



INTERNATIONAL
OIL POLLUTION
COMPENSATION
SUPPLEMENTARY
FUND

ASSEMBLY
1st session
Agenda item 40

SUPPFUND/A.1/39
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RECORD OF DECISIONS OF THE FIRST SESSION OF THE ASSEMBLY

(held from 14 to 22 March 2005)

Chairman:	Captain Esteban Pacha (Spain)
First Vice-Chairman:	Mr Nobuhiro Tsuyuki (Japan)
Second Vice-Chairman:	Mrs Birgit Sølling Olsen (Denmark)

Opening of the session

The 1st session of the Assembly of the Organisation established under the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), was opened by the Secretary-General of the International Maritime Organization (IMO), Mr Efthimios E. Mitropoulos.

The Secretary-General explained that the proposal to establish the Supplementary Fund had arisen after concerns had been raised that the amount of compensation available for oil pollution damage caused by tankers might be inadequate, particularly in the case of large oil spills and in view of the soaring clean-up costs. He pointed out that the proposal had received an added impetus through incidents such as those involving the tankers *Erika* and *Prestige*, the major pollution damage of which had harmed extensively the natural and economic resources along large areas of the coastline of Western Europe. He further pointed out that, although, fortunately, no human lives had been lost in the process, there had been considerable clean-up costs and many livelihoods had been affected. He referred to the fact that public feelings had run high and political pressure had been brought to bear.

The Secretary-General explained that at the core of the discussions which had ensued was the role of IMO and the suitability of a global regulatory regime to prevent the occurrence of similar incidents in the future. He also explained that to the forefront of discussions was the question of how to ensure that, should a pollution incident occur, victims would be adequately compensated. He pointed out that in the face of calls for regional regulatory alternatives which, if adopted, might well have undermined the cohesive structure of the international regulatory regime, IMO had acted quickly and decisively to put in place new measures, the successful outcome of which demonstrated, once again, the Organization's ability to provide a prompt and effective response to any real needs.

The Secretary-General pointed out that on the technical side, the Organization had adopted amendments to the MARPOL Convention that had resulted in considerably accelerating the phasing out period for single hull tankers - a measure principally designed to reduce the risk of oil spills from tankers involved in low energy collisions or groundings. He also pointed out that on the compensation side, after extensive preparation within the IOPC Funds, the Diplomatic Conference which had adopted the Protocol establishing the Supplementary Fund had been held in May 2003, scarcely six months after the *Prestige* incident, which the Secretary-General considered to be a clear demonstration of IMO's determination to tackle head on issues of sensitivity to its Member Governments and the environment-sensitive community at large.

The Secretary-General reminded the Assembly that the Supplementary Fund would have available an amount of some £436 million (US\$845 million), in addition to the amount of some £161 million (US\$314 million) which was available under the 1992 Conventions, following the increase which had taken effect on 1 November 2003. He also pointed out that as a result, the total amount available for compensation for each future incident in the States which were Members of the Supplementary Fund would be approximately £597 million (US\$1.2 billion), which approximated to the amount available under the United States legislation, the Oil Pollution Act 1990 (OPA 90). He reminded the Assembly that States which chose not to join the Supplementary Fund would continue to be covered by the 1992 Fund, with no reduction in that coverage.

The Secretary-General considered that this remarkable achievement was not that of IMO alone but also reflected the influential role played by the International Oil Pollution Compensation Fund. He commented that since its inception back in 1978, the Fund had not only been an administering body of the affairs entrusted to it, but had expanded its role to include the monitoring and review of the effectiveness of the Civil Liability and the Fund Conventions. He explained that in so doing, it had become the 'right arm' of IMO and the two Organisations had worked closely together over many years to achieve the continuing reform of the international oil pollution compensation regime established by both treaties. He saluted the efforts and achievements of the Funds, their Director, Mr Måns Jacobsson and staff and said that he looked forward to a continuing co-operation with them to the benefit of the two Organisations' constituents and the marine environment on a worldwide basis.

The Secretary-General expressed the view that the convening of this first Assembly of the Supplementary Fund, less than two years after the adoption of the 2003 Protocol, demonstrated not only the well perceived need for an increased availability of compensation, but also showed that States could move speedily to ratify international conventions which were judged to be in the national interest. He informed the Assembly that the 2003 Protocol had already entered into force for eight States and that it would enter into force for a ninth State (Portugal) on 15 May 2005. He expressed his certainty that other States would, in the near future, follow suit and that the Protocol would serve them well in providing adequate compensation for all parties affected by oil pollution damage generated by tanker casualties. He considered that the Supplementary Fund Assembly, which was being constituted at the present session, would have a vital role to play in this process as the main deliberating body.

The Secretary-General wished the Assembly well in the first session and in the coming years and at the same time and above all he expressed the wish that there would be no tanker casualties necessitating the activation of the Supplementary Fund.

Procedural matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document SUPPFUND/A.1/1.

2 Election of Chairman and two Vice-Chairmen

2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Captain Esteban Pacha (Spain)
First Vice-Chairman:	Mr Nobuhiro Tsuyuki (Japan)
Second Vice-Chairman:	Mrs Birgit Sjølling Olsen (Denmark)

2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them. He also assured the Assembly that he would make every effort to serve the interests of the Supplementary Fund as well as the interests of all Member States to the best of his ability.

2.3 The Chairman congratulated the International Maritime Organization (IMO) on its efforts in adopting the Supplementary Fund Protocol, which had culminated with the Diplomatic Conference of 2003 at which the Protocol was adopted. He pointed out that the Protocol had entered into force in the record time of just 22 months, and that thanks to the way in which the process had been managed by the IMO, the Supplementary Fund was today a reality.

2.4 The Chairman congratulated each Member State of the Supplementary Fund and welcomed each member of their delegations to the first session of the Assembly. He pointed out that on this historical occasion, the Assembly had the honour and responsibility of establishing the principles for the functioning of this new international Organisation. He noted that in doing so, the Assembly would be counting on the experience of the 1992 Fund and of its Secretariat as well as the experience of the delegations of the Member States and all the observer delegations attending the session.

2.5 The Chairman expressed his hope that, with the notable improvement in maritime safety conditions and the measures promoted by the IMO to prevent maritime pollution, the risk of incidents in maritime transport was very small, and that the Supplementary Fund would never be required to act. He noted, however, that if it were called upon, the Supplementary Fund would have to provide compensation for the damage caused by pollution incidents as society demanded. The Chairman considered that this was the responsibility of the Supplementary Fund and that it should be its objective.

2.6 The Chairman expressed his hope that the work that the Assembly carried out during the session would encourage other States to begin or quicken the necessary work for accession to the Supplementary Fund Protocol, so that it could reach a truly global dimension.

2.7 The Chairman finished by thanking the Director of the 1992 Fund on behalf of the Assembly for his efforts carried out on the preparations for the entry into force of the Supplementary Fund Protocol and of the first session of the Assembly.

2.8 The Director of the 1992 Fund and the 1971 Fund congratulated the Chairman and Vice-Chairmen on their appointments and made some observations on what he considered an important milestone for the international compensation regime, the setting up of the International Oil Pollution Compensation Supplementary Fund.

