INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT15/**11/1**	
Original: ENGLISH	23 October 2015	
1992 Fund Administrative Council	**92AC14/92A20**	●
1992 Fund Executive Committee	**92EC65**	●
Supplementary Fund Assembly	**SA11**	●

RECORD OF DECISIONS OF THE OCTOBER 2015 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 19 to 23 October 2015)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Administrative Council **(92AC14/ 92A20)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Samuel Roger Minkeng (Cameroon)
	Executive Committee **(92EC65)**	Mrs Welmoed van der Velde (Netherlands)	Mr Ibraheem Olugbade (Nigeria)
Supplementary Fund	Assembly **(SA11)**	Mr Sung-bum Kim (Republic of Korea)	Mrs Birgit Sølling Olsen (Denmark) Mr Mustafa Azmar (Turkey)

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Opening of the sessions

1992 Fund Administrative Council

0.1 The Chairman of the 1992 Fund Assembly attempted to open the 20th session of the Assembly at 9:30 and 09:45 but the Assembly failed to achieve a quorum on both occasions. Only the following 53 Member States of the 1992 Fund were present at that time:

Antigua and Barbuda	Greece	Panama
Argentina	Islamic Republic of Iran	Philippines
Australia	Italy	Poland
Bahamas	Japan	Portugal
Cambodia	Kenya	Republic of Korea
Cameroon	Latvia	Russian Federation
Canada	Liberia	Singapore
China[<1>]	Malaysia	Slovakia
Colombia	Malta	Spain
Côte d'Ivoire	Marshall Islands	Sri Lanka
Cyprus	Mexico	Sweden
Denmark	Monaco	Trinidad and Tobago
Ecuador	Morocco	Turkey
Estonia	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Nigeria	Uruguay
Germany	Norway	Venezuela (Bolivarian Republic of)
Ghana	Oman	

0.2 Since the quorum required 58 States to be present and no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 14th session of the 1992 Fund Administrative Council, acting on behalf of the 20th session of the 1992 Fund Assembly[<2>].

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

Supplementary Fund Assembly

0.4 The Supplementary Fund Assembly Chairman opened the 11th session of the Assembly.

1992 Fund Executive Committee

0.5 The 1992 Fund Executive Committee Chairman opened the 65th session of the Executive Committee.

0.6 The Member States present at the sessions are listed in Annex I, 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.

<2> From this point forward, references to the '14th session of the 1992 Fund Administrative Council' should be taken to read '14th session of the 1992 Fund Administrative Council, acting on behalf of the 20th session of the 1992 Fund Assembly'.

1 Procedural Matters

1.1	**Adoption of the Agenda** **Document IOPC/OCT15/1/1**	**92AC**	**92EC**	**SA**

The 1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/OCT15/1/1.

1.2	**Election of the Chairmen**	**92AC**		**SA**

1.2.1 The Director reminded the governing bodies that following the adoption of the new Rules of Procedure for the 1992 Fund Assembly during the spring 2015 sessions, he would preside over this agenda item for all governing bodies.

1992 Fund Administrative Council Decision

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

Chairman: Mr Gaute Sivertsen (Norway)
First Vice-Chairman: Professor Tomotaka Fujita (Japan)
Second Vice-Chairman: Mr Samuel Roger Minkeng (Cameroon)

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

Supplementary Fund Assembly Decision

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

Chairman: Mr Sung-bum Kim (Republic of Korea)
First Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)
Second Vice-Chairman: Mr Mustafa Azmar (Turkey)

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

1.3	**Examination of credentials – Establishment of Credentials Committee** **Document IOPC/OCT15/1/2**	**92AC**	**92EC**	**SA**
	Examination of credentials – Report of the Credentials Committee **Document IOPC/OCT15/1/2/1**	**92AC**	**92EC**	**SA**

1.3.1 The governing bodies took note of the information contained in document IOPC/OCT15/1/2.

1.3.2 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.

1.3.3 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 (see documents 92FUND/A.13/25, paragraph 7.9 and SUPPFUND/A.4/21, paragraph 7.11).

1992 Fund Administrative Council Decision

1.3.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Algeria, Colombia, Finland, Liberia and Marshall Islands as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Debate

1.3.6 After having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee and the Supplementary Fund, the Credentials Committee reported in document IOPC/OCT15/1/2/1 that credentials had been received from 59 Member States and that all were in order. It was noted that credentials had not yet been submitted by the Syrian Arab Republic but that the Committee expected that this would be rectified by the delegation shortly after the session.

1.3.7 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2015 sessions.

1.4	**Request for observer status** **Document IOPC/OCT15/1/3**	**92AC**		**SA**

1.4.1 The governing bodies took note of document IOPC/OCT15/1/3 regarding a request for observer status which had been received from the Iberoamerican Maritime Law Institute. It was noted that, in accordance with Rule 5 of the Rules of Procedure, the Director had invited the Iberoamerican Maritime Law Institute to send representatives to the October 2015 sessions of the governing bodies. It was recalled that past practice was that the organisation applying for observer status attended the session at which their application was under consideration and that the organisation would make a statement in support of their request. However, it was noted that no representatives from the Iberoamerican Maritime Law Institute were present at the session when this item was discussed.

1992 Fund Administrative Council Decision

1.4.2 The 1992 Fund Administrative Council welcomed the interest of Iberoamerican Maritime Law Institute in the work of the IOPC Funds, but given that there were no representatives from Iberoamerican Maritime Law Institute at the time, decided to postpone the decision to grant the international non-governmental organisation observer status to the 1992 Fund.

Supplementary Fund Assembly Decision

1.4.3 The Supplementary Fund Assembly took note of the decision of the 1992 Fund Administrative Council and decided to postpone the decision to grant the Iberoamerican Maritime Law Institute observer status to the Supplementary Fund.

2 Overview

2.1	**Report of the Director** **Document IOPC/OCT15/2/1**	**92AC**		**SA**

2.1.1 The Director presented his report contained in document IOPC/OCT15/2/1, providing details on the activities of the organisation over the past year and some background to the key items on the agenda for the week ahead.

2.1.2 The Director recalled the landmark decision which had been taken by the 1971 Fund Administrative Council at its October 2014 session to dissolve the 1971 Fund on 31 December 2014 and noted that this had been a very important and difficult decision for Member States which had had to be taken by a vote. He recalled that, since its establishment in 1978, the 1971 Fund had paid some £331 million in compensation and had laid the foundations for the 1992 and Supplementary Fund regime which exists today.

2.1.3 The Director also recalled that, on Friday 17 April 2015, the Secretary-General of IMO had convened the final meeting of former Member States of the 1971 Fund where the Financial Statements for 2014 had been reviewed and approved. Following that meeting, a special session had been held to commemorate the 1971 Fund, with a number of key figures taking the opportunity to look at the establishment and operation of the 1971 Fund over its 36 year existence. The four Directors of the 1971 Fund had attended that session and speeches had been provided by Dr Rosalie Balkin, former Assistant Secretary-General and Head of Legal Affairs and External Relations Division of IMO, Dr Reinhard Ganten, the first Director of the IOPC Fund, Mr Måns Jacobsson, former Director of the IOPC Funds, Dr Karen Purnell, Managing Director of ITOPF, Mr Alfred Popp QC, Administrator of the Ship Source Oil Pollution Fund in Canada, and Captain David Bruce, the last Chairman of the 1971 Fund Administrative Council. The Director expressed his gratitude to all of them for having taken part on this special occasion.

2.1.4 With respect to compensation matters, the Director reported that the 1992 Fund was currently dealing with 13 incidents. With regard to the *Hebei Spirit* incident, he reported that the 1992 Fund had recently started making payments at 35% of the established claims. However, the 1992 Fund Executive Committee would have to decide whether to maintain the level of payments or not, in light of the latest information regarding this incident. With respect to the *Alfa I* incident, the Director reported that a decision would be required from the Executive Committee on whether to authorise him to agree a settlement for €12 million in full and final settlement of the claim by the main clean-up contractor against the 1992 Fund.

2.1.5 The Director reported that the 1992 Fund seventh intersessional Working Group had held its fourth and final meeting in April 2015 on the consideration of the definition of 'ship', under the chairmanship of Mrs Birgit Sølling Olsen (Denmark), and that the final report of the Working Group, containing the Group's conclusions and proposals, had been submitted to the 1992 Fund Administrative Council at its current session.

2.1.6 The Director also reported that the issue of compensation for claims for VAT by central governments which had been discussed by the 1992 Fund Administrative Council at its October 2013 sessions and by the 1992 Fund Assembly at its October 2014 sessions, in light of a claim by the French Government relating to the *Prestige* incident, was under consideration again at the current session of the 1992 Fund Administrative Council as a result of two court decisions arising from the *Hebei Spirit* incident.

2.1.7 The Director reported that one of the most important items on the agenda was that of the funding of interim payments. He recalled that, at its April 2015 session, the 1992 Fund Administrative Council had noted that no agreement had been reached between the Director and the International Group of P&I Associations (International Group) on this issue. The Director reported that he had met with the International Group on three separate occasions since the April 2015 sessions and that the parties had agreed that there were two areas which required further work, namely the immunities of the 1992 Fund and Supplementary Fund and the concept of 'established claims'. Given the importance and sensitivity

of the issues involved, the Director was proposing in document IOPC/OCT15/4/6 to establish a Consultation Group of a limited number of Member States to work with him to examine the issues which need to be resolved in respect of interim payments, to discuss with the International Group a new Memorandum of Understanding between the International Group and the 1992 Fund and Supplementary Fund which would contain the terms and conditions under which interim payments would be made in future and to make recommendations to the governing bodies at their October 2016 sessions.

2.1.8 The Director reported that, on 6 May 2015, the 1992 Fund had received an order of the High Court of Justice in London registering in England a judgment rendered in 2009 by the Maritime Court of Appeal in Venezuela against the 1971 Fund in the amount of SDR 56.3 million (£52 million) in respect of the *Plate Princess* incident. At a hearing held on 22 July 2015, the 1992 Fund had argued that, although it was not clear whether the Registration Order was directed at the 1992 Fund or the 1971 Fund or both, the Venezuelan judgment had clearly been made against the 1971 Fund and as a consequence, the Court should set aside the Registration Order. The 1992 Fund also argued that the 1992 Fund had immunity from suit as granted by the Headquarters Agreement with the United Kingdom Government. The Director reported that, after that hearing, the Judge had set aside the Registration Order and affirmed the 1992 Fund's immunity from jurisdiction. The Judge had also awarded the 1992 Fund its legal costs, amounting to some £61 000. The Director noted that, on 2 September 2015, the Puerto Miranda Union had applied to the Court of Appeal for permission to appeal the July 2015 judgment and that a date for the Court to hear the application for permission to appeal was awaited.

2.1.9 The Director also noted that, in accordance with the instructions of the governing bodies at their October 2014 sessions, the Audit Body had conducted a competitive process for the selection of the External Auditor from both public and private sectors to conduct the audits of the Financial Statements for 2016-2019 or any such period as may be decided by the governing bodies. He noted that, taking into account the evaluation of the tenders and the results of the interviews, the Audit Body had concluded that BDO International should be recommended to the governing bodies for appointment as the External Auditor to the 1992 Fund and the Supplementary Fund, for four years, subject to satisfactory performance as evidenced by the annual review by the Audit Body in accordance with its mandate.

2.1.10 With respect to the relocation of the IOPC Funds' offices, the Director reported that there had been a significant development since the April 2015 sessions of the governing bodies. The Secretary-General of International Maritime Organization (IMO), after discussions between representatives of IMO, the UK Government and the IOPC Funds, had confirmed that IMO agreed in principle to accommodate the IOPC Funds' Secretariat in the rear wing of the first floor of the IMO Headquarters building. The Director reported that, pending further discussions with the IMO Secretariat in relation to the exact size and location of space available to the IOPC Funds, and taking into account the preference expressed by the UK Government to relocate the IOPC Funds' offices to IMO, he considered that a relocation of the IOPC Funds to the IMO building would be a pragmatic and mutually agreeable solution to all.

2.1.11 With respect to staff matters, the Director referred to the departure from the Secretariat of the following members of staff members since the October 2014 sessions of the governing bodies: Ms Ellen Leishman, Administrative Assistant, Ms Emer Padden, External Relations and Conference Coordinator, Mrs Astrid Richardson, Administrative/Claims Assistant and, most recently, Mrs Akiko Yoshida, Legal Counsel. The Director took the opportunity to thank Ms Leishman, Ms Padden, Mrs Richardson and Mrs Yoshida for their contribution to the work of the IOPC Funds.

2.1.12 He also announced the arrival of Mr Thomas Moran, External Relations and Conference Coordinator, Ms Julia Sükan del Río, External Relations and Conference Assistant, Mrs Julia Shaw, Human Resources Manager, Ms Sarah Hayton, Oil Reporting Administrator, and most recently, Mr Kensuke Kobayashi, Legal Counsel.

2.1.13 The Director informed the governing bodies of a number of external relations initiatives undertaken since October 2014. He mentioned in particular the fifth IOPC Funds' Short Course that had taken place in June 2015 and in which representatives of 13 Member States had participated. He thanked

IMO, International Chamber of Shipping (ICS), the International Group and International Tanker Owners Pollution Federation (ITOPF) who had continued to support the course. He announced that details of the 2016 Short Course would be issued by the end of the year.

2.1.14 The Director referred to the continued development of the IOPC Funds' website and, in particular, further improvements to the Incidents section, the expansion of the History section and the translation of the country profiles in French and Spanish. He also noted the publication of Guidelines for presenting claims for costs of clean up and preventive measures which had been added to the existing Claims Information Pack.

2.1.15 The Director also reported that since the October 2014 sessions of the governing bodies, the Secretariat had travelled to Finland, Gabon, Japan, Malaysia, Malta, Morocco, the Netherlands, Qatar, Saudi Arabia, Thailand and Turkey to run or participate in national, regional or international seminars or workshops and conferences relating to the international oil pollution compensation regime, or to provide assistance in the drafting of national legislation. In addition, the IOPC Funds had participated in Interspill 2015 which had been held in Amsterdam in March 2015, and where the Funds had organised two workshops, chaired two sessions, had made a presentation on environmental damage and had had a stand where information on the international regime had been provided to interested persons. He reported that the 1992 Fund Secretariat had also given presentations related to the HNS Convention at various workshops and seminars.

2.1.16 The Director was gratified to note the continued growth of the 1992 Fund with 114 Member States, but pointed out that the Secretariat would nevertheless continue to promote the benefits of the international compensation regime in States which had not ratified the 1992 Fund Convention and the Supplementary Fund Protocol.

2.1.17 He was also pleased that the International Group and the IOPC Funds had re-opened the dialogue on interim payments and, with the assistance of Member States, was looking forward to reaching an agreement on a revised Memorandum of Understanding.

2.1.18 In concluding, the Director expressed his gratitude to all who had provided input into the work of the Organisations over the past year, in particular the Member States, P&I Clubs and fellow international organisations with whom the Secretariat had worked closely. In particular, he expressed his sincere appreciation to Mr Koji Sekimizu, the Secretary-General of IMO, and his staff for the continued cooperation and support provided to the IOPC Funds. He noted that Mr Sekimizu would be stepping down as Secretary-General of IMO at the end of 2015 after 26 years of service to the Organization and took the opportunity to note his invaluable contribution to the aims and objectives of IMO and to convey his very best wishes to him for a long and happy retirement. The Director was also pleased to note the appointment of Mr Kitack Lim (Republic of Korea) to succeed Mr Sekimizu and expressed his confidence that the excellent relationship which had always existed between the IOPC Funds and IMO would continue to flourish under his leadership for the common benefit of the international community.

2.1.19 The Director also thanked the Chairmen and Vice-Chairmen of the governing bodies who were called upon on occasion outside of sessions to provide views and assistance to the Director and the Secretariat on key issues affecting the Organisation.

2.1.20 He thanked the lawyers and experts who work for the Funds, the members of the Audit Body, the Investment Advisory Body and the representatives of the External Auditor. Finally, the Director thanked all his colleagues in the Secretariat for their dedication to the Funds over the past 12 months.

3 Incidents involving the IOPC Funds

3.1	**Incidents involving the IOPC Funds** **Document IOPC/OCT15/3/1**		**92EC**	**SA11**

The 1992 Fund Executive Committee and the Supplementary Fund Assembly took note of document IOPC/OCT15/3/1, which contained information on documents for the October 2015 meetings relating to incidents involving the IOPC Funds.

3.2	**Incidents involving the IOPC Funds – 1992 Fund: *Erika*** **Document IOPC/OCT15/3/2**		**92EC**	

3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT15/3/2.

Civil Proceedings

3.2.2 It was noted that the last legal action pending against the 1992 Fund, with a total amount claimed of €87 467, had become stale for lack of prosecution, since under French law, legal actions become stale if there is no activity for ten years.

3.2.3 The 1992 Fund Executive Committee noted that this incident was now closed.

3.3	**Incidents involving the IOPC Funds – 1992 Fund: *Prestige*** **Document IOPC/OCT15/3/3/Rev.1**		**92EC**	

3.3.1 The Executive Committee took note of the information contained in document IOPC/OCT15/3/3/Rev.1 concerning the *Prestige* incident.

CLAIMS FOR COMPENSATION IN SPAIN

3.3.2 It was recalled that individual claims received by the claims-handling office in La Coruña had been assessed at €3.9 million. It was also recalled that the experts engaged by the 1992 Fund had also assessed the court claims submitted by individual claimants in Spain. It was further recalled that payments totalling €666 935 had been made at 30% of the assessed amount, taking into account the aid received, in respect of individual claims submitted to the claims-handling office and in court.

3.3.3 It was recalled that the claims by the Spanish Government had been assessed at €300.2 million and that payments totalling €115 million had been made to the Government.

CLAIMS FOR COMPENSATION IN FRANCE

3.3.4 It was recalled that individual claims received by the claims-handling office in Lorient had been assessed at €19 million and that payments totalling €5.8 million had been made at 30% of the assessed amount.

3.3.5 It was noted that the claim submitted by the French Government had been assessed at €42.2 million. It was noted, however, that the French Government had not agreed with this assessment and had decided to maintain its claim in court against the 1992 Fund and other parties. It was recalled that no payments had been made to the French Government since the French Government was standing last in the queue.

CRIMINAL PROCEEDINGS IN SPAIN

Judgment of the Audiencia Provincial (Criminal Court)

3.3.6 It was recalled that the Audiencia Provincial (Criminal Court) in La Coruña had issued a judgment on 13 November 2013, finding that the master, 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, were not criminally liable for damages to the environment. The Court had therefore not declared civil liability and thus had not awarded compensation to the victims.

Civil claims in the criminal proceedings

3.3.7 It was recalled that under Spanish law, civil claims could be submitted in the criminal proceedings as the Criminal Court had to decide not only on criminal liability, but also on civil liability derived from the criminal action. It was also recalled that the 1992 Fund had been a party to the proceedings from the beginning, as a party with strict civil liability under the 1992 Fund Convention.

Cassation appeal

3.3.8 It was recalled that some 19 parties had submitted appeals to the Supreme Court, including the Spanish and French Governments, some individual claimants in Spain, and local and regional authorities in France.

3.3.9 It was recalled that the French Government's action in the criminal proceedings was not against the 1992 Fund, but against the master, the chief engineer and the shipowner, its insurer and the ship management company.

3.3.10 It was noted that a hearing to consider the appeals had taken place in late September 2015 and that it was expected that the Supreme Court would deliver its judgment in 2015.

Civil proceedings in France

3.3.11 It was noted that actions by 120 claimants remained pending in French courts. It was recalled that some 174 French claimants, including various communes, had joined the criminal proceedings in Spain.

Legal action by France against American Bureau of Shipping (ABS)

3.3.12 It was recalled that France had brought a legal action in the Court of First Instance in Bordeaux against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS).

Legal action by the 1992 Fund against ABS

3.3.13 It was also recalled that the 1992 Fund had brought a recourse action against ABS in the Court of First Instance in Bordeaux.

Debate

3.3.14 The delegation of France informed the Executive Committee that, at the hearing at the Supreme Court in Madrid on 29 September 2015, the public prosecutor had requested the annulment of the judgment of the Audiencia Provincial in La Coruña, demanding the Supreme Court consider some information which established the liability of the master which the Criminal Court had ignored. That delegation also stated that it was expected that the Supreme Court would render its decision before the end of 2015.

3.4	**Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT15/3/4**		**92EC**	

3.4.1 The 1992 Fund Executive Committee took note of document IOPC/OCT15/3/4 which contained information relating to the *Solar 1* incident.

Claims for compensation

3.4.2 It was recalled that as at 13 July 2015, 32 466 claims had been received and that payments totalling PHP 987 million had been made in respect of 26 870 claims, mainly in the fisheries sector. It was also recalled that these payments had been reimbursed by the Shipowner's Club to the 1992 Fund in

accordance with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006. It was further recalled that all claims had been assessed and the local claims office had been closed.

Legal proceedings by the Philippine Coastguard (PCG)

3.4.3 The Executive Committee 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.

3.4.4 It was recalled that an offer of settlement for PHP 104.8 million for both claims had been accepted by the PCG. It was noted that in April 2012, the Secretariat had provided the PCG with a draft compromise agreement, the terms of which were agreed with the PCG.

3.4.5 It was noted that in February 2015, the Director had met with the Ambassador of the Philippines in London to discuss a proposal to pay the PCG's claim directly to the Ambassador as a representative of the Philippine Government for transfer to a nominated Philippine Government Treasury account in return for a signed and authorised receipt and release document, in order that the PCG could receive the assessed sum of PHP 104.8 million. It was also noted that in August 2015, the Director was informed that the Solicitor General and the PCG had agreed to settle the PCG claim at the amount assessed by the 1992 Fund's experts, and that the Solicitor General would sign the compromise agreement. The Executive Committee further noted that the Secretariat remained hopeful that the settlement monies would be paid shortly.

Legal proceedings by 967 fisherfolk

3.4.6 It was recalled that a civil action totalling PHP 286.4 million for property damage as well as economic losses had been filed in August 2009 by a law firm in Manila representing claims from 967 fisherfolk. It was also recalled that the claimants had rejected the 1992 Fund's assessment of a 12-week business interruption as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without, however, providing any evidence or support.

3.4.7 It was further recalled that the case had proceeded to mediation and a pre-trial hearing had taken place in September 2012, at which directions were given for the future conduct of the case, including discovery procedures for the presentation of documents to the opposing party and the Court. The 1992 Fund Executive Committee recalled that in June 2013, the claimants had failed to submit Judicial Affidavits as required under Philippine law, as a consequence of which the 1992 Fund's lawyer applied to the Court to declare the claimants as having waived the right to adduce evidence, in effect, requesting a plea for the outright dismissal of the claim.

3.4.8 The 1992 Fund Executive Committee also recalled that in October 2013, the Court had denied the 1992 Fund's application to dismiss the complaints for failure of the claimants to submit their Judicial Affidavits at four pre-trial hearings, accounting for a failure to comply four times with the rule.

3.4.9 The Executive Committee further recalled that thereafter, on a series of dates from March to July 2014, the claimants had presented their evidence to court. It was recalled that the claimants were unable to validate that it was unsafe to fish long after the occurrence of the incident, as claimed in their complaint.

3.4.10 It was noted that the case had been re-set for hearings in July 2015, at which the plaintiffs indicated that they would present technical witnesses in support of their claim, but that in fact no such witnesses were presented and the hearings were adjourned until September 2015.

3.4.11 It was also noted that at the September hearings, the claimants' experts were presented, amongst which there was a chemist from the Department of Environment and Natural Resources (DENR), who identified a 2011 report which claimed that oil resulting from the spill did not dissipate until 2011, some five years after the incident.

3.4.12 It was further noted that upon cross-examination, the claimant's expert admitted to having merely collated reports which had been produced in previous years, particularly in 2006, when the incident had just occurred. Further questioning, likewise exposed the expert, as having no personal knowledge of the allegations contained within the report, and the claimant's expert did not advance any expert opinion on how long the sea was contaminated and the effects, if any, on the livelihood of the fisherfolk.

3.4.13 The Executive Committee noted that further court hearings had taken place just before the Executive Committee session in October 2015, upon which the Secretariat currently awaited an update from its lawyers.

Legal proceedings by a group of municipal employees

3.4.14 The Executive Committee recalled that 97 individuals employed by a municipality in Guimaras during the response to the incident had taken action in court against the mayor, the ship's captain, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having been paid for their services. The Executive Committee also recalled that the 1992 Fund had filed statements of defence in court, noting in particular that the majority of claimants were not engaged in activities admissible in principle and that a number of the claimants were already included in a claim settled by the Municipality of Guimaras.

3.4.15 The Executive Committee further recalled that the 1992 Fund had instructed its lawyers to meet with the claimants' lawyers before the first mediation hearing took place, but no progress had been made in resolving the proceedings.

3.4.16 It was noted that the Court had initially set a similar timetable as for the claim involving 967 fisherfolk, and that a number of court hearings had occurred between 2012 and 2015 during which the status of several of the claimants presented by their lawyers had been examined. It was also noted that further court hearings to conclude the examination of the witnesses submitted by the claimants were set to take place in July 2015, but no witnesses had presented and the matter had been adjourned.

3.5	**Incidents involving the IOPC Funds – 1992 Fund: *Volgoneft 139* Document IOPC/OCT15/3/5**		**92EC**	

3.5.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT15/3/5 concerning the *Volgoneft 139* incident.

Limitation proceedings

3.5.2 It was recalled that the owner of the *Volgoneft 139* had been declared bankrupt in March 2008. It was also recalled that the *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, ie the minimum limit of liability under the 1992 Civil Liability Convention (1992 CLC) prior to November 2003, and that since the minimum limit under the 1992 CLC after November 2003 is 4.51 million SDR, there was an 'insurance gap' of some 1.51 million SDR.

3.5.3 It was also recalled that in February 2008, the Arbitration Court of Saint Petersburg and Leningrad Region (Arbitration Court) had issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million).

Civil proceedings

3.5.4 It was recalled that in June 2012, when delivering its judgment on quantum, the Arbitration Court had decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. It was also recalled that in the judgment, the Court had decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident, as published by the Russian Official Gazette. It was also recalled that since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR, the judgment left an 'insurance gap' of some 1.51 million SDR.

