.30 The Executive Committee further noted the request made by the Korean delegation to reconsider the rejection of over 30 000 claimants belonging to group 3 handgatherers (see paragraph 3.9.35 below) which were carried out without conducting individual interviews.

Debate

3.9.31 A number of delegations agreed with the Korean delegation's view that the employment of further experts should be explored by the Secretariat with the aim of accelerating the assessment process and requested the Secretariat's view on whether the option had been explored and why it could not be implemented.

3.9.32 The Acting Director explained that the assessment of the majority of the claims that had been submitted in this incident required experts in a very specific sector, who may not necessarily be readily available. The Acting Director further stated that the Club and the Fund had employed all of the qualified surveyor companies that were available in the Republic of Korea, and that in fact even the Limitation Court had found it difficult to find sufficiently qualified experts to appoint as Court experts. The Acting Director, however, confirmed that the Fund was monitoring the situation and would, if appropriate, endeavour to appoint further experts if circumstances allowed for it.

3.9.33 A number of delegations requested clarification from the Secretariat regarding the method used to reject the 30 000 claims referred to by the Korean delegation and whether such claimants should be interviewed despite them not having submitted any proof of loss.

3.9.34 One delegation stated that by interviewing claimants who had not provided any proof of loss, the assessment process would likely be extended and suggested that in order to avoid a lengthy assessment process, a possible way forward to assess these claims was for the claimants to group themselves into associations so as to facilitate the assessment of their claims.

3.9.35 The Acting Director recalled that, upon the Korean Government's suggestion, the claims submitted in the handgatherer sector were divided into three groups:

- the first group consisted of those handgatherers who were in possession of a valid registration at the date of the incident and who were capable of proving the loss or damage suffered;
- the second group consisted of handgatherers whom the Korean Government considered to be genuine even though they did not have a valid registration at the time of the incident and/or were not capable of proving the loss or damage suffered; and
- finally, a third group consisted of claimants who were not in possession of a valid registration at the time of the incident and whom the Korean Government had not confirmed to be genuine handgatherers and who further did not submit any proof in support of their claims.

3.9.36 The Acting Director confirmed that, in accordance with the agreed assessment process, claims from the handgatherers belonging to the third group who could not provide any proof that they were legitimate claimants and that they had suffered a loss as a result of the contamination, had been rejected, but that this had been done after having conducted an assessment of these claims. The Acting Director also stated that if these claimants provided information to support their claims the Secretariat would review the assessments as necessary.

3.10

Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina **Document IOPC/OCT11/3/10**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT11/3/10 concerning an oil spill that had impacted the shoreline in Caleta Córdova, Chubut Province, Argentina, in December 2007.

Criminal proceedings

3.10.2 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 had originated from the *Presidente Arturo Umberto Illia* (*Presidente Illia*). It was, however, recalled that the shipowner and

the insurer of the *Presidente Illia* contested liability and had appealed against the decision arguing that the oil which impacted the coast must have come from another source.

Civil proceedings

3.10.3 It was noted that several claimants had brought actions against the West of England Club and the 1992 Fund in the courts of Comodoro Rivadavia and Buenos Aires.

Claims situation

3.10.4 It was noted that as at 5 September 2011, 257 claims for compensation for a total of AR$49.9 million and US$126 617 had been submitted to the 1992 Fund and the owner of the *Presidente Illia*. It was also noted that 128 claims had been assessed at a total of AR$3.5 million and US$115 949 and that payments totalling AR$2.8 million and US$70 949 had been made by the Club. It was further noted that the assessment of claims continued.

3.10.5 The Executive Committee noted that it seemed likely that the total admissible damage caused by the spill would fall within the shipowner's limit, namely 24 067 845 SDR (AR$150.6 million or US$35.8 million).

3.11

Incidents involving the IOPC Funds – 1992 Fund: ***King Darwin*** **Document IOPC/OCT11/3/11**		**92EC**		

3.11.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT11/3/11. It was noted that on 27 September 2008, the Marshall Islands-registered 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 discharging operations in the Port of Dalhousie, New Brunswick, Canada.

Claims for compensation

3.11.2 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

3.11.3 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 (SOPF) 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. It was further noted that the dredging company had since then discontinued its action against SOPF.

3.11.4 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 Civil Liability Convention limit and that it was therefore unlikely that the 1992 Fund would be called upon to pay compensation.

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

3.12

Incidents involving the IOPC Funds – 1992 Fund: ***JS Amazing*** **Document IOPC/OCT11/3/12**		**92EC**		

3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT11/3/12, which contained information relating to the *JS Amazing* incident.

3.12.2 It was noted that in May 2011, the Secretariat was informed of an oil spill which occurred in June 2009, in the Warri River, Delta State, Nigeria. It was noted that very little information was available, but that the *JS Amazing* was reported to have capsized at a loading berth and spilled an unknown quantity of low pour fuel oil causing pollution damage to local communities. It was noted, however, that some sources reported that the pollution damage was caused by a spill from oil pipelines which were vandalised two weeks prior to the spill from the *JS Amazing*.

3.12.3 It was noted that the 1992 Fund had instructed lawyers in Nigeria to gather background information concerning the incident, the impact of the spill and any clean-up operations undertaken. It was noted that the lawyers had met with the shipowner, but the shipowner had not provided any information as to whether the vessel was insured for pollution liabilities as required under Article VII.1 of the 1992 CLC. The shipowner had also not provided details of any claims received or compensation paid.

3.12.4 It was noted that Nigeria is a Party to the 1992 Civil Liability and Fund Conventions. The limit of liability of the owner of the *JS Amazing* under the 1992 CLC is estimated to be 4.51 million SDR (£4.5 million).

3.12.5 It was noted that as at October 2011, no claims had been presented and no legal proceedings against the 1992 Fund had been commenced.

Intervention by the Nigerian delegation

3.12.6 The delegation of Nigeria stated that it recognised that this incident was a serious matter and should be investigated thoroughly. It further stated that it was willing to assist the Secretariat in contacting the relevant Government authorities in order to obtain further information concerning the incident.

Interventions by other delegations

3.12.7 In response to a suggestion by one delegation for the Secretariat to obtain copies of the laboratory test results detailed at paragraph 2.9 of document IOPC/OCT11/3/12, the Secretariat responded that these results had already been obtained and analysed but were found to be inconclusive as to whether the oil analysed originated from the pipeline spill, the *JS Amazing* incident, or other sources.

3.12.8 Another delegation stated that it was regrettable that the Secretariat had only been informed of this incident recently, more than two years after the incident occurred, and that having been informed of the earlier spill from the oil pipeline, it would be, in its estimation, almost impossible to ascertain whether the spill from the *JS Amazing* caused the oil pollution damage. That delegation also reminded the Nigerian delegation that the issue of the time bar was a relevant factor.

1992 Fund Executive Committee

3.12.9 The 1992 Fund Executive Committee noted that it was not known whether the shipowner had third party oil pollution liability insurance, and that at present, no claims had been presented against the 1992 Fund. The Executive Committee also noted the difficulties faced in obtaining information regarding this incident which took place over two years ago, and looked forward to receiving further information from the Secretariat who would continue investigating the incident with the Nigerian authorities before reporting back to the 1992 Fund Executive Committee at its next session.

4 Compensation matters

4.1

Reports of the 1992 Fund Executive Committee on its 50th-52nd sessions	**92A**			

The 1992 Fund Assembly noted the reports of the 50th-52nd sessions of the 1992 Fund Executive Committee (cf documents IOPC/OCT10/11/1/1, IOPC/MAR11/9/1 and IOPC/JUL11/8/1) and expressed its gratitude to the Executive 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/OCT11/4/1**	**92A**			

4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/4/1.

1992 Fund Assembly Decision

4.2.2 In accordance with 1992 Fund Resolution N°5, the 1992 Fund Assembly 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)
Canada	Bahamas
France	Greece
India	Mexico
Italy	Morocco
Malaysia	Nigeria
Republic of Korea	Norway
Spain	Panama
	Turkey

4.3	**Reports on the second and third meetings of the 6th intersessional Working Group** **Documents IOPC/OCT11/4/2 and IOPC/OCT11/4/3**	**92A**			

4.3.1 The 1992 Fund Assembly noted document IOPC/OCT11/4/2, regarding the report of the second meeting of the sixth Intersessional Working Group, held on 31 March 2011, and document IOPC/OCT11/4/3, containing the report of the Working Group's third meeting, held on 7 July 2011.

4.3.2 In presenting the reports to the 1992 Fund Assembly, the Chairman of the Working Group highlighted that on the question of interim payments the Working Group had established a Consultation Group which had met twice, and would meet again on 27 October 2011, to focus on that matter. He pointed out that the Consultation Group was considering whether the topic of interim payments should be dealt with in an Assembly Resolution. He explained that two main questions had arisen: firstly, whether the insurer when making payments is doing so on behalf of both parties, itself and the IOPC Funds; secondly, whether Member States should be asked to ensure that their national law gives full effect to subrogation rights acquired by the insurer when it makes interim payments in order to avoid double payment. The Chairman stated that following further discussions, the Consultation Group was likely to return to the Working Group with a proposal for a Resolution at its next meeting. He clarified that it would be for the Working Group to consider the matter further and make any relevant decisions.

4.3.3 The Chairman pointed out that as regards the topic of handling a large number of small claims, the Working Group had taken note of the existing practices of the Secretariat and had discussed several proposals which were aimed at providing the Director with more flexibility when dealing with small claims without straying outside the framework of the existing Conventions. The Chairman informed the Assembly that the Secretariat had been requested to prepare drafts of new text for the Claims Manual for the Working Group's consideration at its next meeting.

4.3.4 Finally, the Working Group Chairman pointed out that the Working Group had also discussed several proposals in relation to the role of Member States. He explained that it was agreed that whilst no obligations could be imposed on Member States to take certain measures, such as standing last in the queue for compensation in the event of a major incident, the proposals made did offer recommendations to Member States. It was noted that the Secretariat had been asked to prepare a

more detailed list, to ensure that those Member States wishing to follow one or other recommendation, had a clear understanding. The Chairman suggested that the Working Group should be in a position to agree on that list at its next meeting. He pointed out that the next meeting of the Working Group would take place in spring 2012.

4.4

Consideration of the definition of 'ship' **Document IOPC/OCT11/4/4**	**92A**		**SA**	

4.4.1 It was recalled that in October 2010 the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had instructed the Director to provide a legal analysis of the extent to which the interpretation of the definition of 'ship' within Article I.1 of the 1992 CLC might include floating storage units, and to consider whether to levy contributions for oil carried by 'mother' vessels as described in paragraphs 5.1 to 5.3 of document IOPC/OCT10/4/3/1, submitted by the delegation of Denmark.

4.4.2 It was noted that in accordance with the 1992 Fund Administrative Council's instructions, the Acting Director had engaged Professor Vaughan Lowe QC, a practising lawyer and leading academic at the University of Oxford with many years' experience dealing with international treaties and conventions, to carry out the study. Professor Lowe's legal opinion is at Annex I to document IOPC/OCT11/4/4.

Consideration of the interpretation of the definition of 'ship'

4.4.3 The 1992 Fund Assembly noted the information contained in document IOPC/OCT11/4/4 and noted that Professor Lowe had concluded that it was clear from the available evidence that the definition of the term 'ship' in Article I.1 of the 1992 CLC was deliberately linked to the carriage of oil in bulk as cargo, and that such carriage was understood to involve the navigation of the ship on a voyage. It was noted that the legal opinion reached this conclusion by two methods of analysis, the first of which considered the definition and ordinary meaning of the terms within Article I.1, including 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo', and the second method considered the other relevant definitions within the text of the 1992 CLC including the terms, 'incident', 'pollution damage' and 'oil'.

4.4.4 On this basis, it was noted that Professor Lowe had concluded that there would be no liability for pollution damage resulting from a spill of oil which was on board only for other (non-carriage) purposes, such as storage.

Considerations regarding FSOs

4.4.5 It was noted that Professor Lowe had concluded that with the exception of the three categories of vessels detailed at paragraph 3.10 (a)-(c) of document IOPC/OCT11/4/4, no intention to include floating storage and offloading units (FSOs) within the definition, or any understanding that FSOs fell within the definition of a 'ship', could be found within the Conventions. With respect to these three categories, Professor Lowe concluded that the elements of *carriage* of oil and undertaking *a voyage* were present, so they could rightly be classed as a 'ship' within Article I.1 of the 1992 CLC.

Considerations regarding 'mother' vessels

4.4.6 It was noted that the legal opinion addressed the question concerning the application of the term 'ship' to 'mother' vessels anchored off the Danish coastline, as detailed in paragraphs 3.1-3.8 of document IOPC/OCT10/4/3/1.

4.4.7 In this regard, Professor Lowe had concluded that notwithstanding that all of the examples detailed in paragraphs 3.1-3.8 of that document were anchored for varying periods of time and engaging in ship-to-ship (STS) transfer operations, this would not preclude their being treated as 'ships', because they were in the course of a voyage carrying oil as cargo, which they would continue after the STS transfer.

4.4.8 The 1992 Fund Assembly also noted that the legal opinion concluded that all of the mother vessels so described in paragraphs 3.1-3.8 of document IOPC/OCT10/4/3/1, could properly be described as 'ships' within the 1992 Conventions, as there was no doubt that they were *'constructed or adapted for the carriage of oil in bulk as cargo'* as they all involved tankers sailing to Danish waters and anchoring there, before continuing their voyages.

4.4.9 It was therefore noted that the previous decision taken by the 1992 Fund Assembly in October 2010 regarding whether the 'mother' vessels were 'ships', was, in the Acting Director's opinion, correct.

4.4.10 It was also noted that Professor Lowe had stated that it was at the discretion of the Member States to decide, if they so wished, the appropriate time period at anchor beyond which it would not be reasonable to say that a vessel remained on a voyage for the carriage of oil by sea as cargo, and thus to deprive the vessel of its character as a 'ship' for CLC purposes, and give the vessel the character of a FSO.

Considerations regarding 'receipt' of oil under Article 10 of the 1992 Fund Convention

4.4.11 It was noted that the legal opinion stated that Article 10 of the 1992 Fund Convention made no reference to 'ship' and that liability to make contributions was defined not by reference to what was, or was not a 'ship', but according to whether oil had been 'received' in a Contracting State, and that there was a broad discretion permitted to the 1992 Fund in laying down a precise definition of the circumstances in which oil was considered received for the purposes of Article 10 of the 1992 Fund Convention.

The question of contributions from 'mother' vessels

4.4.12 It was noted that the legal opinion concluded that the oil on board those vessels which fell into the four scenarios described in paragraphs 3.2-3.5 of document IOPC/OCT10/4/3/1, should not be regarded as 'received' contributing oil, given the evident intention that oil loaded onto the 'mother' vessels was to be carried by those vessels on voyages (albeit after a period of storage).

The issues of strict liability, compulsory insurance and certification

4.4.13 It was noted that with regard to the issue of strict liability, the legal opinion had considered the implication that FSOs were not 'ships' for the purposes of strict liability and concluded that if an incident occurred which caused oil pollution damage for which there was no remedy under the international compensation regime (as the ship was not a 'ship' and/or because the incident did not involve a spill of 'oil' as defined), compensation under the international regime would not be available.

4.4.14 With regard to the issue of compulsory insurance, the legal opinion concluded that the owners of craft that did not count as 'ships' under the 1992 CLC, were not bound to maintain insurance in accordance with Article VII.1 of the 1992 CLC.

4.4.15 In relation to the issue of certification, it was noted that the legal opinion concluded that if a craft was considered not to be a 'ship' as defined by the 1992 CLC, the compulsory insurance and certification provisions of Article VII.1 of the 1992 CLC did not apply.