2.9 The Director reminded the Assembly that when the 1992 Conventions were adopted, it was widely believed that the high amount of compensation available in relation to the 1969/1971 regime would be plainly sufficient to compensate all claims in full, even in respect of the most serious incidents. He pointed out that very soon, however, it became evident that this was not so.

2.10 The Director mentioned that even the first major case involving the 1992 Fund, the *Nakhodka* incident in Japan, had given rise to claims which had greatly exceeded the amount of

compensation available. He commented that this had become even more evident as a result of the *Erika* incident and later the *Prestige* incident.

- 2.11 The Director pointed out that the Member States of the 1992 Fund had acted rapidly and with determination to create an optional third tier of compensation in a relatively short time span. He said that it was important to note that all 1992 Fund Member States, European as well as non-European, had agreed that the development of the compensation regime should take place on a global basis in London, within IMO and the 1992 Fund, and not on a regional basis.
- 2.12 The Director commented that the importance that Member States attached to the Supplementary Fund was evidenced by the fact that the Protocol had come into force rapidly, within less than two years of the IMO Diplomatic Conference at which it was adopted. He stated that whilst only nine States had ratified the Protocol, he expected to see many more of the 1992 Fund Member States becoming Members of the Supplementary Fund in the very near future.
- 2.13 The Director pointed out that the main advantage of the creation of the Supplementary Fund was obviously that the maximum amount available for compensation was much higher than under the 1992 Conventions alone and that it would therefore be possible to compensate claimants in full for practically all incidents in the foreseeable future. He further pointed out that there was also another very important advantage in that since the Supplementary Fund would stand behind the 1992 Fund, the 1992 Fund would be able to pay claimants in full and would not have to pro-rate payments as had sometimes been the case in the past, causing significant hardship to the victims.
- 2.14 The Director stated that, although it was hoped that incidents so serious that the Supplementary Fund would be called upon to intervene would rarely occur, the Supplementary Fund should nevertheless be prepared to act if the need were to arise.
- 2.15 The Director pointed out that the Supplementary Fund was a separate intergovernmental organisation but that, as had already been emphasised in the discussions in the 1992 Fund Assembly, the Supplementary Fund would apply the same criteria for the admissibility of claims as had been adopted for the 1992 Fund.
- 2.16 The Director assured the Assembly that the staff of the Secretariat of the 1992 and 1971 Funds would, in the event that it were given the task of administering also the Supplementary Fund, endeavour to give the Supplementary Fund the highest possible level of service, to the benefit of Member States, the various stakeholders and, in particular, the victims of major oil pollution incidents. He also pointed out that as the amounts involved in the Supplementary Fund would be much higher than in the 1992 Fund, there would be a significantly greater responsibility on the Funds' Secretariat, and assured the Assembly that the Secretariat would make every effort to fulfill this responsibility.
- 2.17 The Director also expressed his gratitude to the Secretary-General of IMO for the support he and his predecessors had given the 1971 Fund and 1992 Fund over the years and for the personal interest he had shown in the Funds' activities as well as for the assistance which IMO had given the Funds. He stated that he was convinced that the excellent co-operation between IMO and the Funds would continue in the future.
- 2.18 A number of States expressed their satisfaction with the entry into force of the Supplementary Fund Protocol and their hope that many other 1992 Fund Member States would ratify the Protocol in the near future. They also expressed their hope that no oil spill incident would occur which would necessitate the Supplementary Fund to be called upon to pay compensation, but emphasised that the Fund should be ready and able to do so if necessary.
- 2.19 One delegation joined other delegations in expressing its satisfaction on the rapid entry into force of the Supplementary Fund Protocol, but at the same time insisted that, even if the Protocol did respond to an urgent need, it did not completely resolve the question of the revision of the entire

international regime established by the 1992 Civil Liability and Fund Conventions. In this respect, that delegation called upon all the delegations present to continue the work of the Working Group with a view to attaining a revision of those Conventions.

3 Non-contracting States to be invited as observers

- 3.1 It was noted that the Secretary-General of IMO had issued invitations to send observers to the present session of the Assembly to all Member States of the International Oil Pollution Compensation Fund 1992 (1992 Fund) which would not be Members of the Supplementary Fund at the time of the session, as well as to all States having observer status with the 1992 Fund.
- 3.2 The Assembly decided that the following categories of States should be invited to send observers to sessions of the Assembly, and that the Rules of Procedure should be worded accordingly (cf agenda item 5):
- (a) States which have signed the Supplementary Fund Protocol or which have deposited the appropriate instrument in respect of that Protocol, but for which that Protocol is not yet in force;
 - (b) Other States which are Members of the 1992 Fund but not of the Supplementary Fund; and
 - (c) States which would be invited to send observers to meetings of the Assembly of the 1992 Fund, in accordance with the Rules of Procedure of that Fund.
- 3.3 The Assembly decided, therefore, to confirm the invitations issued by the Secretary-General to the States referred to in paragraph 3.1 to attend the present session as observers.

4 Intergovernmental and international non-governmental organisations to be invited as observers

- 4.1 It was noted that the Secretary-General of IMO had invited intergovernmental organisations and international non-governmental organisations which had been granted observer status with the 1992 Fund to send observers to the present session of the Assembly.
- 4.2 The Assembly decided that intergovernmental organisations and international non-governmental organisations that had been granted observer status in respect of the 1992 Fund should have observer status with the Supplementary Fund, unless the Assembly of the Supplementary Fund decided otherwise in respect of a particular organisation, and that the Rules of Procedure as adopted should be worded accordingly (cf agenda item 5).
- 4.3 The Assembly decided, therefore, to confirm the invitations issued by the Secretary-General to the Intergovernmental and non-governmental organisations referred to in paragraph 4.1 above to attend the session as observers.
- 4.4 It was recalled that Rule 5 of the Rules of Procedure of the 1992 Fund Assembly was supplemented by Guidelines on relations between the 1992 Fund and intergovernmental organisations and international non-governmental organisations. In light of its decision set out in paragraph 4.2 above, the Assembly decided that there was no need for any such Guidelines for the Supplementary Fund.

5 Adoption of Rules of Procedure

- 5.1 The Assembly adopted the Rules of Procedure for the Assembly as proposed by the Director of the 1992 Fund in document SUPPFUND/A.1/5.

- 5.2 It was noted that the Rules of Procedure as adopted would be published in document SUPPFUND/A.1/39/1(cf agenda item 12).

6 Examination of credentials

- 6.1 The following Member States were present:

Denmark	Germany	Norway
Finland	Ireland	Spain
France	Japan	

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

- 6.2 Portugal, which had deposited an instrument of ratification to the Supplementary Fund Protocol but for which the Protocol had not yet entered into force, was represented as an observer.