3.5.5 It was recalled, however, that in a ruling delivered in July 2013, the Supreme Court had decided that the Presidium of the Supreme Court should consider the 1992 Fund's appeal on the 'insurance gap'. It was recalled that, in a judgment rendered in October 2013, the Presidium of the Supreme Court had ordered that the previous judgments by lower courts be set aside in respect of the part that had ordered the 1992 Fund to cover the 'insurance gap' of 1.51 million SDR and had ordered the case to be sent to the Arbitration Court for reconsideration on that point.

3.5.6 It was further recalled that in a judgment delivered in November 2014, the Arbitration Court had decided to deduct the 'insurance gap' of 1.51 million SDR *pro rata* from the amount previously awarded to all claimants. The Executive Committee noted that the November 2014 judgment by the Arbitration Court was now final.

3.5.7 The Executive Committee noted that, on the advice of the Fund's Russian lawyer, the 1992 Fund had applied for the reversal of the execution of the 2012 judgment and that the Fund's application had been accepted. It was also noted that a hearing to consider the application had taken place in September 2015 and that a further hearing would take place in October 2015. It was noted that reversal of the execution of the judgment would formally entitle the 1992 Fund to receive from private claimants the amounts overpaid to them in comparison with what the November 2014 judgment had awarded.

CLAIMS FOR COMPENSATION

June 2012 judgment

3.5.8 It was recalled that, at its April 2013 session, the 1992 Fund Executive Committee had decided to authorise the Director to pay private claimants in full according to the 2012 ruling of the Arbitration Court and make provisional payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'. It was also recalled that, in accordance with that decision, the 1992 Fund had paid all private claimants in full and only the three government agencies remained to be paid.

November 2014 judgment

3.5.9 It was recalled that the total amount awarded against the shipowner/Ingosstrakh and the 1992 Fund in the June 2012 judgment, including costs, together with the amount settled out of court for the shipowner's claim, was RUB 512.3 million (£6 million), but that following the November 2014 judgment, this amount had been reduced to RUB 453.7 million (£5.1 million).

3.5.10 The Executive Committee recalled that the 1992 Fund had paid a total of RUB 76.2 million to the private claimants. It was recalled, however, that the 1992 Fund had the right to recover from the private claimants a total of RUB 8.7 million (£99 000).

3.5.11 It was noted that Ingosstrakh had not yet made any payments to claimants. It was also noted that initial discussions with its representatives suggested that Ingosstrakh might be willing to discount from the amount due by them to private claimants the amounts overpaid by the Fund to these claimants, and that Ingosstrakh would then pay the deducted amounts to the 1992 Fund.

3.5.12 It was noted that the 1992 Fund was continuing discussions with the parties involved.

Debate

3.5.13 One delegation expressed disappointment that the November 2014 judgment had become final, since it placed the 1992 Fund in a situation of overpayment. That delegation, however, expressed satisfaction with Ingosstrakh's initial willingness to discount from the amount due by them to private claimants the amounts overpaid by the Fund to these claimants, and then pay the deducted amounts to the 1992 Fund. That delegation expressed the hope that the issue of overpayment could be resolved quickly without additional financial burden to the 1992 Fund.

3.5.14 In the view of that delegation there were three main lessons to be drawn from this incident:

- If Member States did not implement the Conventions properly, they could cause a financial loss to the Fund.
- Cooperation with insurers could prove difficult when the insurers were not part of the International Group of P&I Associations.
- Utmost care should be taken when making provisional payments in order to avoid overpayment situations.

3.5.15 Other delegations encouraged the Director to continue the talks with Ingosstrakh, hoping a satisfactory solution could be found to the overpayment situation.

3.6	**Incidents involving the IOPC Funds – 1992 Fund: *Hebei Spirit* Documents IOPC/OCT15/3/6, IOPC/OCT15/3/6/1 and IOPC/OCT15/3/6/2**		**92EC**	

3.6.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/OCT15/3/6 and IOPC/OCT15/3/6/1 submitted by the Secretariat, and document IOPC/OCT15/3/6/2 submitted by the Republic of Korea, in respect of the *Hebei Spirit* incident.

DOCUMENT IOPC/OCT15/3/6, SUBMITTED BY THE SECRETARIAT

Claims situation

3.6.2 The 1992 Fund Executive Committee noted that as at 19 October 2015, 128 406 individual claims totalling KRW 2 776 billion had been registered. It also noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club), had made payments totalling KRW 186.8 billion in respect of 32 453 claims.

3.6.3 The Executive Committee also noted that the 1992 Fund had compensated the Korean Government for a subrogated claim in respect of 444 claims, totalling KRW 146.7 million.

Limitation proceedings

3.6.4 The Executive Committee recalled that 127 483 claims totalling KRW 4 227 billion had been submitted to the limitation proceedings. The Executive Committee also recalled that in January 2013 the Limitation Court had rendered a decision regarding the distribution of the *Hebei Spirit* limitation fund, assessing the damages arising out of the *Hebei Spirit* incident at a total of KRW 738 billion and rejecting 64 270 claims.

3.6.5 It was noted that a total of 122 552 claims had been filed in the objection proceedings.

3.6.6 The Executive Committee noted that the Court of First Instance in Seosan (Seosan Court) had been proposing mediation settlements to the parties in cases where matters of principle were not under discussion. The Executive Committee further noted that, as a result, 91 797 claims had been resolved by judgments or mediation, or had been withdrawn and that 35 686 were pending in the Courts. The Executive Committee further noted that the Seosan Court had issued judgments in respect of 35 462 claims, the majority of which had been appealed.

DOCUMENT IOPC/OCT15/3/6/1, SUBMITTED BY THE SECRETARIAT

Level of payments

3.6.7 The Executive Committee recalled that in June 2008, in view of the uncertainty as to the total amount of the admissible claims, it had decided that the level of payments should be limited to 35% of the

amount of the damage actually suffered by the respective claimants as assessed by the 1992 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 losses.

3.6.8 The Executive Committee recalled that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was 203 million SDR or KRW 321.6 billion.

3.6.9 The Executive Committee noted that the Seosan Court had resolved, through recommendations and judgments, about 72% of the claims, but that some 28% of the claims in the limitation proceedings were still pending.

3.6.10 The Executive Committee noted that the Korean courts had largely applied a similar approach to claim assessment as the Fund. It further noted that the Korean Government was standing last in the queue for its claims and was also compensating claimants the full amount awarded on a final basis by the Courts, and subrogating their rights *vis-à-vis* the 1992 Fund.

3.6.11 The Executive Committee noted that, the Director considered that it was possible to increase the level of payments from 35% to 50% of the established claims, taking into consideration the claims for which the Korean Government was standing last in the queue, and still preserving a sufficient safety margin, in case the amounts awarded by the higher courts for the remaining claims pending were more than the amounts awarded by the Limitation Court.

3.6.12 The Executive Committee noted the Director's recommendation to increase the level of payments to 50% of the established claims so as to avoid an overpayment situation and his recommendation that this level of payments be reviewed at the next session of the 1992 Fund Executive Committee.

DOCUMENT IOPC/OCT15/3/6/2, SUBMITTED BY THE REPUBLIC OF KOREA

3.6.13 The Executive Committee noted that the Korean Government had submitted document IOPC/OCT15/3/6/2 proposing that the Executive Committee increase the level of payments of the claims arising out of the *Hebei Spirit* incident.

3.6.14 The Executive Committee noted that, in its intervention, the Korean Government informed the Executive Committee that 71% of the claims had been settled by judgment or mediation at about 63% of the amount initially awarded by the Limitation Court. The Korean Government argued that, since the Korean courts had sufficiently conformed to the 1992 Fund's policy on the causal relationship between an incident and losses and matters of evidence, the same principles could be anticipated to be applied to the remaining claims in the future. Therefore, it should be assured that the 1992 Fund's realistic exposure, which was the sum of both the established amount and the claimed amount of the remaining claims, would not exceed the amount decided by the Limitation Court.

3.6.15 It was further noted that the Korean Government argued that it had a legal obligation, under the Special Law, to pay the total amount of damages which exceed the total amount available for compensation under the 1992 CLC and 1992 Fund Convention. It was also noted that in the view of the Korean Government, if the level of payments were increased according to its request, there would be no risk to the 1992 Fund and the principle of equal treatment between claimants would be respected.

3.6.16 In view of these considerations, the Korean Government requested the Executive Committee to increase the level of payments to 60% of the established claims.

Debate

3.6.17 The majority of the delegations which spoke remarked on the impressive work undertaken by both the Korean Government and the Korean courts in dealing with the very high number of claims which had arisen from the *Hebei Spirit* incident.

3.6.18 Those delegations also stated that, in view of the fact that the Korean courts were by and large following the Fund's principles, and in view of the commitment by the Korean Government to pay all established claims in full and to stand last in the queue for a number of claims, it appeared to be safe to increase the level of payments to 50% of the established claims as long as sufficient safeguards were in place to ensure that the 1992 Fund would not find itself at risk of overpayment.

3.6.19 One delegation asked the Korean delegation to confirm whether, by standing last in the queue for a number of claims, it intended to be paid last, or whether it accepted that it may not be paid if sufficient compensation was unavailable.

3.6.20 Responding to a question from a delegation on the basis for a review of the level of payments at the next session as suggested by the Director, the Director informed the Committee that this would be based on the fact that the Korean courts had followed the 1992 Funds' principles, and that a number of court cases were expected to be concluded in the spring.

3.6.21 The Korean delegation confirmed that, in its view, the claims for which the Korean Government stood last in the queue would only be compensated if there was a sufficient amount available for compensation after all private claims had been compensated.

3.6.22 Some delegations stated that, although they would accept the majority's view to accept the Director's proposals to increase the level of payments to 50% of the established claims, they would not object to an increase of level of payments to 60% in line with the Republic of Korea's request.

3.6.23 The majority of the delegations which spoke agreed with the Director's proposal to increase the level of payments to 50% of the established claims and to review this decision at the next session of the Executive Committee.

1992 Fund Executive Committee Decision

3.6.24 The 1992 Fund Executive Committee decided to:

(a) increase the level of payments to 50% of the amount of the established losses; and

(b) review this decision at the next session of the 1992 Fund Executive Committee.

DOCUMENT IOPC/OCT15/3/6/1, SUBMITTED BY THE SECRETARIAT

Global settlement

3.6.25 The Executive Committee noted that the Director considered that, in view of the fact that the amount of established losses totalled KRW 322 billion and that there were some 36 000 claims still unresolved, the established losses would exceed KRW 321.6 billion and the 1992 Fund would therefore pay the full amount available under the 1992 Civil Liability and Fund Conventions.

3.6.26 The Executive Committee further noted that, in the Director's view, it was time to explore a possible global settlement with the Korean Government, which would allow the 1992 Fund to pay the Government the compensation available and would provide the safeguards to the 1992 Fund against judgments by the Korean Courts.

3.6.27 The Executive Committee also noted that the Director therefore recommended that he be instructed to explore, with the Korean Government, a possible global settlement in which the 1992 Fund would pay the Government the total amount available for compensation and to present it to the Executive Committee at its spring 2016 session for the Executive Committee's consideration and approval.

Debate

3.6.28 The delegation of the Republic of Korea remarked that the proposed global settlement would be a viable option to resolve the incident, since it would be time efficient and would also reduce the administrative

burden on all parties. That delegation further stated that, if the Executive Committee agreed to instruct the Director to explore the possibility of a global settlement, the Korean Government would closely cooperate with the Director to achieve a viable settlement to present to the Executive Committee at its spring 2016 session.

3.6.29 All the delegations which spoke commended the Republic of Korea and the Secretariat for the way in which they had cooperated to ensure that all claimants were compensated to the fullest extent possible.

3.6.30 Those delegations were optimistic that, in view of the very good cooperation existing between the Korean Government and the Secretariat, a global settlement solution could be found to everybody's satisfaction.

3.6.31 A number of delegations stated that, in view of such cooperation, they considered that a possible global settlement as proposed by the Director could be a more productive solution to the incident rather than reviewing and raising the level of payments session-by-session, provided that appropriate safeguards were in place to avoid any additional financial burden once the 1992 Fund had paid the Government.

3.6.32 The Executive Committee therefore supported the proposal by the Director to explore with the Korean Government the possibility of reaching a global settlement on the *Hebei Spirit* incident and to present it to the 1992 Fund Executive Committee for consideration and approval at its spring 2016 session, provided that the proposed settlement ensured that sufficient safeguards were in place.

1992 Fund Executive Committee Decision

3.6.33 The 1992 Fund Executive Committee decided to instruct the Director to explore with the Korean Government a possible global settlement and to present it to the 1992 Fund Executive Committee at its spring 2016 session for its consideration and approval.

3.7	**Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina** **Document IOPC/OCT15/3/7**		**92EC**	

3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT15/3/7 dealing with an incident in Argentina.

Criminal proceedings

3.7.2 It was recalled that an investigation into the cause of the incident by the Federal Court of Comodoro Rivadavia (Criminal Section) had reached a preliminary decision that the spill originated from the *Presidente Illia*. It was recalled, however, that the shipowner and the insurer of the *Presidente Illia* contested liability.

Civil proceedings

3.7.3 It was recalled that, taking into consideration that criminal court decisions were not binding on civil judges, the owner of the *Presidente Illia* would be entitled to prove, in any of the civil court proceedings, that the spill did not come from the *Presidente Illia*. It was also noted that there remained only one legal action against the owner of the *Presidente Illia* and the West of England Club.

Action by the 1992 Fund against the owner of the San Julian

3.7.4 It was recalled that in December 2010 the 1992 Fund had brought an action in a civil court of Buenos Aires against the owner of the *San Julian* and its insurer in order to protect its compensation rights in case the Argentine courts were to find that the spilling vessel was not the *Presidente Illia* but the *San Julian*. It was also recalled that the parties had agreed to stay the proceedings pending the resolution of the civil actions brought by claimants against the owner of the *Presidente Illia* and its insurer.

Action by the owner of the Presidente Illia against the 1992 Fund

3.7.5 It was recalled that an action had also been brought by the owner of the *Presidente Illia* and the West of England Club against the 1992 Fund in Buenos Aires, in order to protect their compensation rights against the 1992 Fund in case it was finally established that the spill originated from a tanker other than the *Presidente Illia*. It was further recalled that the parties had agreed to stay the proceedings pending the resolution of the civil actions brought by claimants against the owner of the *Presidente Illia* and its insurer.

Claims for compensation

3.7.6 It was recalled that the 1992 Fund and the West of England Club had agreed that the shipowner and its insurer would pay claims for compensation assessed and approved in accordance with the principles set out in the 1992 Civil Liability and Fund Conventions. If, however, it was finally established that the oil which impacted the coast did not come from the *Presidente Illia* but from another ship as defined in the 1992 CLC, the owner of the *Presidente Illia* and the West of England Club would recover from the 1992 Fund the amounts of compensation paid.

3.7.7 It was noted that 331 claims for compensation for a total of AR$53.3 million (£3.85 million) and US$391 294 (£232 374) had been submitted, and that as at 10 August 2015, the payments made by the West of England Club totalled AR$5 million (£361 118). It was also noted that all valid claims arising out of this incident had now been settled and that a number of claims could be considered as time-barred or had been rejected.

3.7.8 It was also noted that, although it seemed likely that the total admissible damage caused by the spill would be within the shipowner's limit, the 1992 Fund would have to keep monitoring the case until the issue of liability of the owner of the *Presidente Illia* had been resolved in the civil courts.

3.8	**Incidents involving the IOPC Funds – 1992 Fund: *Redfferm* Document IOPC/OCT15/3/8**		**92EC**	

3.8.1 The 1992 Fund Executive Committee took note of document IOPC/OCT15/3/8 which related to the *Redfferm* incident.

3.8.2 The 1992 Fund Executive Committee recalled that in January 2012, the Secretariat was informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank following a transhipment operation from the tanker *MT Concep*. The barge sank spilling an unknown quantity/residue of cargo of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area. The oil remaining on board amounted to approximately 100 tonnes of LPFO and it was this residue that was spilled.

3.8.3 It was also recalled that at the time of the incident, the barge *Redfferm* was used to tranship LPFO from a sea-going tanker, the *MT Concep*, to a shore-based power plant because of its reduced draft and size compared to the *MT Concep*. It was further recalled that no evidence had been submitted of any sea-going voyages undertaken by the barge *Redfferm*.

3.8.4 The Executive Committee recalled that in October 2012, preliminary information was provided by the claimants' lawyer detailing the locations of the 102 communities and the numbers of individuals within the communities affected by the spill.

3.8.5 The Executive Committee also recalled that in March 2013, the Nigerian Federal Ministry of Transport had established a Marine Board of Inquiry for the *Redfferm* incident, which was attended by the 1992 Fund's Nigerian lawyers who did not participate in the proceedings. The report of the Marine Board of Inquiry was provided to the Secretariat at the April 2013 session of the 1992 Fund Executive Committee.

3.8.6 The Executive Committee further recalled that during the Marine Board of Inquiry, no definitive answer had been provided as to what had caused the sinking of the barge and that several possibilities had been raised by the witnesses called by the Board, including a collision between the tanker and barge, overloading, lack of structural integrity and poor construction.

Reasons for rejection of claims

3.8.7 It was recalled that in February 2014, the 1992 Fund wrote to the claimants' representative rejecting the claims submitted for the following reasons:

- The barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 Civil Liability Convention;
- There were large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
- There was a lack of information submitted to prove the claimants' identities and occupations.

Legal proceedings

3.8.8 It was recalled that in March 2012 a claim for US$26.25 million was filed by 102 communities against the owners of *MT Concep*, the owners of *Redfferm*, Thames Shipping Agency Ltd (Thames Shipping) (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

3.8.9 It was also recalled that in February 2013, the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. It was further recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.

3.8.10 It was further recalled that in October 2013, the Judge ruled against Thames Shipping's application to set aside the service of the writ and that in November 2013, Thames Shipping had filed an appeal against the ruling. The 1992 Fund Executive Committee recalled that the Judge had stayed the proceedings pending the determination of the 1992 Fund's appeal against the first instance ruling in which the Judge had refused to remove the 1992 Fund as a defendant and replace it as an intervenor.

3.8.11 The 1992 Fund Executive Committee noted that on a number of occasions through 2014 and 2015, the 1992 Fund's lawyers had written to the Registrar of the Court of Appeal requesting that the 1992 Fund's appeal against the first instance ruling be listed for a hearing date, but that no response had been received from the Court of Appeal.

3.8.12 The 1992 Fund Executive Committee also noted that the 1992 Fund's lawyers had advised that due to a heavy caseload at the Court of Appeal, it was unlikely that the 1992 Fund's appeal would be heard before the end of 2015 at the earliest.

3.8.13 The 1992 Fund Executive Committee further noted that no further steps had been taken in the legal proceedings.

Director's considerations

3.8.14 The 1992 Fund Executive Committee recalled that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it had provided to the Secretariat, without which the Secretariat would have faced difficulty in obtaining information about the incident.

3.8.15 The 1992 Fund Executive Committee also recalled that since the *Redfferm* was not a 'ship' within the definition of Article I(1) of the 1992 CLC, the 1992 Conventions did not apply to this incident.

3.8.16 The 1992 Fund Executive Committee further recalled that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims had been rejected.

3.8.17 It was noted that the legal proceedings in Nigeria were continuing, but that in accordance with the advice rendered by the 1992 Fund's lawyers due to a heavy caseload at the Court of Appeal, it was unlikely that there would be any developments in the legal proceedings until the end of 2015 at the earliest.

3.9	**Incidents involving the IOPC Funds – 1992 Fund: *JS Amazing* Document IOPC/OCT15/3/9**		**92EC**	

3.9.1 The 1992 Fund Executive Committee took note of document IOPC/OCT15/3/9 which contained information relating to the *JS Amazing* incident.

3.9.2 It was recalled that in May 2011, the 1992 Fund was informed of an incident which occurred in June 2009 in which the tanker *JS Amazing* spilled an unknown quantity of low pour fuel oil into the Warri River, Delta State, Nigeria.

3.9.3 It was also recalled that in March 2012, the 1992 Fund was provided with the background facts surrounding the incident by the Nigerian Federal Ministry of Transport who had established a Marine Board of Inquiry to carry out an investigation into the cause of the spill, and that in April 2012, the Marine Board of Inquiry had published its report.

Claims for compensation

3.9.4 The Executive Committee recalled that in May 2012 a claim for NGN 30.5 billion was filed against, *inter alia*, the 1992 Fund by 248 communities. The Executive Committee also recalled that the claims submitted comprised claims for damage to fishing gear, loss of earnings from fishing, damage to economic trees and crops, general damage to communities, displacement and ecological damage, and damage to ancestral shrines.

Reasons for rejection of claims

3.9.5 The Executive Committee recalled that the 1992 Fund's experts had analysed the claims submitted, by comparing them to the reports produced following the joint investigation visit by the Nigerian Oil Spill Detection and Response Agency (NOSDRA) and the Pipelines and Product Marketing Company Limited (PPMC) conducted in 2009, together with other published scientific papers on fishing gear and fishing practices in the Warri Delta region, and had found in many cases that there were very large discrepancies between the claims submitted and the information available on the type and number of items of fishing gear contaminated by oil.

3.9.6 The Executive Committee also recalled that an analysis of the loss of earnings revealed large discrepancies between the claims submitted for lost income and other available data which advised that the typical monthly wage earned was in the region of NGN 5 000, but that the claims submitted were often in many multiples of this figure.

3.9.7 The Executive Committee further recalled that for these reasons, the 1992 Fund had rejected the claims in January and February 2014.

Legal proceedings

3.9.8 It was recalled that in May 2012, the claim by 248 communities had been filed against the 1992 Fund, the shipowner and the joint liquidators of the South of England P&I Club.

3.9.9 It was also recalled that in July 2012, the 1992 Fund had applied to strike itself out as a defendant, but had also sought leave to be an intervenor on the basis that primary liability for the first tier of

compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.

3.9.10 It was further recalled that in March 2013, upon the claimants' application, the Court had ordered the arrest and detention of the *JS Amazing*, pending the provision of a bank guarantee to cover the claim or the deposit of the sum of NGN 30.5 billion into court. The 1992 Fund Executive Committee recalled that the vessel was located at Kirikiri jetty and, pending further information, was believed to still be under arrest.

3.9.11 The Executive Committee also recalled that in March 2014, the Judge had granted the 1992 Fund's application to strike itself out as a defendant and had ordered the claimants to amend its writ to include PPMC as a third party to the proceedings. The proceedings were then adjourned.

3.9.12 The Executive Committee noted that in February 2015, the claimants applied for a further adjournment to serve the amended writ upon the defendants, and that the matter was listed for a hearing in March 2015, but adjourned on two further occasions to October 2015 for the hearing of the claimants' application.

Director's considerations

3.9.13 The Executive Committee recalled that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it had provided to the Secretariat, without which the Secretariat would have faced difficulty obtaining information, given the location of the incident.

3.9.14 The Executive Committee also recalled that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims had been rejected.

3.9.15 The Executive Committee noted that the legal proceedings in Nigeria were still continuing and that there had been no further substantive developments in 2015.

Debate

3.9.16 In response to a question raised by one delegation, concerning whether the 1992 Fund acknowledged that the damages were caused by the *JS Amazing* or by a spill from a pipeline, the Secretariat confirmed that the 1992 Fund acknowledged that a spill from the tanker *JS Amazing* had occurred, but that it was not possible to ascertain with certainty whether the damages arose from the spill from the tanker or from a number of pipeline spills which occurred before and after the spill from the *JS Amazing*.

3.10	**Incidents involving the IOPC Funds – 1992 Fund: *Haekup Pacific* Document IOPC/OCT15/3/10**		**92EC**	

3.10.1 The 1992 Fund Executive Committee took note of document IOPC/OCT15/3/10 which contained information relating to the *Haekup Pacific* incident.

3.10.2 It was recalled that in April 2013 the Secretariat was notified of an incident which took place in April 2010 in the Republic of Korea when the *Haekup Pacific*, an asphalt carrier of 1 087 GT was involved in a collision with the *Zheng Hang*, as a result of which the *Haekup Pacific* sank in waters of approximately 90 metres depth off Yeosu, Republic of Korea.

3.10.3 It was also recalled that at the time of the incident the *Haekup Pacific* was laden with 1 135 metric tonnes of asphalt cargo together with bunkers of 23.37 metric tonnes of intermediate fuel oil (IFO) and 13 metric tonnes of medium diesel oil (MDO).

3.10.4 It was further recalled that the *Haekup Pacific* was entered with the UK P&I Club and that it was a 'relevant ship' within the definition of STOPIA 2006, and that therefore STOPIA 2006 would apply.

3.10.5 The 1992 Fund Executive Committee recalled that shortly after sinking a small spill of some 200 litres of oil had occurred resulting in some minor pollution.

3.10.6 The 1992 Fund Executive Committee also recalled that on the likely environmental impact arising from the incident, the shipowner had obtained the advice of the ITOPF who was of the view that the asphalt cargo would become solidified in the cold, 90 metre deep sea and would not pose a threat to the environment. The 1992 Fund Executive Committee further recalled that ITOPF were of the opinion that the MDO would evaporate away quickly if it leaked out and that any IFO spilled would reasonably be expected to drift away from the Korean coast in a north-easterly direction under the influence of winds and a strong current.

3.10.7 It was recalled that surveyors retained by the UK P&I Club estimated that the cost of the oil removal operation would be in the region of US$5 million, whereas the wreck and cargo removal operation would cost in excess of US$25 million.

3.10.8 It was also recalled that in August 2010 the shipowner had submitted the reports of both ITOPF and the surveyor to the Korean authorities stating that:

(i) no further leakage had been observed;
(ii) there had been no adverse effect on the marine environment; and
(iii) the wreck and oil removal operations were not justified.

3.10.9 It was further recalled that in September 2013, the Yeosu City, had requested the shipowner to provide a plan for the removal of the wreck, and that in April 2014 a further request was made.

3.10.10 It was noted that a number of further meetings had taken place with the Yeosu City at which the shipowner, following ITOPF's advice, had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

3.10.11 It was also noted that a further meeting took place in December 2014 at which the Yeosu City specified a number of issues which it wished the shipowner to include within an assessment of the wreck, but that the Yeosu City awaited the shipowner's plan. It was further noted that there had been no subsequent developments.