Permitted time period to define 'permanently or semi-permanently at anchor'

4.4.16 The 1992 Fund Assembly noted that both Professor Lowe and the Acting Director had raised questions regarding the period of time beyond which a vessel would be considered to be 'permanently or semi-permanently at anchor'.

4.4.17 It was noted that the questions were important as they concerned the application of Article I.1 of the 1992 CLC, and the question of contributions under Article 10 of the 1992 Fund Convention from vessels that remained at anchor, acting as floating storage units, rather than undertaking a voyage.

The application of Article I.1 of the 1992 CLC

4.4.18 The 1992 Fund Assembly noted that Professor Lowe had considered the possibility of the 1992 Fund Assembly making a decision regarding vessels that remained in place for 'extended periods' conducting STS operations, and that in Professor Lowe's opinion, one year could be classed as an 'extended period', beyond which a vessel could be considered to be 'permanently or semi-permanently at anchor'.

4.4.19 Regarding this issue, the 1992 Fund Assembly noted the comments of the Danish delegation at paragraph 4.4.27 of document IOPC/OCT10/11/1, the October 2010 Record of Decisions, which commented 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, but that in the opinion of the Danish delegation, a vessel which remained at anchor for more than one year could not be considered to be on a 'voyage'.

4.4.20 In this regard, it was noted that the Acting Director explained that the one-year time period was arbitrarily chosen as a practical solution and a reasonable starting point for discussion. The Director further considered that a pragmatic solution needed to be found, and that paragraph 112 of the legal opinion stated that consideration might need to be given to the notion of 'continuing a voyage', a notion which might be stipulated to involve more than moving to a nearby anchorage. Alternatively, the 1992 Fund Assembly could decide that the decision as to what constituted a 'voyage' should be decided in light of the particular circumstances of the case.

4.4.21 It was also noted that the Acting Director recommended that the 1992 Fund Assembly decide that one year was a reasonable time period to allow for a vessel to remain at anchor prior to resuming its voyage and still qualify as a 'ship' under Article I.1 of the 1992 CLC, but that the decision as to whether the vessel should still qualify as a 'ship' under Article I.1 of the 1992 CLC should nevertheless be taken in the light of the particular circumstances of the case.

The question of contributions under Article 10 of the 1992 Fund Convention

4.4.22 It was noted that the Acting Director considered that a pragmatic solution needed to be found which would help to provide certainty as to the application of the 1992 Conventions and to clarify the decisions made by the 1992 Fund Assembly at its October 2006 session with regard to the levying of contributions for oil received on board permanently or semi-permanently anchored vessels.

4.4.23 It was noted that the Acting Director recommended that the 1992 Fund Assembly decide that one year was a reasonable time period for a ship to be at anchor, beyond which, it should be considered as 'permanently or semi-permanently at anchor' for contribution purposes under Article 10.1 of the 1992 Fund Convention.

Making an agreed interpretation effective

4.4.24 It was noted that Professor Lowe had stated that the 1992 Fund had a broad discretion to interpret the Conventions on a particular point, but that the Director considered that the term 'latitude in interpretation' was more appropriate.

4.4.25 The 1992 Fund Assembly noted paragraphs 132-135 of the legal opinion which considered the various methods of ensuring that an agreed interpretation was made effective, and further noted that the legal opinion considered that the most effective method would be to amend the relevant parts of the 1992 CLC, by means of a Protocol, although this would likely take considerable time, and could lead to a significant administrative and legislative burden for many Member States.

4.4.26 It was further noted that in view of these concerns, the Director considered that the suggestion to adopt by unanimity or consensus, an agreed interpretation of the definition of Article I.1 of the 1992 CLC by means of an Assembly Resolution, to be the most practical and effective method of

addressing the issue of implementing any agreed interpretation, although it was recognised that although there was no guarantee that an Assembly Resolution would necessarily be recognised by the national courts of Member States, a decision taken by the 1992 Fund Assembly (preferably in the form of an Assembly Resolution) would at least have a strong persuasive effect in many Member States.

Debate

4.4.27 Many delegations expressed their gratitude to Professor Lowe for his clear and persuasive legal opinion, and to the Acting Director for his document.

4.4.28 One delegation stated that they were highly satisfied with the conclusions of the legal opinion and the recommendations detailed in paragraphs 7.1 (a), (c) and (d) of document IOPC/OCT11/4/4, and were therefore content for these to be included in an Assembly Resolution, but that they expressed caution regarding paragraphs 7.1 (b) and (e) of document IOPC/OCT11/4/4 and questioned whether the issue on excluding vessels after one year should focus purely on the length of time the 'ship' had remained at anchor. That delegation stated that in their opinion it might be preferable to make a decision based on a more functional basis, for instance the manning levels of the vessel, and that further investigation of industry practice would be required before they felt able to agree to the one-year time period proposed. Another delegation stated that they were happy with paragraphs 7.1 (a), (b), (c), (d) and (e) of document IOPC/OCT11/4/4. One delegation did not agree with the proposal of the Acting Director that one year is a reasonable time period to allow for a vessel to remain at anchor prior to resuming its voyage and still qualify as a ship. In the view of that delegation a tanker intended to continue its voyage remains a ship, no matter if it is anchored two weeks, two months, two years or whatever time period.

4.4.29 A number of delegations stated that the issues raised in the legal opinion and the Acting Director's document concerned 'core parts' of the Conventions, and that there was a possibility that if some of the proposals were adopted, this might create 'gaps' in the compensation regime system, which might require additional instruments or national legislation to fill, and might create difficulties with a system that had previously functioned well.

4.4.30 Another delegation expressed concern regarding the one-year time period mentioned in the legal opinion, and also expressed concern regarding the issues of insurance coverage and liability. That delegation also requested further industry assistance in order to assist with enabling them to make an informed decision. That delegation proposed that a Working Group, with clear terms of reference, be established to meet in conjunction with sessions of the 1992 Fund governing bodies. This proposal was supported by a large number of delegations.

4.4.31 One delegation considered that the one-year time period proposal was very clear and provided a degree of certainty, but that it would be easy to circumvent.

4.4.32 A number of delegations requested further time to consider the implications and potential impact of the proposals and stated that it was important that all consequences were considered before a decision was taken on the proposals.

4.4.33 One non-governmental observer organisation, speaking on behalf of several non-governmental observer organisations, offered to provide statistics and other industry assistance regarding the typical lengths of time that vessels were anchored.

4.4.34 Finally, Professor Lowe stated that the one-year time period under consideration was not intended to be an absolute cut-off date, but was a rebuttable presumption that could be amended in future years if experience showed that there were a large number of tankers that intended to continue their voyages after periods at anchor of one year or more. Professor Lowe also stated that it might be prudent to consider the intention of the owner of the vessel, but that this intention often changed during the time the vessel was at anchor.

4.4.35 The 1992 Fund Assembly noted that with the exception of one delegation there appeared to be no desire amongst Member States to amend the 1992 Conventions, and that many delegations wished to establish a Working Group with limited scope which excluded amending the 1992 Conventions.

1992 Fund Assembly Decision

4.4.36 The 1992 Fund Assembly decided to establish a Working Group to consider the implications of the proposals contained within paragraph 7 of document IOPC/OCT11/4/4, and to report back to the 1992 Fund Assembly at its next session. The terms of reference of the Working Group are at Annex III.

Supplementary Fund Assembly

4.4.37 The Supplementary Fund Assembly took note of the decision taken by the 1992 Fund Assembly.

4.5

STOPIA 2006 and TOPIA 2006 **Document IOPC/OCT11/4/5**	**92A**		**SA**	

4.5.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT11/4/5/Rev.1 (English) and IOPC/OCT11/4/5 (French and Spanish) 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 the International Group of P&I Clubs (International Group) had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 317 tankers as at August 2011.

4.5.3 It was noted that the International Group had reported to the Secretariat that as at August 2011 all of the tankers which were insured by one of the members of the International Group and reinsured through its pooling arrangements, were also 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 501.

5 Financial reporting

5.1

Report on submission of oil reports **Document IOPC/OCT11/5/1**	**92A**		**SA**	**71AC**

5.1.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT11/5/1.

5.1.2 The governing bodies noted that, in letters dated 15 January 2011, 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 2010 and/or any outstanding reports, as appropriate. It was also noted that reminder letters were sent in July 2011 to the competent authorities of States with outstanding reports.

5.1.3 It was noted that since the October 2010 sessions of the governing bodies, 16 States had submitted most or all of their outstanding reports. It was noted with satisfaction that Congo, Oman and Saint Kitts and Nevis, which had reports outstanding for five years, Hungary, which had outstanding reports for three years, and the Russian Federation which had outstanding reports for two years, had all submitted all of their outstanding reports.

5.1.4 It was further noted that 28 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. Although it was worth noting the significant improvement from 2010, where 38 Member States of the 1992 Fund, two Member States of the Supplementary Fund and three former Member States of the 1971 Fund had outstanding oil reports, the Secretariat expressed its serious concern about 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 with satisfaction that those States which had submitted reports for 2010 represented some 97.56% of the expected total contributing oil within the 1992 Fund (cf document IOPC/OCT11/4/1, Annex I) which was a significant improvement from 2010.

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 six States 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.

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.

Debate

5.1.8 One delegation paid compliments to the Secretariat on the substantial progress it had made in obtaining outstanding oil reports.

5.2

Report on contributions **Document IOPC/OCT11/5/2**	**92A**		**SA**	**71AC**

5.2.1 The governing bodies took note of the information on contributions to the IOPC Funds contained in document IOPC/OCT11/5/2.

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

5.2.3 In particular, the governing bodies noted that the Secretariat had commenced legal action against contributors in the Russian Federation to recover the outstanding contributions due to the 1992 Fund and the 1971 Fund. The governing bodies were informed by the delegation of the Russian Federation that the Ministry of Transport of the Russian Federation would be present as a third party during the hearings, and of their offer of support and assistance in this matter. It was further noted that the Secretariat was in correspondence with the relevant authority in South Africa to resolve South Africa's outstanding contributions which made up a large percentage of the total outstanding contributions due to the 1992 Fund.

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 former Socialist Federal Republic of Yugoslavia.

5.2.5 Following an intervention by one delegation, the Secretariat offered to study the practices of other international bodies with regard to liabilities owed by the former Union of Soviet Socialist Republics and the former Socialist Federal Republic of Yugoslavia and to report to the 1971 Fund at a future session.

5.3

Report on investments **Document IOPC/OCT11/5/3**	**92A**		**SA**	**71AC**

5.3.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the Director's report on the IOPC Funds' investments during the period 1 July 2010 to 30 June 2011 contained in document IOPC/OCT11/5/3. 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 The governing bodies recognised that the London Clearing Bank base rate and European Central Bank Refi rate were low and this had had a considerable impact on the yields achieved by the Funds on their investments. It was noted that investment yields on Korean Won deposits earned a much higher yield compared to Pounds Sterling or Euro deposits.

5.3.3 The governing bodies took note of the fact that investments with Barclays Bank, one of the Funds' house banks, exceeded the normal limit during most of the reporting period. This was as a result of implementing the hedging policy through the purchase of Korean Won, which is not a freely convertible currency, and investing these funds with Barclays Bank Seoul in relation to the *Hebei Spirit* incident (Hedging Guideline 8).

5.3.4 It was noted that the 1992 Fund had used Dual Currency Investments (previously known as Dual Currency Deposits) between Pounds Sterling and the Korean Won at no cost to the 1992 Fund and with the added benefit of a higher return on deposits.

5.4

Report of the joint Investment Advisory Body **Document IOPC/OCT11/5/4**	**92A**		**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 the Annex to document IOPC/OCT11/5/4.

5.4.2 The 1992 Fund Assembly noted that hedging for Euro liabilities in respect of the *Erika* and *Prestige* incidents was some 54%, and for Korean Won liability in respect of the *Hebei Spirit* incident was some 40%.

5.4.3 It was noted that the IAB had recommended the Director open Korean Won accounts with four financial institutions in Seoul to hold Korean Won namely, Barclays Bank (Seoul), Korea Exchange Bank, Standard Chartered First Bank Korea and BNP Paribas (Seoul).

5.4.4 It was noted that since the IAB had recommended that the 1992 Fund should hedge up to 50% of its total liability in respect of an incident, and only some 40% of the Korean Won liability had been hedged, the IAB recommended the Secretariat use an 'Extendable Collar' to seek protection against any appreciation of the Korean Won in relation to Pounds sterling.

5.4.5 The governing bodies noted that the IAB, as in previous years, had held meetings with representatives of the External Auditor and with the Audit Body.

5.4.6 The governing bodies also took note of the oral report by the IAB with regard to the current volatility in the financial markets and the risk of global recession and noted that the IAB acted with diligence, caution and prudence in discharging its mandate and constantly monitored the credit ratings of financial institutions to ensure that the IOPC Funds' investments were placed in the safest institutions.

5.5

Report of the joint Audit Body **Document IOPC/OCT11/5/5**	**92A**		**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, as set out in document IOPC/OCT11/5/5, which reflected how the Audit Body had carried out its mandate during its final year and over its three-year period of appointment.

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 joint Investment Advisory Body (IAB), the Audit Body always enjoyed frank and helpful discussion 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 review of the Audit Body's responsibilities and the audit function, which the Audit Body had presented to the governing bodies in October 2010, had not achieved its intended outcome and a full complement of nominations for the new Audit Body had not been received. They further noted that the Audit Body had, therefore, prepared a paper on the possibility of refining the selection process for Audit Body members in the future, for the consideration of the current sessions of the governing bodies.

5.5.4 The governing bodies also noted that the Chairmen of the governing bodies had attended a number of meetings of the Audit Body over the last three years and that the Audit Body had valued this participation and hoped that Chairmen would attend future meetings if their other commitments allowed them to do so.

5.5.5 The attention of the governing bodies was drawn to the implementation by the Secretariat of the International Public Sector Accounting Standards (IPSAS) and the close interest shown by the Audit Body in this activity and, in particular, the involvement of the External Expert, Mr Nigel Macdonald, in helping to resolve some of the specific implementation issues that a 'one size fits all' accounting standard can pose to organisations having unique characteristics such as the IOPC Funds. The governing bodies noted that the External Auditor had commended the Secretariat on its successful implementation of IPSAS with respect to the 2010 Financial Statements.

5.5.6 It was 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 and on maintaining its high standards. The governing bodies noted with satisfaction that, in 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 2010.

5.5.7 The attention of the governing bodies was drawn to the time and effort which the Audit Body had devoted to the preparation and implementation of a robust, transparent and effective selection process of the External Auditor and that this had been one of the major undertakings of the outgoing Audit Body.

5.5.8 The governing bodies noted that, in accordance with their request at their October 2010 sessions, the Audit Body had undertaken detailed and extensive work on the effectiveness of the 1992 Fund Assembly Resolution N^{o}11 on 'Measures in Respect of Contributions' which had been adopted in 2009; on any impact of the policy adopted in 2008 in relation to outstanding oil reports; and on investigating any options that might be available to provide assurance that oil reports were accurate and reliable. The governing bodies noted that the Audit Body was proposing recommendations which it considered offered the possibility of some significant progress being made towards solving these long-running problems and that the Audit Body would be reporting separately on this work during the course of the current sessions.

5.5.9 The governing bodies also noted that, acting on an instruction from the governing bodies at their October 2010 sessions, the Audit Body would be reporting at the current sessions on the question of succession and contingency planning for the Secretariat under agenda item 7 and that this had been a difficult and sensitive task.