- 6.3 The following States which are Members of the 1992 Fund but not of the Supplementary Fund were represented as observers:

Algeria	Kenya	Poland
Antigua and Barbuda	Latvia	Qatar
Argentina	Liberia	Republic of Korea
Australia	Lithuania	Russian Federation
Bahamas	Malta	Sierra Leone
Belgium	Marshall Islands	Singapore
Cameroon	Mexico	Sweden
Canada	Monaco	Trinidad and Tobago
China (Hong Kong Special Administrative Region)	Morocco	Tunisia
Cyprus	Netherlands	Turkey
Gabon	New Zealand	United Arab Emirates
Ghana	Nigeria	United Kingdom
Greece	Oman	Uruguay
Italy	Panama	Vanuatu
	Philippines	Venezuela

- 6.4 The following States which have observer status with the 1992 Fund were represented as observers:

Benin	Democratic People's	Malaysia
Brazil	Republic of Korea	Peru
Chile	Ecuador	Saudi Arabia
Côte d'Ivoire	Iran (Islamic Republic of)	

- 6.5 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

European Commission
 International Maritime Organization (IMO)
 International Oil Pollution Compensation Fund 1971 (1971 Fund)
 International Oil Pollution Compensation Fund 1992 (1992 Fund)

International non-governmental organisations:

BIMCO

Comité Maritime International (CMI)

Federation of European Tank Storage Associations (FETSA)

International Association of Independent Tanker Owners (INTERTANKO)

International Chamber of Shipping (ICS)

International Group of P&I Clubs

International Union of Marine Insurance (IUMI)

International Tanker Owners Pollution Federation Ltd (ITOPF)

Oil Companies International Marine Forum (OCIMF)

General questions

7 General principles

- 7.1 The Assembly noted that the Diplomatic Conference held in May 2003, which had adopted a Protocol to the 1992 Fund Convention (Supplementary Fund Protocol), had also adopted a Resolution on the Establishment of the International Oil Pollution Compensation Supplementary Fund which requested the 1992 Fund Assembly to authorise and instruct the Director of the 1992 Fund to carry out certain tasks necessary for the setting up of the Supplementary Fund. It also recalled that the 1992 Fund Assembly had instructed the Director to make the necessary preparations for the entry into force of the Supplementary Fund Protocol and to carry out the appropriate studies for this purpose.
- 7.2 The Assembly noted that the 1992 Fund Assembly had expressed the view that the 1992 Fund and the Supplementary Fund should be administered by a joint Secretariat headed by one Director. It was also noted that, at its 8th extraordinary session held in May 2004, the 1992 Fund Assembly had endorsed in general proposals made by the Director of the 1992 Fund in respect of a number of issues relating to the entry into force of the Supplementary Fund Protocol. It was noted that the 1992 Fund Assembly had recognised that any positions it took in respect of the structure or operation of the Supplementary Fund were only proposals and that any decisions on those issues would have to be taken by the Supplementary Fund Assembly. It was further noted that the proposals presented by the Director of the 1992 Fund to the Assembly of the Supplementary Fund had been based on the following assumptions which had been endorsed by the 1992 Fund Assembly at its May 2004 session:
- (a) The Supplementary Fund's Headquarters would be located in London.
 - (b) The 1992 Fund and the Supplementary Fund would be administered by a joint Secretariat headed by a single Director.
 - (c) A simple formula should be found for sharing the costs of running the joint Secretariat between the 1992 Fund and the Supplementary Fund.
 - (d) Since the Supplementary Fund would not make its own examination of compensation claims, but pay compensation for claims which had been recognised by the 1992 Fund or had been accepted as admissible by a decision of a competent court binding on the 1992 Fund, there would be no need for the Supplementary Fund to set up a body to deal with claims for compensation.
- 7.3 It was noted that, in view of the very close link which would exist between the 1992 Fund and the Supplementary Fund, and the link between the 1992 Fund and the 1971 Fund, the 1992 Fund Assembly and the 1971 Fund Administrative Council would be called upon to take certain decisions in the light of the decisions taken by the Supplementary Fund Assembly at its 1st session, and that for this reason, the 1992 Fund Assembly and the 1971 Fund Administrative

Council were holding sessions during the same week as the 1st session of the Supplementary Fund Assembly.

Treaty matters

8 Status of the Supplementary Fund Protocol

- 8.1 The Assembly took note of the information contained in document SUPPFUND/A.1/7 concerning the ratification situation in respect of the Supplementary Fund Protocol and the 1992 Fund Convention.
- 8.2 The Assembly noted that the requirements for the entry into force of the Supplementary Fund Protocol had been fulfilled on 3 December 2004 and that the Protocol had therefore entered into force on 3 March 2005. The Assembly also noted that there were at present eight Member States of the Supplementary Fund and that one more State, Portugal, had deposited an instrument of ratification of the Protocol on 15 February 2005 and would become a Member of the Supplementary Fund on 15 May 2005.
- 8.3 The observer delegation of Sweden stated that the Swedish Parliament was considering the ratification of the Supplementary Fund Protocol, that it was expected that Parliament would approve the ratification on 7 April 2005 and that ratification would take place later that month. The Italian observer delegation informed the Assembly that ratification of the Protocol had received the approval of the Chamber of Deputies of the Italian Parliament and that after examination by the Senate, the final approval would be expected in the near future. The Greek observer delegation informed the Assembly that implementation of the Protocol into national law was under parliamentary consideration in Greece and that this procedure was expected to be completed by the end of March 2005. The observer delegation of Oman informed the Assembly that consideration of ratification of the Protocol was currently at Government level and that the Omani Government hoped to be able to encourage Oman's neighbours to ratify the Protocol. The United Kingdom observer delegation informed the Assembly that it was hoped that the United Kingdom would ratify the Protocol as soon as possible and that the situation in respect of progress towards ratification would be clearer by the Assembly's October session. The Netherlands observer delegation stated that the Netherlands Government was working towards implementation of the Protocol but could not give a precise timetable for ratification.

9 Application of the Supplementary Fund Protocol to the EEZ or an area designated under Article 3(a)(ii)

The Assembly decided that notifications from States on the establishment of an exclusive economic zone (EEZ) or designation of an area under Article 3(a)(ii) of the 1992 Fund Convention received by the Secretary-General of IMO or the Director in respect of the 1992 Fund should automatically apply in respect of the Supplementary Fund Protocol when the States became parties to that Protocol.

Secretariat and Headquarters Matters

10 Headquarters State

- 10.1 The Assembly decided that the headquarters of the Supplementary Fund should be located in the United Kingdom.
- 10.2 The observer delegation of the United Kingdom, on behalf of the host State, welcomed the Supplementary Fund to London.