Legal proceedings

3.10.12 The 1992 Fund Executive Committee recalled that in April 2013, the shipowner/UK P&I Club had started legal proceedings against the 1992 Fund in the Seoul Central District Court before the expiry of the three-year anniversary of the date when the damage occurred, in order to protect their rights in respect of any future liability for costs of the removal operation which they might have to pay.

3.10.13 The 1992 Fund Executive Committee also recalled that the UK P&I Club had indicated that, if the shipowner/UK P&I Club and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had been paid in respect of the potential claim for removal operations), then only the six-year time limit under the 1992 Fund Convention would be applicable.

3.10.14 It was recalled that the UK P&I Club and the 1992 Fund had settled the terms of an agreement on facts stating that since the costs of the potential claim for removal operations had not yet taken place, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/UK P&I Club had been withdrawn in June 2013. It was noted that the parties awaited developments regarding the removal orders and removal operations.

Intervention by the delegation of the Republic of Korea

3.10.15 The delegation of the Republic of Korea stated that the most recent information it had received confirmed that the shipowner had notified the Yeosu City of its intention to carry out an environmental study and that recently, the shipowner had provided its proposals to the Yeosu City.

3.11	**Incidents involving the IOPC Funds – 1992 Fund: *MT Pavit* Document IOPC/OCT15/3/11**		**92EC**	

3.11.1 The 1992 Fund Executive Committee noted the information contained in document IOPC/OCT15/3/11 relating to the *MT Pavit* incident.

3.11.2 The Executive Committee recalled that on 31 July 2011, the *MT Pavit*, a product tanker of 999 GRT built in 1990, ran aground off Juhu beach, Mumbai, India.

3.11.3 The Executive Committee noted that the 1992 Fund had instructed experts to advise on the recoverability of losses claimed by the salvors, and a firm of naval architects to advise on the operations conducted during the re-floating operations and to consider whether the circumstances of the grounding of the tanker on the beach at Mumbai on 5 August 2011, constituted a 'grave and imminent threat' of causing oil pollution.

3.11.4 The Executive Committee further noted that the Fund's experts had concluded that the *MT Pavit* grounded on a sandy beach, into which it settled and which caused no structural defect, nor any breach of the hull which allowed any liquid pollutant out of the vessel. It was noted that the Fund's experts were of the view that there was little immediate threat of the vessel breaking up or toppling over, given that the vessel had secured itself into the sandy beach and was unlikely to move without towage assistance.

3.11.5 It was noted that an interpretation of the measurements taken by the marine surveyors who performed the initial survey of the vessel, had failed to identify significant quantities of oil and oily water in the vessel that could support the claim that the vessel presented a 'grave and imminent threat' of pollution that would cause environmental damage.

3.11.6 It was also noted that in August 2015, one of the claimants provided the Secretariat with a laboratory report which analysed some oily sludge said to be taken from the *MT Pavit*, but that no information on the exact source was provided.

3.11.7 It was further noted that the laboratory report indicated that the sample it had been provided with was lube oil, which was persistent. It was noted that on this basis, the claimants had argued that the *MT Pavit* fell within the coverage of the 1992 CLC and 1992 Fund Convention.

3.11.8 The Executive Committee noted that the 1992 Fund's experts had commented that without a robust chain of custody of the sample they were unable to say where the oil originated from. They had stated that it could have equally originated from one of the barrels of lube oil found stored on the deck of the *MT Pavit*, although they would have expected an oily sludge from the engine room to have had an opaque appearance rather than the clear appearance stated in the laboratory report.

3.11.9 The Executive Committee also noted that based on the evidence presently at hand, it appeared that the *MT Pavit*, although unladen at the time of her grounding, had carried Marine Gas Oil which was likely to have been non-persistent oil on a previous voyage. Consequently, it would appear that the *MT Pavit* was not carrying in bulk as cargo, residues of an oil as defined under Article I(5) of the 1992 CLC.

3.11.10 The Executive Committee further noted that the West of England P&I Club had insured the vessel at the start of the voyage but that insurance cover had been cancelled with retrospective effect on 22 July 2011, for non-payment of insurance premium in accordance with the West of England P&I Club Class rules. It was noted that the 1992 Fund's lawyers had advised that under the blue card there would only be liability if the vessel was carrying persistent mineral oil and if there was actual oil pollution

from the vessel within the 90 day period following the Club providing notice of cessation to the Flag State. Since no evidence had been presented to indicate that there was any pollution from the *MT Pavit*, combined with the view that the residues of oil carried on board were likely to have been non-persistent mineral oil, it would appear that the P&I Club had no liability.

3.11.11 It was also noted that the 1992 Fund's experts had considered the factors mentioned by the claimant who contended that they established a 'grave and imminent threat' which necessitated the vessel being removed immediately in order to avoid an untoward pollution incident, but had found that it was submitted that the factors did not equate to a 'grave and imminent threat' of pollution damage.

3.11.12 It was further noted that there had been no cases where the 1992 CLC and 1992 Fund Convention had been applied in a case of 'grave and imminent threat' of pollution damage when oil was not spilled from a tanker, but the only case of note was the *Santa Anna* incident in the United Kingdom in 1998, but whose circumstances appeared to be very different from the *MT Pavit* incident. It was noted that whilst the issue of being a 'grave and imminent threat' might apply if the ship had carried a cargo of persistent oil in accordance with Article I(5) of the 1992 CLC, it did not apply to vessels which did not carry a cargo of persistent mineral oil, such as the *MT Pavit*.

3.11.13 The Executive Committee noted that in the *Santa Anna* incident, the claimants had recovered the costs from the shipowner and insurer under the provisions of the United Kingdom legislation applicable at that time, namely the 1995 Merchant Shipping Act, and not under the 1992 CLC.

Director's considerations

3.11.14 The Executive Committee also noted that the Director was grateful for the assistance provided by the Indian authorities and the claimants in reporting the incident, but that it was unfortunate that the incident had been reported to the 1992 Fund almost three years after the events took place and as a consequence, it had been difficult to obtain evidence relating to the incident.

Debate

3.11.15 In response to one delegation which asked who was liable to prove that no residues of persistent oil were present onboard, the Secretariat stated that it was the claimant's obligation to prove that the residues onboard were persistent, but that at present, the only available evidence indicated that the previous cargo onboard was a cargo of Marine Gas Oil, which the Fund's experts had advised was likely to be non-persistent.

3.11.16 Another delegation stated that the incident was interesting as it raised questions on evidence and whether the vessel carried 'oil' as defined under Article I(5) of the 1992 CLC. That delegation also stated that the Fund needed to investigate the issue of the cancellation of cover retrospectively by the P&I Club, and also raised the issue that Member States needed to safeguard themselves by ensuring that ships entering into their territorial waters had insurance cover for risks other than pollution damage, including wreck removal and spills from bunkers.

3.12	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/OCT15/3/12**		**92EC**	

3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT15/3/12 which contained information relating to the *Alfa I* incident.

Claims situation

3.12.2 The Executive Committee recalled that in January 2015, the Director and the Claims Manager responsible for dealing with the incident, together with the Fund's expert, had met with the insurer and the clean-up contractors to further discuss the claim and to ascertain whether it was possible to settle the claim before the court rendered its judgment.

3.12.3 The Executive Committee further recalled that in the meeting with the clean-up contractors, the details of the contractors' claim were discussed and further information was sought to enable the 1992 Fund's expert to proceed with the assessment of the claim.

3.12.4 It was also recalled that in the meeting with the insurer, the insurer had indicated that the reinsurers had instructed it to fight the claim, on the basis that since the *Alfa I* had carried less than 2 000 tonnes of persistent mineral oil, the 1992 CLC did not apply, and thus the insurer and reinsurers had no liability.

3.12.5 It was further recalled that this view was not shared by the 1992 Fund. The Executive Committee recalled that the Director had explained that, whilst the requirement to maintain compulsory insurance in accordance with the provisions of Article VII(1) of the 1992 CLC, did not apply if the ship did not carry 2 000 tonnes of oil in bulk as cargo, the remaining provisions of the 1992 CLC, including the provisions relating to the strict liability of the shipowner, did still apply, since the insurer had issued a blue card which had been relied upon by the Greek authorities when issuing their certificate of insurance.

3.12.6 The Executive Committee also recalled that in February 2015, the clean-up contractors had also served the 1992 Fund with legal proceedings before the expiry of the three-year time bar, and that another claimant had filed a claim against the shipowner and insurer for some €349 000 before the expiry of the three-year time bar, and that the 1992 Fund had been notified of this action. The Executive Committee further recalled that the 1992 Fund had filed an intervention before the Maritime Court of First Instance, Piraeus, to challenge the quantum of the losses claimed.

3.12.7 It was noted that a claim for some €222 000 for clean-up expenses had also been filed by the Greek State against the shipowner but that this had not been formally notified to the 1992 Fund. It was also noted that in May 2015, the Maritime Court of First Instance had awarded the first clean-up contractor the sum of €14.4 million and that the 1992 Fund's lawyers had been instructed to prepare an appeal once the first instance judgment was formally served.

3.12.8 It was further noted that in July 2015 the 1992 Fund and its experts met with the first clean-up contractor to further discuss the incident, and that the clean-up contractor had agreed to a proposal to accept the sum of €12 million in full and final settlement of its claim against the shipowner, insurer and the 1992 Fund. The 1992 Fund Executive Committee noted that it was understood that the insurer would pay the equivalent of the shipowner's full limit of liability of 4.51 million SDR.

3.12.9 The Executive Committee also noted that the Director had been advised by the 1992 Fund's lawyers that even if the 1992 Fund were to appeal the first instance court judgment of €14.4 million, the 1992 Fund would be unlikely to obtain a much better result than the proposed settlement offer of €12 million.

3.12.10 The Executive Committee further noted that if the 1992 Fund were to appeal the first instance judgment, it was unlikely that a judgment from the Greek Court of Appeal would be available within three years, during which time, interest would continue to accrue on the judgment, in the region of €1.3 million per year.

3.12.11 It was noted that in light of the foregoing, the Director was of the view that a possible settlement of the largest claim against the 1992 Fund for the sum of €12 million, including interest, with the shipowner or its insurer paying the equivalent of the limitation amount due (4.51 million SDR), would be a good settlement figure, taking into consideration the advice of the 1992 Fund's technical advisors on the merits of the claim, and making an allowance for the litigation risk and increased interest upon the claim that would otherwise be due if the 1992 Fund were to proceed with an appeal to the Greek Court of Appeal.

3.12.12 It was also noted that although the claim by the main clean-up contractor could be settled for €12 million, there remained outstanding the claim by the other clean-up contractor for €349 000. It was noted that in addition the shipowner and insurer would face the claim by the Greek State for some €222 000.

3.12.13 The Executive Committee further noted the Director's recommendation that he be instructed to agree a settlement of €12 million in full and final settlement of the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund on the basis that the insurer would pay the equivalent of the limitation amount due (4.51 million SDR).

Intervention by the delegation of Greece

3.12.14 The delegation of Greece stated that it had no further information to add, since all developments had been reported. In response to the Director's request, it was stated that the Greek Authorities could not intervene at this stage in the negotiations between the Fund, the claimants and the insurer. It also stated that it was in favour of the Director's proposal to pay €12 million in full and final settlement of the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on the basis that the insurer would pay the equivalent of the limitation amount due (4.51 million SDR).

Debate

3.12.15 A large number of delegations took the floor in support of the Director's proposal, on the condition that the insurer would pay the equivalent of the limitation amount due (4.51 million SDR).

3.12.16 One delegation highlighted that, in view of the previous actions of the insurer, it was necessary to check the feasibility and financial viability of the insurer before making any payment. Two delegations also stated that it was important to protect the rights of the victims.

1992 Fund Executive Committee Decision

3.12.17 The 1992 Fund Executive Committee decided to authorise the Director to agree a settlement of €12 million including interest, in full and final settlement of the main clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on condition that the insurer first paid the equivalent of the limitation amount due (4.51 million SDR).

3.13	**Incidents involving the IOPC Funds – 1992 Fund: *Nesa R3* Document IOPC/OCT15/3/13**		**92EC**	

3.13.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT15/3/13.

3.13.2 The Executive Committee recalled that on 19 June 2013, the 856 GT tanker *Nesa R3*, carrying 840 tonnes of bitumen, sank off the Port Sultan Qaboos, Muscat, Oman. It was recalled that the pollution affected 40 kilometres of the coast of Oman. It was recalled that tragically the master of the *Nesa R3* lost his life while trying to save his vessel.

3.13.3 The Executive Committee recalled that the *Nesa R3* had been carrying less than 2 000 tonnes of persistent oil as cargo and, as such, was not required to maintain insurance. Notwithstanding this, the owners of the *Nesa R3* had taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka. It was recalled, however, that the insurer had declared that the insurance policy would not cover this incident.

3.13.4 It was also recalled that at its October 2013 session, it had authorised the Director to make payments of compensation in respect of admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

3.13.5 It was further recalled that the shipowner had not yet responded to requests from the Omani Government to pay compensation for the pollution damage caused by the incident.

3.13.6 The Executive Committee also recalled that the Omani Government had informed the 1992 Fund that it had commenced legal proceedings against the shipowner in the Court of Muscat and that the next hearing of the Court had been scheduled for 2015.

3.13.7 The Executive Committee noted that the 1992 Fund had instructed its lawyers to ascertain the chances of making any recovery from the shipowner and its insurer in the Court of Muscat.

3.13.8 It was also noted that 28 claims, totalling OMR 5 830 327 (£9.8 million), for clean-up related activities, surveys of the wreck and economic losses suffered in the fisheries sector had been received by the Secretariat.

3.13.9 The Executive Committee further noted that five clean-up claims had been assessed at OMR 972 421 (£1.6 million) and that, of these, three claims amounting to OMR 797 237 (£1.3 million) had been paid. The Committee noted that the other claims had been queried pending the submission of additional information.

3.14	**Incidents involving the IOPC Funds – 1992 Fund: *Shoko Maru* Document IOPC/OCT15/3/14**		**92EC**	

3.14.1 The Executive Committee took note of the information contained in document IOPC/OCT15/3/14 concerning the *Shoko Maru* incident.

3.14.2 It was recalled that on 29 May 2014 the *Shoko Maru* had exploded and sank off Himeji Port, Hyogo Prefecture, Japan.

Investigation into the cause of the incident

3.14.3 It was noted that the Japan Transport Safety Board was investigating the cause of the incident and that the Japan Coast Guard had been conducting a criminal investigation into the cause of the incident. It was also noted that the investigation was still in progress and that no conclusions had yet been issued.

Claims for compensation

3.14.4 It was noted that all the claims received as a result of this incident had been settled by the shipowner's insurer.

3.14.5 It was also noted that the claims submitted had not exceeded the limitation applicable to the *Shoko Maru* under the 1992 CLC and that therefore the 1992 Fund was unlikely to be liable to pay compensation to the victims of this spill.

3.14.6 It was further noted that, from the information that had been obtained by the expert engaged by the 1992 Fund, no further claims were expected.

Debate

3.14.7 The delegation of Japan pointed out that it was very unlikely that this incident would have any financial implications for the 1992 Fund but that it would inform the Fund if there were new developments in the case.

3.14.8 That delegation also stated that most insurers in Japan, although not belonging to the International Group, provided essentially the same cover as the P&I Clubs belonging to the International Group, including STOPIA.

4 Compensation matters

4.1	**Report of the 1992 Fund Executive Committee on its 62nd, 63rd and 64th sessions**	**92AC**		

The 1992 Fund Administrative Council noted the reports of the 62nd, 63rd and 64th sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT14/11/1/1 and IOPC/OCT15/9/1) 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/OCT15/4/1**	**92AC**		

4.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT15/4/1.

1992 Fund Administrative Council Decision

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

Eligible under paragraph (a):	Eligible under paragraph (b):
Canada	Algeria
France	Bahamas
India	Cameroon
Japan	Marshall Islands
Singapore	Mexico
Spain	New Zealand
United Kingdom	Sweden
	Turkey

4.2.3 The governing bodies took note of the new procedure for the election of the Chairman and Vice-Chairman of the 1992 Fund Executive Committee, following the decision adopted by the 1992 Fund Administrative Council in April 2015, by which the incoming Chairman and Vice-Chairman of the 1992 Fund Executive Committee would be elected at the same time as the incoming Executive Committee was elected (document IOPC/APR15/9/1, paragraph 6.1.6 (i)).

4.2.4 It was noted that this new procedure had been proposed in order to avoid the need for a separate new session of the Executive Committee at the end of the regular sessions of the governing bodies.

4.2.5 It was further noted that the incoming Chairman and Vice-Chairman would assume their positions as soon as the main sessions had concluded and the Records of Decisions had been adopted and until the end of the next regular session of the Assembly.

4.2.6 The 1992 Fund Executive Committee elected, by acclamation, the following delegates to hold office until the end of the next regular session of the 1992 Fund Assembly:

Chairman:	Ms Stacey Fraser (New Zealand)
Vice-Chairman:	Mr Daniel Kjellgren (Sweden)

4.2.7 The elected Chairman thanked, also on behalf of the Vice-Chairman, the 1992 Fund Executive Committee for the confidence shown in them.

4.3	**Final report of the seventh intersessional Working Group Document IOPC/OCT15/4/2**	**92AC**		

4.3.1 The 1992 Fund Administrative Council took note of documents IOPC/OCT15/4/2 and IOPC/OCT15/4/2/WP.1, which detailed the final report of the seventh intersessional Working Group and which focused on the proposals designed to conclude the outstanding matters relating to the issue of the definition of 'ship' under Article I(1) of the 1992 CLC.

Conclusions of the Working Group in respect of the definition of 'ship'

4.3.2 The 1992 Fund Administrative Council noted that the Working Group had concluded that it should agree a non-exhaustive, illustrative list of examples of vessels which clearly fell within the definition of 'ship' under Article I(1) of the 1992 CLC, as detailed in the amended version of document IOPC/APR15/8/1/WP.1.

4.3.3 The Administrative Council also noted that the Working Group had emphasised that the list contained in the document was not exhaustive and was only indicative of the craft which fell within the definition of 'ship' and which clearly fell outside the definition of 'ship', and that other craft with similar characteristics may fall within or outside the definition depending on the circumstances, which were to be considered on a case-by-case basis.

4.3.4 The Administrative Council further noted that the Working Group had concluded that 'grey areas' were to be decided by the 1992 Fund governing bodies, on a case-by-case basis using the hybrid approach which involved the list of examples of ships which clearly fell within the definition of 'ship' or clearly fell outside the definition, and the use of the maritime transport chain as an interpretive tool for addressing situations where it was not clear if the craft was a 'ship' or not.

Conclusions of the Working Group in respect of the issue of whether oil discharged into 'permanently or semi-permanently' anchored vessels engaged in ship-to-ship (STS) oil transfer operations should qualify as contributing oil

4.3.5 It was noted that although a number of delegations were of the view that all oil received in a Member State's territory should contribute, the majority view of the Working Group was that the concept of 'permanently or semi-permanently at anchor' was not found in the Conventions and was problematic as it introduced uncertainty, and should be discarded. As a consequence, it was not necessary to further discuss the issue of contributions arising as a result of vessels performing STS operations whilst permanently or semi-permanently at anchor.

Recommendations regarding the definition of 'ship'

4.3.6 It was also noted that the Working Group recommended that the 1992 Fund Administrative Council agree a non-exhaustive, indicative list which illustrates examples of vessels which clearly fall within or outside the definition of 'ship' under Article I(1) of the 1992 CLC, as detailed within the revised version of document IOPC/APR15/8/1/WP.1, incorporating the comments agreed by the Working Group, and that this formed the first part of the 'hybrid' approach favoured by a number of delegations.

4.3.7 It was further noted that the Working Group also recommended that the 1992 Fund Administrative Council adopt the concept of the maritime transport chain, as an interpretive tool, to address those situations on a case-by-case basis, where it was not clear whether a vessel fell within the definition of 'ship'. It was noted that this formed the second part of the 'hybrid' approach.

4.3.8 The Administrative Council noted that such an approach was not intended to introduce discretion and flexibility into the international compensation regime, which could lead to different interpretations resulting if different national courts were to decide on the matter, but rather to ensure that, so far as was currently possible, clear guidance was provided for known vessel-types and scenarios, and a process was in place to consider unusual vessel types or scenarios that may arise in the future. It also noted that

it would then be possible to consider whether the craft or type of craft was considered a ship under the Conventions in light of the circumstances and activities conducted.

4.3.9 The Administrative Council further noted that the Working Group recommended that it should give further consideration to the issue of when the maritime transport chain commenced and concluded.

Recommendations regarding the issue of whether oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS oil transfer operations should qualify as contributing oil

4.3.10 It was noted that the Working Group recommended that the 1992 Fund Administrative Council consider discarding the concept of vessels 'permanently or semi-permanently' at anchor, since it introduced uncertainty into the compensation regime and was a concept which was not found in the Conventions.

4.3.11 It was also noted that the Working Group recommended that the 1992 Fund Administrative Council should reverse its 2006 decision that oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS operations should qualify as contributing oil for the purposes of Article 10 of the 1992 Fund Convention and should discard the concept of craft 'permanently or semi-permanently at anchor'.

Recommendations regarding enforcement of agreed principles and definitions

4.3.12 It was further noted that the Working Group recommended that the 1992 Fund Administrative Council instruct the Secretariat to draft a guidance document, based on the discussions of the Working Group, to be presented to the 1992 Fund governing bodies for their consideration in spring 2016.

4.3.13 The Administrative Council noted that the Working Group recommended that the guidance note should record:

(a) the list of illustrative and non-exhaustive examples of vessels which were clearly within or clearly outside the interpretation of the definition of 'ship' under Article I(1) of the 1992 CLC;

(b) the agreed definitions of the commencement and conclusion of the maritime transport chain concept, to be used for the vessels or scenarios falling into the 'grey areas';

(c) automatically, any further decisions made by the 1992 Fund Assembly regarding the issue of the definition of 'ship', if and when they were made; and

(d) if so agreed, that the 1992 Fund Assembly had reversed its decision that oil discharged into permanently or semi-permanently anchored vessels engaged in STS operations should qualify as contributing oil for the purposes of Article 10 of the 1992 Fund Convention.

Debate

4.3.14 A large number of delegations thanked the Chairman of the Working Group, Ms Birgit Sølling Olsen (Denmark), for her work and guidance on a difficult subject.

4.3.15 One delegation stated that it had proposed amendments to the text of document IOPC/APR15/8/1 and noted that its proposals were not correctly recorded in document IOPC/OCT15/4/2. That delegation stated that it was content with document IOPC/OCT15/4/2/WP.1.

4.3.16 In response to a request for clarity from two delegations regarding how the proposals regarding FSOs and FSUs could be reconciled with the decision taken by the 1992 Fund Assembly in October 1999 (the October 1999 decision) endorsing the conclusions of the second intersessional Working Group regarding the applicability of the 1992 Conventions to offshore craft, the Director stated that a decision taken by the 1992 Fund governing bodies remained valid until revoked. However, it was clear that in light of the recommendations of the seventh intersessional Working Group, the craft covered by the

October 1999 decision, would now fall into the 'grey areas' to be decided by the 1992 Fund governing bodies on a case-by-case basis, using the maritime transport chain test as an interpretive tool.

4.3.17 A large number of delegations supported the recommendations of the Working Group contained in document IOPC/OCT15/4/2/WP.1 regarding:

1) the illustrative list of vessels that fall clearly within or outside the definition of 'ship' under Article I(1) of the 1992 CLC, that forms the first part of the hybrid approach (as detailed in Annex II to document IOPC/OCT15/4/2); and

2) the concept of the maritime transport chain, as an interpretive tool, to address those situations or 'grey areas', on a case-by-case basis, where it was not clear whether a vessel fell within the definition of 'ship'.

4.3.18 In relation to the issue of contributions from vessels performing STS operations whilst 'permanently or semi-permanently at anchor', there was no opposition to the recommendation of the Working Group, that the 1992 Fund Administrative Council should reverse its 2006 decision that oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS operations should qualify as contributing oil for the purpose of Article 10 of the 1992 Fund Convention, and should discard the concept of craft 'permanently or semi-permanently at anchor'.

4.3.19 In relation to the issue of whether to instruct the Secretariat to produce a guidance document reflecting the conclusions of the Working Group to be considered by the 1992 Fund Assembly at its spring 2016 session, a number of delegations expressed concern that a guidance document may reopen the issues already decided, which they did not wish to occur.

4.3.20 However, a larger number of delegations stated that a simple guidance document would assist to provide clarity to a range of maritime entities including Flag States, owners, operators of offshore craft and the national courts of Member States.

4.3.21 A number of delegations suggested amendments to be made to the text of document IOPC/OCT15/4/2/WP.1, in order that it could be used as part of the guidance document to be drafted by the Secretariat. One delegation stated that the guidance document, in addition to specifying the vessels clearly within or outside the definition of 'ship', should also include the information with the corresponding footnotes, regarding the maritime transport chain, as contained in Annex II of document IOPC/OCT15/4/2. In addition, that delegation stated that the guidance document should also contain information stating that vessels engaged in the production or processing of oil operations would not be covered under the Conventions.

4.3.22 The observer delegation of the International Group of P&I Associations stated that, for the sake of clarity, and in order to assist with certification requirements, it would prefer the guidance document to state clearly that the vessels detailed at paragraph 2.1 of document IOPC/OCT15/4/2/WP.1, under the heading, 'List of vessels that fall clearly within the definition of ship', would require a blue card to be issued by an insurer and would require a State to issue a certificate in accordance with the provisions of the 1992 CLC, whereas the vessels detailed under the heading 'List of vessels that clearly do not fall within the definition of ship', would not require such steps to be taken, since they were vessels which clearly fell outside the definition.

1992 Fund Administrative Council Decision

4.3.23 The 1992 Fund Administrative Council decided:

In respect of the issue regarding the definition of 'ship':

1) To accept the recommendations of the Working Group regarding the illustrative list of vessels falling clearly within or outside the definition of 'ship' under Article I(1) of the 1992 CLC that forms the first part of the hybrid approach;

List of Vessels that fall clearly within the definition of ship:

1) A seagoing vessel or seaborne craft constructed or adapted for the carriage of oil in bulk as cargo when it is actually carrying oil in bulk as cargo;

2) A seagoing vessel or seaborne craft in ballast following a voyage carrying oil with residue of oil onboard;

3) A craft[3] carrying oil in bulk as cargo being towed (or temporarily at anchor for purposes incidental to ordinary navigation or force majeure or distress);

4) A ship capable of carrying oil and other cargoes (ie an Oil Bulk Ore carrier (OBO)) when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues;

5) Offshore craft[4] that have their own independent motive power, steering equipment for seagoing navigation and seafarer onboard so as to be employed either as storage units or carriage of oil in bulk as cargo and that have the element of carriage of oil and undertaking a voyage; and

6) Craft that are originally constructed or adapted (or capable of being operated) as vessels for carriage of oil, but later converted to FSOs, with capacity to navigate at sea under their own power and steering retained and with seafarer onboard and that have the element of carriage of oil and undertaking a voyage.