5.5.10 The governing bodies noted that the Audit Body had had valuable and pro-active exchanges with the IAB over the current Audit Body's three year term and had been mindful of the potential for adverse impact on the Funds of the ongoing global financial instability. The governing bodies further noted that the Audit Body had been reassured that this risk was not a major threat to the Funds because the investment risk profile remained conservative and actively monitored.

5.5.11 The governing bodies noted that the Audit Body had prepared a background note for the transition to the new Audit Body due to take office in October 2011 which, while intended principally for the members of the new Audit Body, the current Audit Body considered might also be of interest to the governing bodies as it outlined how the Audit Body saw its future and the areas for focus (cf document IOPC/OCT11/5/5, Annex, Attachment II).

5.5.12 The governing bodies noted Mr Stuart's gratitude to Mr Charles Coppolani (Chairman of the Audit Body for its first six years) who had laid the foundations for the effective function of the Audit Body, to the Secretariat for their support and engagement, to the members of the IAB for their open and clear sharing of information and expertise and to the representatives of the External Auditor for the time and attention they gave at all stages of the external audit process. Mr Stuart paid particular tribute to the outgoing Director, Mr Oosterveen, on behalf of all the members of the Audit Body and wished him success, happiness and fulfilment in his future.

5.5.13 The governing bodies noted, in conclusion, 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 Organisation and that the Audit Body was satisfied that the Director took a similar view. They further noted that the Audit Body was satisfied that any recommendations made by the External Auditor in the annual management letter to the Director and other reports were considered and addressed by an appropriate plan of action developed and implemented by the Secretariat. They also noted that the Audit Body was satisfied (as it has been in each previous year of its current mandate) that all recommendations made by the External Auditor on prior years' Financial Statements had been addressed.

Debate

5.5.14 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 and especially for their proposals which had led to decisions being taken by the governing bodies. They expressed their appreciation in particular to the outgoing members of the Audit Body: Mr Wayne Stuart for his work as a member and subsequently as Chairman, and Mr Marcel Mendim Me N'Koo who had been the first representative of the African continent to serve on the Audit Body. The governing bodies also acknowledged the enormous contribution made by Mr Nigel Macdonald who had served as External Expert since the establishment of the Audit Body in 2002.

5.5.15 The Acting Director, on behalf of the Secretariat, thanked Mr Stuart and Mr Mendim Me N'Koo for their valuable contribution to the Audit Body over the last six years and to Mr Macdonald for his invaluable assistance to the Secretariat over the last nine years. He wished all the outgoing members well and said the Secretariat looked forward to working with the new Audit Body.

5.6

2010 Financial Statements and Auditor's Reports and Opinions Document IOPC/OCT11/5/6	**92A**		**SA**	**71AC**
2010 Financial Statements and Auditor's Report and Opinion – 1992 Fund Document IOPC/OCT11/5/6/1	**92A**			
2010 Financial Statements and Auditor's Opinion – Supplementary Fund Document IOPC/OCT11/5/6/2			**SA**	
2010 Financial Statements and Auditor's Report and Opinion – 1971 Fund Document IOPC/OCT11/5/6/3				**71AC**

5.6.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT11/5/6. The governing bodies dealt separately with their Organisation's respective Financial Statements for the financial year 2010. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT11/5/6/1, IOPC/OCT11/5/6/2 and IOPC/OCT11/5/6/3.

5.6.2 After the Secretariat's introduction of each document, a representative of the External Auditor, Mr Steve Townley, Director, UK National Audit Office, introduced the External Auditor's Report and Opinion for each Organisation.

5.6.3 The governing bodies 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/OCT11/5/6/1 (1992 Fund), Annex III to document IOPC/OCT11/5/6/2 (Supplementary Fund) and Annexes III and IV to document IOPC/OCT11/5/6/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2010 Financial Statements, prepared for the first time using the International Public Sector Accounting Standards (IPSAS) 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 the unqualified audit opinions on the first set of IPSAS-compliant financial statements and the External Auditor's comment that it represented a major achievement and confirmation that the Organisations' internal financial controls had operated effectively.

5.6.4 The governing bodies noted that the advantages of IPSAS-compliant financial statements were, as pointed out by the External Auditor, transparency, year-on-year comparability and its use as a tool for informed decision making.

5.6.5 With respect to the move to IPSAS by the Funds, the governing bodies noted with satisfaction the External Auditor's commendation that it was a significant achievement which would not have been possible without the investment of considerable time and effort by the Secretariat.

5.6.6 The 1992 Fund Assembly noted the External Auditor's statement confirming that all previous years' recommendations had been satisfactorily acted upon by the Secretariat and took note of the recommendations set out in the External Auditor's report on the 2010 Financial Statements of the 1992 Fund.

5.6.7 With regard to the External Auditor's Recommendation 2 that the Funds should consider the move from a modified accrual basis of preparing its budget to a full accruals based budget in the future, it was pointed out by one delegation that this would require consideration by the 1992 Fund Assembly.

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

5.6.9 The governing bodies noted the recommendation by the joint Audit Body that they approve the Financial Statements of the 1992 Fund, the Supplementary Fund and the 1971 Fund (document IOPC/OCT11/5/5, Annex, paragraph 3.1(e)).

1992 Fund Assembly Decision

5.6.10 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2010.

Supplementary Fund Assembly Decision

5.6.11 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2010.

1971 Fund Administrative Council Decision

5.6.12 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2010.

6 Financial policies and procedures

6.1

Measures encouraging the submission of oil reports – Development of an online reporting system Document IOPC/OCT11/6/1	**92A**		**SA**	**71AC**
Improving the accuracy and timeliness of submission of oil reports and the collection of contributions Document IOPC/OCT11/6/2	**92A**		**SA**	**71AC**

6.1.1 The 1992 Fund Assembly, Supplementary Fund Assembly and 1971 Fund Administrative Council took note of the information provided in document IOPC/OCT11/6/1, submitted by the Secretariat on measures to encourage prompt and accurate submission of oil reports by Member States and document IOPC/OCT11/6/2, submitted by the Audit Body on recommendations for improving the accuracy and timeliness of submission of oil reports and the collection of contributions.

Development of a prototype for an oil reporting system

6.1.2 It was recalled that in March 2010, nine States (Bahamas, Canada, China[<2>], Germany, Italy, Malaysia, Marshall Islands, New Zealand and Turkey) participated in the trial of the online reporting system and that at their October 2010 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had endorsed the Director's proposal to continue the trial of the online reporting system and to prepare a detailed analysis of the feedback received.

6.1.3 The Secretariat explained that the 2010 trial of the online reporting system had provided valuable feedback, in particular regarding the difficulties experienced with the login procedure. It was reported that an additional survey had provided the Secretariat with a number of suggestions which had been taken into account in the development of Phase II of the online reporting system.

6.1.4 It was noted that within Phase II, an updated prototype was developed, integrating new features. The redeveloped prototype was sent to nine Member States (Australia, Bahamas, China[<2>], Germany, Italy, Latvia, Malaysia, New Zealand and Turkey) in September 2011 and all nine had provided feedback stating that the prototype offered a user-friendly way to submit oil reports. For the prototype, an electronic oil reporting form was developed, designed to be completed electronically and available to everyone for use on a voluntary basis, starting in 2012. It was noted that, for the time being, the electronic form still needs to be printed and signed by both the contributor and the State authority.

[<2>] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

6.1.5 It was further noted that based on the improvements made and the feedback received from the nine trial States, the prototype should be built into an operational system, allowing interested States to submit oil reports online from 2012. It was noted that the online system will be run in parallel with the current paper-based system until it is firmly established. It was noted that Member States that were interested in using the online reporting system should get in touch with the Secretariat as soon as possible.

Improving the accuracy and timeliness of submission of oil reports and the collection of contributions – Use of independent sources to validate and assist with reporting of oil imports

6.1.6 The governing bodies were informed of the initiatives taken by the Audit Body to identify ways in which the Secretariat could help Member States validate their oil report data submissions. It was noted that one such initiative was a survey, in which Australia, Canada, Japan, Malaysia, Morocco and the United Kingdom identified how they collate and validate oil reports. The results of the survey indicated that the development of comprehensive guidelines on how to submit oil reports would be of assistance for new State representatives.

6.1.7 The Audit Body also stated that it believed the use of independent data to validate oil information would be another effective way to significantly improve the accuracy and timeliness of the submission of oil reports. The Audit Body subsequently recommended the use of Lloyd's List Intelligence, as it offered comprehensive and appropriate data.

6.1.8 The Audit Body stated that the subscription to Lloyd's List Intelligence would involve some additional costs which had been taken into account within the budget, as presented in document IOPC/OCT11/9/2/1. The Audit Body stated that the cost was due to the commercially sensitive nature of the data. It was noted, however, that the Audit Body was of the view that the benefits of such an initiative would outweigh the cost implication, and that it recommended the approval of the introduction of the new measure on a trial basis for a period of three years, reviewing the position again in October 2014. This three-year trial period would give the opportunity to review oil data in all the Member States over a three-year span and also give the Secretariat ample time to conduct appropriate analyses before reporting back in October 2014. It was further noted that the purchase of the subscription for the Secretariat to access the Lloyd's List Intelligence would remove the need for individual Member States to purchase it.

Debate

6.1.9 Two Member States that took part in the trial expressed support for the online reporting system. The delegation of Australia stated that it welcomed the opportunity to fully participate in the online reporting system in 2012. The delegation of Bahamas confirmed the statement made in document IOPC/OCT11/6/1 paragraph 3.9, and explained that the prototype was in fact free from technical problems and user-friendly. That delegation also commended the efforts of the Secretariat to provide ample assistance to the trial states and encouraged other Member States to participate in the system.

6.1.10 Several Member States took the floor to comment on the proposal put forward by the Audit Body to use Lloyd's List Intelligence to validate oil information.

6.1.11 One delegation emphasised the need to do more to improve the situation with regards to oil reports and that such an initiative was welcomed. However, it suggested a two-year trial period instead of three, given that there was an earlier need for feedback on its effectiveness, particularly since such an initiative, if it was to be adopted, should be implemented at the national level, as Member States were primarily responsible for validating oil information.

6.1.12 The Canadian delegation expressed support for the Audit Body's proposal, stating that even Canada, where oil reports are submitted directly by the Ship-Source Oil Pollution Fund, finds it a challenge to validate the information in its oil reports and that it was currently conducting a study investigating how best to validate such information. That delegation also agreed that it would be difficult for individual Member States to subscribe to Lloyd's List Intelligence data, and that it would be best for the Secretariat to have access and resolve any discrepancies through dialogue with Member States.

6.1.13 Another delegation requested clarification on the additional cost and it was noted that the subscription for the first year was £63 000 and £50 000 annually for subsequent years.

6.1.14 The delegation of the Philippines stated that it already had a satisfactory established system to validate oil information at national level, and expressed its concern with the proposal as this initiative seeks to validate an act of government with information emanating from a commercial organisation.

6.1.15 Another delegation stated that it did not support the initiative, as having used the Lloyd's List Intelligence data, it did not have confidence in the accuracy of oil export and import data reported. It also raised a question as to whether or not the Secretariat should be authorised to dispute oil reports submitted by contracting states based on the Lloyd's data. That delegation suggested trying the Lloyd's data for individual Member States on a need basis.

6.1.16 Three more Member States expressed support for the Audit Body's initiative, on a trial basis, and suggested that any discrepancies should be sorted out between the Secretariat and the Member State concerned.

6.1.17 The observer delegation of ITOPF stated that it had experience purchasing and using a number of datasets from Lloyd's List Intelligence and that it would be willing to share its experience in analysing the data with the Secretariat, which to his knowledge had already been in contact on the matter.

1992 Fund Assembly Decision

6.1.18 The 1992 Fund Assembly instructed the Secretariat to continue with the trial of the online reporting system and to report the outcome of the trial to the 1992 Fund Assembly at its next session, and to subscribe to the Lloyds List Intelligence data on a trial basis.

Supplementary Fund Assembly and 1971 Fund Administrative Council

6.1.19 The Supplementary Fund Assembly and 1971 Fund Administrative Council noted the decisions of the 1992 Fund Assembly.

6.2

Election of members of the joint Audit Body Document IOPC/OCT11/6/3	**92A**		**SA**	**71AC**
Review of the nomination process for the joint Audit Body Document IOPC/OCT11/6/4	**92A**		**SA**	**71AC**

Election of members of the joint Audit Body

6.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/6/3. It noted that the term of office of the present members of the joint Audit Body of the three Funds would expire at the October 2011 sessions of the governing bodies and that a new joint Audit Body would be elected. It further noted that, in accordance with the Composition and Mandate of the joint Audit Body which was adopted in October 2008, the Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: six named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, nominated by the Chairperson of the 1992 Fund Assembly.

6.2.2 The Assembly recalled that, in response to a circular dated 17 December 2010 from the Acting Director calling for nominations, four nominations had been received from 1992 Fund Member States by the deadline of 11 March 2011:

Mr Emile Di Sanza	Nominated by Canada for a second term
Mr John Gillies	Nominated by Australia
Mr Thomas Kaevergaard (formerly Johansson)	Nominated by Sweden for a second term
Professor Seiichi Ochiai	Nominated by Japan for a second term

6.2.3 The Assembly further recalled that at its March 2011 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had decided that the four candidates whose nominations had been received within the deadline were automatically elected: Mr Emile Di Sanza, Mr Thomas Kaevergaard and Professor Ochiai were re-elected for a second term of three years from October 2011 and Mr John Gillies was elected for a first term of three years from October 2011.

6.2.4 The Assembly also recalled that, at the same session, the Chairman of the 1992 Fund Assembly had put forward the candidature of Mr Michael Knight to replace Mr Nigel Macdonald as the external expert with expertise and experience in audit matters for a term of three years from October 2011 and that the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had agreed with this proposal and appointed Mr Knight.

6.2.5 The Assembly also recalled that the Administrative Council had decided that a second circular would be sent by the Acting Director to 1992 Fund Member States calling for further nominations to fill the remaining two positions for individuals nominated by 1992 Fund Member States and that if more than two candidatures were received for this position, an election would take place.

6.2.6 The 1992 Fund Assembly noted that, as a result of the second circular which had been to 1992 Fund Member States on 6 May 2011 inviting further nominations to fill the remaining positions, one new nomination had been received by the deadline of 30 July 2011, that of Vice-Admiral Giancarlo Olimbo, nominated by Italy.

6.2.7 The Assembly noted that, due to a shortfall in sufficient nominations for membership of the joint Audit Body, the full complement of six members nominated by 1992 Fund Member States had not been met on this occasion.

6.2.8 The Assembly noted the Acting Director's view that the IOPC Funds' Audit Body was large compared with audit committees in many other international organisations (eg World Food Programme, Council of Europe and the Commonwealth Secretariat, all of which functioned with fewer members) and that this view had been shared by the External Auditor although, in his view, the IOPC Funds' Audit Body had taken on more tasks than many audit committees.

6.2.9 The Assembly recalled that in document IOPC/MAR11/4/1 submitted to the March 2011 sessions of the governing bodies, the Acting Director had expressed the view that if the situation were to arise whereby only one or no further nominations were to be received in response to a second circular, the 1992 Fund Assembly would have to decide in October 2011 if the number of members of the Audit Body nominated by 1992 Fund Member States could be reduced for the next three-year term. A decision could then be taken by the 1992 Fund Assembly at the end of the three-year period, on the basis of an assessment made by the Audit Body, in consultation with the Chairmen of the 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council, as to whether to amend the Composition and Mandate to reflect a reduction in the number of members nominated by 1992 Fund Member States on a permanent basis.