11 Secretariat of the Supplementary Fund

- 11.1 The Assembly noted that the Supplementary Fund Protocol contained a provision (Article 17.1) to the effect that the Secretariat and Director of the 1992 Fund may function also as the Secretariat and Director of the Supplementary Fund. It was also noted that the Diplomatic Conference which had adopted the Supplementary Fund Protocol had expressed in a Resolution its preference for the 1992 Fund and the Supplementary Fund to share a single Secretariat headed, if appropriate, by the same Director. The Assembly noted that during the consideration in May 2004 by the 1992 Fund Assembly of the preparations for the entry into force of the Supplementary Fund Protocol, the Director had expressed the view that an arrangement under which the Supplementary Fund and the 1992 Fund shared a Secretariat headed by the same Director had great practical and financial advantages, as already demonstrated by the 1992 Fund and 1971 Fund joint Secretariat. It was further noted that at that session the 1992 Fund Assembly had agreed that since it was highly likely that the 1992 Fund would have a wider membership and would be involved in significantly more incidents than the Supplementary Fund, the most practical solution would be for the 1992 Fund Secretariat to administer also the Supplementary Fund.
- 11.2 The Assembly decided, subject to the agreement of the 1992 Fund Assembly and the 1971 Fund Administrative Council, that the Secretariat of the 1992 Fund should, in addition to administering the 1971 Fund, also administer the Supplementary Fund. The Assembly therefore requested the 1992 Fund Assembly and the 1971 Fund Administrative Council to agree to the Secretariat of the 1992 Fund carrying out this task.
- 11.3 It was noted that the 1992 Fund Assembly had decided, at its 9th extraordinary session, to authorise the Secretariat of the 1992 Fund to administer, in addition to the 1971 Fund, also the Supplementary Fund. It was further noted that the 1971 Fund Administrative Council had, at its 16th session, agreed to this arrangement.
- 11.4 The Assembly considered how conflicts of interests between the Supplementary Fund and the 1992 Fund should be dealt with. The Assembly noted that Article 17.2 of the Supplementary Fund Protocol provided that if the Secretariat and the Director of the 1992 Fund also performed the function of the Secretariat and Director of the Supplementary Fund, the Supplementary Fund should be represented, in cases of conflicts of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly. It was also noted that the 1992 Fund Convention contained a corresponding provision (Article 36 quater (b)) in respect of conflicts of interests between the 1992 Fund and the 1971 Fund. It was further noted that conflicts of interests had arisen between those Funds in respect of three incidents and that these conflicts had been resolved by their respective governing bodies.
- 11.5 One delegation stated that whilst it supported the Director's proposal that the Supplementary Fund and the 1992 Fund should share a single Secretariat, it considered that further clarification was still needed as regards cases of conflicts of interests between the 1992 Fund and the Supplementary Fund.
- 11.6 The Assembly agreed with the Director that the solution provided in the Supplementary Fund Protocol was adequate. The Assembly decided that if there were to be a real conflict of interests (as opposed to a hypothetical conflict) between the 1992 Fund and the Supplementary Fund, each of them could be represented by the respective Assembly Chairman. It also decided that if a major conflict of interest (ie a conflict of significant importance) were to arise, the matter should be referred to the respective governing bodies for decision on how the conflict should be resolved.
- 11.7 One delegation expressed its concern over the eventuality of one Member State occupying more than one of the three key posts in question, namely Chairman of the Supplementary Fund Assembly, Chairman of the 1992 Fund Assembly and Director of the Joint Secretariat, which could confer too much influence on one State. The Assembly noted the concern of that delegation but considered that such a situation was unlikely to occur.

12 Appointment of Director

- 12.1 It was noted that the Director of the 1992 Fund was *ex-officio* Director of the 1971 Fund. It was further noted that Article 17.1 of the Supplementary Fund Protocol provided that the Director of the 1992 Fund may function also as Director of the Supplementary Fund.
- 12.2 The Assembly decided to request the 1992 Fund Assembly and the 1971 Fund Administrative Council to agree to the Director of the 1992 Fund performing also the function of Director of the Supplementary Fund.
- 12.3 It was noted that the 1992 Fund Assembly had decided, at its 9th extraordinary session, to authorise the Director of the 1992 Fund to perform also the function of Director of the Supplementary Fund and that the 1971 Fund Administrative Council had, at its 16th session, agreed to this arrangement.
- 12.4 It was noted that the 1992 Fund Assembly had, at its 9th session in October 2004, decided to extend the contract of the present Director, Mr Måns Jacobsson, for a further term of office of two years as from 1 January 2005, to include any period for a smooth transition to the next Director as the 1992 Fund Assembly may decide.
- 12.5 The Assembly appointed Mr Måns Jacobsson, the present Director of the 1992 Fund, as Director of the Supplementary Fund. It was decided that this appointment should take effect immediately and expire on the same date as his appointment as Director of the 1992 Fund expired.
- 12.6 Mr Måns Jacobsson, the Director of the 1992 Fund and the 1971 Fund, accepted his appointment as Director also of the Supplementary Fund, and expressed his gratitude for the renewed confidence shown in him through this appointment. He assured the Assembly, on behalf of all members of the joint Secretariat of the three Organisations, that they would make their best endeavours to serve the Member States of the Supplementary Fund as well as those of the 1992 Fund and former Members of the 1971 Fund. The Director stated that it would be an essential task of the joint Secretariat to ensure that the international compensation regime was operated in such a way that it continued to meet the needs of society in respect of compensation for oil pollution damage. He expressed the view that it was crucial for the Supplementary Fund to enjoy the same strong support from governments and public bodies, as well as from the various private interests involved in oil spills, as the 1992 Fund and 1971 Fund had always enjoyed.
- 12.7 It was noted that at its 9th extraordinary session the 1992 Fund Assembly had decided that some editorial amendments would have to be made to the contract between the 1992 Fund and the Director to cover his duties as Director of the Supplementary Fund. It was also noted that the 1992 Fund Assembly had authorised its Chairman to negotiate with the Director the appropriate amendments and to sign the required document.
- 12.8 In the light of the decisions of the governing bodies of the three Funds, the Assembly decided that there was no need for a provision in its Rules of Procedure corresponding to Rule 54 in the 1992 Fund Assembly's Rules of Procedure which dealt with appointment of Director (cf agenda item 5).

13 Staff Regulations and Rules

- 13.1 The Assembly noted that, in the light of the decision that the Secretariat and the Director of the 1992 Fund should also perform the functions of Secretariat and Director of the Supplementary Fund, the Director and other staff members would be employed only by the 1992 Fund, and that there was therefore no need for a separate set of Staff Regulations for the Supplementary Fund.

- 13.2 It was noted that the 1992 Fund Assembly had decided at its 9th extraordinary session to adopt amendments to the Staff Regulations of the 1992 Fund to allow staff members of the 1992 Fund Secretariat to act also for the Supplementary Fund.

14 Sharing of joint administrative costs with the 1992 Fund and the 1971 Fund

- 14.1 The Assembly considered the apportionment of the costs of running the joint Secretariat between the Supplementary Fund, the 1992 Fund and the 1971 Fund (document SUPPFUND/A.1/13). It was noted that the 1971 Fund contributed to these costs by the payment of a management fee to the 1992 Fund, set at £325 000 for 2004 and 2005 (corresponding to approximately 10% of the administrative expenses of the Secretariat).
- 14.2 The Assembly decided to propose to the 1992 Fund Assembly and the 1971 Fund Administrative Council that the Supplementary Fund should pay a flat management fee to the 1992 Fund, initially set at £150 000 per annum (corresponding to approximately 5% of the administrative expenses of the Secretariat), and that for the period 3 March - 31 December 2005 that fee should be £125 000, ie £150 000 per annum pro-rated for a ten month period from the date when the Supplementary Fund Protocol came into force, ie 3 March 2005.
- 14.3 The Assembly suggested that the level of the management fee should be reconsidered for later years in the light of experience in respect of the workload of the Supplementary Fund.
- 14.4 It was suggested that in future a more detailed breakdown should be made of the actual expenses in respect of the Supplementary Fund. The Director undertook to provide more details of expenses which could be attributed specifically to the Supplementary Fund, but stated that it would be difficult to identify time spent by staff on Supplementary Fund matters.
- 14.5 It was noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 9th extraordinary session and 16th session respectively, agreed to the apportionment of the costs for operating the joint Secretariat in the form of the Supplementary Fund paying a flat management fee to the 1992 Fund as set out in paragraph 14.2.