List of Vessels that clearly do not fall within the definition of ship:

1) Barges certified or classed only for use on inland water ways;

2) Vessels which are not constructed or adapted for the carriage of oil in bulk as cargo. Such categories include 'non-tanker' vessels, such as:

   (a) Container vessels;
   (b) Cruise Ships;
   (c) Tugs;
   (d) Dredgers;
   (e) General cargo vessels;
   (f) Diving support vessels;
   (g) Bulk carriers;
   (h) Passenger vessels;
   (i) Car carriers;
   (j) Fishing vessels; and
   (k) Ferries.

3) Vessels or craft involved in:

   (a) Exploration, for example jack-up rigs or Mobile Offshore Production Units (a jack-up platform whether or not it carries oil, gas and water separation equipment); or

   (b) The production or processing of oil, for example Drill-ships, FDPSOs, and FPSOs, including separation of water and gas, and its management.

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[3] This could be a barge or an offshore craft.

[4] The term 'offshore craft' could be a Floating Drilling Production Storage and Offloading unit (FDPSO), Floating Production Storage and Offloading unit (FPSO), Floating Storage and Offloading unit (FSO) or Floating Storage Unit (FSU) whether purpose-built, or converted or adapted from seagoing vessels constructed for the carriage of oil.

2) To adopt the concept of the maritime transport chain, as an interpretative tool, to address those situations or 'grey areas' on case-by-case basis, where it was not clear whether a vessel fell within the definition of 'ship', and which forms the second part of the hybrid approach.

3) To instruct the Secretariat to produce a succinct guidance document reflecting the conclusions of the Working Group, to be considered by the 1992 Fund Assembly at its spring 2016 session.

In respect of the issue of whether oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS oil transfer operations should qualify as contributing oil:

To reverse its 2006 decision that oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS operations should qualify as contributing oil for the purpose of Article 10 of the 1992 Fund Convention and discard the concept of craft 'permanently or semi-permanently at anchor'.

4.4	**STOPIA 2006 and TOPIA 2006 Document IOPC/OCT15/4/3**	**92AC**		**SA**

4.4.1 The governing bodies took note of the information contained in document IOPC/OCT15/4/3 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.4.2 It was noted that the International Group had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 485 tankers as of August 2015. The International Group also reported that the number of 'relevant ships' entered in a P&I Club but not entered in STOPIA 2006 was nil, and the number of 'relevant ships' which ceased to be in STOPIA 2006 while insured by a P&I Club was also nil.

4.4.3 It was noted that the International Group had reported to the Secretariat that as of August 2015, 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. The International Group also reported that the number of 'relevant ships' which entered in a P&I Club but not entered in TOPIA 2006 was nil, and that the number of 'relevant ships' which ceased to be in TOPIA 2006 while insured by a P&I Club was also nil.

4.4.4 It was further noted that, a review of STOPIA 2006 and TOPIA 2006 would be carried out in 2016 based on the experience in the 10 year period from the entry into force of these agreements. It was stated that the Secretariat would report the outcome of the review to the 1992 Fund Assembly and to the Supplementary Fund Assembly at their October 2016 sessions.

4.4.5 One delegation stated that, STOPIA 2006 and TOPIA 2006 had worked well and asked whether the agreements would be extended or whether they would cease to apply during the review.

4.4.6 In reply to the question, the delegation of the International Group of P&I Clubs informed the governing bodies that, although it did not have the actual text of the STOPIA and TOPIA agreements available at hand, it agreed that the agreements would be maintained during and after the review period, subject to the termination provisions contained in the agreements.

4.5	**Compensation for claims for VAT by central governments Documents IOPC/OCT15/4/4 and IOPC/OCT15/4/4/1**	**92AC**		**SA**

4.5.1 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of document IOPC/OCT15/4/4 submitted by the Secretariat, and document IOPC/OCT15/4/4/1 submitted by the delegation of France.

DOCUMENT IOPC/OCT15/4/4, SUBMITTED BY THE SECRETARIAT

4.5.2 The governing bodies noted that document IOPC/OCT15/4/4 summarised the current policy of the IOPC Funds in respect of claims for compensation of VAT from central governments, and highlighted that the issue has arisen again recently as a result of claims arising from the *Hebei Spirit* incident.

4.5.3 The governing bodies also noted that the document provided a summary of the considerations of the 1992 Fund Administrative Council in October 2013, following the submission of documents by the Secretariat (document IOPC/OCT13/4/7/1) and the delegation of France (document IOPC/OCT13/4/7). It was recalled that both documents commented on French civil law aspects regarding the payment of VAT.

4.5.4 The governing bodies also recalled the discussions arising following the submission of document IOPC/OCT14/4/5 by the Director in October 2014, which had been submitted as a result of the instruction from the 1992 Fund Administrative Council to further investigate the recoverability of VAT by central governments claiming from the IOPC Funds.

4.5.5 It was noted that the document submitted by the Director in October 2014 contained at its Annex the legal opinions of lawyers from a wide cross-section of Member States, and that following consideration of the legal opinions, the Director had invited Member States to comment on the issue of compensation for VAT by central governments.

4.5.6 It was also noted that following a debate on the issue in October 2014, the 1992 Fund Assembly had noted the views of the delegations and also noted that further time was required to discuss this difficult issue.

4.5.7 It was further noted that the issue of compensation for VAT by central governments was not discussed at the April 2015 sessions of the 1992 Fund governing bodies, and that as a result no opportunity had arisen for Member States to comment further on the issues at stake. It was noted however, that the question of how the 1992 Fund should handle claims for compensation of VAT from central governments was now under consideration as a result of two court decisions arising from the *Hebei Spirit* incident, which the 1992 Fund had appealed.

Judgments on two claims by the Republic of Korea

4.5.8 The governing bodies noted that in May 2015, the Seosan Court had issued two judgments on claims by the Korean Navy and the Korean Naval Operation Command relating to costs incurred during the response to the *Hebei Spirit* incident. The 1992 Fund Administrative Council also noted that in its judgments, the Court accepted the 1992 Fund's assessment of both claims, but that in the same judgments, the Court also held that the VAT paid to external contractors in the amount of KRW 1 037 092 (£590) and KRW 1 350 511 (£770) respectively, was compensable. In its reasoning, the Court indicated that under Korean law, VAT was returnable (or deductible from output tax) only to entrepreneurs. However, although the Korean Government did not fall within that category, it argued that it had paid for the services of an entrepreneur, and on that basis, the Korean Government claimant was claiming compensation for the VAT.

4.5.9 The governing bodies further noted that in addition, the Court had also emphasised that the procedure for determining compensable amounts through objection proceedings, and the procedure for calculating VAT returns (or deductions), were separate, and therefore it would not be fair to change the amounts of damages awarded, purely on the basis that the claimant was the Government.

4.5.10 It was noted that the 1992 Fund had objected to these judgments based on the advice of its Korean lawyers at that time because although the claimant's payment to the contractor's company included VAT, since the Korean Government claimant was also the party imposing VAT, the payment of such VAT could not constitute a loss to the claimant. Moreover, since the VAT would eventually be returned to the claimant (ie to the Republic of Korea), a payment of VAT to the Government as part of compensation of their department's claim, would have to be considered a double payment.

4.5.11 It was also noted however, that subsequent to filing the appeals and contrary to their initial advice, the 1992 Fund's Korean lawyers had advised that they were now of the view that the Korean Government would be able to recover the VAT, because the VAT paid to the external contractors, and the VAT paid by the external contractors to the Korean Government, arose from separate causes of action, and there was no direct link between the two causes.

4.5.12 The governing bodies further noted that the 1992 Fund had appealed both judgments which were expected to be heard before the spring 2016 sessions of the governing bodies, at which point the 1992 Fund would report the outcome of the litigation.

DOCUMENT IOPC/OCT15/4/4/1, SUBMITTED BY THE DELEGATION OF FRANCE

4.5.13 The governing bodies noted that document IOPC/OCT15/4/4/1 presented a legal opinion from Mr Guillaume Goulard, a member of the Conseil d'Etat, President of the 9th Chamber of the litigation section of the Conseil d'Etat, explaining the position of the French courts concerning the inclusion of VAT in the claim for compensation submitted by the French State.

4.5.14 The governing bodies also noted that the main points of Mr Goulard's legal opinion were as follows:

(a) The case law of the Conseil d'Etat and the French administrative courts were clearly set in favour of the inclusion of VAT in the State's claim for compensation.

(b) This solution was explained by the distinction drawn between the State acting as a victim entitled to full compensation for the damage suffered, including VAT, and the State acting as a tax collector, which received, pursuant to tax laws, all taxes from the taxpayers.

(c) In the event of a financial loss incurred by the State as a victim of damage, the cost of VAT is direct, certain and immediate, whereas the collection of this VAT by the State as a tax collector is indirect, uncertain and deferred over time. Therefore, when the State has paid VAT on goods or services giving rise to compensation, the company which invoiced this tax does not directly and immediately pay it over to the State. It only takes it into account in the determination of its VAT contribution. There is therefore no direct and certain relationship between the payment of VAT and its collection as budgetary revenue. In the event of a liquidation of the company that invoiced the VAT, the State may even fail to collect any of the tax it has paid.

(d) VAT is one of the taxes due by the company which carries out the operations, but it is not the only one. If VAT were to be excluded from compensation, corporate tax, and even income tax, whose basis may be affected by the additional activity associated with response operations, should also be questioned.

4.5.15 The governing bodies further noted that the French delegation was of the view that non-reimbursement of VAT would penalise States taking counter-pollution measures, since in the case of a major spill, it was up to the affected State to clean up its coasts using its own resources or by engaging private contractors, and that like any victim of damage, the State must pay for the services provided by private contractors, including VAT.

4.5.16 It was noted that in the view of the French delegation, the non-reimbursement of VAT paid to private contractors for the supply of services and goods necessary for the clean-up operations, was an undue burden which caused financial loss to the affected State. It was also noted that if the State decided not to intervene, but gave formal notice to the shipowner to clean up the coasts, that shipowner would hire private contractors which it would pay for the services provided, including VAT, and that VAT would in turn, then be paid to the affected State in the form of tax revenues.

4.5.17 It was also noted that in the view of the French delegation compensation of VAT on a case-by-case basis, according to the legal system of the affected State would allow for fair treatment of States.

4.5.18 It was further noted that in the view of the French delegation, the diversity of legal systems of Member States of the IOPC Funds prevented the adoption of a single general principle regarding the reimbursement of VAT, and that, as stated by some delegations during the October 2014 sessions of the IOPC Funds' governing bodies, fair treatment of Member States of the IOPC Funds necessarily implied compensating VAT on a case-by-case basis, depending on the legal system of the affected State.

4.5.19 The governing bodies noted that in the French delegation's view, if the IOPC Funds were to apply a restrictive policy on this matter, it would weaken the international compensation regime which is founded on the principle of out-of-court settlement of claims; since if a State could not obtain full compensation for its loss from the IOPC Funds, it would refuse amicable settlement and would systematically start legal proceedings against the IOPC Funds before its national courts in order to enforce its national law.

4.5.20 The governing bodies also noted that the French delegation invited the IOPC Funds to adapt to the legal systems of affected States.

Intervention by the delegation of France

4.5.21 The delegation of France made the following intervention (original in French):

'The French delegation, in response to the analysis by Professor Bénabent produced by the IOPC Funds Secretariat in October 2014, which contested the jurisprudence of the Conseil d'Etat on the issue of VAT, now submits a legal opinion from Guillaume Goulard, Judge in the French Conseil d'Etat and President of the Tax Litigation Chamber. This Judge clarifies the position of the French administrative Judge on VAT matters and confirms that:

a) the jurisprudence of the Conseil d'Etat and the French administrative courts is perfectly clear: it allows the State to include VAT in the amount of its loss eligible for compensation;
b) this solution can be explained by the distinction that is made between the State which has suffered a loss, and therefore is entitled to full compensation for the loss suffered, including VAT, and the State as tax collector, which collects taxes owed by taxpayers in accordance with the rules specific to tax law.

It follows from this that the French administrative jurisprudence is clear. While it is true that the civil court which is competent in this instance has not yet ruled on the question, the State will defend the same position before that court, since there is no reason in principle for it to depart from the solution decided by the administrative court.

Furthermore, the French delegation wishes to raise three points:

- Firstly, it considers that the non-reimbursement of VAT by the IOPC Funds would constitute a sanction against States that intervene in the pollution response. Indeed, in the case of an oil spill, the affected State can decide to call on specialised private companies and, in that case, like any other person suffering a loss, it must pay for the services provided by the private companies, including all taxes. It would therefore be unjust on these grounds not to compensate it.

- Secondly, if national law authorises the inclusion of VAT in the loss subject to compensation, any offer of compensation by the IOPC Funds would in fact be challenged before the national courts, which would undermine the very purpose of the Conventions. **A State that is the victim of an oil spill should not, indeed, suffer a loss by virtue of its participation in the international compensation regime.**

- Thirdly, the French delegation notes with satisfaction that France is not the only country where this question arises, since a Korean court has just agreed reimbursement of VAT to the Korean Government in relation to the *Hebei Spirit* incident. Furthermore, the Oslo Court, in Norway, also recognised in January 2015, in the MV Server case, the possibility

of the Norwegian Government obtaining reimbursement of the VAT paid to private contractors following a pollution incident.

To conclude, the diversity of legal systems of the Member States of the IOPC Funds precludes the adoption of a single general principle with respect to reimbursement of VAT, as had been recognised, by several delegations during the meeting of the governing bodies of the Funds in October 2014.

For all these reasons, France invites the delegations present to decide in favour of the reimbursement of VAT **on a case-by-case basis**, depending on the legal system of the affected State, as this solution alone will allow equitable treatment of States.'

4.5.22 In response to the statement made by the delegation of France, the Director replied that it appeared that the parties were not very far apart from a solution based on two principles, namely that the national courts of the Member States should have the final say and that no party should receive more than the losses it had suffered.

4.5.23 The Director also stated that a possible solution was a 'hybrid approach', whereby priority was given to Member States' national legislation where it existed, but where no such legislation existed or the national law was not clear regarding the payment of VAT, a 'modified Foster Test' could be applied.

4.5.24 The Director further stated that the Member States could, if they so wished, instruct the Director to draft the text of criteria, to be considered by the governing bodies at the spring 2016 sessions of the governing bodies, for inclusion in an amended Claims Manual.

Debate

4.5.25 One delegation stated that, in its view, VAT should be treated in the same manner as all other claims, and that only if a State could prove that it had not received VAT because an intermediary had not passed it back to the State, should that State be able to recover the VAT from the 1992 Fund.

4.5.26 Another delegation speaking in support of both the French delegation's proposal and the Director's proposal, stated that in circumstances where the national law did not provide clarity regarding how VAT was to be treated, often the national law itself contained instruments to clarify the matter, and that only if no solution could be found using those instruments, should a modified Foster Test be used.

4.5.27 A significant number of delegations spoke in support of the proposal to include amended text in a revised Claims Manual, noting that it was important that Member States' national law and the principles of the law of damages were respected. One of the delegations stated that in its view, domestic tax arrangements were beyond the remit of the IOPC Funds' governing bodies, and that it broadly agreed that if the national law permitted recovery of VAT, then the IOPC Funds should pay it to the affected State.

1992 Administrative Council and Supplementary Fund Assembly Decisions

4.5.28 The 1992 Fund Administrative Council and Supplementary Fund Assembly decided that the IOPC Funds may pay compensation for claims for VAT by central governments if a State's national law allowed for the inclusion of VAT in the State's claim for compensation, and use criteria based on the principles of the law of damages (as contained in document IOPC/OCT15/4/4) to be applied in cases where the national law was not clear.

4.5.29 The governing bodies instructed the Director to present a new text for the Claims Manual reflecting the above decision in respect of compensation for claims for VAT by central governments for consideration at the spring 2016 session of the governing bodies.

4.6	**Guidance for Member States – Management of fisheries closures and restrictions** **Document IOPC/OCT15/4/5**	**92AC**		

4.6.1 The 1992 Fund Administrative Council and Supplementary Fund Assembly recalled that, in April 2015, guidelines for Member States in respect of the management of fisheries closures and restrictions following an oil spill were presented in the Annex to document IOPC/APR15/4/2 for consideration and comments by delegations.

4.6.2 It was recalled that, at its April 2015 session, the 1992 Fund Administrative Council had decided that the draft would not be considered for approval in April 2015 as more time was needed to review both the Guidelines and the suggestions made by the delegations.

4.6.3 It was noted that since April 2015, the Secretariat had revised and inserted comments submitted by a number of delegations. The revised Guidelines were presented to the governing bodies for approval, as set out at the Annex to document IOPC/OCT15/4/5.

4.6.4 It was noted that the Secretariat intended to publish the document in a similar format to the guidance document to Member States relating to measures to facilitate the claims handling process which can be found under the publications section of the IOPC Funds' website (www.iopcfunds.org).

Debate

4.6.5 One delegation expressed its support for the publication of the guidance document and encouraged the Secretariat to continue to produce such guidance for Member States on difficult subjects. In response to a question from the same delegation, the Secretariat confirmed that the final design would be consistent with other IOPC Funds' publications, and would include all important information such as the contact details for the 1992 Fund.

4.6.6 One delegation, whilst supporting the adoption of the guidance document in principle, stated that it could not support its publication in its current form. In particular that delegation expressed concern that the document contained a number of references to the importance of emergency plans for the management of fisheries restrictions or closures, which implied that they were mandatory. That delegation, however, considered that it would be more appropriate to include text acknowledging that States could also prepare and implement their own national procedures. That delegation referred to the example of the *Erika* incident which was included in the draft text and which, in its view, demonstrated that in the absence of a national emergency plan, national authorities can nevertheless manage fisheries restrictions in an efficient and acceptable way.

4.6.7 That delegation provided a number of specific suggestions to modify the draft document to ensure that the points raised above would be taken into account. It also proposed an amendment to the text which would clarify that the absence of a contingency plan would not signify that the 1992 Fund would not approve alternative measures taken in respect of any particular incident.

4.6.8 That delegation raised concerns with regard to the use of the term 'comprehensive evidence' in the draft text as it considered it to be too restrictive. That delegation noted that in other places within the document, less restrictive wording was used and for consistency, suggested that the term should be replaced with 'assessment'. That delegation made a number of other editorial suggestions.

4.6.9 One delegation stated that, whilst it supported the draft text, it acknowledged that the proposals made by the previous speaker merited further consideration.

4.6.10 Another delegation expressed concerns that the wording of the guidance document did appear to be mandatory and suggested that the use of the imperative be removed from the document to ensure that it was clear that the document was for guidance purposes only.

4.6.11 All the delegations which spoke thanked the Secretariat for the work carried out in drafting the guidance document, and reiterated the usefulness of such publications to Member States.

1992 Fund Administrative Council and Supplementary Fund Assembly Decision

4.6.12 The 1992 Fund Administrative Council and the Supplementary Fund Assembly instructed the Director to revise the draft text contained in the Annex to document IOPC/OCT15/4/5 to ensure that the concerns and suggestions made by delegations at the session were incorporated in a document to be presented for the consideration and approval of the governing bodies at their spring 2016 sessions. The 1992 Fund Administrative Council and the Supplementary Fund Assembly also encouraged delegations to provide any input they may have to the Secretariat.

4.7	**Interim Payments** **Document IOPC/OCT15/4/6**	**92AC**		

4.7.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document IOPC/OCT15/4/6 which contained information on the issue of interim payments.

4.7.2 The governing bodies recalled that at its 6th session held in October 2009, the 1992 Fund Administrative Council had decided to establish an intersessional Working Group to consider the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses, and also to consider the question of the funding of interim payments to claimants.

4.7.3 The governing bodies also recalled that in April 2013, the Working Group decided to close the Group, having made good progress in discussing the problems of assessing a large number of small claims, changes to the Claims Manual, and the toolbox which was available to Member States in the event of an oil spill in their jurisdiction. However, it was noted that the Director and the International Group of P&I Associations would continue to discuss the issues relating to interim payments with the aim of finding a solution which was acceptable to them both, and would submit a recommendation to the 1992 Fund Assembly at a future session.

4.7.4 The governing bodies further recalled that at the time of the 1992 Fund Administrative Council's April 2015 session, no agreement had been reached between the Director and the International Group, but that a further meeting was planned between the Director and the International Group in May 2015. It was also recalled that the Administrative Council had noted at that session that it was in the interests of both parties to find a solution. It was recalled that at that same session, the Director was also requested to examine Regulation 7 of the Internal Regulations of the 1992 Fund, in consultation with the Audit Body, and to report back with proposed changes to the governing bodies in October 2015.

4.7.5 It was noted that in May and June 2015, the Director had met with the International Group to discuss proposed amendments to the text of the existing Memorandum of Understanding (MoU). It was recalled that the MoU currently provided details of cooperation on claims-handling procedures and costs of joint experts in respect of incidents involving an International Group P&I Club, the 1992 Fund and the Supplementary Fund, as the case may be.

4.7.6 It was also noted that in September 2015, the Director had met again with the International Group to continue the discussions on the proposed amendments to the MoU, and that the two areas which required further discussion were the immunities of the 1992 Fund and Supplementary Fund jurisdiction clause within the MoU and the concept of 'established claims'.

Director's considerations

4.7.7 The governing bodies noted that the Director was of the view that considerable progress had been made on the question of the funding of interim payments to claimants, and that the legal analysis conducted by Mr Jacobsson and Mr Shaw in April 2012 was particularly important since it clarified the practice in respect of interim payments, developed over the years by P&I Clubs members of the International Group and the IOPC Funds.

4.7.8 The governing bodies also noted that litigation in 2014 between the Gard Club and the 1971 Fund in respect of the *Nissos Amorgos* incident had prevented discussions from continuing, but that since the litigation was now over, discussions had resumed.

4.7.9 The governing bodies further noted that the current MoU signed in 2006 provided that any claims or disputes shall be subject to the exclusive jurisdiction of the English High Court. It was noted that a question to be resolved was how to reconcile a jurisdiction clause in the MoU with the immunity granted to the 1992 Fund and Supplementary Fund by the Headquarters Agreements between the Government of the United Kingdom and the 1992 Fund and the Supplementary Fund.

4.7.10 It was also noted that another area where further work was required was the concept of 'established claims' within the MoU and, in particular, whether a final judgment of a competent court in proceedings against the owner and/or the Club, where the Fund has been notified of them, in accordance with Article 7.6 of the 1992 Fund Convention, could be considered an 'established claim'.

4.7.11 It was further noted that these two areas were clearly legally complex and difficult and required careful consideration.

4.7.12 The governing bodies noted that in order to make progress on this matter, the Director proposed the establishment of a Consultation Group of a limited number of 1992 Fund Member States to work with him and the International Group to:

(i) examine the issues which need to be resolved in respect of interim payments;
(ii) discuss a new text of a MoU between the International Group and the 1992 Fund and Supplementary Fund which would contain the terms and conditions under which interim payments would be made in future; and
(iii) make recommendations to the governing bodies at their October 2016 sessions.

4.7.13 The governing bodies also noted the draft mandate and composition of the Consultation Group contained in Annex II to document IOPC/OCT15/4/6.

Debate

4.7.14 A significant number of delegations supported the Director's proposal to establish a Consultation Group. One of the delegations stated that the parties should intensify the pace of the discussions since the matter was a priority and there was a high level of coincidental interests together with a history of fruitful cooperation between the IOPC Funds and the International Group of P&I Associations.

4.7.15 In response to one delegation's proposal that the Mandate of the Consultation Group should include investigating the implementation of subrogation rights in accordance with the Conventions in Member States, the Director acknowledged that the implementation of the Conventions was a wide issue upon which he would revert with a proposal at a future session of the IOPC Funds' governing bodies, but that the current mandate of the proposed Consultation Group should be restricted to the issue of interim payments.

4.7.16 In response to a request by one delegation for clarity as to how the Consultation Group was to interact with the Director and the International Group, the Director and the Chairman both stated that the proposal for the Consultation Group was made on the understanding that the Consultation Group would undertake to interact with the parties as it saw fit, and that both the Director and the International Group would be available to the Consultation Group, should it wish to interact with them.

4.7.17 In response to another delegation's question, the Chairman stated that the Consultation Group would be free to seek legal advice as it considered appropriate.

Intervention by the delegation of the International Group of P&I Associations

4.7.18 The delegation of the International Group stated that it did not oppose the establishment of a Consultation Group and that if the Member States decided that another 12 months should be devoted to the issue, then it looked forward to meeting with the Consultation Group when it was established.

4.7.19 That delegation also stated that it wished to repeat its interventions made at previous sessions of the IOPC Fund governing bodies, namely that, in terms of funding interim payments in the future, if the International Group of P&I Associations were to be able to even consider the possibility of advancing payments in excess of the CLC limit, there would need to be, at a minimum, a legally binding and enforceable agreement in place with the IOPC Funds to make good any overpayment by the Club concerned up to the Fund limit, coupled with an unconditional waiver by the Fund of its right to rely on immunity.

4.7.20 Noting that its position was clear in this regard, that delegation stated that this was just one of the reasons as to why the parties had not been able to reach an agreement previously. The delegation further stated that the International Group had entered into discussions with the Director on the possibility of reaching a legally binding generic agreement that built on the concept of the MoU, with the International Group's position on immunity, as stated.

4.7.21 That delegation concluded by stating that it was more than happy to meet with the Consultation Group when it was established, but it was important to make the points clear in advance, in order to ensure that expectations were realistic and reflective of the position as at the present date.

1992 Fund Administrative Council Decision

4.7.22 The 1992 Fund Administrative Council decided to establish the Consultation Group with the Mandate and Composition as set out in Annex II.