6.2.10 The Assembly noted the Acting Director's view that the 1992 Fund Assembly may wish to allow the Audit Body to function with five members nominated by 1992 Fund Member States and the external expert for the next three-year term, with a decision to be taken in October 2014 as to whether to

amend the Composition and Mandate to reflect a reduction in the number of members nominated by 1992 Fund Member States on a permanent basis.

Review of the nomination process for the joint Audit Body

6.2.11 Mr Emile Di Sanza, member of the Audit Body, presented document IOPC/OCT11/6/4.

6.2.12 The 1992 Fund Assembly noted that the elections in 2008 and 2011 of members of the Audit Body nominated by 1992 Fund Member States had resulted in less than the full complement of nominations being received as a result of the first call for nominations and the subsequent requirement for time to be allocated by the 1992 Fund Assembly for discussion of the issue and for the Secretariat to seek further nominations.

6.2.13 The Assembly noted that in October 2001 and again in 2002 the governing bodies had given careful consideration to the Audit Body's composition and mandate and that those nominated for membership of the Audit Body were intended to be independent and selected so as to bring a balanced combination of experience and expertise and a wide geographic perspective. The issue of the size of the Audit Body had also been considered carefully by Member States at that time and the suggestion of a smaller-sized Audit Body had not been supported.

6.2.14 The Assembly also noted that the mandate of the Audit Body had been changed twice since its establishment (most recently in October 2008) to encompass further issues decided by the governing bodies, the most significant of which was to manage and conduct the regular selection of an External Auditor. It further noted that there had been an increase in the number of issues that the governing bodies referred to the Audit Body for review, advice and the development and submission of possible solutions.

6.2.15 The Assembly noted that in October 2010 the Audit Body had outlined the mix of skills it believed was required of Audit Body members in order to carry out its mandate.

6.2.16 The Assembly noted the Audit Body's concern that unless the shortfall in the number of members of the Audit Body could be overcome, there could be some serious doubts concerning the ability of the Audit Body to deliver on the increasing expectation and requirement that the Audit Body undertake specific work referred to it by the governing bodies from time to time, as well as meeting its mandate in full.

6.2.17 The Assembly further noted that the proposal put forward by the Audit Body recognised the primary importance of 1992 Fund Member States retaining the right to nominate the members of the Audit Body and that the proposed change would only come into effect if Member States did not nominate sufficient individuals to allow the membership of the Audit Body to be complete or effective. The proposal, which would remove the need for more than one call for nominations from Member States should nominations fall short of the vacancies to be filled, was as follows:

> Should sufficient nominations not be received to fill the vacancies, the 1992 Fund Assembly authorises the Chairperson of the Audit Body, in consultation with the Chairperson of the 1992 Fund Assembly and the Director of the IOPC Funds, to identify and propose for consideration by the 1992 Fund Assembly at the next available session, a person or persons who would bring to the Audit Body the specific skills, experience and attributes that would contribute to having a well-balanced and adequate membership. This authorisation does not require that any or all of the vacancies be filled if the Chairperson of the Audit Body considers that the overriding requirements of experience, expertise and geographical spread have been met by the existing nominations and that the Audit Body can deliver its mandate and the work identified in its work programme and obligations without its full complement of members (see document IOPC/OCT11/6/4, paragraph 4.1).

6.2.18 The Assembly noted the Audit Body's opinion that, in the event of insufficient nominations, the proposal would provide the Chairperson of the Audit Body with the opportunity to analyse the mix of skills and experience of the current members and nominees and, if considered necessary, propose for any vacancies persons who would help the Audit Body achieve the broad-based balance of expertise and experience that was intended when the Audit Body was created.

6.2.19 The Assembly noted that should the Audit Body's proposal meet with the Assembly's approval, it would be necessary for the Audit Body's Composition and Mandate to be modified slightly to acknowledge the possibility that from time to time the Audit Body might comprise less than seven members.

Debate

6.2.20 Most of the delegations which took the floor recalled the decision taken by the governing bodies when the Audit Body was established that six of its members would be nominated by 1992 Fund Member States. These delegations expressed the view that the Audit Body's proposal that the Chairperson of the Audit Body, in consultation with the Chairperson of the 1992 Fund Assembly and the Director of the IOPC Funds could designate one or more candidates to fill vacancies would not reflect the independence of Member States.

6.2.21 In response to concern shown by some delegations that the Audit Body's proposal might lead to the appointment of members of the Audit Body who did not have the support of their Government, Mr Di Sanza clarified that the Audit Body recognised the primacy of Member States in nominating members of the Audit Body and that the Audit Body's intention had been that support for any nominations coming from the Chairperson of the Audit Body, in consultation with the Chairperson of the 1992 Fund Assembly and the Director of the IOPC Funds, would be obtained from the Member State concerned.

6.2.22 One delegation said that it could accept the Director's proposal that the Audit Body should operate with fewer members nominated by 1992 Fund Member States but that there should be a minimum number, for example, five.

6.2.23 Several delegations which took the floor expressed regret that States did not put forward candidates for membership of the Audit Body. In this regard, one delegation expressed its view that there was a need for the Audit Body to identify the specific skills required at the time of the call for nominations rather than the overall skills needed in an Audit Body as a whole as laid out in Annex II to the circular calling for nominations.

6.2.24 Another delegation noted from the Secretariat's document that, while sharing the Director's view that the Audit Body was large compared with audit committees in many other international organisations, the External Auditor had indicated that it had taken on more tasks than many audit committees. In that delegation's view, if the Assembly was giving the Audit Body too many tasks for it to deal with, these tasks should be prioritised by the Assembly. This opinion was shared by several other delegations.

6.2.25 Another delegation felt that the current situation was exceptional and the Audit Body proposal to resolve this situation should not create a precedent for the future and it therefore supported the Director's proposal.

1992 Fund Assembly Decisions

6.2.26 The 1992 Fund Assembly decided to adopt the Director's proposal to allow the Audit Body to function with five members nominated by 1992 Fund Member States and the external expert for the next three-year term and to review the composition of the Audit Body at its October 2014 session.

6.2.27 The 1992 Fund Assembly decided to elect Vice-Admiral Giancarlo Olimbo to the joint Audit Body for a first term of three years from October 2011.

6.2.28 On the proposal of the Chairman of the 1992 Fund Assembly, in consultation with the Chairmen of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, the 1992 Fund Assembly decided to elect Mr Emile Di Sanza as Chairman of the Audit Body.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

6.3

Appointment of members of the joint Investment Advisory Body **Document IOPC/OCT11/6/5**	**92A**		**SA**	**71AC**

6.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/6/5. The Assembly noted that Mr David Jude was not seeking reappointment to the joint Investment Advisory Body (IAB) beyond October 2011. The Assembly expressed its sincere gratitude and appreciation to Mr David Jude for his valuable work as a member of the joint IAB since 1994.

1992 Fund Assembly Decision

6.3.2 The 1992 Fund Assembly reappointed Mr Brian Turner and Mr Simon Whitney-Long as members of the joint IAB for a term of three years. The Assembly appointed Mr Alan Moore to replace Mr David Jude as a member of the joint IAB for a term of three years.

Supplementary Fund Assembly and 1971 Fund Administrative Council

6.3.3 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decisions of the 1992 Fund Assembly.

7 Secretariat and administrative matters

7.1

Secretariat matters **Document IOPC/OCT11/7/1**	**92A**		**SA**	**71AC**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT11/7/1 regarding the operation of the Secretariat.

7.1.2 The governing bodies noted that the posts of Technical Adviser/Claims Manager, External Relations Officer, Information Officer and Translation Administrator (French) had all been filled since the October 2010 sessions of the governing bodies.

7.1.3 The governing bodies also noted that the Director had created two new posts in the External Relations and Conference Department, namely Administrative Assistant and Translation Administrator (Spanish) and that these posts had been filled in August and September 2011, respectively.

7.1.4 The governing bodies noted the Director's decision to re-classify the post of Office Assistant in the Finance and Administration Department.

7.1.5 The governing bodies noted the amendments to:

(a) the new General Service salary scale;
(b) the new base salary scale for staff in the Professional and higher categories;
(c) the new scale of pensionable remuneration for staff in the Professional and higher categories;
(d) the amendments with regard to the Education Grant and special Education Grant for disabled children in Staff Rule IV.9; and
(e) the amendments with regard to Dependency Allowances as contained in Staff Rule IV.10.

7.1.6 The governing bodies also noted that in 2011, the Director had introduced a Conscious Rewarding Scheme to reward staff members for outstanding performance in their current role. It was noted that the scheme had been designed to be as simple as possible and was based on consideration of the following criteria:

(a) performance by a staff member which is deemed to be consistently outstanding; or
(b) outstanding performance and/or significant extra efforts in the context of a specific project or extraordinary circumstances.

7.1.7 It was noted that a pilot project was tested in June 2011 after consultation with staff members and that the Director intended to continue with the scheme and would report on the total amount awarded under the scheme to the regular sessions of the 1992 Fund Assembly.

7.1.8 One delegation expressed its wish that in future, the composition of the Secretariat should be more representative of the membership of the IOPC Funds and urged the Director to consider regional balance in future recruitment.

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

7.1.9 The 1992 Fund Assembly , the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in the document.

7.2

Appointment of the Director **Documents IOPC/OCT11/7/1/1 and IOPC/OCT11/7/1/2**	**92A**		**SA**	**71AC**

7.2.1 The 1992 Fund Assembly noted that as a result of the decision of the current Director of the IOPC Funds, Mr Willem Oosterveen, not to seek a second term of office, the post of Director would become vacant on 1 November 2011, on the expiry of the Director's contract on 31 October 2011. It further noted that the Assembly would at its 16th session therefore appoint a new Director who would, *ex officio*, also be Director of the Supplementary Fund and the 1971 Fund.

7.2.2 The 1992 Fund Assembly recalled its decision at its July 2011 session that, should Mr Oosterveen not seek a second term of office, nominations for the post of Director should be received by the IOPC Funds' Secretariat by 15 September 2011. The Assembly noted that, by that date, two nominations had been received, namely Mr José Maura Barandiarán, nominated by the Government of Spain, received on 19 August 2011, and Mr Frédéric Hébert, nominated by the Government of France, received on 14 September 2011. The Assembly further noted that the nominations, together with the supporting documents, had been circulated to 1992 Fund Member States in circulars 92FUND/Circ.79 and 92FUND/Circ.80, dated 25 August 2011 and 14 September 2011 respectively.

7.2.3 The Assembly took note of the information contained in document IOPC/OCT11/7/1/1 regarding the candidates for the next Director of the IOPC Funds.

7.2.4 The Assembly took note of Articles 32 and 33 of the 1992 Fund Convention and Rules 32, 33, 37, 38 and 54 of the 1992 Fund Assembly's Rules of Procedures, relevant to the election of the Director.

7.2.5 The Assembly agreed with the proposal of the Chairman of the 1992 Fund Assembly that the same procedures used for the election of the Director in October 2005 be followed in October 2011, as set out in section 2 of document IOPC/OCT11/7/1/2.

7.2.6 The Assembly also noted that the Chairman of the 1992 Fund Assembly had invited Mr Oosterveen to stay in the room for the election process.

7.2.7 The 1992 Fund Assembly adopted the following timetable for the election:

First ballot	Wednesday 26 October, 9.30 am
Second ballot (if required)	Wednesday 26 October, 2.30 pm
Third ballot (if required)	Thursday 27 October, 9.30 am

7.2.8 On the proposal of the Chairman, the Assembly elected Ms Merja Huhtala (Finland) and Mr Zulkurnain Ayub (Malaysia) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.

7.2.9 The Assembly held a meeting in private on Tuesday 25 October 2011, pursuant to Rule 12 of the Assembly's Rules of Procedure, at which the two candidates were invited to make presentations. Following the presentations by each candidate a brief question and answer session with the candidate was held. During the private meeting only representatives of Member States of the 1992 Fund, former Member States of the 1971 Fund, and members of the Audit Body were present. Neither candidate was present for the presentation of the other and members of the Secretariat did not attend the private meeting.

7.2.10 At a meeting held in private on 26 October 2011, at which only representatives of 1992 Fund Member States, former 1971 Fund Member States, members of the Audit Body and Mr Willem Oosterveen were present, the Assembly held a secret ballot under Rule 54 of the Rules of Procedure with the following result:

Mr José Maura Barandiarán	39 votes
Mr Frédéric Hébert	28 votes
Blank ballots	0

7.2.11 Since 67 delegations were present at the time of the vote, the required two-thirds majority of 45 votes was not achieved.

7.2.12 Subsequent to the ballot, Mr Hébert announced that he was withdrawing his candidature in the light of the results. He expressed his deep gratitude to the 1992 Fund Member States which had given him their support and congratulated Mr Maura on the result of the first ballot.

7.2.13 Given that the provisions of the 1992 Fund Convention required the Director to be elected by two-thirds majority as well as the need for Rule 54 of the Assembly's Rules of Procedure to be observed, the Assembly held a second secret ballot at a private meeting on 26 October 2011 at which only representatives of the 1992 Fund Member States, former 1971 Fund Member States, members of the Audit Body and Mr Willem Oosterveen were present with the following result:

Mr José Maura Barandiarán	52 votes
Blank ballots	10

7.2.14 Since 62 States were present at the time of the vote, the required two-thirds majority of 42 votes was achieved. The Assembly declared that Mr José Maura Barandiarán had been elected as the next Director of the 1992 Fund from 1 November 2011 and that he would, *ex-officio*, also be Director of the 1971 Fund and the Supplementary Fund.

7.2.15 The 1992 Fund Assembly expressed its sincere gratitude to both candidates for their willingness to serve as Director and congratulated Mr Maura on his election.

7.2.16 Mr Maura, Director-Elect, made the following statement:

'I would like to express my gratitude to you all for the confidence and trust you have shown by electing me the new Director of the IOPC Funds. This is a great honour and privilege and I will do my utmost to live up to your expectations. I commit myself to providing the high-quality service to Member States that the appointment demands and the Fund deserves. It is my sincere wish to be a Director for the Fund as a whole, and for all Member States: big or small, developed or developing, nearby or far away.

The foremost duty of the Director is to manage the Secretariat so that the IOPC Funds operate smoothly for the benefit of victims of pollution damage, thus doing justice to the spirit of the Conventions governing the international compensation regime. I intend to establish with Member States a wide consultative process and I will appreciate, and indeed need, the feedback from Member States and other stakeholders in respect of the functioning of the Secretariat and of the IOPC Funds.

Preparing for this election has, to say the least, been a challenging process. It takes courage to put oneself forward as a candidate for the Director of the IOPC Funds. Frédéric Hébert had that courage as well, which has made it possible for you to make a choice in this important matter. He deserves credit for that courage. Both of us have the wellbeing of the IOPC Funds at heart and I hope our candidatures have been seen by all as our willingness to serve the Funds. The outcome of the ballot cannot be seen in terms of winners or losers, but the Assembly could only elect one of us. Now that a decision has been reached, I am sure Frédéric and I will let the past be the past and concentrate on continuing the development of the excellent relationship that the IOPC Funds has, and will continue to have, with REMPEC.

I hope I can count on the support and advice of all Member States. Even if we acknowledge that sometimes we have differences of opinion, let us never forget what binds us together in the IOPC Funds; even if we acknowledge the imperfections of the international compensation regime, let us never forget that it is endlessly better than no regime at all.

I think it is very important that as many Member States as possible are involved in the core decision-making process of the IOPC Funds and that the excellent relationship between the Funds and all relevant parts of the industry will continue in the future for the benefit of the international community.