15 Headquarters Agreement

- 15.1 The Assembly noted that the Director of the 1992 Fund had entered into consultations with the United Kingdom Government on the preparation of a Headquarters Agreement governing the relationship between the Host State and the Supplementary Fund. It was also noted that the Director had submitted to the United Kingdom Government a draft text of a revised Headquarters Agreement for the 1992 Fund and a draft text of a Headquarters Agreement for the Supplementary Fund. The Assembly further noted that consultations with the United Kingdom Government on the draft texts were continuing.
- 15.2 The Assembly noted that it would be invited to consider the text of the Headquarters Agreement relating to the Supplementary Fund once a provisional agreement on a text had been reached between the United Kingdom Government and the Director.

16 Lease agreement in respect of the premises for the Supplementary Fund Secretariat

The Assembly noted that the lease agreement for the Portland House premises of the IOPC Funds Secretariat had been entered into on behalf of the 1992 Fund only, as the 1992 Fund Secretariat operated the 1992 Fund and the 1971 Fund (document SUPPFUND/A.1/15). It was also noted that the lease allowed the use of the premises for the operations of other intergovernmental organisations which carried out similar functions to those of the 1992 Fund and that there was therefore no need to amend the lease agreement or to enter into a separate agreement on behalf of the Supplementary Fund.

17 Co-operation agreement with the International Maritime Organization

- 17.1 It was noted that, at its first session, the Assembly of the 1992 Fund had approved a draft Agreement of Co-operation between the 1992 Fund and the International Maritime Organization (IMO) which was based on the corresponding Agreement between the 1971 Fund and IMO concluded in 1971 (document SUPPFUND/A.1/16). In view of the decisions set out in paragraphs 11.2 and 11.3 above that the Supplementary Fund and 1992 Fund should have a joint Secretariat, the Assembly decided to propose to the Secretary-General of IMO that a corresponding agreement should be concluded between IMO and the Supplementary Fund, following very closely the text of the Agreement between IMO and the 1992 Fund.
- 17.2 The Assembly noted that, following discussions with the Secretary-General of IMO, the Director had prepared a draft Agreement between IMO and the Supplementary Fund, reproduced at Annex II of document SUPPFUND/A.1/16. The Assembly approved the draft Agreement, provided that the text of the Agreement would be made gender neutral.
- 17.3 The Assembly noted that the Agreement would have to be considered by the IMO Council and approved by the IMO Assembly before being signed by the Secretary-General of IMO and the Director.

18 Agreement with the International Maritime Organization on administrative arrangements

The Assembly authorised the Director to reach an agreement with the Secretary-General of IMO on an extension of the scope of the current Agreement and License to Occupy and the Underlease relating to the Funds' occupancy in the IMO building to cover also the activities of the Supplementary Fund, as proposed in document SUPPFUND/A.1/17.

19 Submission of oil reports

- 19.1 It was noted that, under Article 13 of the Supplementary Fund Protocol, States which were Members of the Supplementary Fund were obliged to submit reports on contributing oil received during a given calendar year but that reports submitted to the 1992 Fund should be deemed to have been made also to the Supplementary Fund under that Protocol.
- 19.2 The Assembly noted that for States in which contributing oil was only received directly by sea, and not by any other means of transport, the reports to the Supplementary Fund would be identical to those to the 1992 Fund and that it was expected that the great majority of States which were or would become Members of the Supplementary Fund would fall into this category. The Assembly decided that for these States, the Supplementary Fund should simply accept oil reports made under the 1992 Fund Convention. The Assembly noted, however, that States in which contributing oil was received by other means of transport than by sea, such as by pipeline or road, which had previously been received in another State by sea, may need to make separate reports to the 1992 Fund and the Supplementary Fund depending on whether or not the latter State was also a Member of the Supplementary Fund and, if so, the date on which it joined that Fund.
- 19.3 The Assembly noted that the 1992 Fund Assembly had, at its 9th extraordinary session, approved a new text of the 1992 Fund oil reporting form and explanatory notes, the text having been revised in such a way as to permit their use for both the 1992 Fund and the Supplementary Fund.
- 19.4 The Assembly approved the proposed revised oil reporting form and explanatory notes as contained in Annex II of document SUPPFUND/A.1/18 which enabled, *inter alia*, States to indicate whether a report to the 1992 Fund should be considered as a report to the Supplementary Fund also.
- 19.5 The Assembly recalled that Article 14 of the Supplementary Fund Protocol dealt with the case where the aggregate quantity of contributing oil received in a Member State in a given calendar

year was less than 1 million tonnes. It noted that, in such a case, that Member State should assume the obligations that would be incumbent on any person who would be liable to contribute to the Supplementary Fund in respect of oil received in that State in so far as no liable person existed for the aggregate quantity of oil received. The Assembly further noted that this meant that the Member State would be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual contributing oil receipts reported in respect of that State.

- 19.6 The Assembly decided that such a State should not be required to submit a report in respect of any contributing oil which would be deemed to have been received in that State, but that the Director should write to any such State, requesting it to identify the government ministry or authority which would be responsible for the payment of such contributions. It was further decided that in the letter the Director should indicate the quantity of contributing oil for which the State was obliged to pay contributions.

20 Denial of compensation due to non-submission of oil reports

- 20.1 The Assembly noted that when the Supplementary Fund Protocol was drafted, it was decided to insert provisions under which compensation would be denied temporarily or permanently in respect of States that had failed to fulfil their obligations to submit oil reports. It was further noted that this issue was dealt with in Articles 15.2 and 15.3 of that Protocol and that Article 15.2 provided that the Assembly should determine in the Internal Regulations the circumstances under which a State should be considered as having failed to fulfil its obligations. The Assembly considered the Director's proposals on this issue as set out in document SUPPFUND/A.1/19.
- 20.2 Many delegations emphasised that it was essential that the provisions on denial of compensation should be applied rigorously and that appropriate procedures should be decided in advance of any incidents occurring. All delegations that spoke agreed that it should be for the Assembly rather than the Director to decide whether or not a State had fulfilled its obligations to submit oil reports.
- 20.3 Some delegations considered that the Assembly should not take extenuating circumstances into account when determining whether or not a State had fulfilled its obligations to submit oil reports. Other delegations considered that the Assembly would in any case take such circumstances into account and that this issue did not therefore need to be mentioned explicitly in the Internal Regulations.
- 20.4 Several delegations considered that small formal mistakes in the reports on contributing oil should not be considered as grounds for withholding compensation but only those errors and omissions which were of such a nature as to prevent the Secretariat from issuing invoices based on the reports.
- 20.5 Special reference was made to the period of one year after the Director had informed a State that it had not complied with its obligations to submit oil reports laid down in Article 15.3 of the Supplementary Fund Protocol, at the expiry of which compensation would be permanently denied unless the obligations had been complied with. It was noted that this one-year period was fixed. Some delegations considered, however, that the timetable proposed by the Director for notifying States that they had failed to meet their obligation to submit oil reports should be tightened. It was pointed out that, were the Director for any reason to fail to send any of the reminders specified in the Internal Regulations, that would not affect the permanent denial of compensation under Article 15.3 of the Protocol.
- 20.6 The Assembly decided that before a State's failure to meet its obligation was referred to the Assembly, it should be given three months to resolve the situation. It was further decided that if the State had failed to resolve the situation by the expiry of the three-month period, the Director should notify the State accordingly and refer the matter to the Assembly at a session to be held within three months of the date of this second notification. It was also decided that once the

Assembly had concluded that a State had failed to fulfil its obligation to submit oil reports, the Director should immediately notify the State in writing drawing its attention to the provision of Article 15.3 of the Supplementary Fund Protocol, under which compensation would permanently be denied if the State had not complied with its obligation within one year of this notification. It was finally decided that in the event of no response from the State in question resolving the issue, the Director should send reminders after six and nine months.