Supplementary Fund Assembly

4.7.23 The Supplementary Assembly took note of the decision of the 1992 Fund Administrative Council.

4.8	**Legal proceedings arising from *Plate Princess* incident Documents IOPC/OCT15/4/7 and IOPC/OCT15/4/7/1**	**92AC**		

4.8.1 The 1992 Fund Administrative Council took note of the information contained within documents IOPC/OCT15/4/7 and IOPC/OCT15/4/7/1, which provided information on the legal proceedings arising from the *Plate Princess* incident.

The Registration Order

4.8.2 The 1992 Fund Administrative Council noted that in March 2015, the English High Court registered a judgment of the Maritime Court of Appeal, Venezuela, dated 24 September 2009 (the 'Venezuelan judgment') in the amount of SDR 56.3 million (£52 million), as a judgment in the Queen's Bench Division of the High Court of Justice (the 'Registration Order').

4.8.3 The 1992 Fund Administrative Council also noted that the Venezuelan judgment had been granted in favour of the Puerto Miranda Union, in respect of claims allegedly arising from the *Plate Princess* incident which took place in 1997 in Venezuela.

4.8.4 The 1992 Fund Administrative Council further noted that the Registration Order was obtained against the 'International Oil Pollution Compensation Fund', and it was therefore unclear whether it was intended to be directed against the 1992 Fund, or the 1971 Fund which had been dissolved and had ceased to exist on 31 December 2014, or both.

4.8.5 It was noted that the Registration Order permitted the 1971 Fund 21 days to apply to set aside the registration of the Venezuelan judgment in England, and that the 1992 Fund's application was submitted on 27 May 2015. The 1992 Fund applied for (i) a declaration that the Registration Order did not apply to it; alternatively (ii) that the Registration Order be set aside on the basis that the 1992 Fund was immune from jurisdiction and enforcement pursuant to the Headquarters Agreement and Article 5 of the 1996 Order. The hearing was set for 22 July 2015.

4.8.6 It was also noted that the Director had informed the United Kingdom Government, as host country of the 1992 Fund, of the Registration Order and had also discussed the matter with the Chairman of the 1992 Fund Assembly.

Service of Notice of Enforcement

4.8.7 It was further noted however, that on 5 June 2015, before the 1992 Fund's application to set aside the Registration Order could be heard, an enforcement officer acting on behalf of the Puerto Miranda Union, served the Director with a Notice of Enforcement, demanding payment of the sum of £52 134 475.60. The Notice of Enforcement demanded payment of the outstanding sum by 13 June 2015.

4.8.8 The 1992 Fund Administrative Council noted that as a consequence, the 1992 Fund made an emergency application to set aside the Writ of Control, pursuant to which the Notice of Enforcement had been issued and the enforcement officer had been appointed. A hearing date was set for 11 June 2015.

The court decision in June 2015

4.8.9 The 1992 Fund Administrative Council also noted that the Judge agreed to set aside the Writ of Control, finding that the Puerto Miranda Union was not entitled to take any steps in enforcement while the 1992 Fund's application for an order declaring that the judgment by the Venezuelan Court did not apply to the 1992 Fund, was pending. The 1992 Fund Administrative Council further noted that the Judge had found the Registration Order and the Writ of Control to be ambiguous in their references to the judgment debtor.

4.8.10 It was noted that the Judge had declined to make any decision on the matter of how the 1992 Fund's immunity affected the enforcement of the judgment, as that would be dealt with at the July hearing and did not need to be decided at that time, as the Writ was set aside on other grounds. It was also noted that the Judge had awarded the 1992 Fund all its costs of the hearing, in the amount of £28 753 which the Puerto Miranda Union had subsequently paid.

The judgment in July 2015 regarding the Registration Order

4.8.11 It was noted that the judge had held, at the July 2015 hearing on the Registration order, that:

- The English courts had no jurisdiction to register the Venezuelan judgment against the 1992 Fund because the 1992 Fund was immune under the 1996 Order.
- The Registration Order be set aside.
- The 1992 Fund be awarded its costs in full (£60 881.07).

4.8.12 The 1992 Fund Administrative Council noted that following the Judge handing down his judgment, the Puerto Miranda Union applied for permission to appeal, but this was denied. The Puerto Miranda Union was, however, granted six weeks from 22 July, ie until 2 September 2015, to apply to the Court of Appeal for such permission.

4.8.13 The 1992 Fund Administrative Council also noted that on 2 September 2015, the Puerto Miranda Union had applied to the Court of Appeal for permission to appeal the July 2015 judgment, and that the 1992 Fund was served with details of the application on 7 September 2015.

4.8.14 The 1992 Fund Administrative Council further noted that the Puerto Miranda Union sought to obtain leave to appeal, upon a number of grounds of appeal, including, *inter alia*, allegations of procedural deficiencies, breach of a right to defence and due process of law. It was noted that the Puerto Miranda Union had also argued that it was unlawful for the 1971 Fund to have wound itself up.

4.8.15 It was also noted that in September 2015, the 1992 Fund had filed a statement of reasons why permission to appeal should be refused, since the arguments advanced by the Puerto Miranda Union were unclear and often confusing.

4.8.16 It was further noted that the 1992 Fund had submitted that the Puerto Miranda Union's grounds of appeal fell into two categories: (i) arguments that were not advanced before the previous Judge; and (ii) arguments that did not engage with the terms of the judgment rendered in July 2015.

4.8.17 The 1992 Fund Administrative Council noted that the 1992 Fund had submitted, *inter alia*, that the Bolivarian Republic of Venezuela did not become Party to the 1992 Fund Convention until 22 July 1999, after the date of the *Plate Princess* incident. It had also submitted that, the Venezuelan judgment was obviously against the 1971 Fund and not the 1992 Fund, as correctly found by Mr Justice Pickens in the July 2015 judgment.

4.8.18 The 1992 Fund Administrative Council also noted that the 1992 Fund had also responded to the Puerto Miranda Union's contention that it was unlawful for the 1971 Fund to wind itself up, noting that this argument had not been advanced before the previous Judge; furthermore, it was inconsistent with the Puerto Miranda Union's argument that it accepted that the 1971 Fund had been wound up and was therefore concerned only with the 1992 Fund's liability. It was also noted that, the 1992 Fund had argued that such a question would be non-justiciable, requiring the Court to impugn the decision of the Member States of the 1971 Fund, which it could not do.

4.8.19 The 1992 Fund Administrative Council further noted that a date for the hearing of the application for permission to appeal was awaited from the Court.

Intervention by the Bolivarian Republic of Venezuela

4.8.20 The delegation of the Bolivarian Republic of Venezuela made the following intervention (original in Spanish):

'Mr Chairman,

My delegation has reviewed the documents before us and has listened with care to the report submitted by the Director on the legal proceedings arising from the *Plate Princess* incident. My delegation is grateful for the information provided, particularly that contained in paragraph 2.7 of document IOPC/OCT15/4/7/1, which reflects the fact that the legal proceedings in the English courts have not yet been finalised.

Venezuela comes to this Assembly trusting in the power of the principles and respect for those principles, which inspire, and the law governing the actions of the IOPC Funds. I wish to remind the distinguished delegates of the tenor of Article 2 of the Fund Convention, on the establishment of an International Fund for Compensation for Oil Pollution Damage, whose purpose is to compensate victims of damage caused by pollution, and explains why the Fund must be recognised as a legal person assuming rights and obligations and being a party in legal proceedings before the courts of that Contracting State.

My Government has complied with the letter of the Convention. The Venezuelan courts, to whose jurisdiction the Fund submitted in the exercise of its right to defence, handed down a final and enforceable judgment at the highest judicial level with the decision of the Supreme Court of Justice.

My Government, based on this decision of the Venezuelan Judicial Power and in strict conformity with the letter the Convention on the establishment of the Fund, notes that under Article 7,

paragraph 6 the judgment is binding on the Fund, and affirms its position through the letter from the Minister of Foreign Relations of my country, delivered by my delegation to the Funds' Secretariat, which I quote verbatim:

"In 1991, the Bolivarian Republic of Venezuela, in order to ensure compensation of Venezuelan nationals affected by pollution generated by oil tankers, adopted the International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

On 27 November 1992, the International Maritime Organization (IMO), with a view to increasing the contemplated compensation limits, convened a Diplomatic Conference in which Venezuela took part. That Conference adopted the 1992 Protocols which amended both Conventions. The aforementioned Protocols required Member States to denounce the original conventions in order to convert the 1992 Protocols into the new 1992 Civil Liability Convention and the 1992 Fund Convention, establishing transitional clauses to ensure full compensation of victims of pending cases, arising under the application of the original Conventions. The original 1971 Convention establishes, for its part, that while there were claims pending, the 1971 Fund would continue to have a legal personality.

In addition, on 29 September 2000, the 1992 Fund Assembly declared that the 1992 Fund did not have legal or financial obligations to the 1971 Fund with respect to future incidents, for which reason it would only be liable in respect of incidents that occurred before the year 2000, prior to the approval of the 2000 Protocol.

As a consequence of the foregoing, the Bolivarian Republic of Venezuela requests the Director of the International Oil Pollution Compensation Fund (IOPC Funds) to abide by the final judgment of 29 October 2009 of the Venezuelan Courts, which sets out the compensation due to the victims of the incident caused by the tanker *Plate Princess* on 27 May 1997 in Venezuelan waters, as laid down in the International Convention on Compensation for Oil Pollution Damage of 1971 and its amending Protocol of 1992, the said judgment having been registered and enforced by the English courts as the judicial authority of the host State of the Fund Convention".

Mr Chairman, distinguished delegates, for the foregoing reasons, my delegation submits for the consideration of this Assembly the position of the Venezuelan State with a view to the appropriate measures being undertaken to ensure full compliance with the Convention governing this Organisation.

Thank you, Mr Chairman.'

4.8.21 The Venezuelan delegation also requested Member States to study the intervention and attempt to find a way to comply with the aims of the international conventions to pay compensation to victims.

Debate

4.8.22 In response to the intervention by the delegation of the Bolivarian Republic of Venezuela, one delegation stated that it did not agree that a State could join a Convention two years after an incident occurred and then claim compensation under that Convention. Whilst it acknowledged that the aims of the Conventions were to pay compensation, such payments were conditional on all the legalities of the ratification process having been complied with correctly.

4.8.23 A number of other delegations stated that they supported the actions taken by the Director to oppose the attempts to enforce the Venezuelan judgment against the 1992 Fund, and that they wished to reiterate instructions previously given to the Director to oppose the attempts to enforce the Venezuelan judgment against the 1992 Fund.

1992 Fund Administrative Council Decision

4.8.24 Noting that the *Plate Princess* incident was not a 1992 Fund incident, the 1992 Fund Administrative Council decided to reiterate its previous instructions to the Director to defend the 1992 Fund, and to oppose the attempts to enforce the Venezuelan judgment.

5 Financial reporting

5.1	**Report on submission of oil reports** **Document IOPC/OCT15/5/1**	**92AC**		**SA**

5.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT15/5/1.

5.1.2 The governing bodies noted with satisfaction that since their last sessions, Montenegro had fulfilled its obligations under the Conventions submitting all of its outstanding oil reports, and that South Africa had made significant progress in meeting its reporting obligations, submitting some of its outstanding reports for 2010-2014, following the adoption of implementing legislation from 1 May 2014.

5.1.3 It was noted that, at the time of its October 2015 sessions, 16 out of the 114 Member States of the 1992 Fund still had outstanding oil reports. It was further noted that, since document IOPC/OCT15/5/1 had been published, oil reports for 2014 had been received from Mozambique, Serbia, and Trinidad and Tobago and reports for 2013 and 2014 had been received from Djibouti and Senegal.

5.1.4 It was noted that, out of the 16 States with outstanding reports for the 1992 Fund, six States, including a new Member State (the Republic of Nicaragua), had recorded outstanding reports for one year only, that four States had two years of outstanding oil reports and that six States had not submitted oil reports for four years or more. In particular, it was noted that three of those had been members of the 1992 Fund for a number of years and had never submitted any reports: Dominican Republic (16 years), Comoros (15 years) and the Republic of Guinea (13 years). It was reported that Saint Lucia, a Member of the 1992 Fund for 11 years, had provided some tonnage information and that dialogue was continuing.

5.1.5 With regard to the Supplementary Fund, it was noted that two out of the 31 Member States still had outstanding oil reports.

5.1.6 It was further noted that despite the number of States with outstanding reports, particularly for the 1992 Fund, the financial consequences of the missing reports were limited, as the 98 States that had submitted their reports for 2014 represented more than 99% of the expected total contributing oil, and for the Supplementary Fund the reports represented over 98.92% of the expected total.

5.1.7 The governing bodies also took note of the Director's considerations that, despite the continuous improvement regarding the number of Member States with long-outstanding oil reports, he considered it to be a matter of ongoing serious concern that a number of 1992 Fund Member States and one Supplementary Fund Member State had outstanding oil reports for more than one year. They noted in particular that there were five States for which no reports had ever been submitted, in spite of the Secretariat's repeated efforts to remind them of this important treaty obligation. The Director indicated that he would continue his efforts to obtain the remaining outstanding reports.

Online reporting system

5.1.8 It was recalled that since 2010 the Secretariat had been developing an online reporting system (ORS) to assist Member States to submit oil data more efficiently to the Secretariat. The governing bodies were informed of the latest developments in the implementation of that system and of the contacts made by the Secretariat with a number of States considering registering for the system.

5.1.9 The governing bodies noted that out of the 28 States that had opened an ORS account, 25 had submitted their reports online, representing some 80% of the total volume of contributing oil reported to the

1992 Fund and 84% to the Supplementary Fund for 2014. It was noted, however, that while a considerable percentage of oil tonnage was submitted via the ORS, the number of users remained small and represented only 22% of the 1992 Fund's Membership.

5.1.10 The governing bodies noted that, to facilitate its further development and subsequent adoption as the official submission procedure, it was important that many more States use the online reporting system in the future. All Member States not yet registered with the online reporting system were urged to do so in preparation for the submission of the 2015 oil reports.

5.1.11 It was also noted that the Internal Regulations on oil reporting for the 1992 Fund and Supplementary Fund remained applicable to all States, including those States using the online reporting system. In that respect it was noted that all States were obliged to continue to submit to the Secretariat printed oil reports signed by the contributors and relevant government authority as official proof of reported volumes.

5.1.12 The governing bodies also took note of the Director's consideration that, with about 80% of the total tonnage being reported via the ORS in 2014, it signifies a major step forward for this project. The Director indicated that the Secretariat would continue to engage with the relevant authorities in Member States to further encourage the use of the system and would continue its development and that of its functionalities.

Debate

5.1.13 One delegation, a State user of the ORS system, expressed support for its further development and raised the question as to whether the report form with the electronic signatures of the contributor and the Government authority could be submitted to the Funds instead of printed copies. The Secretariat confirmed that electronic versions of oil reports were regularly received but that the Internal Regulations still required physical signatures to be present on the oil report form. An example was given of legal proceedings where the originals of oil reports had been required by the courts.

5.1.14 One delegation expressed its appreciation of the Secretariat's efforts to obtain the outstanding oil reports and noted that, in its view, the current situation of non-reporting by several States was unacceptable as it undermined the premise of fair treatment within the system. That delegation further noted that it expected a detailed report on the non-submission of oil reports from the Audit Body at a future session.

5.1.15 One delegation from the Supplementary Fund Assembly requested confirmation from the Director that, when Member States were reminded about oil report submissions, the Member States concerned were told of the consequences of non-submission of reports under Article 15 of the Convention. That delegation also noted that those Member States that fulfilled the oil reporting obligations to the Supplementary Fund paid for the administrative costs of the Fund whilst other Member States failed to report. The Director confirmed that States with outstanding reports were reminded of their treaty obligations when they were contacted by the Secretariat.

5.1.16 The Supplementary Fund Assembly expressed its concern that two out of the 31 Member States still had reports outstanding.

1992 Fund Administrative Council and Supplementary Fund Assembly Decision

5.1.17 The 1992 Fund Administrative Council and Supplementary Fund Assembly reaffirmed that under the International Conventions, Member States had an obligation to submit oil reports and urged all of them to do so. In particular, those Member States with outstanding oil reports were requested to submit them as soon as possible since the submission of oil reports was a cornerstone of the compensation regime and of crucial importance for the functioning of the IOPC Funds. In addition, the governing bodies requested the Director to continue his efforts to obtain the outstanding reports and urged Member States to cooperate with those efforts.

5.1.18 The 1992 Fund Administrative Council and Supplementary Fund Assembly also encouraged more Member States to submit oil reports using the online reporting system.

5.2	**Report on contributions** **Document IOPC/OCT15/5/2**	**92AC**		**SA**

5.2.1 The governing bodies took note of the information on contributions to the IOPC Funds contained in document IOPC/OCT15/5/2.

5.2.2 The 1992 Fund Administrative Council in relation to the outstanding contributions noted that no final settlement had been received from the liquidators in respect of contributions due from two contributors based in the United Kingdom and Switzerland (oil received in Belgium), who had gone into liquidation. Pursuant to its decision at the October 2014 session, the 1992 Fund Administrative Council recalled that any balance due would be written off in the financial statements on receipt of final settlement.

5.2.3 The 1992 Fund Administrative Council noted that a claim had been filed with the trustees of the bankrupt estate for contributions due from a contributor in Denmark.

5.2.4 The 1992 Fund Administrative Council also noted that with effect 1 May 2014, the 1992 Fund Convention had been implemented into the national legislation in South Africa and that the Government of the Republic of South Africa had assumed responsibility to pay contributions under Article 14 of the 1992 Fund Convention. The 1992 Fund Administrative Council further noted the intention of the South African Government to resolve the matter of outstanding contributions of £1 448 326.14 and interest due from contributors in South Africa since the legislation was not applicable retrospectively.

5.2.5 The 1992 Fund Administrative Council noted that contributions due to the 1992 Fund from four contributors in the Russian Federation totalled £742 559.88 and that four separate actions had been commenced against three contributors in the Russian Federation by the 1992 Fund.

5.2.6 It was noted that the 1992 Fund had received part of the contributions not considered time-barred in one legal action and all the contributions and interest claimed in the second legal action.

5.2.7 It was also noted that in the other two cases the contributors had argued that they should not be held liable for contributions since they were engaged in trans-shipment services and were not a 'first receiver of oil' under Russian law, although the authorities of the Russian Federation had identified them as receivers. It was noted that in one case, the Federal Arbitration Court had accepted this argument. It was also noted that in the second case the Cassation Court had stated that the notion of 'first receiver' should be based on the sense prescribed in the 1992 Fund Convention and not on Russian internal law. It was further noted that the Court had ruled that the contributor was liable to pay contributions and interest, but that the judgment is subject to appeal by the contributor.

5.2.8 The 1992 Fund Administrative Council recalled that in all the cases, the courts in the Russian Federation had applied a three-year limitation of action period provided under the Russian Civil Code, calculated from the moment when the contributions were due. It was further noted that the Russian courts had not considered the time bar as being interrupted by the periodic invoices/reminders which had been sent.

5.2.9 The 1992 Fund Administrative Council noted that the Russian Federation, as a party to the legal action, had been kept informed of the developments and that the Director in a meeting with representatives of the Russian Government had also reminded them of their obligation under the Article 15.4 of the Fund Convention to compensate the Fund for any financial loss resulting from the State's lack of proper submission of oil receipt information.

5.2.10 The 1992 Fund Administrative Council noted that the Director would continue his dialogue with the relevant authorities in South Africa, the Russian Federation, Ghana and Kenya with regard to the outstanding contributions due from the contributors in the respective Member States.

5.2.11 The 1992 Fund Administrative Council also noted the Director's proposal to write off contributions amounting to £9 843.48 and interest thereon pursuant to Financial Regulation 11.5 due from a contributor in the Republic of Panama that had ceased to exist.

5.2.12 The 1992 Fund Administrative Council further noted that due to international sanctions, the 1992 Fund was not in a position to receive contributions due from one contributor in the Islamic Republic of Iran.

Debate

5.2.13 One delegation stressed that since contributions were the cornerstone of the successful functioning of the IOPC Funds, a decision to write off contributions should only be adopted as the last remedy. That delegation expressed its view that only after all possible efforts had been exhausted and with a view to avoid wasting the Fund's assets should contributions be written off. That delegation further requested that, in future, information on efforts made to collect the contributions, an analysis of costs incurred and/or expected and the feasibility of collection would be helpful for the governing bodies to understand the basis for the write off.

5.2.14 Another delegation, while appreciating the efforts made by the Secretariat and Member States, was disappointed to note that the cost of legal actions far exceeded the contributions recovered. That delegation concluded by saying that payment of contributions was an obligation embedded in the Articles of the Convention and encouraged Member States to continue their cooperation in ensuring payment of contributions.

5.3	**Report on investments** **Document IOPC/OCT15/5/3**	**92AC**		**SA**

5.3.1 The governing bodies took note of the Director's report on the IOPC Funds' investments during the period 1 July 2014 to 30 June 2015 contained in document IOPC/OCT15/5/3. 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 had continued to remain low while the European Central Bank Refi rate and the Bank of Korea base rate had been lowered, impacting the yields achieved by the Funds on their investments. It was noted that investment yields on Korean Won and Russian Rouble deposits were much higher compared to Pounds sterling or Euro deposits.

5.3.3 The governing bodies noted that investments with Barclays Bank, one of the Funds' house banks, had exceeded the normal limit on a few occasions. This was a result of implementing the hedging policy in relation to the *Hebei Spirit* incident since Korean Won, which is not a freely convertible currency, was invested with Barclays Bank (Seoul).

5.3.4 It was further noted that along with Barclays Bank, HSBC Bank was designated as the Funds' main operational house bank and that BNP Paribas, International Nederlanden Bank (ING Bank NV), Standard Chartered Bank and Korea Exchange Bank were designated as temporary house banks since they are used to hold Korean Won for the *Hebei Spirit* incident.

5.3.5 It was also noted that the 1992 Fund had continued to use Dual Currency Investments (also known as Dual Currency Deposits) between Pounds sterling and Korean Won at no cost to the 1992 Fund and with the added benefit of a higher yield.

5.4	**Report of the joint Investment Advisory Body** **Document IOPC/OCT15/5/4**	**92AC**		**SA**

5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund, contained at the Annex to document IOPC/OCT15/5/4.

5.4.2 It was noted that following the decision in October 2014 to wind up the 1971 Fund at the end of 2014, the IAB monitored the assets of the 1971 Fund and noted the subsequent reimbursement of assets to the respective contributors by the end of the year.

5.4.3 The governing bodies noted that hedging for Euro liabilities in respect of the *Prestige* incident was some 78%, and that the Korean Won liability in respect of the *Hebei Spirit* incident was some 73% on the basis that the Fund's liability was KRW 179.4 billion (or 97% assuming that the Fund's liability was some KRW 134.8 billion). It was also noted that some RUB 267.6 million was held by the 1992 Fund following the decision of the 1992 Fund Executive Committee at its April 2013 session to authorise payment in respect of the *Volgoneft 139* incident.

5.4.4 It was also noted that the IAB were proactive during the periods of volatility in the financial markets and recommended restricting the tenor of deposits during these periods.

5.4.5 It was also noted that the 1992 Fund continued to use Dual Currency Investments during the reporting period where there was a requirement for currency other than Pounds sterling, with the added benefit of higher yields.

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

5.4.7 It was further noted that the IAB recommended the use of an independent financial advisor to introduce a voluntary scheme in 2015 to complement the current provident fund scheme that would possibly provide higher return to the Staff Provident Fund. It was also noted that the IAB undertook to review the scheme at its quarterly meetings.

5.4.8 The 1992 Fund Assembly and Supplementary Fund Assembly expressed their gratitude to the IAB for their important contribution to the safeguarding of the assets of the 1992 Fund and the Supplementary Fund.

5.5	**Report of the joint Audit Body** **Document IOPC/OCT15/5/5**	**92AC**		**SA**

5.5.1 The Chairman of the Audit Body, Mr Jerry Rysanek, introduced the joint Audit Body's report to the governing bodies (document IOPC/OCT15/5/5). Mr Rysanek noted that this was the first annual report of the new Audit Body that had been elected in October 2014 and took the opportunity to recognise his fellow members on the Audit Body: Mr John Gillies (Australia), Mr Makoto Harunari (Japan), Mr José Luis Herrera Vaca (Mexico), Mr Eugène Ngango Ebandjo (Cameroon), Mr Giancarlo Olimbo (Italy) and Mr Michael Knight (United Kingdom), the Audit Body's external expert.

5.5.2 The governing bodies noted that the report dealt with how the Audit Body had discharged its responsibilities under its mandate and that it centred on six main areas, namely ascertaining the effectiveness of the IOPC Funds' management and financial systems; reviewing the effectiveness of the Funds' risk management; reviewing the Funds' Financial Statements and Reports; promoting the understanding and effectiveness of the audit function within the IOPC Funds; managing the relationship between the IOPC Funds and the External Auditor; and undertaking any other tasks or activities as requested.

5.5.3 In respect of the first area of the Audit Body's responsibility, Mr Rysanek reported that, at its inaugural meeting in December 2014, the new Audit Body had considered the External Auditor's planning report in respect of the 2014 Financial Statements and had been fully satisfied with the risk-based approach and scope of the audit plan. At its subsequent meetings in April and June 2015, the Audit Body had reviewed the interim and final results of the external audit.

5.5.4 With respect to the Audit Body's oversight of the risk management function, Mr Rysanek noted that the Audit Body recognised that it was the Secretariat's role to identify and manage risks and that the Audit Body's role (in accordance with its mandate) centred on ensuring that the risk management

framework was adequate. To this end, the Audit Body's work programme prescribed a number of activities as discussed in section 3.2 of the report. In its review of how the Secretariat addressed risk, the Audit Body noted continued improvements in risk recognition and implementation of mitigation measures by the Secretariat.

5.5.5 With respect to the third key area of responsibility relating to the review of the Organisations' Financial Statements and Reports, Mr Rysanek reported that this process began just before year-end with the Secretariat briefing the Audit Body on any changes to accounting policies or financial statements as well as any departures from the International Public Sector Accounting Standards (IPSAS). He further reported that the Financial Statements were then subject to a detailed review by the External Auditor and that the Audit Body considered the findings and comments by the External Auditor at each stage of the annual external audit process.