I am looking forward to an excellent relationship with Mr Mitropoulos, the Secretary General of IMO, and with his successor, Mr Sekimizu, the Secretary General Elect of IMO, which is recognised as the mother organisation of the IOPC Funds.

I am very lucky to have such highly qualified colleagues in the Secretariat and I know that I can count on their support and cooperation in providing the team effort on which I intend to rely. The period since September 2010 has been a challenging time for me as Acting Director and for my colleagues in the Secretariat. Their work and support has been essential for the smooth management of the Secretariat during this period. I know I can count on their expertise and dedication and that together we can ensure that working for the Funds is interesting, challenging, rewarding and a great pleasure.

I would like to thank you all again for the great honour you have paid to me by electing me as Director of the IOPC Funds. The IOPC Funds are truly remarkable Organisations and fulfil a very important role in the international community. Nothing will give me greater satisfaction than to be able to direct all my energies towards serving the Funds and all they stand for.

I will uphold the dignity and honour of the Organisations and carry out my duties and responsibilities honestly and diligently. I know I have a demanding task ahead but with Members' support and the help from my colleagues in the Secretariat I will succeed.'

7.2.17 His Excellency Mr Carles Casajuana, Ambassador of Spain to the United Kingdom, thanked the 1992 Fund Member States for the support they had shown in appointing Mr Maura as the next Director of the IOPC Funds. He said that he had no doubt that Mr Maura would continue to show the same devotion and commitment to the IOPC Funds as he had shown since becoming Acting Director in September 2010.

7.2.18 The French delegation congratulated Mr Maura on his well-deserved election which crowned a most impressive career devoted to helping victims of oil pollution incidents. That delegation welcomed the fact that two excellent candidates had had the courage to stand, thus allowing a genuine election to take place. That delegation also thanked the 1992 Fund Member States which had supported Mr Hébert in the first ballot. That delegation further stated that the questions to candidates during their presentations had shown that there were weaknesses in the compensation regime but that the challenges that lay ahead would be faced together.

7.2.19 Other delegations that spoke expressed their warm congratulations to Mr Maura, promising him their full support and wishing him every success in his leadership of the IOPC Funds.

7.2.20 The Chairman of the 1992 Fund Assembly expressed the Assembly's gratitude to the scrutineers for their assistance in the voting process.

7.2.21 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the election of Mr José Maura Barandiarán as *ex officio* Director of the Supplementary Fund and of the 1971 Fund and congratulated him on his appointment.

7.3

Contingency arrangements for the Director and senior Secretariat personnel **Document IOPC/OCT11/7/1/3**	**92A**		**SA**	**71AC**

7.3.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council held a meeting in private, pursuant to Rule 12 of the Rules of Procedure of the Governing Bodies to consider this item. During the private meeting, covered by paragraphs 7.3.2-7.3.9 below, only representatives of the 1992 Fund Member States, former 1971 Fund Member States and members of the Audit Body were present.

7.3.2 The governing bodies took note of the information contained in document IOPC/OCT11/7/1/3, submitted by the Audit Body, regarding succession planning within the Secretariat.

7.3.3 The governing bodies recalled that at the October 2010 sessions, following the unexpected situation which resulted from the Director being unable to fulfil his role, the Audit Body was instructed to consider succession planning within the Secretariat and to formulate recommendations for consideration by the 1992 Fund Assembly at a future regular session.

7.3.4 In light of the instructions of the governing bodies, the Audit Body considered contingency arrangements to ensure that, at any given time, Member States, the Secretariat and other stakeholders would know who acted as the IOPC Funds' legal representative and Chief Administrative Officer and also to ensure that the function of Director continued effectively.

7.3.5 The governing bodies noted that the Audit Body had also reviewed both contingency and succession planning arrangements for the other senior members of the Secretariat and had also taken into account the likelihood that contingency arrangements should be designed to accommodate the entry into force of the HNS Convention in the future.

7.3.6 The governing bodies noted the recommendations of the Audit Body contained in paragraphs 8.1-8.3 of document IOPC/OCT11/7/1/3 and specifically changes to Internal Regulation 12, as set out in the Annex to document IOPC/OCT11/7/1/3.

7.3.7 The governing bodies noted, in particular, that with regard to the position of Deputy Director, the Audit Body recommended that:

(a) the governing bodies should reaffirm their decision that the post of Deputy Director was a permanent one and that an ongoing obligation to appoint such an individual existed;
(b) the individual so appointed should be empowered to act on the Director's behalf when the Director was on mission, on leave or otherwise unable to act;
(c) the role of Deputy Director should be combined with that of another senior role within the Secretariat and that this would be a matter for the Director to decide but that it was anticipated that the role would normally be combined with that of the Head of the Claims Department;
(d) if, as a result of the entry into force of the HNS Convention at some future date, there were two Deputy Directors appointed, there should be clarity about which would be the senior and hence the designated individual empowered to act on the Director's behalf when the Director was on mission, on leave or otherwise unable to act and that the decision with regard to seniority would fall to the Director at the time; and
(e) the (senior) Deputy Director should be remunerated either at Assistant Secretary General (ASG) level or at D2 level of the United Nations scale.

7.3.8 The Governing bodies also noted that with regard to other contingency arrangements, the Audit Body recommended that:

(a) contingency planning should be maintained in place to ensure that at all times there is clarity as to who would act as the Funds' legal representative and Chief Administrative Officer;
(b) Internal Regulation 12 should continue to be used in future to provide arrangements for cover when the Director and Deputy Director were not available;
(c) Internal Regulation 12 should be amended to extend the list of possible alternates to members of the Management Team and that the Director should be required to specify the seniority in which this list should apply;
(d) Internal Regulation 12 should contain specific guidance as to what should happen in the event that none of those specified were able to take up that responsibility and/or that the Director had failed to specify seniority as required; and
(e) the Director should be required to have a signed, authorised and current Administrative Instruction in place at all times and that a copy of that Administrative Instruction should be held by the Director's PA and by the Chairman of the 1992 Fund Assembly.

7.3.9 The governing bodies further noted that with regard to succession arrangements for senior staff of the Secretariat, the Audit Body recommended that the Chairman of the 1992 Fund Assembly and Chairmen of all the other Funds' governing bodies (including in due course the HNS Fund Assembly) should be aware of the Director's view of succession planning options for the senior posts within the Secretariat and that in gaining that understanding (which would be related to the nature of skills needed as well as to the individuals concerned) there should be discussion and challenge so that the plans reflected a wider perspective.

Debate

7.3.10 Following the private meeting, the Chairman of the 1992 Fund Assembly stated that the main focus of the discussion had been on the recommendations contained in paragraph 8.1 of document IOPC/OCT11/7/1/3, noting that the Assembly had recognised the contribution of the Audit Body and in particular, the importance of the appointment of the Deputy Director. Some delegations had felt that filling the post was a matter of urgency and that the position should be filled as soon as possible. However, the general consensus had been that no decision should be taken at the current sessions of the governing bodies as the matter required further consideration by the Director. All

delegations which took the floor expressed the view that it was premature to discuss the appointment of a Deputy Director in charge of the HNS Fund.

7.3.11 The Director-Elect recognised the importance of the role and agreed that a Deputy Director should be appointed. However, he requested time to consider the role and its implications. He indicated that with regard to Internal Regulation 12, Delegation of Authority, there was a provisional arrangement in place and in the interim he had delegated his authority under Internal Regulation 12 to the Head of the Finance and Administration Department. He also stated that it was for the Assembly to make the final decision on the level of remuneration for the Deputy Director. The governing bodies noted that the Director would report back to the Assembly at some future date, putting forward solutions and setting out his proposals on this issue.

1992 Fund Assembly Decisions

7.3.12 The 1992 Fund Assembly decided that with regard to the position of Deputy Director:

(a) the post should be a permanent one; and
(b) the role could be combined with another role in the Secretariat but that it was for the Director to decide on the combination of the roles.

7.3.13 The 1992 Fund Assembly decided that with regard to other contingency arrangements it would be left to the Director to decide on delegation of authority in respect of Internal Regulation 12, until the appointment of a Deputy Director.

Supplementary Fund Assembly and 1971 Fund Administrative Council

7.3.14 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decisions of the 1992 Fund Assembly.

7.4

Proposed revised template for Director's contract Document IOPC/OCT11/7/1/4	**92A**		**SA**	**71AC**
Appointment of the Director and term of office Document IOPC/OCT11/7/1/8	**92A**		**SA**	**71AC**

7.4.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council held a meeting in private, pursuant to Rule 12 of the Rules of Procedure of the governing bodies, to consider this item. During the private meeting, covered by paragraphs 7.4.2-7.4.7 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.

DOCUMENT IOPC/OCT11/7/1/4, SUBMITTED BY THE CHAIRMAN OF THE 1992 FUND ASSEMBLY

7.4.2 The 1992 Fund Assembly noted the information contained in document IOPC/OCT11/7/1/4, submitted by the Chairman of the 1992 Fund Assembly. It recalled that, at its July 2011 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly had decided to review, for the future, the governance provisions of the 1992 Fund that had a bearing on the renewal of the Director's initial appointment, most notably, 1992 Fund Assembly Resolution N°9 and the new template for the Director's contract.

7.4.3 The Assembly noted that a consultation group, consisting of the Chairmen of the IOPC Funds' governing bodies, the external expert on the Audit Body and the Head of the Finance and Administration Department, had reviewed the template for the Director's contract and had noted that, while the template for the Director's contract contained a provision requiring the Director to give a notice of three months in case he/she wished to resign, it did not contain any mention of the length of time in advance of the end of his/her initial appointment that the Director should advise the 1992 Fund Assembly if he/she wished to seek a renewal of his/her initial appointment for an additional term.

7.4.4 The Assembly further noted that the consultation group had considered the issue and was proposing the addition of a new clause in the preamble as well as the inclusion of a new provision in the template for the Director's contract to the effect that the Director should communicate to the Chairman of the 1992 Fund Assembly in writing no less than three months before the end of his/her initial appointment whether or not he/she wished to seek a renewal of the initial appointment for an additional term. The Assembly also noted that the new provision being proposed by the consultation group would only apply to the end of the first term of five years and not the end of the second term of five years.

DOCUMENT IOPC/OCT11/7/1/8, SUBMITTED BY THE DELEGATION OF FRANCE

7.4.5 The 1992 Fund Assembly took note of document IOPC/OCT11/7/1/8, submitted and presented by the delegation of France, in which it was proposed that the conditions for the appointment of the Director of the IOPC Funds be amended with a view to ending the automatic renewal of the Director's contract at the end of his/her first term of office and to limit the possible terms of office to two.

7.4.6 The French delegation proposed that, in the interests of good governance, the second term of the Director should not be automatic and that an election should take place before the end of each term of office and candidacies should be received at least six months before the date on which the Assembly would appoint the Director. That delegation proposed that, in addition, the number of terms should be limited to two.

7.4.7 The Assembly took note of the proposal by the French delegation to amend Resolution N°9 adopted by the 1992 Fund Assembly at its October 2004 session.

Debate

7.4.8 The Chairman of the 1992 Fund Assembly reported the decisions taken by the Assembly in its private meeting. Taking into account the discussions relating to the appointment of the Director and the term of office, a revised version of 1992 Fund Assembly Resolution N°9 prepared by the Chairman of the Assembly was circulated for the consideration of the Assembly.

7.4.9 Most delegations which spoke did not support the proposal in the revised Resolution, stipulating that an incumbent Director who was seeking re-appointment for a second term of five years would not require nomination by his/her government for that purpose. These delegations were of the view that, as was the practice in the International Maritime Organization for the re-appointment of the Secretary-General and as had been the case in the IOPC Funds in the past, it was understood that an incumbent Director of the IOPC Funds who was seeking a second term of office would have the support of his/her own Government so that a nomination would not be necessary. Based on this understanding, it was decided not to include in Resolution N°9 a provision on this matter.

7.4.10 The 1992 Fund Assembly agreed on the text of a revised Resolution N°9 which is at Annex IV and on the final template of the Director's contract which is at Annex V.

1992 Fund Assembly Decision

7.4.11 The 1992 Fund Assembly decided:

- that the Director would be appointed for an initial term of five years;
- that the incumbent Director may be re-appointed for a second term of five years by a vote pursuant to Articles 32 and 33(b) of the 1992 Fund Convention;
- that the second term of the incumbent Director may be extended for a limited period of time, if the Assembly so decides, in response to exceptional circumstances that would warrant such an extension;

- that candidates for the appointment to the post of Director pursuant to points 1 or 2 above must notify the Secretariat at least three months before the Assembly is scheduled to meet to appoint or reappoint the Director, as the case may be; and
- adopted the amended Resolution N°9 as contained at Annex IV.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

7.5

Secretariat matters – Internships within the Secretariat **Document IOPC/OCT11/7/1/5**	**92A**			

7.5.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/7/1/5.

7.5.2 The 1992 Fund Assembly recalled that, at its October 2010 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had endorsed the Director's proposal regarding the content and format of a pilot internship programme. The Assembly further recalled that the pilot programme would be offered to a maximum of ten candidates nominated by 1992 Fund Member States and they would be self-funded.

7.5.3 The Assembly noted that, as a result of a circular calling for nominations, a total of ten nominations had been received by the deadline of 26 August 2011 from 1992 Fund Member States and that the candidates had been nominated by Antigua and Barbuda, Bahamas, Brunei Darussalam, Greece, Ireland, Latvia, Norway, Philippines, Poland and the Republic of Korea.

7.5.4 The Assembly further noted that the ten nominations had been scrutinised and since the candidates represented a wide spread of geographical regions with different legal, maritime, oil production and oil import/export profiles, the Secretariat had decided that all ten candidates were suitable for the internship programme.

7.5.5 The Assembly noted that the successful candidates and their sponsoring governments had been informed in September 2011 that they had been accepted on to the programme which would take place from 21-25 November 2011.

7.5.6 The Assembly also noted that the programme was being supported by the International Maritime Organization (IMO), the International Association of Independent Tanker Owners (INTERTANKO), the International Group of P&I Clubs and the International Tanker Owners Pollution Federation Limited (ITOPF) and would include visits to or by representatives from these Organisations.

7.5.7 The Assembly noted that the Secretariat would 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 in the future.

7.6

Appointment of the Director – Contract of the Director-Elect **Document IOPC/OCT11/7/1/6**	**92A**		**SA**	**71AC**

7.6.1 The Assembly held a meeting in private pursuant to Rule 12 of the Assembly's Rules of Procedure to consider this agenda item. During the private meeting only representatives of Member States of the 1992 Fund, former Member States of the 1971 Fund and members of the Audit Body were present. Except for the Director, the members of the Secretariat did not attend the private meeting, nor did the Director-Elect, Mr José Maura.

7.6.2 The Assembly decided that Mr Maura's contract should contain the following main elements:

- 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.
- Representation allowance of £11 000 per annum.

7.6.3 The Chairman was authorised to sign, on behalf of the 1992 Fund, the contract with the Director-Elect containing the main elements set out above.

7.7

Appointment of the Director – Oath of the Director-Elect Document IOPC/OCT11/7/1/7	**92A**		**SA**	**71AC**

7.7.1 The 1992 Fund Assembly noted that in accordance with Regulation 5 of the Staff Regulations of the 1992 Fund, every member of the Secretariat, on taking up his or her duties, should make and sign an oath or declaration, as set out in Staff Regulation 5.

7.7.2 The Director-Elect, Mr José Maura, made the following declaration in front of the governing bodies of the 1992 Fund, the Supplementary Fund and the 1971 Fund:

> 'I solemnly promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the 1992 Fund, to discharge those functions and regulate my conduct with the interests of the 1992 Fund, the Supplementary Fund and the 1971 Fund only in view and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the 1992 Fund, the Supplementary Fund and the 1971 Fund.'