20.7 The Assembly approved the following text of Internal Regulation 8:

Regulation 8

Denial of compensation due to non-submission of oil reports

- 8.1 A Member State shall be considered as having failed to comply with its obligations in respect of reports on contributing oil receipts as set out in Regulation 4 of the 1992 Fund and Regulation 4 of the Supplementary Fund, and compensation in respect of claims arising from a particular incident shall therefore be denied temporarily under Article 15.2 of the Protocol, if for a given year prior to the occurrence of that incident:
- (i) the Director has neither been notified by that State that no person is liable to contribute to the Supplementary Fund in respect of that State nor received any oil reports for that year;
 - (ii) the Director has not received all oil reports or has received incomplete reports in respect of that State; or
 - (iii) there are deficiencies in respect of one or more reports which would prevent the Supplementary Fund from issuing invoices in respect of those contributors.
- 8.2 When the Director becomes aware that an incident might give rise to payments of compensation by the Supplementary Fund, in addition to the normal procedures for checking whether States have submitted their oil reports, the Director shall promptly assess the situation as regards the affected State's oil reports for all years prior to the occurrence of the incident.
- 8.3 If a Member State has not, in the Director's view, fulfilled its obligation to submit oil reports or if there is uncertainty as to whether its obligation has been complied with, the Director shall notify the State in question, by registered letter to its diplomatic representative accredited to the Government of the United Kingdom of Great Britain and Northern Ireland, inviting the State to take the necessary steps to resolve the issues set out in the notification. If the State in question does not have such a diplomatic representative, the notification shall be sent to the Minister of Foreign Affairs of that State by courier.
- 8.4 If the situation has not been resolved to the Director's satisfaction within a period of three months from the notification referred to in Regulation 8.3, the Director shall notify that State accordingly and refer the matter to the Assembly for its consideration at a session to be held within three months of the date of this second notification.
- 8.5 At the session referred to in Regulation 8.4 the Assembly will decide whether or not the State has fulfilled its obligation to submit reports. In the event that the Assembly decides that the State has failed to comply with its obligations, the Director shall notify the State in writing of the Assembly's decision, drawing the State's attention to the provision of Article 15.3 of the Supplementary Fund Protocol, under which

compensation will be permanently denied if the State has not complied with its obligations to submit oil reports within one year of this notification.

- 8.6 If, six months after the date of the Director's notification of the Assembly's decision, the State has still not fulfilled its obligation to submit reports, the Director shall remind the State in writing of the need to fulfil these obligations in order to avoid compensation being permanently denied after the one-year period has expired.
- 8.7 If, nine months after the date of the Director's notification of the Assembly's decision, the State has still not fulfilled its obligation to submit reports, the Director shall remind the State again in writing of the need to fulfil these obligations in order to avoid compensation being permanently denied after the one-year period has expired.
- 8.8 If, after the expiry of the one-year period referred to in Regulation 8.5, the State has not, in the Director's view, fulfilled its obligation to submit oil reports, the Director shall refer the matter to the Assembly to decide, at a session to be held within three months after the expiry of that period, whether compensation should be permanently denied in respect of that State under Article 15.3 of the Supplementary Fund Protocol.
- 8.9 The Director shall keep the Executive Committee of the 1992 Fund informed of the steps taken in accordance with Regulations 8.2-8.8 so that in the event that the Supplementary Fund Assembly were to decide that compensation should be denied either temporarily or permanently, the Executive Committee can decide whether the 1992 Fund should pro-rate compensation payments in order to ensure that Article 4.5 of the 1992 Convention will be respected.
- 20.8 Several delegations indicated that, in addition to its normal procedures, the Secretariat should take a proactive approach towards encouraging States to fulfil their obligations to submit oil reports. One delegation suggested that States which did not fulfil their obligations should be 'named and shamed', for example on the IOPC Funds' website or in the Annual Report.
- 20.9 The Assembly instructed the Secretariat to consider its normal procedures for monitoring the submission of oil reports and to make recommendations to the next session of the Assembly as to what further measures could be taken to encourage States to fulfil their obligations in this regard. Delegations were also invited to submit proposals.

21 Levying of contributions

- 21.1 The Assembly decided that contributions to the Supplementary Fund should be levied every year and that they should be levied at the same time as contributions were levied to the 1992 Fund and/or to the 1971 Fund.
- 21.2 It was noted that in June 1996 the Assemblies of the 1971 and 1992 Funds had introduced a deferred invoicing system. It was also noted that, under this system, the governing bodies fixed the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year, if necessary.
- 21.3 The Assembly decided that the corresponding deferred invoicing system should be introduced also in respect of the Supplementary Fund.

22 Capping of contributions

- 22.1 The Assembly noted that, as was the case for the 1992 Fund Convention in respect of the early years following its entry into force, Article 18 of the Supplementary Fund Protocol provided for a system of capping of contributions prior to its widespread ratification.

- 22.2 It was noted that, under Article 18 of the Supplementary Fund Protocol, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year. It was also noted that if the application of the provisions in Article 11, paragraphs 2 and 3 of the Protocol would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equalled 20% of the total annual contributions to the Supplementary Fund in respect of that year. It was further noted that the capping provisions shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in Article 14, paragraph 1, had reached 1000 million tonnes or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurred earlier.
- 22.3 The Assembly noted that the capping system under the Supplementary Fund Protocol was, from a technical point of view, identical to that which applied under the 1992 Fund Convention. The Assembly decided that the Supplementary Fund should follow the same procedures in respect of the capping procedures as had been applied by the 1992 Fund (cf document SUPPFUND/A.1/21, paragraph 1.2), namely:

The capping system should apply separately for a given year to each levy for the general fund and to each levy for a major claims fund. The assessments should be made in such a way that the basic levy and the additional capping levy (or capping deduction, in respect of contributors in a capped State) are shown separately in the Fund's accounts and on the invoices sent to contributors.

The Director should make the decision - at the time of invoicing - of whether to cap contributions, since this would make it possible to base the decision on more complete figures on oil receipts than if the decision were taken by the Assembly.

The capping procedure should not apply in respect of decisions to levy contributions taken by the Assembly after the date on which the Director received from Member States reports on contributing oil where the reported quantity received in all Member States (ie those States for which the Supplementary Fund Protocol has entered into force) together exceeded 1 000 million tonnes. It was noted in this context that the timing of a decision by the Assembly to levy contributions could affect whether or not the capping procedure would be applied.

- 22.4 It was noted that as a result of there being at present only a small number of Member States, the aggregate contributions may have to be pro rated in respect of the first levy of contributions to 20% of the total annual contributions to the Supplementary Fund for more than one Member State.