5.5.6 Mr Rysanek reported that, following its review of the Funds' Financial Statements, the Audit Body was recommending that the relevant governing bodies approve the accounts of the 1992 Fund and the Supplementary Fund for the financial year ending 31 December 2014.

5.5.7 Mr Rysanek also reported that the Audit Body, through its external expert, had participated in the preparation of the final Financial Statements of the 1971 Fund and had found them satisfactory and had recommended their adoption at the special meeting of the 1971 Fund Member States which had been convened by the Secretary-General of IMO in April 2015.

5.5.8 The governing bodies noted that section 3.4 of the report outlined how the Audit Body's addressed its role to promote the understanding and effectiveness of the audit function within the Funds. It met three times a year and worked to a structured agenda and detailed programme of activities. These meetings involved the participation of the Director, Deputy Director/Head of Finance and Administration and other members of the Secretariat as required, representatives of the External Auditor, and provide a forum to discuss a broad range of matters relevant to the Audit Body's mandate. He stated that the periodic attendance of one or more of the Chairmen of the governing bodies at meetings of the Audit Body further promoted good communication.

5.5.9 Mr Rysanek also reported that, in the course of its scheduled meetings over the past year, the Audit Body had met once with the Investment Advisory Body (IAB). While recognising the distinct mandate of the IAB, the Audit Body had found it particularly useful, in the exercise of its own mandate, to have a good understanding of the views of the IAB on investment and financial risks and that this had been particularly important in light of the instability and volatility in global markets and economies in recent years.

5.5.10 Mr Rysanek also drew the attention of the governing bodies to how the Audit Body had discharged its responsibility to manage the process for the selection of a new External Auditor. He noted that this task had taken most of the Audit Body's time since its inaugural meeting in December 2014 and that the outcome and recommendation in respect of the competitive process for the appointment of a new External Auditor was contained in document IOPC/OCT15/6/2.

5.5.11 He further reported that, pursuant to the decision of the governing bodies at their October 2014 sessions, the Audit Body had undertaken to revise 1992 Fund Resolution N°11 dealing with the issue of outstanding contributions. He recalled that the task of the Audit Body was to elaborate a new Resolution which would also address the issue of outstanding oil reports. He reported that the Audit Body expected to be in a position to submit the new Resolution to the governing bodies for consideration and approval at their spring 2016 sessions.

5.5.12 In conclusion, Mr Rysanek highlighted the work and contribution of his fellow members on the Audit Body and, on behalf of the Audit Body, extended thanks to the Director and Secretariat for their support and engagement in the work of the Audit Body. By the same token, he acknowledged the productive relationship that existed with the representatives of the current External Auditor and extended the Audit Body's appreciation to the Investment Advisory Body for their frank exchange of information and expertise.

5.5.13 The governing bodies expressed their appreciation to the members of the Audit Body for their work during the past 12 months.

5.6	**2014 Financial Statements and Auditor's Reports and Opinions Documents IOPC/OCT15/5/6, IOPC/OCT15/5/6/1 and IOPC/OCT15/5/6/2**	**92AC**		**SA**

5.6.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT15/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2014. These Statements, together with the External Auditor's Report and Opinions thereon, were contained in documents IOPC/OCT15/5/6/1, and IOPC/OCT15/5/6/2.

5.6.2 After the Director's introduction of each document, a representative of the External Auditor, Mr Damien Brewitt, Director of the UK National Audit Office, introduced the External Auditor's Report and Opinion for the 1992 Fund and the External Auditor's Opinion for the Supplementary Fund.

5.6.3 The governing bodies noted with appreciation the Financial Statements of their respective Organisations, as well as the External Auditor's Report and Opinions contained in Annexes III and IV of document IOPC/OCT15/5/6/1 (1992 Fund) and Annex III of document IOPC/OCT15/5/6/2 (Supplementary Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2014 Financial Statements for each Organisation which had been prepared under the International Public Sector Accounting Standards (IPSAS), following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The governing bodies noted that the unqualified audit opinions on the Financial Statements were confirmation that the Organisations' internal financial controls had operated effectively.

5.6.4 The 1992 Fund Administrative Council noted the External Auditor's statement that, of the three recommendations relating to the 2013 Financial Statements of the 1992 Fund, one had been fully implemented and two were satisfactorily under implementation. The Administrative Council noted that the External Auditor was encouraged by the positive response and the good progress made by the Secretariat to implement the recommendations and that the External Auditor would continue to monitor developments as part of the 2015 audit.

5.6.5 The governing bodies also took note of the recommendations set out in the External Auditor's report on the 2014 Financial Statements and the Director's responses.

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

Debate

5.6.7 One delegation sought clarification from the Director and the External Auditor in respect of the recommendation to undertake a formal evaluation of significant incidents. The Director stated that the Secretariat had in the past held wash-up meetings for major incidents and reported its findings to the governing bodies. The External Auditor, while concurring with the Director's response, recommended that a standard formal process be undertaken which should also be documented.

5.6.8 Another delegation commended the high standards maintained by the Secretariat which had continued to function well and below budget. That delegation also commended the External Auditor on the wide scope of his audit which included not only finance but also governance matters and welcomed the recommendation to undertake a systematic and documented evaluation of all significant incidents.

1992 Fund Administrative Council Decision

5.6.9 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2014.

Supplementary Fund Assembly Decision

5.6.10 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2014.

6 Financial policies and procedures

6.1	**Measures encouraging the submission of oil reports** **Documents IOPC/OCT15/6/1**	**92AC**		**SA**

6.1.1 The governing bodies took note of the information provided in document IOPC/OCT15/6/1 which set out examples of problems which the IOPC Funds' Secretariat has experienced in relation to the collection of contributions and submission of oil reports. It was noted that the document was an abridged version of a more detailed document prepared by the Secretariat on request from the Audit Body and was presented at their April 2015 session.

Problems encountered at the stage of submission of oil reports

6.1.2 It was recalled that the oil reporting system constitutes the foundation of the contributions system under the 1992 Fund Convention. It was noted that the situation in respect of the non-submission of oil reports had improved in recent years through increased engagement with Member States' governments. The governing bodies were informed of the results of these improvements and noted the observations drawn by the Secretariat.

6.1.3 In particular, it was reported that submission delays of one year were most commonly explained by changes in personnel within the responsible authority and that regular reminders had proven sufficient to resolve the matter in the majority of instances. The Secretariat reported that in 2013, 12 States had reports outstanding for one year, and that this figure had decreased to 6 in 2014.

6.1.4 It was also reported that for a number of years, the method for reporting the situation regarding outstanding oil reports had been to differentiate between States that have outstanding reports for two to three years, and those that have outstanding reports for four years or more. It was noted that there had been a downward trend in outstanding oil reports between 2009 and 2014; from 11 to 1 for States with outstanding reports for two to three years, which had risen to 4 in 2014, and from 17 to 6 for States with outstanding reports for four or more years. It was also noted that in most cases where oil reports had been outstanding for four or more years, the problems had been resolved by the Member States' governments' understanding of the oil reporting mechanism and the subsequent submission of nil declarations.

6.1.5 It was further noted that, for those Member States with outstanding reports of four years or more, three main issues often arose, namely:

(i) lack of national legislation implementing reporting obligations into national law;
(ii) lack of awareness and difficulty establishing contact with competent authorities; and
(iii) political situations such as civil war and political instability.

6.1.6 The governing bodies noted the successful efforts of the Secretariat to engage with Member States to resolve several instances of the first two issues, while acknowledging that the Secretariat was not in a position to provide assistance to those Member States affected by war or political instability.

6.1.7 It was also reported that, in addition to problems of non-submission, the Secretariat had occasionally encountered issues of partial submission, where oil reports were not received for all contributors in the Member State.

6.1.8 The governing bodies noted that Regulation 8 of the Internal Regulations of the Supplementary Fund raises three scenarios under which Member States could be considered to have failed to comply with their obligations in respect of oil reports, namely:

(i) the non-submission of oil reports;
(ii) the submission of partial reports or incomplete reports; and
(iii) deficiencies in the oil reports submitted.

Problems encountered at the stage of collecting contributions

6.1.9 In respect of the payment of contributions, the Secretariat reported that problems were often found when invoices were sent out to each contributor and requests for payment were rejected. The governing bodies took note of the examples and reasons for the rejection of requests for payment, including:

(i) lack of domestic legislation obliging them to pay contributions to the 1992 Fund;
(ii) incorrect information provided on the oil report, including confusion over the first receiver;
(iii) lack of understanding about the contributions system and liability to pay contributions;
(iv) financial difficulty, including bankruptcy or liquidation;
(v) international sanctions; and
(vi) late submission of oil reports and consequent larger invoices.

6.1.10 The Secretariat pointed out that the majority of reasons for the problems encountered with regard to contributions appeared to stem from a failure in the domestic legislation and oil reporting systems. It was noted that the 1992 Fund Convention and Supplementary Fund Protocol, recognise that oil reports underpin the contributions system by containing provisions which imply that the respective Assemblies might seek compensation from those Member States whose failure to fulfil their obligations in relation to oil reporting causes a loss to the Funds (Article 15.4 of the 1992 Fund Convention and Article 13 of the Supplementary Protocol). It was also noted that the Supplementary Fund Protocol further contained a provision of sanction measures against claimants with respect to an incident having occurred in a State that had failed to submit oil reports.

6.1.11 The governing bodies noted that the oil reports were the only source of information available to the IOPC Funds to identify the contributors and the amount of their liability to pay contributions. The Secretariat suggested that it was the responsibility of Member States to provide the correct information in accordance with the provisions set out in the Internal Regulations adopted by the Assembly and the Funds' Secretariat could only assist in that regard, as was the case recently with the use of the Lloyds Intelligence Data.

6.1.12 It was noted that the issues surrounding the submission of oil reports and collection of outstanding contributions did not at present have a financial impact on the operations of the IOPC Funds and that the level of outstanding contributions was some 0.47% of the total contributions levied. It was noted, however, that the payment of contributions was a legal obligation under the Conventions and it is a matter of principle that all States should fulfil their obligations in a timely manner.

6.1.13 The Secretariat reported that it regularly updated the joint Audit Body on both the non-submission of oil reports and the non-payment of contributions. The governing bodies noted that, as part of its current work-plan, taking into account the difficulties faced by the Secretariat set out in document IOPC/OCT15/6/1, the Audit Body was developing further proposals to encourage the timely submission of oil reports and payment of contributions in order to ensure that Member States fulfilled their obligations under the 1992 Fund Convention and Supplementary Fund Protocol. It was noted that the Audit Body was expected to submit proposals in this regard for consideration at the next sessions of the governing bodies in spring 2016.

Debate

6.1.14 One delegation expressed appreciation for the efforts by Member States to submit timely and accurate reports as it was essential for the proper functioning of the compensation regime. However, that delegation was concerned that a number of States still had outstanding reports and contributions and looked forward to receiving the proposal from the Audit Body in relation to this matter to ensure fairness in the system to be presented at the next sessions of the governing bodies.

6.1.15 Another delegation expressed satisfaction with the progress reported by the Secretariat with regards to outstanding oil reports, particularly with regards to assistance provided by the Secretariat to Member States with appropriate legislation and awareness of reporting.

6.1.16 The Chairman of the Audit Body thanked the Secretariat for their efforts in highlighting the issues in relation to the submission of oil reports and outstanding contributions which the Secretariat has provided to the Audit Body. He reaffirmed that oil reports and contributions were the cornerstone of the system and confirmed that the Audit Body will make a proposal to the spring 2016 sessions of the governing bodies.

6.1.17 The 1992 Fund Administrative Council and Supplementary Fund Assembly thanked the Secretariat for their efforts with oil reports and outstanding contributions and expressed their satisfaction with the results reported in document IOPC/OCT15/6/1, which highlighted the importance of oil reports and the prompt payment of contributions.

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

6.1.18 The 1992 Fund Administrative Council and the Supplementary Fund Assembly reaffirmed that the submission of oil reports and the payment of contributions were legal obligations under the Conventions and as a matter of principle all States should fulfil their obligations in a timely manner.

6.1.19 The governing bodies also instructed the Director to continue his efforts to encourage the submission of oil reports by all Member States and to report on them at the next regular sessions of the governing bodies.

6.2	**Appointment of the External Auditor** **Document IOPC/OCT15/6/2**	**92AC**		**SA**

6.2.1 The governing bodies took note of document IOPC/OCT15/6/2, submitted by the Audit Body, on the appointment of the External Auditor which was presented by Mr Michael Knight, external expert on the Audit Body.

6.2.2 Mr Knight recalled that, as no valid tenders had been received in response to the invitation from the Director in November 2013 for 1992 Fund Member States to submit nominations for the position of External Auditor commencing with the audit of the IOPC Funds' Financial Statements for the financial year 2015, the governing bodies had decided in October 2014 to extend the tenure of the current External Auditor, the Comptroller and Auditor General of the United Kingdom, National Audit Office (NAO) by one year to cover the financial year 2015. He recalled that the governing bodies had also decided in October 2014 that invitations to tender should be extended to selected commercial firms as well as to Auditors General of Member States and that all candidates should be considered on merit and that value for money was especially important.

6.2.3 Mr Knight noted that the key points relating to the tender process and details of the audit organisations which had responded to the invitation to tender were summarised in sections 1 and 2 of the document (IOPC/OCT15/6/2). He further noted that section 3 of the document set out how the final stage of the process had been approached. He noted that section 4 of the document set out how the Audit Body had conducted the interviews and had evaluated the performance of the candidates, resulting in the recommendation of BDO International for appointment as External Auditor to the IOPC Funds.

6.2.4 Mr Knight explained that the principal reasons for the Audit Body's recommendation were that the BDO International audit team had the requisite experience of performing audits under the IPSAS; it had demonstrated the best understanding of the distinct roles of the Secretariat, the Audit Body, and the Funds' governing bodies; it had demonstrated the best understanding of the Funds' Financial Regulations and budgetary framework; and, together with the development of an appropriate audit approach, it was coordinated by a manager who had previous experience of auditing the IOPC Funds. In addition, the Audit Body was of the view that the previous experience of the audit team in working with the IOPC Funds should facilitate the most efficient transition of responsibilities from the current External Auditor. Mr Knight also noted that, with respect to value for money, at £47 560 per annum, BDO International had quoted the most competitive fee and, subject to the scope of the audit remaining the same, the firm had committed to this fee for four years.

6.2.5 Finally, Mr Knight noted that the Audit Body was recommending that BDO International be appointed as the IOPC Funds' External Auditor to audit the Financial Statements of the 1992 Fund and the Supplementary Fund for a period of four years, ie the financial years 2016-2019 inclusive, subject to satisfactory annual performance.

6.2.6 The governing bodies expressed their appreciation to the members of the Audit Body for the very thorough and transparent process which they had undertaken in respect of the appointment of the new External Auditor.

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

6.2.7 The 1992 Fund Administrative Council and the Supplementary Fund Assembly decided to appoint BDO International as the IOPC Funds' External Auditor to audit the Financial Statements of the 1992 Fund and the Supplementary Fund for a period of four years, ie the financial years 2016-2019 inclusive, subject to satisfactory annual performance.

6.3	**Amendments to Financial Regulations** **Document IOPC/OCT15/6/3**	**92AC**		**SA**

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

The 1992 Fund Administrative Council and Supplementary Fund Assembly decided to amend 1992 Fund and Supplementary Fund Financial Regulations 1, 10 and 13 as well as Annexes I and II to each set of Regulations, in order to remove references to the 1971 Fund. In the light of recent staff changes, the governing bodies also decided to amend Regulation 9 of both sets of Financial Regulations relating to the management of monies. The amended Regulations are set out at Annex III.

6.4	**Amendments to Internal Regulations** **Documents IOPC/OCT15/6/4 and IOPC/OCT15/6/4/Corr.1**	**92AC**		**SA**

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

The 1992 Fund Administrative Council and Supplementary Fund Assembly decided to amend 1992 Fund Internal Regulation 1 and Supplementary Fund Internal Regulation 1 to take into account the dissolution of the 1971 Fund. In the light of recent staff changes, the governing bodies also decided to amend Regulation 12 of both sets of Internal Regulations in respect of the delegation of authority. The amended Regulations are set out at Annex IV.

7 Secretariat and administrative matters

7.1	**Secretariat matters** **Document IOPC/OCT15/7/1**	**92AC**		**SA**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT15/7/1 regarding the operation of the Secretariat.

7.1.2 The governing bodies noted that Mr Kensuke Kobayashi had been appointed to the post of Legal Counsel in August 2015, Ms Julia Shaw had been appointed to the position of HR Manager in June 2015, Mr Thomas Moran had been appointed to the position of External Relations and Conference Coordinator in February 2015, Ms Sarah Hayton had been appointed to the position of Oil Reporting Administrator in June 2015, and Ms Julia Sükan del Río had been appointed to the position of External Relations and Conference Assistant in March 2015.

7.1.3 The governing bodies noted that there were four vacancies in the Professional Category: the posts of two in-house Translators (French and Spanish), External Relations Officer, and Claims Manager, and that only the post of Claims Manager was budgeted for in 2016.

7.1.4 The governing bodies noted that there were three vacant posts in the General Service category, one in the Director's Office, one in the Claims Department, and one in the Finance and Administration Department and further noted that all three posts were not budgeted for in 2016.

Amendments to Staff Regulations and Staff Rules

7.1.5 The governing bodies noted the Director had issued amendments to the 1992 Fund Staff Rules in respect of Annex A of the Staff Rules which contain the salary scales for staff members in the Professional and higher categories with effect from 1 January 2015, and Annex C of the Staff Rules which contain the salary scales for staff members in the General Service category with effect from 1 October 2014.

7.1.6 The governing bodies also noted that the Director had made reference to the decision of the 1992 Fund Administrative Council at its April 2015 session, to amend Staff Regulation 24 in order to increase the required written notice period of resignation from thirty days to ninety days for members of staff in the Professional and higher categories. It was noted that this was applicable for new staff members, and for current staff members on renewal of their contracts.

7.1.7 The governing bodies further recalled the decision of the 1992 Fund Administrative Council at its April 2015 session to amend the Staff Regulations and to note amendments to the Staff Rules in order to remove references to the 1971 Fund following its dissolution.

Investment of the Provident Fund

7.1.8 The governing bodies noted that, given the current and foreseeable climate of low interest rates and following the review and advice by the Joint Investment Advisory Body (IAB) on how best the staff Provident Fund should be invested, the Director had introduced an additional scheme with effect from the beginning of 2015 that would not rely on cash alone. It was noted that there are now two schemes which make up the Provident Fund, namely Provident Fund 1 (PF1), which is invested with the 1992 Fund assets, and the newly introduced scheme, Provident Fund 2 (PF2), which is managed by an independent financial broker in the name of the 1992 Fund. It was noted that participation in PF2 is entirely voluntary and investing in PF2 is to be made only from the cash balance available in PF1. There is no possibility of investing private funds in PF2.

Probation Period

7.1.9 The governing bodies recalled that at the April 2015 session of the 1992 Fund Administrative Council, it had been informed that the Director had increased the probation period for staff members from six months to twelve months.

Conscious Rewarding Scheme

7.1.10 The governing bodies noted that the Director had continued to apply a Conscious Rewarding Scheme, first introduced in 2011, to reward staff members on an annual basis for outstanding performance in their current role. It was noted that the Director established a policy review group in 2013 to review the effectiveness of the Conscious Rewarding Scheme policy and to provide recommendations on improving the scheme. As a consequence, it was noted that the Director had decided to amend the

policy in 2014 to include two types of awards; namely the current annual Director's award, and a new Manager's award which is awarded on a quarterly basis. It was further noted that the total budget for any one year for both types of awards was still limited to 1% of the total annual budget for salaries in the year.

7.1.11 It was noted that during the course of 2014 two teams and seven individuals received the Manager's award, totalling £3 250 and three Director Awards totalling £7 500 were awarded in 2015 for outstanding performance in 2014 to one Professional and three General Service staff members (with one of the awards being shared).

Job Description Review

7.1.12 The governing bodies noted that the Director had engaged a UN experienced consultant to carry out a cross-organisational review to align job descriptions with current principles applied within the UN system. It was noted that the consultant had completed the review in late 2014 and submitted the findings and recommendations to the Director at the beginning of 2015.

7.1.13 The governing bodies noted that job descriptions were reviewed and classified for 29 posts. It also noted the consultant's recommendation of introducing a system of dual grading and that the Director had approved the new job descriptions and classifications (including dual grading) as recommended by the consultant. It was noted that the Director had decided that eight staff members, currently incumbent in a dual graded post at the lower grade, fulfilled the criteria necessary in order to be placed at the higher grade, and one staff member had been moved from the General Service to the Professional category as a result of the reclassification of the post.

7.1.14 The governing bodies noted that all newly recruited staff members, appointed into dual graded posts will be recruited at the lower grade and placed at the higher grade of the post only after having gained all requisite knowledge and experience.

Debate

7.1.15 One delegation noted that the posts of the two in-house Translators had not been in the budget since 2005 and enquired whether the posts should be retained within the structure of the Secretariat. Another delegation supported this view and added that the document should in future not include the vacant posts which the Director did not intend to fill.

7.1.16 The Director recalled that the posts of the two in-house Translators were recommended to be removed from the list of established posts a few years back but that it had been agreed by the 1992 Fund Assembly to retain them within the Secretariat's structure. The Director added that the Secretariat used UN translators and outsourced translation work which continued to be a more efficient system due to the peaks and troughs of translation work within the Secretariat.

7.1.17 One delegation stated that it was a good report of the functioning of the Secretariat and noted that resources were well managed by the Director, and that this was commendable. That delegation stated that given the size of the Secretariat it was important that there was always a balance between the staff available and the staff required to confront an unexpected situation.

7.1.18 A number of French and Spanish speaking delegations expressed their satisfaction with the quality of the translation work and the timely delivery of the documents in French and Spanish, however they stated that the posts of the two in-house Translators should continue to be retained within the structure of the Secretariat. One delegation stated that as a matter of principle an international organisation ought to retain the capacity for in-house translation. Another delegation stated that is was good management practice to have some room for manoeuvre by retaining the posts for operational reasons. Another delegation noted that since there was no extra cost in maintaining these posts, then the status quo should be maintained.

7.1.19 The Chairman of the 1992 Fund Administrative Council stated that there was a clear majority in favour of maintaining these two posts within the structure of the Secretariat.

1992 Fund Administrative Council Decision

7.1.20 The 1992 Fund Administrative Council decided to retain the posts of the two in-house Translators within the structure of the Secretariat.

7.2	**Appointment of the Appeals Board** **Document IOPC/OCT15/7/2**	**92AC**		

7.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT15/7/2. It noted that since the appointment of the Appeals Board in October 2013, certain members/substitute members of the Appeals Board from Japan (Mr Noriyoshi Yamagami), Republic of Korea (Mr Cho Seung-Hwan) and France (Mme Elisabeth Barsacq), had been replaced by their respective successors in their posts in London.

7.2.2 The 1992 Fund Administrative Council expressed their appreciation to both the outgoing and incoming members/substitute members of the Appeals Board.

1992 Fund Administrative Council Decision

7.2.3 The 1992 Fund Administrative Council appointed the following members and substitute members of the Appeals Board to hold office until the October 2017 session of the 1992 Fund Assembly.

Members		Substitute Members	
Mme Nicole Taillefer	(France)	Dr Christos Atalianis	(Cyprus)
Mr Jotaro Horiuchi	(Japan)	Ms Susana Garduño Arana	(Mexico)
Sir Michael Wood	(United Kingdom)	Mr Park Jun-Young	(Republic of Korea)

7.3	**Amendments to Rules of Procedure** **Document IOPC/OCT15/7/3**			**SA**

7.3.1 The Supplementary Fund noted that at the April 2015 sessions of the governing bodies, the 1992 Fund Administrative Council had decided to make a number of amendments to the Rules of Procedure of the 1992 Fund Assembly, and that for consistency, the Director had proposed in document IOPC/OCT15/7/3 that the same amendments be made to the corresponding Rules of Procedure of the Supplementary Fund Assembly.

Supplementary Fund Assembly Decision

7.3.2 The Supplementary Fund Assembly decided to amend Rule 5 of its Rules of Procedure relating to the invitation by the Director of observers to Assembly sessions, as the existing wording was unclear. It also decided to amend Rule 21 relating to the opening of each regular session of the Assembly and approved the insertion of a new Rule 42bis relating to the inclusion of statements made by delegations in the Record of Decisions of sessions. The amended Rules of Procedure are set out at Annex V.

7.4	**Relocation of the IOPC Funds' office premises** **Document IOPC/OCT15/7/4**	**92AC**		

7.4.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/OCT15/7/4. It was recalled that the Director had been informed in 2013 by the Secretary-General of the International Maritime Organization (IMO) that IMO could not accommodate the IOPC Funds' Secretariat at that time. It was further recalled that during the period October 2013 to April 2015, the Director had been seeking suitable alternative premises and had engaged external consultants to assist in the search.

7.4.2 The 1992 Fund Administrative Council noted that, since the April 2015 session of the 1992 Fund Administrative Council, there had been a significant development in that the Secretary-General of IMO, after discussions and meetings between representatives of IMO, the United Kingdom Government and the IOPC Funds, had confirmed IMO's agreement in principle to accommodate the IOPC Funds' Secretariat in the IMO Headquarters building from June 2016 onwards on the understanding that no costs would be incurred by IMO. In this respect, the governing bodies recalled that the Director had been informed that the UK Government would continue to contribute up to 80% of the rent for premises in the IMO Headquarters building, up to a maximum of £381 200 per annum, ie the current contribution by the UK Government for premises in Portland House.

7.4.3 The Administrative Council further noted that, pending further discussions with the IMO Secretariat in relation to the exact size and location of space available to the IOPC Funds, and taking into account the preference expressed by the UK Government to relocate the IOPC Funds' office to the IMO Headquarters building, the Director considered that a relocation of the IOPC Funds to the IMO Headquarters building would be a pragmatic and mutually agreeable solution to all.

7.4.4 The Administrative Council also noted that the Director was proposing a further budget appropriation for 2016 of £250 000 for relocation costs. It noted that the Director did not envisage that the cost of relocation to the IMO building would be as high as the consultants' informed estimate of £850 000 but nevertheless he considered that it would be prudent to have the budget appropriation for 2016. The Administrative Council noted that, of the 2014 budget appropriation of £250 000, a balance of some £214 000 remained and it was anticipated a further £200 000 from the 2015 budget would be available for 2016. It further noted that, including the proposed 2016 budget appropriation of £250 000, a sum of some £664 000 would be available for relocation costs.