7.8

Document services Document IOPC/OCT11/7/2	**92A**		**SA**	**71AC**

Document services website

7.8.1 The 1992 Fund Assembly, Supplementary Fund Assembly and 1971 Fund Administrative Council noted the information contained in document IOPC/OCT11/7/2 regarding the document services provided by the IOPC Funds' Secretariat.

7.8.2 The governing bodies noted in particular the launch in August 2011 of a Document Services website (www.iopcfunds.org/documentservices) which forms part of the IOPC Funds' website, making available all meeting documents and decisions taken by the governing bodies of the IOPC Funds since 1978, as well as providing additional services such as access to circulars and online registration for meetings. It was noted that the new site provides additional features to registered users, including the option to receive notification whenever new documents are added to the site. It was pointed out that 48 delegations had so far registered on the site and that they would therefore, amongst other benefits, have the option of receiving automated notification whenever documents were added. The Secretariat pointed out that prior to the launch of the Document Services site the Secretariat notified 100 delegations who had requested the Secretariat to do so whenever documents were uploaded to the old document server. The governing bodies were informed that as of 1 November 2011, notification to those persons would cease, unless they had registered on the new site.

7.8.3 It was also noted that all meeting documents and circulars on the site were available in English, French and Spanish and that work was underway on making both the interface for the site and the Decisions Database also available in the three official languages.

7.8.4 It was further noted that the initial feedback received by the Secretariat had been very positive and that the small number of issues which had been identified following the launch of the site were expected to be resolved soon after the sessions. Delegations were invited to send feedback on the new site to the Secretariat by e-mail to feedback@iopcfund.org.

Posting of meeting documents

7.8.5 The governing bodies noted the information set out in section 3 of document IOPC/OCT11/7/2 regarding the costs (printing, postage and staff time) and environmental impact involved in posting hard copies of documents to delegates in advance of meetings. It was noted that IMO had ceased posting documents to its delegates in 2009.

7.8.6 The governing bodies were invited to consider, in light of the launch of the Document Services website, whether they would like to continue to receive printed copies of meeting documents by post or whether the Secretariat should bring its practices, in respect of documents for meetings, in line with those of IMO. It was pointed out in the document, that delegates would have access to meeting documents online via the Document Services website, would receive notification of new documents as registered users and would have access to printed copies of documents at the time of the meetings. At the same time, the Secretariat would continue to post invitations, circulars and other official documentation in the usual way.

IOPC Funds' website

7.8.7 The governing bodies noted that work had commenced on the re-design of the 'public' part of the IOPC Funds website and that the project was expected to be completed during 2012. Delegations were requested to inform the Secretariat of any particular features that they would like to see in the new website by email to feedback@iopcfund.org.

Debate

7.8.8 The governing bodies expressed their appreciation to the Secretariat on the successful launch of the Document Services site. A number of delegations expressed their support for the suggestion by the Secretariat to cease posting printed meeting documents. One delegation further stated that some delegations may specifically request the Secretariat to continue to do so.

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

7.8.9 The governing bodies instructed the Secretariat to cease posting printed meeting documents to delegates, provided that, in addition to having access to meeting documents online via the Document Services website, they would receive notification of new documents as registered users and would also have access to printed copies of documents at the time of the meetings.

7.9

Appointment of members and substitute members of the Appeals Board Document IOPC/OCT11/7/3	**92A**		**SA**	**71AC**

7.9.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/7/3. It noted that one member of the Appeals Board, Dr Young-sun Park (Republic of Korea), had notified the Director that he would not be able to stand for a further two-year term as a substitute member.

1992 Fund Assembly Decision

7.9.2 The 1992 Fund Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 18th session of the Assembly:

Members		Substitute Members	
Mme Odile Roussel	(France)	Mr Adonis Pavlides	(Cyprus)
Mr Tetsuto Igarashi	(Japan)	Ms Anne-Marie Sciberras	(Malta)
Sir Michael Wood	(United Kingdom)	Mr Francisco Noel R Fernandez III	(Philippines)

8 Treaty matters

8.1

Status of the 1992 Fund Convention and the Supplementary Fund Protocol **Document IOPC/OCT11/8/1**	**92A**		**SA**	

8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT11/8/1 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 105 Member States of the 1992 Fund and that three States, namely Serbia, Senegal and Palau had ratified the 1992 Fund Convention during 2011, bringing the total number of 1992 Fund Member States to 108 by 29 September 2012. It was also noted that there were 27 Member States of the Supplementary Fund.

8.1.3 The governing bodies recalled that, in response to enquiries by the Director in 2006 as to whether the 1992 Civil Liability and Fund Conventions had been fully implemented into the national law of each 1992 Fund Member State at that time, 14 States had informed the Director that the Conventions had not been fully implemented. The governing bodies noted that in February 2011 the Secretariat had undertaken to write to those States again in order to determine whether this remained the case and, if so, what further could be done by the Secretariat to facilitate the implementation process. It was further noted that the Secretariat was also in contact with three other States, in which it had become apparent that the Conventions had not been fully implemented into national law.

8.1.4 It was noted that the Secretariat had pursued its efforts to acquire the latest information regarding the progress made within the 17 States referred to above but that only one State had informed the Secretariat that it had now implemented the Conventions.

8.1.5 The governing bodies noted that the Audit Body had also expressed its concerns on this matter under agenda item 6, particularly as regards the potential difficulties caused in relation to the submission of oil reports and payment of contributions by States who may or may not have fully implemented the Conventions into national law.

8.1.6 The governing bodies noted that the Director was considering ways in which the Secretariat could more actively assist 1992 Fund Member States to ensure correct implementation of the Conventions.

8.2

Winding up of the 1971 Fund **Document IOPC/OCT11/8/2**				**71AC**

8.2.1 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.

8.2.2 The Administrative Council took note of the developments towards the winding up of the 1971 Fund set out in document IOPC/OCT11/8/2, in particular as regards the outstanding incidents and the financial situation in respect of these incidents.

8.2.3 In this respect, the Administrative Council noted that by the end of 2011 there would be outstanding compensation and/or indemnification claims possibly in respect of the *Nissos Amorgos*, *Iliad* and *Plate Princess* incidents and that the 1971 Fund was still involved in legal actions in respect of the *Vistabella* and *Aegean Sea* incidents, although no compensation/indemnification would be paid for these incidents.

8.2.4 The Administrative Council also noted that levies of contributions to the *Nissos Amorgos* Major Claims Fund and the *Plate Princess* Major Claims Fund (in the event of it being set up) would be payable by the contributors in the States that were Members in 1997, ie at the year when these incidents took place, based on the contributing oil receipts of 1996.

8.2.5 The 1971 Fund Administrative Council noted that at 16 September 2011 there were 11 contributors in arrears for the amount of £310 370, as shown in paragraph 6.2 of document IOPC/OCT11/8/2.

8.2.6 The Administrative Council noted the Director's efforts to make those contributors in arrears pay the amounts due, which included legal actions which the 1971 Fund had lodged against two contributors in the Russian Federation. The Administrative Council also noted that the Director would report the developments to the 1971 Fund Administrative Council's October 2012 session.

8.2.7 The 1971 Fund Administrative Council noted with satisfaction the efforts being made by the Secretariat towards the winding up of the 1971 Fund. It also noted that under agenda item 5 the Secretariat had offered to study the practices of other international bodies with regard to liabilities owed by the former Union of Soviet Socialist Republics and the former Socialist Federal Republic of Yugoslavia and to report to the 1971 Fund at a future session.

8.3

HNS Convention and HNS Protocol **Document IOPC/OCT11/8/3**	**92A**			

8.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/8/3, submitted by the Secretariat, regarding the progress made since its July 2011 session on the administrative tasks necessary for setting up the Hazardous and Noxious Substances (HNS) Fund.

8.3.2 It was recalled that the list of administrative tasks to be undertaken by the 1992 Fund Secretariat in connection with the setting up of the HNS Fund and the progress made so far in that regard had been reported at the October 2010, March 2011 and July 2011 sessions of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly (documents IOPC/OCT10/8/4, IOPC/MAR11/6/2 and IOPC/JUL11/5/1).

8.3.3 It was recalled that, as agreed at the March 2011 session, a number of steps had to be taken first, in cooperation with IMO, to provide States with all the instruments and support required to be able to ratify 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). The 1992 Fund Assembly noted the progress made in that respect by the Secretariats of the 1992 Fund and the IMO since its last session in July 2011, as set out in section 3 of document IOPC/OCT11/8/3.

8.3.4 The 1992 Fund Assembly noted that with regard to the indicative list of substances to be covered under the 2010 HNS Protocol, that a software consulting company had been contracted to consolidate the different lists, with the technical advice of an independent consultant and ongoing assistance from IMO.

8.3.5 It was further noted that this work had been carried out between July and September 2011, resulting in the production of a consolidated list in the form of a database accessible via the internet, complete with a search function allowing for specific interrogation, indicating whether or not a substance would be considered contributing cargo under the 2010 HNS Protocol for the purpose of reporting.

8.3.6 The database called the 'HNS Finder' in its current form was introduced and briefly demonstrated to the delegations. The Secretariat thanked REMPEC, ITOPF, the Centre of Documentation, Research and Experimentation on Accidental Water Pollution (CEDRE) and IMO for their feedback on the database.

8.3.7 The 1992 Fund Assembly also noted that, in line with the decision it adopted in March 2011 that the HNS Convention Contributing Cargo Calculator be overhauled, the Secretariat had plans to work on a new HNS Calculator in order to facilitate the reporting requirements. It was noted, however, that given the anticipated time delay between now and when the Convention enters into force, a full-fledged reporting system would not be necessary immediately. It was noted that adding features to the HNS Finder to allow receivers to select substances qualifying for contribution, add volumes and produce a report would suffice for the time being. This would allow any State already engaged in or about to begin the ratification process to make this system available to its receivers of HNS in order to prepare their reports on receipts of contributing cargo. Considering the time frame for ratification, the 1992 Fund Assembly noted that, in the view of the Secretariat, continuing the development of the HNS Finder to include the possibility for registered users to create an HNS contributing cargo report online was the most cost-effective option to help States fulfil their reporting obligations, as required in Article 45 of the 2010 HNS Protocol. It was noted that, as the HNS Finder nears finalisation, a disclaimer would be added in order to pre-empt any liability issues.

8.3.8 The 1992 Fund Assembly noted that Canada, France, Germany, Netherlands, Norway and Turkey had signed the 2010 HNS Protocol, subject to ratification, on 25 October 2011 at IMO. The signature ceremony took place in the presence of the Secretary General of IMO as the depository of the HNS Convention, and the Acting Director of the IOPC Funds and brought the number of signatories to the 2010 HNS Protocol to seven. It was noted that Denmark had been the first State to sign the Protocol in April 2011.

Debate

8.3.9 The representative of IMO acknowledged the excellent work that was carried out by the Secretariat in cooperation with the IMO Secretariat to expedite the entry into force of the HNS Convention as amended by the 2010 Protocol. It was also noted that another State would be signing the Protocol on 31 October 2011, bringing the total number of signatories to the Protocol to eight by the deadline.

9 Budgetary matters

9.1

Sharing of joint administrative costs between the 1992 Fund, the Supplementary Fund and the 1971 Fund Document IOPC/OCT11/9/1	**92A**		**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 Supplementary Fund and the 1971 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 Supplementary Fund and the 1971 Fund should be reviewed annually in view of changes to 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/OCT11/9/1.

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

9.1.4 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council approved the Director's proposal that the Supplementary Fund and the 1971 Fund should pay flat management fees of £59 500 and £255 000 respectively to the 1992 Fund for the financial year 2012.

9.2

Budgets for 2012 and assessments of contributions to the General Fund Document IOPC/OCT11/9/2	**92A**		**SA**	**71AC**
Budget for 2012 and assessment of contributions to the General Fund – 1992 Fund Document IOPC/OCT11/9/2/1	**92A**			
Budget for 2012 and assessment of contributions to the General Fund – Supplementary Fund Document IOPC/OCT11/9/2/2			**SA**	
Budget for 2012 – 1971 Fund Document IOPC/OCT11/9/2/3				**71AC**

9.2.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT11/9/2 and considered the draft 2012 budget for the administrative expenses of the IOPC Funds joint Secretariat and the assessment of contributions to the 1992 Fund General Fund and Supplementary Fund General Fund, as proposed by the Director in documents IOPC/OCT11/9/2/1 and IOPC/OCT11/9/2/2 respectively, and took note of document IOPC/OCT11/9/2/3 in respect of the 1971 Fund General Fund.

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

9.2.3 The governing bodies also noted that all the budgeted posts in the Professional category had been filled, resulting 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 Assembly 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 It was noted that the increase in some of the costs which were deemed fixed namely, personnel and accommodation costs was explained as the main reason for the overall increase of 10.7 % in the draft budget compared to the 2011 budget.

Debate

9.2.6 In response to one delegation's query as to the increase in personnel costs in the draft 2012 budget, the Secretariat clarified that the cost of staff salaries and entitlements followed that of the United Nations system as applied by the IMO and therefore the Secretariat did not have control over these costs. It was noted that the Secretariat had included an amount being the difference between D2 and D1 grade to provide for Deputy Director's remuneration on the assumption that the role will be combined with another senior role within the Organisation. The increase in appropriation for Consultants' fees was mainly attributed to the purchase of Lloyd's List Intelligence data. It was pointed out that the Audit Body honorarium and IAB remuneration had been increased in line with the Retail Price Index, as decided by the governing bodies at the October 2009 sessions. One delegation requested

clarification on why the expenditure for the Audit Body had not been reduced, in comparison with the current year's budget, given the decrease in the number of Audit Body members. It was clarified by the Secretariat that the budget had been prepared on the assumption that the Audit Body would have seven members. It was further clarified that there would be a saving with respect to this expenditure in 2012.

9.2.7 The 1971 Fund Administrative Council noted the Director's view that the surplus on the 1971 Fund's General Fund as at 31 December 2012 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 2012, as well as the 1971 Fund's share of the administrative expenditure until the 1971 Fund was wound up.

1992 Fund Assembly Decisions

9.2.8 The 1992 Fund Assembly 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 £206 000, based on the 2012 budget).

9.2.9 The 1992 Fund Assembly approved the inclusion of one additional unspecified post in the Professional category at P3 level.

9.2.10 The 1992 Fund Assembly adopted the budget for 2012 for the administrative expenses of the 1992 Fund for a total of £4 670 510 (including the cost of the external audit for the three Funds), as set out in Annex VI, page 1.

9.2.11 The 1992 Fund Assembly also approved the Director's estimate of 2012 expenditure in respect of the preparation for the entry into force of the HNS Convention.

9.2.12 The 1992 Fund Assembly decided to maintain the working capital of the 1992 Fund at £22 million.

9.2.13 The 1992 Fund Assembly decided to levy 2011 contributions to the General Fund of £3.5 million, payable by 1 March 2012.

Supplementary Fund Assembly Decisions

9.2.14 The Supplementary Fund Assembly adopted the budget for 2012 for the administrative expenses of the Supplementary Fund for a total of £73 100 (including the cost of the external audit), as set out in Annex VI, page 2.

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

9.2.16 The Supplementary Fund Assembly decided that there should be no levy of 2011 contributions to the General Fund.

1971 Fund Administrative Council Decisions

9.2.17 The 1971 Fund Administrative Council adopted the budget for 2012 for the administrative expenses of the 1971 Fund for a total of £520 400 (including the cost of the external audit), as set out in Annex VI, page 3.