Compensation matters

23 Involvement of the Supplementary Fund in the claims handling process

- 23.1 The Assembly noted that at its 8th extraordinary session, held in May 2004, the 1992 Fund Assembly had noted that there would normally not be any need for the Supplementary Fund to become directly involved in the claims handling process, but would merely have to decide whether and to what extent the Supplementary Fund should pay the proportion of any established claim not paid under the 1992 Conventions (document 92FUND/A/ES.8/4, paragraph 3.6.4). It

was noted that in a document presented to that session, the Director had expressed the view that it would be difficult to lay down in advance the exact conditions under which the Supplementary Fund should commence payments. It was also noted that, for this reason, he had proposed that this issue should be considered by the Supplementary Fund Assembly on a case-by-case basis. It was further noted that the 1992 Fund Assembly had shared the Director's view (document 92FUND/A/ES.8/4, paragraph 3.6.5).

- 23.2 It was noted that under Article 4.4 of the Supplementary Fund Protocol, the Supplementary Fund shall pay compensation in respect of established claims as defined in Article 1.8 of the Protocol, and only in respect of such claims. It was also noted that the concept of 'established claim' meant a claim which had been recognised by the 1992 Fund or had been accepted as admissible by the decision of a competent court binding on the 1992 Fund not subject to ordinary forms of review, and which would have been fully compensated if the limit set out in Article 4.4 of the 1992 Fund Convention had not been applied to that incident.
- 23.3 The Assembly noted that the Supplementary Fund would pay compensation when the 1992 Fund Assembly considered that the total amount of the established claims arising from an incident would exceed, or there was a risk that it would exceed, the aggregate amount of compensation available under the 1992 Conventions, thus resulting in a decision by the 1992 Fund Assembly provisionally or finally that payments by the 1992 Fund would only be made for a proportion of any established claim. It was also noted that the Supplementary Fund Assembly shall then decide whether and to what extent the Supplementary Fund should pay the proportion of any established claim not paid under the 1992 Conventions (Article 5 of the Supplementary Fund Protocol).
- 23.4 One delegation expressed the concern that, in its view, it was not just the payments that should be considered on a case-by-case basis by the Supplementary Fund Assembly but that the question as to whether the Supplementary Fund should become involved in the claims handling process in respect of the proportion of any established claims not paid under the 1992 Conventions in order to enable it to make a decision whether and to what extent the Supplementary Fund should pay might also be determined on a case-by-case basis. A number of other delegations considered, however, that there would normally not be any need for the Supplementary Fund to become directly involved in the claims handling process.
- 23.5 It was noted that, although the Supplementary Fund should not normally make any assessment of claims, the Director needed authorisation from the Supplementary Fund Assembly to make payments on behalf of the Supplementary Fund, as was the case in respect of payments on behalf of the 1992 Fund, which had to be authorised by the 1992 Fund Assembly or Executive Committee.
- 23.6 The Assembly considered that it would be difficult to lay down in advance the exact conditions under which the Supplementary Fund would commence payments and therefore decided that this issue should be considered by the Assembly on a case-by-case basis.

24 Claims Manual

- 24.1 The Assembly noted that the governing bodies of the 1971 and 1992 Funds had developed criteria for the admissibility of various types of claims which were set out in a Claims Manual which was a practical guide to presenting claims for compensation. It was noted that the latest version of the 1992 Fund's Manual, which had been approved by the 1992 Fund Assembly at its October 2004 session, would be published in Spring 2005.
- 24.2 It was noted that at its 8th extraordinary session, held in May 2004, the 1992 Fund Assembly had agreed with the Director's proposal that the 1992 Fund and the Supplementary Fund should issue a joint Claims Manual, based on the 1992 Fund's Claims Manual (document 92FUND/A/ES.8/4, paragraph 3.6.6). It was further noted that at the 1992 Fund Assembly's October 2004 session, the Director, after further consideration, had expressed the view that the Supplementary Fund did not

need a Manual, and had proposed that the 1992 Fund Assembly should make a recommendation to the Supplementary Fund Assembly to this effect. It was also noted that the 1992 Fund Assembly had decided that the question of whether the Supplementary Fund should have a Claims Manual would have to be considered again in the future and that any final decision would have to be left to the Assembly of the Supplementary Fund (document 92FUND/A.9/31, paragraph 23.17).

- 24.3 It was noted that the new version of the 1992 Fund Claims Manual would contain a number of references to the Supplementary Fund, including a statement that the criteria under which compensation claims qualified for compensation from the Supplementary Fund were identical to those of the 1992 Fund. It was also noted that the Claims Manual stated that the 1992 Fund's claims settlement policy, set out in its Manual, also applied to compensation payments by the Supplementary Fund.
- 24.4 One delegation expressed the view that the Supplementary Fund should have a joint Claims Manual with the 1992 Fund. The majority of delegations considered, however, that the Supplementary Fund would not need a Claims Manual, since the Supplementary Fund would not normally be involved in the handling and assessment of claims.
- 24.5 In the light of the provisions in the Supplementary Fund Protocol and for practical reasons, the Assembly decided that the Supplementary Fund should not have a Claims Manual.

25 Establishment of subsidiary bodies

The Assembly decided that there would be no need at present for the Supplementary Fund to set up a body to deal with claims for compensation.

26 Co-operation with P&I Clubs

- 26.1 The Assembly noted that the co-operation between the 1971 and 1992 Funds and the Protection and Indemnity Associations (P&I Clubs) belonging to the International Group of P&I Clubs was governed by a Memorandum of Understanding signed in November 1980 by the International Group of P&I Clubs and the 1971 Fund and extended, by means of an exchange of letters, to cover co-operation between the P&I Clubs and the 1992 Fund. The Assembly also noted that, at its 8th extraordinary session held in May 2004, the 1992 Fund Assembly had instructed the Director to enter into negotiations with the International Group for the purpose of reaching an agreement on an extension of the Memorandum to cover also co-operation between the Clubs and the Supplementary Fund.
- 26.2 The Assembly noted that discussions on this issue would be carried out in the near future and authorised the Director to agree with the International Group on the text of an exchange of letters to this effect.
- 26.3 The Assembly noted that there was no need to extend the application of the special Memorandum of Understanding of 1985 governing the cooperation between The Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1971 and 1992 Funds, to apply also to the Supplementary Fund.

27 Sharing of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund

- 27.1 Since it was likely that the Supplementary Fund would be involved in a very limited number of incidents, the Assembly decided, subject to the agreement of the 1992 Fund Assembly, that the apportionment of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund should be agreed by the governing bodies of the two Funds on a case-by-case basis.

- 27.2 It was noted that, at its 9th extraordinary session, the 1992 Fund Assembly had agreed with the position taken by the Assembly in respect of the apportionment of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund.

Operational matters

28 Adoption of Internal Regulations

- 28.1 The Assembly adopted the Internal Regulations as proposed by the Director of the 1992 Fund in document SUPPFUND/A.1/27, including Regulation 8 on the denial of compensation due to non-submission of oil reports adopted by the Assembly under agenda item 20 (cf paragraph 20.7 above) and the oil reporting form and explanatory notes, which constituted an Annex to the Regulations, adopted by the Assembly under agenda item 19 (cf paragraph 19.4 above). The Director was instructed to make the necessary amendments so as to render the text gender neutral.
- 28.2 It was noted that the Internal Regulations as adopted would be published in document SUPPFUND/A.1/39/2.