7.4.5 The Director expressed his appreciation to the UK Government, the Secretary-General of IMO and the IMO Secretariat for their continued assistance and cooperation to the IOPC Funds in finding suitable premises for the IOPC Funds' Secretariat.

7.4.6 The Director reported, however, that since the publication of document IOPC/OCT15/7/4, the landlord of Portland House had advised him that the decision had now been taken not to refurbish Portland House until 2020. The landlord had indicated that he would be looking to enter into a new lease with the 1992 Fund up to that date; however, the rent would need to increase from some £42 per square foot to some £55 per square foot. The Administrative Council noted that the Director was not proposing to consider the option of remaining at Portland House but rather to accept the offer by IMO to accommodate the IOPC Funds in the IMO Headquarters building.

7.4.7 On behalf of the Secretary-General of IMO, Mr Frederick Kenney, Director, Legal Affairs and External Relations Division of IMO, stated that IMO was very pleased to be welcoming the IOPC Funds' Secretariat back to the IMO Headquarters building in 2016. He noted the very close relationship which existed between IMO and the IOPC Funds and which could only be strengthened by being back together under the same roof.

7.5	**Information services** **Document IOPC/OCT15/7/5**	**92AC**		**SA**

7.5.1 The governing bodies noted the information contained in document IOPC/OCT15/7/5 in respect of the IOPC Funds' website and publications.

Website

7.5.2 The governing bodies were informed of a number of improvements made to the Incidents section of the website, that the History section had been expanded to include pages dedicated to the 1971 Fund, which included images from the commemorative session in April 2015, and that Resolutions adopted by the governing bodies now appeared more prominently on the website, having been added to the Document Services section. Improvements planned for the search function of the Decisions Database were also noted.

7.5.3 The governing bodies noted that the detailed country profiles under the Membership section were now available in French and Spanish. The governing bodies recalled that at their October 2014 sessions States were invited to submit copies of relevant national legislation to the Secretariat for inclusion in the country profiles in the form of a link to the relevant pages of a government website or in the form of a PDF. It was noted that very few States had provided such information and that the Secretariat now intended to collate such information as best it could itself and to contact the relevant Member State Authority for approval prior to publication of the documentation online.

7.5.4 Member States were invited to check the information provided in their own country profile and to inform the Secretariat of any required update or amendment.

Publications

7.5.5 The governing bodies noted that in addition to the Annual Report, since the October 2014 sessions, the Secretariat had also published the Guidelines for presenting claims for clean up and preventive measures, which had been approved by the 1992 Fund Administrative Council at its April 2015 session and were now available to add to the Claims Information Pack. It was further noted that Draft Guidelines for presenting claims for environmental damage were under development and would also be for inclusion in the Pack when approved. It was noted that they were expected to be submitted for consideration by the governing bodies in spring 2016 (see document IOPC/APR15/9/1, paragraph 4.3.2).

7.5.6 The governing bodies noted that a revised draft of the guidance document for States on the implications of imposing fisheries restrictions in the event of an oil spill had been submitted for consideration at the current session (see paragraph 4.6.3).

Debate

7.5.7 One delegation pointed out that since legislation implementing the 2010 HNS Protocol was currently being adopted by that State, the relevant laws implementing the 1992 Conventions were likely to be amended as a result and for that reason, it would not be useful to submit that State's legislation for inclusion in its online country profile at this stage. Another delegation offered to pass on copies of the relevant legislation and used the opportunity to confirm that it too had adopted legislation implementing the 2010 HNS Protocol.

7.5.8 The governing bodies thanked the Secretariat for the recent improvements made to the website and encouraged it to continue to develop the information services it provides both in electronic format and through publications.

7.6	**Appointment of the Director** **Document IOPC/OCT15/7/6**	**92AC**		**SA**

7.6.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT15/7/6, submitted by the Chairman of the 1992 Fund Assembly. They recalled that, at its 16th session, held in October 2011, the 1992 Fund Assembly had elected Mr José Maura as Director of the 1992 Fund and, at the same session, the Supplementary Fund Assembly had noted that Mr Maura was also *ex officio* Director of the Supplementary Fund.

7.6.2 The governing bodies further recalled that, at the same session, the 1992 Fund Assembly had decided that the Director would be appointed for an initial term of five years and 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. It was recalled that the 1992 Fund Assembly had further decided that candidates for the appointment to the post of Director must notify the Secretariat at least three months before the Assembly was scheduled to meet to appoint or re-appoint the Director and that the 1992 Fund Assembly had adopted an amended Resolution N°9 to take into account these decisions.

7.6.3 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted that the Director had informed the Chairman of the 1992 Fund Assembly that he would be very honoured and willing to serve a second term of five years if re-appointed by the 1992 Fund Assembly in October 2016.

8 Treaty matters

8.1	**Status of the 1992 Fund Convention and the Supplementary Fund Protocol** **Document IOPC/OCT15/8/1**	**92AC**		**SA**

8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information in document IOPC/OCT15/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.

8.1.2 The governing bodies noted that as at the October 2015 sessions of the governing bodies there were 114 States Parties to the 1992 Fund Convention. It was also noted that there were 31 States Parties to the Supplementary Fund Protocol.

Debate

8.1.3 One delegation, whilst expressing its satisfaction with the continued growth of the 1992 Fund, nevertheless expressed its disappointment with the slow growth of the Supplementary Fund. That delegation pointed out that there were certain important 1992 Fund Member States who were yet to join the Supplementary Fund. In particular, it referred to China, although it recognised it had a special status *vis-à-vis* the 1992 Fund, and India. With respect to India, a significant contributor to the 1992 Fund, that delegation stated that it would be important to have that State stand together with the other Supplementary Fund States and accede to the 2003 Supplementary Fund Protocol. That delegation invited the Director to make every effort to encourage the participation of States who import significant quantities of oil to adopt the 2003 Supplementary Fund Protocol.

8.1.4 The delegation of New Zealand informed the governing bodies that the State's Cabinet had approved accession to the 2003 Supplementary Fund Protocol, and that the next steps were to enact domestic legislation to enable ratification.

8.1.5 The Chairman of the Supplementary Fund Assembly thanked the delegations for their comments and confirmed that out of the ten largest contributor States to the 1992 Fund, two had not yet acceded to the Supplementary Fund Protocol. The Chairman expressed his intention to consult with two vice-Chairman on the measures to encourage more States to participate in the Supplementary Fund.

8.2	**Review of Observer Status** **Document IOPC/OCT15/8/2**	**92AC**		**SA**

8.2.1 The governing bodies recalled that every three years a review was carried out of international non-governmental organisations (NGOs) having observer status with the IOPC Funds in order to determine whether the continuance of this status was of mutual benefit.

8.2.2 The governing bodies noted the information set out in document IOPC/OCT15/8/2, in particular Annex II of the document regarding the attendance of international non-governmental organisations at the meetings of the IOPC Funds' governing bodies and the submission of documents by those organisations since the previous review in October 2012.

8.2.3 It was noted that in July 2015, the Secretariat had written to all international non-governmental organisations which had been granted observer status, inviting them to submit their comments on whether, in their view, the continuance of observer status would be of mutual benefit. The governing bodies took note of the information contained in Annex III to document IOPC/OCT15/8/2, which set out the responses received from the organisations concerned. The governing bodies also noted the information contained in sections 3.3 and 4 of that document which detailed the contacts maintained

between the organisations and the Secretariat during the previous three years and the Director's recommendation that all international non-governmental organisations which currently held observer status with the IOPC Funds should maintain that status until the next review in 2018.

8.2.4 In accordance with previous practice, the governing bodies set up a group of five Member States to establish whether the continuance of observer status for each international non-governmental organisation would be of mutual benefit, and to report its findings to the governing bodies. It was decided that the composition of the group should be as follows: Bahamas, Cameroon, Ecuador, Philippines and Turkey.

8.2.5 Following meetings of the group earlier in the session, the Chairman of the group, Mr Cagri Küçükyildiz (Turkey) reported back to the governing bodies as set out in paragraphs 8.2.6 - 8.2.12 below:

Report of the group established to carry out the review

8.2.6 It was reported that the review group had met on Monday 19 and Tuesday 20 October 2015, and had considered in detail the information provided in document IOPC/OCT15/8/2.

8.2.7 The group considered that, amongst those non-governmental organisations under review, the majority maintained a strong and productive relationship with the IOPC Funds, by regularly attending meetings and contributing to the discussions of the governing bodies on key issues through the submission of documents and/or interventions during meetings. In addition, outside of meetings, the group noted that several of those organisations remained in regular contact with the Secretariat, providing assistance and information that is beneficial to the IOPC Funds.

8.2.8 Having taken all of the information provided in document IOPC/OCT15/8/2 into account, with particular reference to sections 3 and 4 and Annexes II and III of the document, the group recommended that the governing bodies approve the continuation of observer status of the following non-governmental organisations:

BIMCO
Comité Maritime International (CMI)
Conference of Peripheral Maritime Regions (CPMR)
European Chemical Industry Council (CEFIC)
International Association of Classification Societies Ltd (IACS)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Associations
International Spill Control Organization (ISCO)
International Salvage Union (ISU)
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)
World LP Gas Association (WLPGA)

8.2.9 The group also made the following observations and suggestions:

(i) The group recognised that whilst CEFIC had not attended meetings in recent years, it had nevertheless engaged with the Secretariat intersessionally and could make a significant contribution to the future work of the organisation in respect of HNS matters. The review group nevertheless recommended that the Secretariat contact CEFIC and strongly encourage them to attend future meetings of the 1992 Fund Assembly.

(ii) The group was pleased to note that CPMR were present at this session after a period of absence and encouraged the organisation to continue their participation at future sessions.

(iii) The group noted that ISU had again expressed its regret that it had been unable to attend IOPC Funds' meetings and recognised that this was due to the Organisation comprising a Secretariat of only two persons. It also noted that since the last review in 2012, ISU had increased its engagement with the Secretariat intersessionally and had reiterated its intention to attend meetings of the governing bodies in future if ever an issue of salvage should arise.

8.2.10 With respect to the International Group of Liquefied Natural Gas Importers (GIIGNL), it was reported that the review group were very concerned that the organisation had not attended any sessions of the governing bodies since 2008 and was not present at the current session despite having submitted a statement at this session and at earlier reviews, confirming that it would make every effort to send a representative on this occasion. The review group was also concerned that the interest of GIIGNL in the work of the IOPC Funds rested purely on the subject of HNS and that despite recent developments in that area, had still not engaged with the IOPC Funds.

8.2.11 Taking into account the aforementioned, the review group recommended that the governing bodies withdraw the observer status for GIIGNL. The review group noted, however, that if in future, GIIGNL should show renewed interest in the work of the Funds they would be welcomed to reapply for observer status.

8.2.12 Finally, the group expressed its gratitude, on behalf of the governing bodies, to all of the non-governmental organisations having observer status with the IOPC Funds for the significant contribution they made and the support they provided to the IOPC Funds. It noted that their knowledge and experience had been invaluable on a number of occasions when the governing bodies had needed to turn to these non-governmental organisations for advice and suggestions on matters of policy.

Debate

8.2.13 One delegation expressed its support for the recommendation to withdraw the observer status of GIIGNL, stating that the organisation would inevitably have an interest in the IOPC Funds when the 2010 HNS Convention enters into force and that it should reapply for observer status at that time. That delegation pointed out, however, that until the entry into force of the Convention, GIIGNL was unlikely to be interested.

8.2.14 The governing bodies expressed their appreciation to the five States who had formed the review group for their participation and for their clear and concise report. The governing bodies also reiterated the appreciation already expressed by the review group, to the international non-governmental organisations holding observer status with the IOPC Funds for their continued support and the important role they played in relation to the work of the IOPC Funds.

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

8.2.15 The 1992 Fund Administrative Council and Supplementary Fund Assembly endorsed the review group's recommendations, including the suggestions made in paragraph 8.2.9 above, and decided that all international non-governmental organisations, except for one, should maintain that status until the next review in 2018.

8.2.16 In respect of the International Group of Liquefied Natural Gas Importers (GIIGNL), it was decided that that organisation's observer status should be withdrawn.

8.3	**Preparation for the entry into force of the 2010 HNS Protocol** **Document IOPC/OCT15/8/3**	**92AC**		

8.3.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT15/8/3 on the update of the work carried out by the Secretariat to set up the Hazardous and Noxious Substances (HNS) Fund.

8.3.2 It was noted that the HNS Correspondence Group, led by the Group's coordinator Mr François Marier (Canada), had continued to communicate via the HNS blog (www.hnsprotocol.wordpress.com), exchanging ideas and best practices and collaborating on solutions to promote the 2010 HNS Convention and facilitate its entry into force. The 1992 Fund Administrative Council also noted the recently extended mandate of the Correspondence Group and the three key projects under development, namely:

- A publication setting out the need for the HNS Convention;
- HNS incidents scenarios; and
- a draft resolution on implementation and entry into force of the 2010 HNS Convention.

8.3.3 It was further noted that since the endorsement of the outline of the publication referred to above by the IMO Legal Committee in April 2015, further work had been carried out within the Correspondence Group with the support of IMO, the IOPC Funds, ITOPF and the International Group of P&I Associations and that it was expected to be published in hard copy and online in due course.

8.3.4 The 1992 Fund Administrative Council noted that since October 2014, the 1992 Fund Secretariat had continued to engage with States considering ratifying the 2010 HNS Protocol and the industry stakeholders potentially affected by the Convention, through the delivery of presentations and participation in workshops and events relating to the HNS Convention. These included an IMO regional seminar in Kuala Lumpur in November 2014, Interspill in March 2015 in Amsterdam, the Netherlands, and a three-day regional workshop, organised by the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA) in Jeddah, Saudi Arabia. It was reported that most recently, in October 2015, the Secretariat had been invited to participate in a meeting organised by the Norwegian Ministry of Trade, Industry and Fisheries, with future Norwegian contributors to the HNS Fund to inform and respond to questions relating to the reporting requirements under the 2010 HNS Convention. It was also reported that in November 2015, the Secretariat would also be participating in a workshop hosted by IMO for the benefit of representatives of Myanmar to cover various treaty matters, including the 2010 HNS Convention.

8.3.5 It was noted that the Council of the European Union was currently discussing a proposal for a Council Decision aimed at instructing EU Member States to take the necessary measures to ratify or accede to the 2010 HNS Protocol within a specific timeframe. It was noted that the proposal also contained a recommendation to EU Member States to exchange information and best practices on the procedures leading up to ratification or accession, as it could facilitate the Member States' efforts in setting up a functional reporting system for HNS contributing cargo under the 2010 HNS Convention. It was further noted that the shipping industry had been strongly supporting this process. The 1992 Fund Administrative Council was informed that the Secretariat had recently received an invitation to participate in a meeting of the European Council Working Group which was considering the matter to make a presentation on the HNS Convention.

8.3.6 The 1992 Fund Administrative Council noted that the consolidated list of HNS covered by the HNS Convention (the HNS Finder) had continued to be updated regularly to take into account changes in the codes and lists referred to in the HNS Convention. The Administrative Council also noted that the HNS Convention website maintained by the 1992 Fund Secretariat (www.hnsconvention.org) was now available in French and Spanish as well.

8.3.7 Finally, it was noted that no State had yet deposited an instrument of ratification or accession to the 2010 HNS Convention, but that some States, including Canada, Denmark and Norway had, however, now adopted implementing legislation as a first measure prior to ratification or accession and had provided detailed information in that regard through the HNS Protocol blog. Other States that might have adopted such legislation were invited to share that information via the blog.

Intervention by the Canadian delegation

8.3.8 The delegation of Canada made the following intervention:

'As you know, the coming into force of the 2010 HNS Convention is a very important issue for Canada and we are pleased to see much progress in that regard.

As it is mentioned in the paper, the IMO Legal Committee has established a Correspondence Group to promote the Convention's coming into force as this is the last one yet to do so in the global network of liability and compensation conventions. Ensuring that a global regime is in place to provide adequate compensation in the event of an HNS incident is in the best interest of all States.

Canada is pleased to have been named as the Coordinator of the Correspondence Group and many of you have been following its work over the last year and a half. This Group is open to all delegations and should you wish to be added to the distribution list, please see this delegation and we can pass along your contact information to its coordinator, Mr François Marier.

In April of this year, the Legal Committee extended the mandate of the Correspondence Group and added three specific items to its work. There has been much progress made to the first of these, which is producing a new publication that underscores the policy intent and rationale of the HNS Convention. This publication, entitled "The HNS Convention. Why it is Needed" does not focus on the how the regime would work but rather on the why it is needed in the first place. This will be a very useful publication for States to better explain this to decision-makers as well as for their consultations with industry stakeholders.

There has been very good collaboration between the IMO, IOPC Funds and ITOPF Secretariats in producing this joint publication, which Canada is pleased to financially support. A draft mock-up focused on the text was circulated during the summer, and now, a draft with images and graphics has been produced by the IMO publications section and distributed within the Correspondence Group. I encourage all who are interested to review this draft, which is available on the HNS Blog.

The finalisation of this publication will allow the Correspondence Group to then focus on the remaining two items in its mandate.

The first is the production of HNS Incident Scenarios, which will be a series of hypothetical incidents of various types of HNS with different damages and compensation scenarios. These will be produced in Powerpoint presentation style to allow easy use for states administrations and others.

The second is the development of a draft resolution for the consideration by the Legal Committee encouraging states to implement and ratify the HNS Convention as soon as possible.

At this point, I would like to thank the members of the Correspondence Group for their continued support and input.

Turning now to our domestic implementation of the HNS Convention, I am pleased to report that in December 2014, the legislation implementing the Convention in Canada was adopted by our Parliament and received Royal Assent. This paved the way for the development of regulations that will set out the HNS reporting requirements. Much progress has been made on these regulations, which we hope to be in place by the end of 2016, thus allowing the reporting to be conducted starting in 2017. Given the fact that the reporting must be done on a calendar year basis, this can be a challenge with internal processes. A reality I am sure many other States are also facing.

I would be interested to hear from other states as to the status of their implementation efforts.

Once again, thank you Mr Chairman for giving me the opportunity to address the Assembly and Canada looks forward to continuing to work with states, industry stakeholders and the Secretariats in pursuing the ultimate goal of bringing the HNS Convention into force.'

Debate

8.3.9 A number of delegations expressed appreciation to the delegation of Canada and specifically to Mr Francois Marier as Chairman of the Correspondence Group for their important contribution as well as to the IMO and IOPC Funds' Secretariats for their continued efforts in encouraging the early entry into force of the 2010 HNS Convention.

8.3.10 One delegation suggested that in addition to the publication and other tools under development, that a promotional video could also be an effective tool, particularly if it were supported by the chemical industry and relevant NGOs.

8.3.11 The delegation of the Netherlands confirmed that it had prepared draft legislation implementing the 2010 HNS Convention which was ready to be sent for parliamentary approval but stated that it was important for that delegation, that its fellow States now did the same to ensure a level playing field.

8.3.12 The delegation of Turkey confirmed that it also had submitted draft legislation and was awaiting parliamentary approval.

8.3.13 The delegation of Denmark reported that it had not only adopted the necessary legislation, but had also begun receiving reports from receivers of HNS goods, which would ensure that Denmark will be in a position to ratify the HNS Protocol when and if the EU Council decides to instruct States to do so.

8.3.14 The delegation of Malaysia informed the 1992 Fund Administrative Council that it had completed an initial review of draft legislation and expected to move to the next stage of the process in early 2016. It reported that it had received reports from most major contributors, had visited key stakeholders and engaged with the relevant industries to provide relevant information and discuss the implications of the 2010 HNS Convention. That delegation also reported that it had prepared a national HNS contingency plan which was currently being reviewed by a dedicated Committee.

8.3.15 The delegation of Norway confirmed that it had also adopted implementing legislation in March 2015, which obliged contributors to submit reports in 2017 for cargo received in 2016. That delegation confirmed Norway's intention to ratify the 2010 HNS Protocol in 2017.

8.3.16 The observer delegation of IMO expressed its appreciation to the IOPC Funds Secretariat for the work it had carried out so far, in particular in respect of the publication under development. That delegation also thanked the Canadian delegation and stated that it looked forward to continuing to work with the Correspondence Group. That delegation reported that it was pleased to hear from Member States present that efforts were indeed underway both with regard to the development and adoption of legislation and also in relation to the reporting aspects. Finally, that delegation stated that it would welcome further discussion at the next session of the IMO Legal Committee.

8.3.17 In summing up the debate, the Chairman of the 1992 Fund Administrative Council encouraged other States to not hesitate to ask the 1992 Fund Secretariat to provide assistance on matters related to the HNS Convention, including organising meetings with stakeholders in their countries, as Norway had done recently.

9 Budgetary matters

9.1	**Budgets for 2016 and assessments of contributions to the General Fund (1992 Fund and Supplementary Fund) Documents IOPC/OCT15/9/1, IOPC/OCT15/9/1/1 and IOPC/OCT15/9/1/2**	**92AC**		**SA**

9.1.1 The governing bodies took note of the information contained in document IOPC/OCT15/9/1.

9.1.2 The 1992 Fund Administrative Council considered the draft 2016 budget for the administrative expenses of the IOPC Funds' joint Secretariat, the apportionment of joint administrative costs between

the two Organisations and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in document IOPC/OCT15/9/1/1.

9.1.3 The Supplementary Fund Assembly considered the draft 2016 budget and assessment of contributions to the Supplementary Fund General Fund in document IOPC/OCT15/9/1/2.

9.1.4 The governing bodies recalled that the Director had been authorised to create positions in the General Service category as required, providing that the resulting cost did not exceed 10% of the figure for salaries in the budget.

9.1.5 The governing bodies noted the request by the Director to renew the authorisation given to him to create one position in the Professional category at the P3 level, subject to need and within the budget resources available.

9.1.6 It was noted that there was an overall increase of 2.3% in the draft 2016 joint Secretariat budget compared to the 2015 budget. It was also noted that the draft budget included an appropriation for separation costs of the present Director and recruitment of a new Director as the first term of the current Director ended on 31 October 2016.

9.1.7 The governing bodies recalled that in March 2005 they had decided that the distribution of the cost of running the joint Secretariat should be made on the basis of the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.

9.1.8 The 1992 Fund Administrative Council noted that the lease for the current premises in Portland House which was due to expire in March 2015 had been extended to 24 March 2018 with a mutual break in June 2016. It was recalled that, at its May 2014 session, the 1992 Fund Administrative Council had decided to accept the Director's proposal to fund the relocation through appropriations in the 2014, 2015 and 2016 budgets to be borne only by the 1992 Fund (document IOPC/MAY14/10/1, paragraph 6.1.14).

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

9.1.10 The 1992 Fund Administrative Council also noted the Director's view, that in the light of continuing discussion with the International Group of P&I Associations in respect of interim payments, the level of working capital be maintained at £22 million.

Debate

9.1.11 With respect to the 1992 Fund, one delegation, although not objecting to the draft budget, requested an explanation for maintaining the working capital at £22 million. That delegation further requested the Director to exercise careful consideration prior to creating posts in the General Service and Professional categories.

9.1.12 The Director responded that based on the request of the 1992 Fund Assembly at its 2014 session he had commenced dialogue with the International Group with respect to interim payments. It was his view that the working capital should be maintained at £22 million to ensure the 1992 Fund would be in a position to make payments if required while discussions were on going. The Director further assured the 1992 Fund Administrative Council that he sought to maintain a balanced Secretariat and referred to his report on the vacant posts within the Secretariat that had not been filled since there was no requirement.

9.1.13 With respect to the Supplementary Fund, the same delegation expressed concern that the burden of the working capital may not be equally shared among all Member States since it was the initial 19 Member

States who had contributed to the working capital and not the full 31 States who were Members of the Supplementary Fund in 2015.

9.1.14 Another delegation agreed that the issue of a balanced levy of working capital among Member States should be reviewed with respect to the Supplementary Fund.

9.1.15 In response, the Director undertook to review the situation with respect to the working capital of the Supplementary Fund and report to the governing bodies at a later date.

1992 Fund Administrative Council Decisions

9.1.16 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create additional posts in the General Service category provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (ie up to £211 000, based on the 2016 budget).

9.1.17 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.

9.1.18 The 1992 Fund Administrative Council adopted the budget for 2016 for the administrative expenses of the 1992 Fund for a total of £4 704 860 (including the cost of the external audit for the 1992 Fund and relocation costs), as set out in Annex VI, page 1.

9.1.19 The 1992 Fund Administrative Council also approved the Director's estimate of the expenses to be incurred in 2016 in respect of the preparation for the entry into force of the HNS Convention.

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

9.1.21 The 1992 Fund Administrative Council decided to levy contributions of £4.4 million to the General Fund payable by 1 March 2016.

9.1.22 The 1992 Fund Administrative Council decided to make a deferred levy of £6 million subject to the 1992 Fund's Executive Committee decision to make payment of compensation in respect of the *Alfa I* incident and the need to pay further compensation with respect to the *Nesa R3* incident.

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2016	
			Levy (£)	Estimated levy per tonne (£)
General Fund	2014	1 505 146 565	4 400 000	0.0029233

Supplementary Fund Assembly Decisions

9.1.23 The Supplementary Fund Assembly adopted the budget for 2016 for the administrative expenses of the Supplementary Fund for a total of £47 500 (including the cost of the external audit), as set out in Annex VI, page 2.

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

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

1992 Fund Administrative Council and Supplementary Fund Assembly Decision

9.1.26 The 1992 Fund Administrative Council and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay a flat management fee of £34 000 to the 1992 Fund for the financial year 2016.

9.2	**Assessment of contributions to Major Claims Funds (1992 Fund) and Claims Funds (Supplementary Fund) Documents IOPC/OCT15/9/2, IOPC/OCT15/9/2/1 and IOPC/OCT15/9/2/2**	**92AC**		**SA**

9.2.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted the Director's proposal for contributions to Major Claims Funds and Claims Funds, respectively, for the Organisations as outlined in documents IOPC/OCT15/9/2, IOPC/OCT15/9/2/1 and IOPC/OCT15/9/2/2.

1992 Fund Administrative Council Decision

9.2.2 The 1992 Fund Administrative Council decided not to levy 2015 contributions in respect of the *Prestige* Major Claims Fund.