9.2.18 The 1971 Fund Administrative Council took note of the Director's view that the balance on the General Fund should be sufficient to cover the 1971 Fund's administrative and minor claims expenses until it is wound up.

9.2.19 The 1971 Fund Administrative Council authorised the Director to use the balance of the 1971 Fund's General Fund to pay for the administrative expenditure and minor claims expenses in respect of that Organisation.

9.3

Assessment of contributions to Major Claims Funds and Claims Funds Document IOPC/OCT11/9/3	**92A**		**SA**	**71AC**
Assessment of contributions to Major Claims Funds – 1992 Fund Documents IOPC/OCT11/9/3/1	**92A**			
Assessment of contributions to Claims Funds – Supplementary Fund Document IOPC/OCT11/9/3/2			**SA**	
Assessment of contributions to Major Claims Funds – 1971 Fund Document IOPC/OCT11/9/3/3				**71AC**

9.3.1 The 1992 Fund Assembly, 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/OCT11/9/3, IOPC/OCT11/9/3/1, IOPC/OCT11/9/3/1/1, IOPC/OCT11/9/3/2 and IOPC/OCT11/9/3/3.

9.3.2 The 1992 Fund Assembly noted that as a result of the global settlement reached in respect of the *Erika* incident there would be a significant surplus on the *Erika* Major Claims Fund after providing for claims in court.

1992 Fund Assembly Decisions

9.3.3 The 1992 Fund Assembly decided to reimburse £25 million of the surplus on the *Erika* Major Claims Fund to the contributors to that Major Claims Fund repayable on 1 March 2012.

9.3.4 The 1992 Fund Assembly decided to levy £8.5 million in respect of the *Prestige* Major Claims Fund, payable by 1 March 2012.

9.3.5 The 1992 Fund Assembly decided to levy £5.5 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.

9.3.6 The Director was authorised to invoice all or part of the deferred levy set out above for payment during the second half of 2012, if and to the extent required.

9.3.7 The 1992 Fund Assembly decided to levy £31.5 million in respect of the *Hebei Spirit* Major Claims Fund, payable by 1 March 2012.

9.3.8 It was noted that the 1992 Fund Assembly's decisions in respect of levies for 2011 contributions and reimbursement to contributors to the *Erika* Major Claims Fund would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment /(Reimbursement) by 1 March 2012		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2010	1 525 278 607	3 500 000	3 500 000	0.0022947		
Prestige	2001	1 357 694 002	8 500 000	8 500 000	0.0062606		
Volgoneft 139	2006	1 534 612 099	5 500 000			5 500 000	0.0035840
Hebei Spirit	2006	1 534 612 099	31 500 000	31 500 000	0.0205264		
Erika	1998	1 116 145 184	(25 000 000)	(25 000 000)	(0.0223985)		

Supplementary Fund Assembly

9.3.9 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

9.3.10 The 1971 Fund Administrative Council decided that there should be no levy of 2011 contributions in respect of either the *Vistabella* or the *Nissos Amorgos* Major Claims Funds.

9.4

Transfer within the 2011 budget Document IOPC/OCT11/9/4	**92A**			

9.4.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT11/9/4.

1992 Fund Assembly Decision

9.4.2 The 1992 Fund Assembly authorised the Director to make the necessary transfer to cover the costs of the Audit Body (under Chapter V), within the 2011 budget, from another Chapter, to cover costs that may exceed the amount that can be transferred under Financial Regulation 6.3.

10 Other matters

10.1

Future sessions	**92A**	**92EC**	**SA**	**71AC**

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

10.1.1 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 15 October 2012.

10.1.2 Dates were also agreed for possible sessions of the governing bodies, or meetings of their subsidiary bodies during the weeks of 23 April and 9 July 2012.

1992 Fund Executive Committee Decision

10.1.3 The 1992 Fund Executive Committee decided to hold its 54th session on 28 October 2011, during which it would consider the date for its 55th session.

10.2

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

Recruitment of the new Head of the Claims Department

10.2.1 One delegation enquired about the procedures for the recruitment of the new Head of the Claims Department which had become vacant since the Acting Director/Head of the Claims Department had been elected as the new Director of the IOPC Funds. That delegation sought clarification on the application process and possible release of information relating to applicants for the post. That delegation also referred to considerations of geographical distribution of post-holders within the Funds.

10.2.2 The Director-Elect outlined the recruitment process of the Funds and assured the governing bodies that the post would be advertised widely, including circulation to all Member States. He assured the governing bodies that the key criterion followed in the recruitment process was knowledge and experience, but that geographical distribution was also taken into account in the selection process, along with other factors.

Election of the new Chairman of the 1992 Fund Assembly

10.2.3 At the beginning of the week, the Chairman of the 1992 Fund Assembly, Mr Jerry Rysanek (Canada) had informed the governing bodies that he would be stepping down as Chairman at the end of the October 2011 sessions of the governing bodies.

1992 Fund Assembly Decision

10.2.4 The 1992 Fund Assembly elected Mr Gaute Sivertsen (Norway) to hold office until the next regular session of the Assembly.

10.2.5 Mr Sivertsen thanked the 1992 Fund Member States for the confidence and trust placed in him and his country in electing him Chairman of the Assembly. He expressed particular thanks to the delegation which had nominated him and to all delegations which had supported his nomination. He stated that he looked forward to working with the Director-Elect, the Vice-Chairmen and the Secretariat. He commented that his predecessor, Mr Jerry Rysanek, had set a very high standard and that he hoped to perform his duties as Chairman in such an efficient and friendly manner.

Farewell to the Chairman of the 1992 Fund Assembly

10.2.6 Before closing the session, Mr Rysanek reminded delegations that he had been attending meetings at the International Maritime Organization since 1985 and at the IOPC Funds since 1995 and was very honoured to serve as Chairman of the 1992 Fund Executive Committee from 2002-2004 and as Chairman of the 1992 Fund Assembly since 2005. He stated that his experience with the IOPC Funds had added enormous value to both his professional and personal life and he first wished to thank the Canadian government and its delegation represented at the current sessions by Mr Tim Meisner, the Director-General of Marine Policy, Transport Canada, for the opportunity given to him to carry out such a rewarding task. He referred to the many friends he had made among delegations and expressed his appreciation and deep respect for the three Directors under which he had served, for the support of the Vice-Chairmen and for the work and support of the Secretariat that was second to none. He also paid tribute to the work of the interpreters to the meetings over the years and, in closing, he wished the remaining Vice-Chairmen and the new Chairman, Mr Sivertsen good luck for the future.

10.2.7 The Director-Elect paid tribute to Mr Rysanek and the remarkable work he had undertaken for the IOPC Funds. He stated that Mr Rysanek had been an excellent Chairman and that both the Secretariat and delegations alike were all very sad to see him go. He thanked Mr Rysanek for all his assistance in ensuring the meetings ran as smoothly as possible and also for the more difficult tasks that Mr Rysanek had had to deal with during his time as Chairman, in particular the assistance he had provided to the Secretariat since the current Director, Mr Oosterveen, had become ill. The Director-Elect stated that it had been a privilege and a pleasure to work with Mr Rysanek and wished him the best of luck for the future.

10.2.8 The 1992 Fund Assembly expressed its appreciation for the work of Mr Rysanek as its Chairman. One delegation, on behalf of the Assembly, thanked Mr Rysanek for conducting the meetings of the Assembly with elegance, professionalism and humour stating that he had always found valuable solutions to difficult issues.

10.2.9 All persons present gave Mr Rysanek a round of applause.

Election of the new Chairman of the Supplementary Fund Assembly

10.2.10 At the beginning of the week, the Chairman of the Supplementary Fund, Vice-Admiral Giancarlo Olimbo (Italy) had informed the governing bodies that he would be stepping down as Chairman at the end of the October 2011 sessions of the governing bodies.

Supplementary Fund Assembly Decision

10.2.11 The Supplementary Fund Assembly elected Mr Sung-Bum Kim (Republic of Korea) to hold office until the next regular session of the Assembly.

10.2.12 Mr Sung-Bum Kim stated that it was an honour and a privilege to have been elected Chairman of the Supplementary Fund Assembly and thanked the Member States of the Supplementary Fund for electing him to the post. He expressed sincere gratitude to his predecessor, Vice-Admiral Giancarlo Olimbo for his contribution to the work of the IOPC Funds over the years. He stated that he would do his utmost to facilitate discussions from all Member States.

Farewell to the Chairman of the Supplementary Fund Assembly

10.2.13 Before closing the session Mr Olimbo said that he had been very pleased and honoured to have served as Supplementary Fund Assembly Chairman for the past [five] years. He stated that whilst it had not been a particularly challenging role since fortunately no incidents had occurred involving the Supplementary Fund, he had found the experience very interesting. He thanked all delegations to the meetings and the Secretariat for creating a very friendly and productive working environment. He expressed particular appreciation for the Italian delegation. Finally he paid tribute to the current Director, Willem Oosterveen, to the Vice-Chairmen and to the Chairmen of the other governing bodies, Mr David Bruce and Mr Jerry Rysanek who he had come to consider good friends from their time sharing the podium. Looking to the future, Mr Olimbo wished the new Chairman of the Supplementary Fund Assembly luck and expressed his happiness at being able to continue to play a role in the work of the Organisation as a newly elected member of the joint Audit Body.

10.2.14 The Director-Elect thanked Mr Olimbo for his work as Chairman of the Supplementary Fund Assembly, stating how sad he and the Secretariat were to see him step down having worked closely with him for many years. He expressed, however, his delight that Mr Olimbo would continue to work with the Secretariat in his new role.

10.2.15 The Supplementary Fund Assembly expressed its appreciation for the work of Mr Olimbo as its Chairman. The Vice-Chairman of the Assembly, Mrs Birgit Sølling Olsen (Denmark), on behalf of the Assembly, thanked Mr Olimbo and praised him for always being in good humour and well-prepared when conducting meetings of the Assembly. She commended Mr Olimbo for his support and involvement in many of the formative issues of the compensation system today, including the drafting of the Supplementary Fund Protocol, and wished him luck for the future.

11 Adoption of the Record of Decisions

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

The draft Record of Decisions of the October 2011 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT11/11/WP.1 and IOPC/OCT11/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States

	1992 Fund Assembly	1992 Fund Exec. Committee	Supp. Fund Assembly	1971 Fund Admin. Council
Albania	●			●
Algeria	●			●
Antigua and Barbuda	●			●
Argentina	●			
Australia	●		●	●
Bahamas	●	●		●
Belgium	●		●	●
Brunei Darussalam	●			●
Bulgaria	●			
Cameroon	●	●		●
Canada	●		●	●
China (Hong Kong Special Administrative Region)	●			●
Colombia	●			●
Cook Islands	●			
Côte d'Ivoire				●
Croatia	●		●	●
Cyprus	●			●
Denmark	●		●	●
Dominican Republic	●			
Estonia	●		●	●
Finland	●		●	●
France	●		●	●
Gabon	●			●
Georgia	●			
Germany	●	●	●	●
Ghana	●			●
Greece	●	●	●	●
Grenada	●			
India	●			●
Ireland	●		●	●
Islamic Republic of Iran	●			
Israel	●			
Italy	●	●	●	●
Jamaica	●			
Japan	●	●	●	●
Latvia	●		●	
Liberia	●			●
Luxembourg	●			
Malaysia	●	●		●

Malta	●			●
Marshall Islands	●			●
Mauritius	●			●
Mexico	●	●		●
Monaco	●			●
Morocco	●	●	●	●
Netherlands	●	●	●	●
New Zealand	●			●
Nigeria	●	●		●
Norway	●	●	●	●
Panama	●			●
Philippines	●			
Poland	●		●	●
Portugal	●		●	●
Qatar	●			●
Republic of Korea	●	●	●	●
Russian Federation	●			●
Saint Kitts and Nevis	●			●
Saint Lucia	●			
Singapore	●	●		
South Africa	●			
Spain	●		●	●
Sri Lanka	●			●
Sweden	●		●	●
Syrian Arab Republic	●			●
Trinidad and Tobago	●			
Turkey	●	●		
United Kingdom	●		●	●
Uruguay	●			
Vanuatu	●			●
Venezuela (Bolivarian Republic of)	●			●

1.2 Non-Member States represented as observers

	1992 Fund	**Supplementary Fund**	**1971 Fund**
Brazil	●	●	●
Guatemala	●	●	
Peru	●	●	●
Saudi Arabia	●	●	●
Thailand	●	●	
Ukraine	●	●	

1.3 Intergovernmental organisations

	1992 Fund	Supplementary Fund	1971 Fund
International Maritime Organization (IMO)	●	●	●
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)	●	●	●

1.4 International non-governmental organisations

	1992 Fund	Supplementary Fund	1971 Fund
BIMCO	●	●	●
Comité Maritime International (CMI)	●	●	●
International Association of Classification Societies Ltd (IACS)	●	●	
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)	●	●	
World Liquid Petroleum Gas Association (WLPGA)	●	●	

* * *

ANNEX II

ORIGINAL IN SPANISH

Reply of the Venezuelan Delegation to document IOPC/OCT11/3/4

INCIDENTS INVOLVING THE IOPC FUNDS – 1971 FUND

Plate Princess

'With reference to document IOPC/OCT11/3/4, submitted by the Secretariat, this delegation must point out that the document contains numerous substantive errors which render it imprecise and may lead to incorrect conclusions.

In this respect, we have the following specific observations:

This delegation draws to your attention that this document again insists that the Fund was not a defendant in the Venezuelan legal proceedings, but it should be emphasized that the 1971 Fund participates in the proceedings in its capacity of an interested third party, as set out in Article 7, paragraph 6 of the Fund Convention, which does not require the Fund to be a defendant but only requires that it be notified of an action against the shipowner in order to be required to comply with the judgement handed down by the court.

In paragraph 2.11, there is a substantive error concerning the amount indicated in the document as the amount claimed, when the correct amount is BsF 53.5 million.

With regard to the matters addressed in paragraphs 2.12 to 2.15, the Constitutional Section of the Supreme Court of Justice decided on these matters in a judgement given on 8 June 2011, on the occasion of the extraordinary appeal filed by the Fund on 4 March 2011.

With regard to paragraph 2.16 and the footnote to page 2, this delegation feels bound to point out that the Venezuelan Court does not **make assumptions or interpret** the Conventions with respect to a notification or claim against the Fund, but simply establishes literally what is set out in Article 7 of the 1971 Fund Convention, which requires only a notification of an action filed against the shipowner for the Fund to be obliged automatically to comply with the decision of the court concerned.

With regard to paragraph 2.17, on 7 October 2011, the claimants withdrew the action against the Fund. A certified copy of the withdrawal order is filed with the Secretariat for the information of the delegations.

With regard to paragraph 2.21, we wish to inform you that the court rejected the expert nominated by the shipowner because the expert was not domiciled in the place where the incident occurred in accordance with the legal provisions of our sovereign State. On the second occasion, the shipowner again nominated the same expert who had been rejected by the court, and the court, as established by law, had to reject the nomination again and an expert had to be appointed directly by the Court.

In paragraph 2.22, we point out that there are no details of the loss of profit concerning the shrimp fishermen, fin-fish fishermen and foot fishermen.

With respect to paragraph 2.26, this Assembly is informed that in June 2011, the Constitutional Court rejected the appeal filed by the Fund in which it alleged, *inter alia*, that the judgment had been unfair, the claims were time-barred and that due process had not been followed. In this respect, there is no other appeal that can be made against the judgment which ordered the Fund to pay the Venezuelan victims affected by the *Plate Princess* incident.

With respect to paragraph 2.27, there is an error, in that the appeal filed before the Court of Appeal only related to the excessive amount in relation to the normal incomes earnned by the fishermen in 1997. The Fund’s legal representative only requested that the quantum that the IOPC Fund was ordered to pay should be reconsidered, and there was nothing whatsoever in the appeal with respect to

the claim being time-barred, since those allegations were exhausted with the extraordinary appeal in the Constitutional Court in the Appeal for Review which was refused on 8 June 2011 by the Venezuelan Supreme Court of Justice.

In paragraph 2.28, with regard to the refusal by the Maritime Court of Appeal to allow the Fund to file a new extraordinary appeal requesting reconsideration of the quantum ordered to be paid by the Fund to the victims of the incident, the Court denied that request because Venezuelan law does not allow any extraordinary appeal for that type of claim. However, the Fund decided to request the Supreme Court of Justice to reconsider the quantum, and the decision of the Supreme Court of Justice on this application is pending.

With respect to paragraph 3.1, there is a substantive error in the amount of the compensation fixed by the Maritime Court of Appeal, the correct amount being BsF 2,844,983.

With regard to paragraph 4.11, in the October 2009 session, this delegation demanded the payment of compensation to those affected by the *Plate Princess* spill, because the victims had obtained a final judgement not subject to appeal. The Acting Director of the IOPC Funds, invoking Article X of the 1969 CLC, requested leave to filed an extraordinary appeal in the Supreme Court of Justice against the final judgment. Nevertheless, the Director told the Assembly that the decision in the highest Venezuelan courts, with respect to extraordinary appeals, would be binding on the 1971 Fund, by virtue of Article 8 of the 1971 Fund Convention. For that reason, the Fund has exhausted the only two extraordinary appeals allowed in Venezuelan legislation (see document IOPC/OCT09/3/2/1).

In paragraph 4.13, in the IOPC Fund Assembly held in Morocco, in March 2011, the Bolivarian Republic of Venezuela submitted document IOPC/MAR11/3/2/1 to the governing bodies of the Funds. This is a document which clarifies all the observations formulated by the various committees in which the *Plate Princess* incident has been discussed.

With respect to paragraphs 4.14 to 5.17, the matters therein were the subject of the appeal for review filed by the Fund in the Constitutional Section of the Venezuelan Supreme Court of Justice, which was refused on 8 June 2011, on the grounds, *inter alia*, that the proceedings had complied with due process and the principle of legal certainty, that the claim was not time-barred, that there had been no violation of the right of defence and that the judgement was not unfair.

With regard to paragraphs 7.2 to 7.7, we reiterate our comments at the beginning of this document: the Fund was not a defendant in the Venezuelan legal proceedings. The 1971 Fund participated in the proceedings in its capacity of an interested third party, as set out in Article 7, paragraph 6 of the Fund Convention, which does not require the Fund to be a defendant but only requires that it be notified of an action against the shipowner in order to be required to comply with the judgement handed down by the Court.

With respect to paragraphs 7.8 and 7.9, comparison of the amounts between *Nissos* and *Plate Princess*, at the foot of the page, the Fund establishes the conversion of the Bolivar in Pounds sterling at 7.00041 Bolivars to the Pound. In comparing the data to which the Director refers, it is clear that there is an error in the Director's estimate, since the average annual income per shrimp boat with respect to the *Nissos Amorgos* (£11 000), compared with the average annual income per shrimp boat in the *Plate Princess* case, based on the average set out in the supplementary expert report at Bs110 330 for six months (see page 95 of the IOPC Fund submission in the appeal for review) which on an annual basis is equivalent to Bs220 660, which in Pound sterling is equal to £31 521.01 as the average annual income, we calculate that the quantum is only 2.85 times higher than the *Nissos Amorgos*, and not 22 times, as the Director states. Thus, if we consider that, as clearly established in paragraph 7.9, that the Bolivar has depreciated by some 750% since the date of the incident, then there is no doubt that the amount claimed per shrimp boat for the *Plate Princess* compared with the *Nissos Amorgos*, would be much lower, as the increase would be only 285%.

With regard to the statement in paragraph 7.10, concerning whether the Fund was notified in a reasonable time or had been given sufficient opportunity to present its case, this was decided by the extraordinary appeal for review filed by the Fund in the Constitutional Section of the Supreme Court of Justice of the Bolivarian Republic of Venezuela. The Court rejected the claims and confirmed that the Fund must pay the victims of the *Plate Princess* incident.

In paragraph 7.11, we again reiterate that, with respect to time-bar, the governing bodies of the IOPC Fund authorised the filing of an extraordinary appeal for review before the Constitutional Section of the Supreme Court of Justice of the Bolivarian Republic of Venezuela. The Supreme Court of Justice, with respect to the appeal for review, decided that there was no time bar with respect to the claim by the Puerto Miranda Fishermen's Union against neither the IOPC Fund nor the shipowner.

With respect to paragraph 7.12, we reiterate our comments indicated above in paragraph 4.11. With respect to this point, it is important to recall that in October 2009, the Director was of the opinion that the Fund should file an extraordinary appeal in the Supreme Court of Justice, because he considered that the IOPC Fund had not been given sufficient time to present its defence. On that occasion, the Director informed the Assembly that if, in the highest Venezuelan Court, the extraordinary appeals were decided against the Fund, the Fund would be obliged to comply with the judgement. In 2010, the Administrative Council of the Fund again authorised the Secretariat to file one last extraordinary appeal for review as allowed in the Venezuelan legal system, because it considered that the decision of the courts was unfair, that due process had not been followed and the claim was time-barred. This final appeal was submitted by the Fund's legal representative on 4 March 2011. In the March 2011 session, held in Morocco, the 1971 Fund Administrative Council decided not to approve any payment and to await the decision in the extraordinary appeal for review filed by the Fund in the Constitutional Section of the Supreme Court of Justice. The Constitutional Section of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, in a judgement dated 8 June 2011, refused the extraordinary appeal for review, among the other allegations made by the IOPC Fund, on the grounds that the claim was not time-barred and that due process had been followed.

As the Fund had exhausted all the ordinary and extraordinary appeal processes, the final decision on those appeals, which ordered the Fund to pay compensation to the Venezuelan fishermen, is binding on the Fund, in application of the international Conventions, thus to disobey the judgement would be to violate the international treaty.

With respect to paragraph 7.13, the Maritime Court of Appeal refused the Fund's application to file a new extraordinary appeal for review in the Civil Section of the Supreme Court of Justice, because under Venezuelan law, an extraordinary appeal to evaluate or request reconsideration concerning the quantum of loss is not permitted.

With respect to paragraph 7.14, on 7 October 2011, FETRAPESCA withdrew its action against the 71 Fund. We are filing a certified copy of the withdrawal order with the Secretariat.

Lastly, with regard to paragraph 7.15, the Courts of Venezuela have already handed down a final judgement in the two extraordinary appeals filed by the Fund, therefore the Administrative Council or the Governing Bodies of the 1992 Fund, under the Protocol which amended the 1971 Fund Convention, must issue instructions for the immediate payment of compensation to the Venezuelan victims.'

* * *

ANNEX III

TERMS OF REFERENCE

Working Group on issues related to the definition of 'ship'

Recognising the importance the definition of 'ship' has for the payment of compensation and for the contribution system,

Taking note of the discussions at sessions of the 1992 Fund Assembly on this issue,

Stressing the need for transparency in the application of the definition of 'ship' and the consequences a decision will have on the scope of the Civil Liability Convention and Fund Convention,

Stressing the need to find solutions without changing the current Conventions,

Noting the legal analysis provided in document IOPC/OCT11/4/4 and other related documents,

The Assembly decides to set up the 7th intersessional Working Group of the 1992 Fund with the following mandate:

1. To analyse the consequences that different interpretations outlined in document IOPC/OCT11/4/4 and other related documents may or could have on the coverage and contributions of the international compensation regimes;

2. To recommend to the Assembly a uniform approach to the interpretation of the definition of 'ship' under Article I.1. of the 1992 CLC and to Article 10 of the Fund Conventions; and

3. To report its (initial) findings and/or recommendations to each regular session of the 1992 Fund Assembly, with a view to terminating its work with a final report to the 18th session of the 1992 Fund Assembly.

4. The Working Group shall have as its Chairman Mrs Birgit Sølling Olsen (Denmark).

* * *

ANNEX IV

Resolution N°9 on the Appointment of the IOPC Funds' Director – Term of service
(as amended by the 1992 Fund Assembly at its 16th session held from 24-28 October 2011)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 Fund),

RECALLING Article 18 of the 1992 Fund Convention,

NOTING that the Assembly has appointed Directors for five-year terms with provision for renewal for such further periods as may be determined by the Assembly.

CONSIDERING the desirability of establishing more specific rules for the serving of successive terms of office for future Directors,

CONSIDERING ALSO the normal practice within the United Nations agencies and subsidiary bodies, and especially the International Maritime Organization precedents.

CONSIDERING FURTHER Rule 54 of the Rules of Procedure of the Assembly and Section IV, Regulations 17 and 18, of the 1992 Fund's Staff Regulations,

DECIDES that:

1 Future IOPC Fund Directors shall be appointed for an initial term of five years.

2 The incumbent Director may be re-appointed for a second term of five years by a vote pursuant to Articles 32 and 33(b) of the 1992 Fund Convention.

3 The second term of the incumbent Director may be extended for a limited period of time, if the Assembly so decides, in response to exceptional circumstances that would warrant such an extension.

4 Candidates for the appointment to the post of Director pursuant to section 1 or 2 above must notify the Secretariat at least three months before the Assembly is scheduled to meet to appoint or reappoint the Director, as the case may be.

5 The Resolution shall be referenced by footnote to Rule 54 of the Rules of Procedure of the Assembly.

* * *

ANNEX V

Final template
(text adopted at the October 2011 session of the 1992 Fund Assembly)

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

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

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

Noting also that in accordance with the 1992 Fund Resolution N°9, adopted by the 1992 Fund Assembly at its 9th session in October 2004 and revised at its 16th session in October 2011, the Director should be appointed for an initial term of five years,

Noting further that the incumbent Director may be re-appointed for a second term of five years by a vote pursuant to Articles 32 and 33(b) of the 1992 Fund Convention,

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

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

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

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

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

1 The appointment shall be for the period until [xx Date].

2 The fundamental conditions of service and the basic rights, duties and obligations of the Director are embodied in the Staff Regulations and Rules of the 1992 Fund as supplemented or amended by the 1992 Fund Assembly or by this contract.

3 The Director shall receive a salary equivalent to that of an Under Secretary-General (USG) in the United Nations salary scale increased by 10%, all subject to post adjustment and contributions to the Provident Fund. If eligible, he/she will receive the allowances available to staff members generally, together with an annual representation allowance of [£xxx] per annum.

4 The Director shall pledge himself by an oath that he/she will exercise, in all loyalty, discretion and conscience, as an international civil servant and the chief administrative officer of the IOPC Funds, the functions and duties assigned to him/her by the provisions of the 1992 and 1971 Fund Conventions and the Supplementary Fund Protocol and the Staff Regulations of the 1992 Fund; that he/she will discharge those functions and regulate his/her conduct with the interests of the IOPC Funds only in view and will not seek or accept instructions in regard to the performance of his/her duties from any government, authority or body external to the IOPC Funds.

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

6 The Director shall communicate to the Chairman of the 1992 Fund Assembly in writing no less than three months before the end of his/her initial appointment whether or not he/she wishes to seek a renewal of the appointment for an additional term.

7 Resignation by the Director:

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

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

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

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

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

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

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

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

For the International Oil
Pollution Compensation Fund 1992

_____ _____

Chairman of the Assembly

* * *

ANNEX VI
2012 Administrative Budget for 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2010 expenditure for 1992 Fund		2010 budget appropriations for 1992 Fund		2011 budget appropriations for 1992 Fund	2012 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 594 077*		*1 742 200*		1 851 810	2 061 860
(b)	Separation and recruitment	*180 058*		*35 000*		35 000	75 000
(c)	Staff benefits, allowances and training	*534 536*		*726 950*		652 910	721 425
	Sub-total		***2 308 671***		***2 504 150***	**2 539 720**	**2 858 285**
II	**General Services**						
(a)	Rent of office accommodation (including service charges and rates)	*301 140*		*320 800*		327 800	347 000
(b)	IT - hardware. software. maintennance.connectivity ***	*65 891*		*72 300*		154 000	318 075
(c)	Furniture and other office equipment	*15 600*		*25 000*		25 000	26 000
(d)	Office stationery and supplies	*20 287*		*22 000*		22 000	22 000
(e)	Communications (courier,telephone,postage) ***	*52 293*		*69 800*		76 000	45 000
(f)	Other supplies and services	*23 576*		*35 000*		35 000	35 000
(g)	Representation (hospitality)	*14 077*		*25 000*		25 000	25 000
(h)	Public Information	*224 035*		*175 000*		275 000	175 000
	Sub-total		***716 899***		***744 900***	**939 800**	**993 075**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' governing bodies and Intersessional Working Groups		***130 219***		***150 000***	**150 000**	**150 000**
IV	**Travel**						
	Conferences, seminars and missions		***95 397***		***150 000***	**150 000**	**150 000**
V	**Miscellaneous expenditure**						
(a)	External audit fees for IOPC Funds	*62 400*		*62 400*		63 000	63 000
(b)	Consultants' fees	*162 846*		*150 000*		100 000	150 000
(c)	Audit Body	*171 459*		*138 000*		160 000	180 000
(d)	Investment Advisory Body	*60 500*		*60 000*		63 000	66 150
	Sub-total		***457 205***		***410 400***	**386 000**	**459 150**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***14 263***		***60 000***	**60 000**	**60 000**
Total Expenditure I-VI			***3 722 654***		***4 019 450***	**4 225 520**	**4 670 510**
	Total Expenditure I-VI excluding External Audit fees for IOPC Funds					**4 162 520**	**4 607 510**
VII	**Due from 71Fund**						
	Management fee payable to 1992 Fund by 1971 Fund		***225 000***		***225 000***	**(240 000)**	**(255 000)**
VIII	**Due from Supplementary Fund**						
	Management fee payable to 1992 Fund by Supplementary Fund		***52 500***		***52 500***	**(56 000)**	**(59 500)**
	1992 Fund Budget Appropriation excluding External audit fee for IOPC Funds					**3 866 520**	**4 293 010**
	1992 Fund Budget Appropriation including External audit fee for 1992 Fund only					**3 915 020**	**4 342 010**

*** ***Chapter II (b)***
IT - hardware,software,maintenance and connectivity (previously - Office machines (IT hardware/software) / maintenance)
*** ***Chapter II (e)***
Communications (courier,telephone, postage) (previously - Communications (courier,telephone, postage, e-mail/internet))

2012 Administrative Budget for the Supplementary Fund

(Figures in Pounds Sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2010 EXPENDITURE	2010 BUDGET APPROPRIATIONS	2011 BUDGET APPROPRIATIONS	2012 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	52 500	52 500	56 000	59 500
II	Administrative expenses (including external audit fees)	3 600	13 600	13 600	13 600
Supplementary Fund Budget Appropriation		**56 100**	**66 100**	**69 600**	**73 100**

2012 Administrative Budget for 1971 Fund

(Figures in Pounds Sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2010 EXPENDITURE	2010 BUDGET APPROPRIATIONS	2011 BUDGET APPROPRIATIONS	2012 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	225 000	225 000	240 000	255 000
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	15 400	15 400
1971 Fund Budget Appropriation		**235 300**	**490 300**	**505 400**	**520 400**