9.2.3 The 1992 Fund Administrative Council decided not to levy 2015 contributions in respect of the *Volgoneft 139* Major Claims Fund.

9.2.4 The 1992 Fund Administrative Council decided not to levy 2015 contributions in respect of the *Hebei Spirit* Major Claims Fund.

Supplementary Fund Assembly Decision

9.2.5 The Supplementary Fund Assembly noted that there had been no incidents which required the Supplementary Fund to pay compensation or claims-related expenses, and that there was therefore no need for contributions to be levied.

10 Other matters

10.1	**Future sessions**	**92AC**	**92EC**	**SA**

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 17 October 2016. It was also agreed that additional sessions of the governing bodies would be held during the week of 25 April 2016.

10.1.2 The governing bodies further decided to hold the next regular sessions, in October 2016, over a four-day period and the spring 2016 sessions, in April 2016, over a three-day period. The governing bodies took this decision in light of the reduction in the need for meeting time following the closure of the Working Group on the definition of ship and the dissolution of the 1971 Fund.

1992 Fund Executive Committee Decision

10.1.3 The 1992 Fund Executive Committee decided to hold its 66th session during the week of 25 April 2016.

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

10.2.1 The Chairman of the 1992 Fund Administrative Council took the opportunity to point out that Mr Alfred Popp QC (Canada) was retiring as Director of the Canadian Ship Source Oil Pollution Fund this year and would no longer form part of the official Canadian delegation to IOPC Funds' meetings.

10.2.2 The Chairman stated that Mr Popp had been instrumental from the inception of the IOPC Funds and had continued to be so over the many years which followed. He pointed out that Mr Popp had attended the very first meeting of the 1971 Fund in 1978 and had chaired the Committee of the Whole at the Diplomatic Conference which had adopted the 1992 Protocols to the Civil Liability and Fund Conventions as well as the Committee of the Whole at the Diplomatic Conference which had adopted the Supplementary Fund Protocol.

10.2.3 The Chairman underlined the important role Mr Popp had played in the work of the IOPC Funds over the years and, on behalf of the governing bodies, expressed thanks and appreciation for the outstanding contribution he had made.

10.2.4 Mr Popp expressed his gratitude to both the IMO and IOPC Funds and explained that he had enjoyed the 40 years he had spent attending various IMO and IOPC Funds' meetings. He referred to the many friends he had made over the years and described his participation as an enriching experience, having been particularly glad to have had a role in putting in place, what he considered to be one of the most successful international Conventions currently in force. Mr Popp thanked his colleagues and industry organisations who he considered to have been partners with the Member States in the successful development of the international compensation regime over the years.

10.2.5 The governing bodies wished Mr Popp a long and happy retirement.

10.2.6 No other items were raised under this agenda item.

11 Adoption of the Record of Decisions

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

The draft Record of Decisions of the October 2015 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT15/11/WP.1 and IOPC/OCT15/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
1	Algeria	●	●	
2	Angola	●		
3	Antigua and Barbuda	●		
4	Argentina	●		
5	Australia	●		●
6	Bahamas	●	●	
7	Bulgaria	●		
8	Cambodia	●		
9	Cameroon	●	●	
10	Canada	●	●	●
11	China[<1>]	●		
12	Colombia	●		
13	Côte d'Ivoire	●		
14	Cyprus	●		
15	Denmark	●		●
16	Dominican Republic	●		
17	Ecuador	●		
18	Estonia	●		●
19	Finland	●		●
20	France	●		●
21	Gabon	●		
22	Germany	●		●
23	Ghana	●		
24	Greece	●		●
25	Islamic Republic of Iran	●		
26	Italy	●	●	●
27	Japan	●		●
28	Kenya	●		
29	Latvia	●		●
30	Liberia	●		
31	Malaysia	●	●	
32	Malta	●		
33	Marshall Islands	●	●	
34	Mexico	●	●	
35	Monaco	●		
36	Morocco	●		●
37	Netherlands	●	●	●
38	New Zealand	●		

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

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
39	Nigeria	●	●	
40	Norway	●		●
41	Oman	●		
42	Panama	●		
43	Philippines	●		
44	Poland	●		●
45	Portugal	●		●
46	Republic of Korea	●	●	●
47	Russian Federation	●		
48	Singapore	●		
49	Slovakia	●		●
50	South Africa	●		
51	Spain	●	●	●
52	Sri Lanka	●		
53	Sweden	●	●	●
54	Syrian Arab Republic	●		
55	Trinidad and Tobago	●		
56	Turkey	●	●	●
57	United Arab Emirates	●		
58	United Kingdom	●		●
59	Uruguay	●		
60	Venezuela (Bolivarian Republic of)	●		

1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Kuwait	●	●
2	Chile	●	●
3	Peru	●	●
4	Saudi Arabia	●	●
5	Thailand	●	●
6	Ukraine	●	●

1.3 Intergovernmental organisations

		1992 Fund	Supplementary Fund
1	European Commission	●	●
2	International Maritime Organization (IMO)	●	●

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	BIMCO	●	●
2	Comité Maritime International (CMI)	●	●
3	Conference of Peripheral Maritime Regions (CPMR)	●	●
4	International Association of Classification Societies Ltd (IACS)	●	●
5	International Association of Independent Tanker Owners (INTERTANKO)	●	●
6	International Chamber of Shipping (ICS)	●	●
7	International Group of P&I Associations	●	●
8	International Spill Control Organization (ISCO)	●	●
9	International Tanker Owners Pollution Federation Ltd (ITOPF)	●	●
10	Oil Companies International Marine Forum (OCIMF)	●	●
11	World LP Gas Association (WLPGA)	●	●

* * *

ANNEX II

MANDATE AND COMPOSITION OF THE
CONSULTATION GROUP ON INTERIM PAYMENTS

At its October 2015 session, the 1992 Fund Administrative Council, acting on behalf of the 20th session of the 1992 Fund Assembly, recalled that, in July 2011, the 1992 Fund 6th intersessional Working Group had established a Consultation Group of a small number of Member States, the Comité Maritime International (CMI), the International Group of P&I Associations (International Group) and the Secretariat to further consider the complex legal and technical issues of subrogation rights and interim payments.

The Administrative Council further recalled that the Consultation Group had met in July and October 2011 to discuss how to proceed and, as a result of the discussions, the Director and the International Group had decided to jointly commission a study to address, *inter alia*, the following issues:

(i) the practice that had been followed by the P&I Clubs and the IOPC Funds in making interim payments under the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention, and previously under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention;

(ii) the problems faced by P&I Clubs when making interim payments; and

(iii) the possible solutions to the problems identified in (ii) above.

The Administrative Council also recalled that the Secretariat and the International Group had engaged the services of Mr Måns Jacobsson (a former Director of the IOPC Funds) and the late Mr Richard Shaw of CMI to carry out the study.

The Administrative Council further recalled that, at its April 2012 meeting, the Working Group had considered the results of the legal analysis conducted by Mr Jacobsson and Mr Shaw (document IOPC/APR12/10/1) as well as a draft Assembly Resolution proposed by the International Group but that no agreement had been reached.

The Administrative Council also recalled that the International Group and the Director had held a number of constructive and useful meetings since October 2013 on the issue of interim payments with the aim of finding a solution which would be agreeable to both the International Group and the IOPC Funds. Options discussed had included a possible amendment to the 2006 Memorandum of Understanding between the International Group and the Funds[<1>] which does not contain any provisions on interim payments, and the adoption of an Assembly Resolution.

The Administrative Council further recalled, however, that as the subject was complex and difficult, no form of wording suitable to both parties had yet been found and the parties were continuing to discuss the issues.

In order to make progress on this matter, the 1992 Fund Administrative Council decided to establish a Consultation Group to work with the Director and the International Group on the issue of interim payments with the following mandate and composition:

[<1>] Memorandum of Understanding between the International Group and the 1992 Fund and Supplementary Fund signed on 19 April 2006.

Mandate

1. To examine the issues which need to be resolved in respect of interim payments.

2. To discuss the text of a new Memorandum of Understanding (MoU) between the International Group and the 1992 Fund and Supplementary Fund which would contain the terms and conditions under which interim payments would be made in future.

3. To make recommendations to the governing bodies at their October 2016 sessions.

Composition

1. The Consultation Group shall be composed of :

   Germany, Mr Volker Schoefisch
   Greece, Lt Commander Antonios Doumanis
   Italy, Minister Plenipotentiary Antonio Bandini
   Japan, Mr Jotaro Horiuchi
   Nigeria, Captain Ibraheem Olugbade

2. The Consultation Group may wish to consult with the Chairman of the 1992 Fund Assembly and the Chairman of the Supplementary Fund Assembly.

3. The Consultation Group may also wish to consult with legal and other experts as required.

4. The Consultation Group will elect its own Chairman.

5. The Consultation Group will conduct its work in English and no interpretation facilities will be provided.

* * *

ANNEX III

Amendments adopted at the October 2015 sessions of the governing bodies in respect of the Financial Regulations of the 1992 and Supplementary Funds

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (as amended by the 1992 Fund Administrative Council, acting on behalf of the 20th session of the Assembly, at its 14th session held from 19 October – 23 October 2015)
Regulation 1 *Definitions* 1.1 The "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.
1.2 The "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established pursuant to Article 2.1 of the 1992 Fund Convention.
1.3 "The Supplementary Fund Protocol" means the Protocol of 2003 to the 1992 Fund Convention.
1.4 "The Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund 2003, established pursuant to Article 2.1 of the Supplementary Fund Protocol.
1.5 "Member State" means a State for which the 1992 Fund Convention is in force.
1.6 "Person", "Owner", "Pollution Damage", "Incident" and "Guarantor" have the same meaning as in Article 1 of the 1992 Fund Convention.
1.7 "Associated person" has the same meaning as in Article 10.2(b) of the 1992 Fund Convention.
1.8 "Assembly" means the Assembly referred to in Article 17 of the 1992 Fund Convention or, where appropriate, a subsidiary body established by the Assembly in accordance with Article 18.9 of the 1992 Fund Convention.
1.9 "Director" means the Director referred to in Article 16 of the 1992 Fund Convention.
1.10 "Claim" means any application for compensation for pollution damage made to or against an owner, his or her guarantor or the 1992 Fund.
1.11 "Claimant" means any person making a claim.
1.12 "SDR" means the Special Drawing Right as defined by the International Monetary Fund.
1.13 "Internal Regulations" means the Internal Regulations of the 1992 Fund.

Regulation 9

Management of Monies

9.2 The Director may authorise officers to act as signatories on behalf of the 1992 Fund in giving payment instructions. The 1992 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1992 Fund when signed as follows:

(a) for any sum up to £100 000, by any two officers from category A or B;

(b) for any sum in excess of £100 000, by one officer from category A plus one officer from category A or B.

For the purposes of this Regulation, the categories are as follows:

Category A Director, Deputy Director/Head of the Finance and Administration Department and Head of External Relations and Conference Department

Category B Head of the Claims Department, Legal Counsel and Finance Manager

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

Regulation 10

Investment of Assets

10.3 The 1992 Fund shall have a joint Investment Advisory Body with the Supplementary Fund, whose members are appointed by the Assembly. The Body shall advise the Director in general terms on investment matters, in accordance with the mandate decided by the Assembly set out in Annex 1 to these Regulations.

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

(a) the 1992 Fund's assets shall be held in Pounds Sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future;

(b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;

(c) the maximum investment in any bank or building society of the 1992 Fund's assets shall not normally exceed 25% of these assets or £10 million, whichever is the higher;

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

(e) any exceptions to the normal limit in Financial Regulation 10.4(c) and (d), shall be reported to the Assembly at its next regular session.

These principles shall be reviewed from time to time.

Regulation 13

Audit Body

The 1992 Fund shall have a joint Audit Body with the Supplementary Fund, whose members are appointed by the Assembly. The Audit Body shall report to the Assembly in accordance with the mandate set out in Annex II to these Regulations.

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND

(as amended by the Supplementary Fund Assembly at its 11th session held from 19–23 October 2015)

Regulation 1

Definitions

1.1 The "Supplementary Fund Protocol" means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

1.2 The "Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund 2003, established pursuant to Article 2.1 of the Supplementary Fund Protocol.

1.3 The "1992 Fund" means the International Oil Pollution Compensation Fund 1992, established pursuant to Article 2.1 of the 1992 Fund Convention.

1.4 "Member State" means a State for which the Supplementary Fund Protocol is in force.

1.5 "Person", "Owner", "Pollution Damage", "Incident" and "Guarantor" have the same meaning as in Article 1 of the 1992 Fund Convention

1.6 "Associated person" has the same meaning as in Article 10.2(b) of the 1992 Fund Convention.

1.7 "Assembly" means the Assembly referred to in Article 16.1 of the Supplementary Fund Protocol or, where appropriate, a subsidiary body established under Article 16.2 of that Protocol in conjunction with Article 18.9 of the 1992 Fund Convention.

1.8 "Director" means the Director referred to in Article 16.1 of the Supplementary Fund Protocol.

1.9 "Claim" means any application for compensation for pollution damage made to or against an owner, his or her guarantor or the 1992 Fund.

1.10 "Claimant" means any person making a claim.

1.11 "Established claim" means a claim referred to in Article 1.8 of the Supplementary Fund Protocol.

1.12 "Internal Regulations" means the Internal Regulations of the Supplementary Fund.

Regulation 9

Management of Monies

9.2 The Director may authorise officers to act as signatories on behalf of the Supplementary Fund in giving payment instructions. The Supplementary Fund's bankers shall be empowered to accept payment instructions on behalf of the Supplementary Fund when signed as follows:

(a) for any sum up to £100 000, by any two officers from category A or B;

(b) for any sum in excess of £100 000, by one officer from category A plus one officer from category A or B.

For the purposes of this Regulation, the categories are as follows:

Category A Director, Deputy Director/Head of the Finance and Administration Department and Head of the External Relations and Conference Department

Category B Head of the Claims Department, Legal Counsel and Finance Manager

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

Regulation 10

Investment of Assets

10.3 The Supplementary Fund shall have a joint Investment Advisory Body with the 1992 Fund, whose members are appointed by the 1992 Fund Assembly. The Investment Advisory Body shall advise the Director in general terms on investment matters, in accordance with the mandate decided by the Assembly set out in Annex I to these Regulations.

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

(a) the Supplementary Fund's assets shall be held in Pounds Sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future;

(b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;

(c) the maximum investment in any bank or building society of the Supplementary Fund's assets shall not normally exceed 25% of these assets or £10 million, whichever is the higher;

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

(e) any exceptions to the normal limit in Financial Regulation 10.4(c) and (d), shall be reported to the Assembly at its next regular session.

These principles shall be reviewed from time to time.

Regulation 13

Audit Body

The Supplementary Fund shall have a joint Audit Body with the 1992 Fund, whose members are appointed by the 1992 Fund Assembly. The Audit Body shall report to the Assembly in accordance with the mandate decided by the Assembly set out in Annex II to these Regulations.

ANNEX I TO THE 1992 FUND FINANCIAL REGULATIONS AND TO THE SUPPLEMENTARY FUND REGULATIONS

MANDATE OF THE JOINT INVESTMENT ADVISORY BODY OF THE 1992 FUND AND THE SUPPLEMENTARY FUND

1 The Investment Advisory Body of the International Oil Pollution Compensation Fund 1992 and the International Oil Pollution Compensation Supplementary Fund is composed of three persons appointed by the Assembly of the International Oil Pollution Compensation Fund 1992 for three years.

2 The mandate of the Investment Advisory Body is:

(a) to advise the Director in general terms on investment matters;

(b) in particular, to advise the Director on the tenor of the Funds' investments and the suitability of institutions used for investment purposes;

(c) to draw the Director's attention to any developments which may justify a revision of the Funds' investment policy as laid down by the governing bodies; and

(d) to advise the Director on any other matters relevant to the Funds' investments.

3 The Body shall meet at least three times a year. The meetings shall be convened by the Director. Any member of the Body may request a meeting to be held. The Director, the Deputy Director/Head of the Finance and Administration Department and Finance Manager shall be present at the meetings.

4 The members of the Body shall be available for informal consultations with the Director in case of need.

5 The Body shall submit, through the Director, to each regular autumn session of the governing bodies, a report on its activities since the previous autumn sessions of the governing bodies.

ANNEX II TO THE 1992 FUND FINANCIAL REGULATIONS AND TO THE SUPPLEMENTARY FUND REGULATIONS

COMPOSITION AND MANDATE OF THE JOINT AUDIT BODY OF THE 1992 FUND AND THE SUPPLEMENTARY FUND

COMPOSITION

1 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole and shall not receive any instructions from anyone, including their Governments.

2 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. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director in response to a call for nominations made by the Director. The Chairperson of the 1992 Fund Assembly will, in consultation with the Chairperson of the Supplementary Fund Assembly, propose the name of one of the elected members of the Audit Body for consideration and approval by the governing bodies as Chairperson of the Audit Body.

3 Members of the Audit Body shall hold office for three years, once renewable. Should nominations for election to the Audit Body not be sufficient to fill vacancies at an election, existing members of the Audit Body having served two terms will be eligible for a once-only re-election, provided they are re-nominated by one or more 1992 Fund Member States. The external expert shall hold office for three years, twice renewable.

4 Travel and subsistence expenses of the members of the Audit Body shall be paid by the Organisations. The Assembly of the 1992 Fund will, from time to time, decide on the quantum of the honorarium paid to the six elected members and the fee paid to the external expert. The timing and method of payment will be agreed between the Audit Body and the Director.

MANDATE

5 The Audit Body shall:

(a) review the adequacy and effectiveness of the Organisations' management and financial systems, financial reporting, internal controls, operational procedures, risk management and related matters;

(b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss matters referred to in (a) above and matters raised by the external audit;

(c) discuss with the External Auditor the nature and scope of each forthcoming audit and provide input to the development of the strategic audit plan;

(d) review the Organisations' Financial Statements and reports;

(e) consider all relevant reports by the External Auditor, including reports on the Organisations' Financial Statements, and make appropriate recommendations to the Funds' governing bodies;

(f) manage the process for the selection of the External Auditor; and

(g) undertake any other tasks or activities as requested by the Funds' governing bodies.

6 The Chairman of the Audit Body shall report on its work to each regular session of the 1992 Fund Assembly and the Supplementary Fund Assembly.

7 Every three years the functioning of the Audit Body and its mandate shall be reviewed by the 1992 Fund Assembly and the Supplementary Fund Assembly on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX IV

Amendments adopted at the October 2015 sessions of the governing bodies in respect of the Internal Regulations of the 1992 and Supplementary Funds

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992

(as amended by the 1992 Fund Administrative Council, acting on behalf of the 20th session of the Assembly, at its 14th session held from 19 October – 23 October 2015)

Regulation 1

Definitions

1.1 The "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

1.2 The "1992 Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.

1.3 The "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established pursuant to Article 2.1 of the 1992 Fund Convention.

1.4 The "Supplementary Fund Protocol" means the Protocol of 2003 to the 1992 Fund Convention.

1.5 The "Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund, 2003, established pursuant to Article 2.1 of the Supplementary Fund Protocol.

1.6 "Member State" means a State for which the 1992 Fund Convention is in force.

1.7 "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", "Contributing Oil", "Guarantor" and "Terminal Installation" have the same meaning as in Article 1 of the 1992 Fund Convention.

1.8 "Tonne" in relation to oil means a metric ton.

1.9 "Assembly" means the Assembly referred to in Article 17 of the 1992 Fund Convention or, where appropriate, a subsidiary body established by the Assembly in accordance with Article 18.9 of the 1992 Fund Convention.

1.10 "Director" means the Director referred to in Article 16 of the 1992 Fund Convention.

1.11 "Claim" means any application for compensation for pollution damage made to or against an owner, his or her guarantor or the 1992 Fund.

1.12 "Claimant" means any person making a claim.

1.13 "SDR" means the Special Drawing Right as defined by the International Monetary Fund.

Regulation 12

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Head of the External Relations and Conference Department, the Head of the Claims Department or the Legal Counsel, in that order, to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chairman of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume their responsibilities.

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND

(as amended by the Supplementary Fund Assembly at its 11th session held from 19-23 October 2015)

Regulation 1
Definitions

1.1	The "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992.
1.2	The "1992 Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.
1.3	The "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established pursuant to Article 2.1 of the 1992 Fund Convention.
1.4	The "Supplementary Fund Protocol" means the Protocol of 2003 to the 1992 Fund Convention.
1.5	The "Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund, 2003, established pursuant to Article 2.1 of the Supplementary Fund Protocol.
1.6	"Member State " means a State for which the Supplementary Fund Protocol is in force.
1.7	"Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", "Contributing Oil", "Guarantor" and "Terminal Installation" have the same meaning as in Article 1 of the 1992 Fund Convention.
1.8	"Tonne" in relation to oil means a metric ton.
1.9	"Assembly" means the Assembly referred to in Article 16.1 of the Supplementary Fund Protocol or, where appropriate, a subsidiary body established by the Assembly in accordance with Article 16.2 of the Supplementary Fund Protocol in conjunction with Article 18.9 of the 1992 Fund Convention.
1.10	"Director" means the Director referred to in Article 16.1 of the Supplementary Fund Protocol.
1.11	"Claim" means any application for compensation for pollution damage made to or against an owner, his or her guarantor or the 1992 Fund.
1.12	"Claimant" means any person making a claim.
1.13	"SDR" means the Special Drawing Right as defined by the International Monetary Fund.
1.14	"Established claim" has the same meaning as in Article 1.8 of the Supplementary Fund Protocol.

Regulation 12

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Head of the External Relations and Conference Department, the Head of the Claims Department or the Legal Counsel, in that order, to act on his or her behalf in the fulfilment of the functions set out in Article 16 of the Supplementary Fund Protocol in conjunction with Article 29 of the 1992 Fund Convention, and to be the legal representative of the Supplementary Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chairman of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume their responsibilities.

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ANNEX V

RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND

(as amended by the Supplementary Fund Assembly, at its 11th session held from 19 October – 23 October 2015)

Rule 5

The Director shall invite the following to be represented as observers at any session of the Assembly:

(a) the 1992 Fund;

(b) the United Nations;

(c) the International Maritime Organization;

(d) any other specialized agency of the United Nations whose interests and those of the Supplementary Fund are of common concern;

(e) any other inter-governmental organisation and any international non-governmental organisation which the Assembly has decided to admit to its meetings in accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.10 of the 1992 Fund Convention.

Rule 21

At the opening of each regular session of the Assembly, the Director shall chair until the Assembly has elected a Chairman for the session.

Rule 42

In addition to exercising the powers conferred upon him or her elsewhere by these Rules, the Chairman shall declare the opening and the closing of the session of the Assembly and, subject to the Assembly's wishes, he or she shall determine the hours of meetings and may adjourn meetings. The Chairman shall direct the discussion and ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions resulting from the voting.

Rule 42*bis*

During the discussions of any matter, a representative of a Member State or observer delegation who would like their entire statement to be inserted in the Record of Decisions of the session should say so at the moment that they make their statement. In such cases, a written copy of the statement should be passed to a member of the Secretariat immediately after it is made. Otherwise, it will be understood that a summary, drafted by the Secretariat, reflecting the key points and sense of the intervention will be acceptable in the Record of Decisions of the session.

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ANNEX VI
2016 Administrative Budget for the 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2014 expenditure for 1992 Fund		2014 budget appropriations for 1992 Fund		2015 budget appropriations for 1992 Fund	2016 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 851 847*		*2 061 920*		2 062 790	2 110 495
(b)	Separation and recruitment	*44 010*		*40 000*		40 000	80 000
(c)	Staff benefits, allowances and training	*567 312*		*645 775*		650 570	731 665
(d)	Conscious rewarding scheme [<1>]	-		-		20 000	20 000
	Sub-total		***2 463 169***		***2 747 695***	**2 773 360**	**2 942 160**
II	**General services**						
(a)	Rent of office accommodation (including service charges and rates)	*327 466*		*332 800*		346 800	337 800
(b)	IT (hardware, software, maintenance and connectivity)	*248 598*		*221 615*		223 480	222 600
(c)	Furniture and other office equipment	*7 926*		*13 000*		13 000	10 800
(d)	Office stationery and supplies	*8 605*		*15 000*		12 500	12 500
(e)	Communications (courier, telephone, postage)	*27 456*		*45 000*		35 000	35 000
(f)	Other supplies and services	*26 949*		*35 000*		35 000	28 500
(g)	Representation (hospitality)	*21 408*		*20 000*		20 000	20 000
(h)	Public information	*119 787*		*110 000*		130 000	110 000
	Sub-total		***788 195***		***792 415***	**815 780**	**777 200**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' [<2>] governing bodies and intersessional Working Groups		***136 843***		***130 000***	**130 000**	**110 000**
IV	**Travel**						
	Conferences, seminars and missions		***40 213***		***100 000***	**100 000**	**100 000**
V	**Other expenditure (previously Miscellaneous expenditure)**						
(a)	Consultants' and other fees	*171 383*		*100 000*		150 000	150 000
(b)	Audit Body	*148 351*		*165 000*		205 000	195 000
(c)	Investment Advisory Body	*70 565*		*70 850*		72 500	73 000
	Sub-total		***390 299***		***335 850***	**427 500**	**418 000**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		-		***60 000***	**60 000**	**60 000**
Total joint Secretariat expenditure I-VI (excluding External Audit fees)			***3 818 719***		***4 165 960***	**4 306 640**	**4 407 360**
VII	**External Audit fees 1992 Fund only**		*48 500*		*48 500*	47 500	47 500
VIII	**Relocation costs 1992 Fund only**		***35,859***		***250,000***	***250,000***	250 000
Total Expenditure I-VIII			***3 903 078***		***4 464 460***	**4 604 140**	**4 704 860**

[<1>] Expenditure and budget for 'Conscious rewarding scheme' in 2014 was included under 'Salaries'

[<2>] The 1971 Fund was wound up on 31 December 2014.

2016 Administrative Budget for the Supplementary Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2014 EXPENDITURE	2014 BUDGET APPROPRIATIONS	2015 BUDGET APPROPRIATIONS	2016 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	32 000	32 000	33 000	34 000
II	Administrative expenses (including external audit fees)	3 600	13 600	13 500	13 500
Supplementary Fund Budget Appropriation		**35 600**	**45 600**	**46 500**	**47 500**