29 Adoption of Financial Regulations

- 29.1 The Assembly adopted the Financial Regulations as proposed by the Director of the 1992 Fund in documents SUPPFUND/A.1/28 and SUPPFUND/A.1/28/Corr.1, provided that Financial Regulation 10.4(c) should read:

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

- 29.2 The Director was instructed to make the necessary amendments to the Financial Regulations so as to render the text gender neutral.
- 29.3 It was noted that the Financial Regulations as adopted would be published in document SUPPFUND/A.1/39/3.

30 Appointment of External Auditor

- 30.1 The Assembly decided that the same person should act as External Auditor for the Supplementary Fund, the 1992 Fund and the 1971 Fund.
- 30.2 It was noted that the External Auditor of the 1992 and 1971 Funds, the Comptroller and Auditor General of the United Kingdom, had confirmed that he would be prepared to act also as External Auditor for the Supplementary Fund.
- 30.3 The Assembly appointed the Comptroller and Auditor General of the United Kingdom as External Auditor of the Supplementary Fund. The Assembly decided that the appointment should be from 3 March 2005 to 31 December 2006 (so that the expiry of the terms of office in respect of the three Organisations should coincide).
- 30.4 The Assembly decided that the term of office of the External Auditor should thereafter be four years.

31 Establishment of Audit Body

- 31.1 It was noted that the 1992 Fund and the 1971 Fund had a joint Audit Body.
- 31.2 The Assembly noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 8th extraordinary session and 16th session respectively, decided that the Audit Body of the 1992 and 1971 Funds should also be the Audit Body of the Supplementary Fund. The Assembly also noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at those sessions, adopted a revised mandate of the joint Audit Body.
- 31.3 The Assembly endorsed the decision made by the 1992 Fund Assembly and the 1971 Fund Administrative Council that the Supplementary Fund, the 1992 Fund and the 1971 Fund should have a joint Audit Body.
- 31.4 One delegation expressed the view that if, as proposed by the Director, the 1992 Fund Assembly were to elect the Members of the Audit Body, it would be important that the composition of that Body was such as to ensure that the interests of the Supplementary Fund were protected. Other delegations considered that in view of the fact that all Supplementary Fund Member States were also 1992 Fund Member States, and bearing in mind the independent nature of the Audit Body, it was not necessary for Supplementary Fund Member States to receive special treatment.
- 31.5 The Assembly decided that, in view of the fact that all Supplementary Fund Member States would also be Members of the 1992 Fund, the Supplementary Fund Assembly should not hold elections of the Audit Body Members but instead leave this function to the 1992 Fund Assembly. The Assembly also agreed to the present composition of the Audit Body set out in paragraph 1.3 of document SUPPFUND/A.1/30.
- 31.6 The Assembly endorsed the composition and mandate of the Audit Body that had been adopted by the 1992 Fund Assembly and the 1971 Fund Administrative Council as reproduced in Annex I.
- 31.7 The Assembly noted that the term of office of the present members of the Audit Body expired at the October 2005 sessions of the IOPC Funds' governing bodies.

32 Establishment of Investment Advisory Body

- 32.1 It was noted that the 1971 Fund and the 1992 Fund each had an Investment Advisory Body composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters.
- 32.2 The Assembly noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 9th extraordinary session and 16th session respectively, proposed that there should be a joint Investment Advisory Body for the 1992 Fund, the 1971 Fund and the Supplementary Fund. The Assembly also noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at those sessions, adopted a revised mandate of such a joint Investment Advisory Body.
- 32.3 The Assembly endorsed the proposal made by the 1992 Fund Assembly and the 1971 Fund Administrative Council that the Supplementary Fund, the 1992 Fund and the 1971 Fund should have a joint Investment Advisory Body.
- 32.4 The Assembly decided that, in view of the fact that all Supplementary Fund Member States would also be Members of the 1992 Fund, the Supplementary Fund Assembly should not make appointments to the Investment Advisory Body but instead leave this function to the 1992 Fund Assembly.

- 32.5 The Assembly endorsed the mandate of the joint Investment Advisory Body that had been adopted by the 1992 Fund Assembly and the 1971 Fund Administrative Council reproduced in Annex II.
- 32.6 The Assembly also endorsed the present composition of the Investment Advisory Body set out in paragraph 1.3 of document SUPPFUND/A.1/31.

Financial matters

33 Working capital

- 33.1 The Assembly noted that, in accordance with Financial Regulation 7.1(b) adopted by the Assembly (cf agenda item 29), the Supplementary Fund should maintain a working capital at such a level as the Assembly may decide from time to time.
- 33.2 The Assembly decided that the Supplementary Fund should have a working capital of £1 million.

34 Budget for 2005

- 34.1 The Assembly decided that the first financial period of the Supplementary Fund should cover the period 3 March – 31 December 2005.
- 34.2 The Assembly adopted the budget of the Supplementary Fund for that period, with a total administrative expenditure of £225 000, as proposed by the Director and reproduced in Annex III.

35 Assessment of contributions

- 35.1 The Assembly took the view that it would be preferable to postpone the first levy of contributions to the Supplementary Fund until the extraordinary session of the Assembly to be held in the autumn of 2005. It was recognised that this approach would delay the Supplementary Fund's financial independence, and that the Supplementary Fund would therefore be obliged to take up loans.
- 35.2 The Assembly decided to request the 1992 Fund Assembly to authorise the Director of the 1992 Fund to make the necessary funds available to the Supplementary Fund in the form of loans from the 1992 Fund. It was agreed that such loans would be repaid, with interest, when the Supplementary Fund had received the first levy of contributions decided by the Assembly.
- 35.3 It was noted that at its 9th extraordinary session the 1992 Fund Assembly had authorised the Director of the 1992 Fund to make the necessary funds available to the Supplementary Fund in the form of loans, to be repaid with interest when the Supplementary Fund had received its first levy of contributions, to the extent that this could be done without prejudice to the operations of the 1992 Fund.
- 35.4 In the light of the decision of the 1992 Fund Assembly referred to in paragraph 35.3 above, the Assembly decided to postpone the first levy of contributions until its 1st extraordinary session, to be held in October 2005.

General administrative matters

36 Annual Reports

- 36.1 The Assembly noted that the 1971 Fund and the 1992 Fund currently published a joint Annual Report. The Assembly considered that, in view of the close link that would exist between the 1992 Fund and the Supplementary Fund, it would be preferable that the 1992 Fund, 1971 Fund and the Supplementary Fund should issue joint Annual Reports. The Assembly proposed, subject

to the agreement of the 1992 Fund Assembly and the 1971 Fund Administrative Council, the publication of such joint Annual Reports.

- 36.2 It was noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 9th extraordinary session and 16th session respectively, agreed to the proposal of the Supplementary Fund to publish joint Annual Reports for the three Organisations.

37 Other administrative matters

37.1 Nomenclature

- 37.1.1 The Assembly decided that the following terminology should be issued:

	1971 Fund Convention	1992 Fund Convention	Supplementary Fund Protocol
Full Name	International Oil Pollution Compensation Fund 1971	International Oil Pollution Compensation Fund 1992	International Oil Pollution Compensation Supplementary Fund
Abbreviated Expression	1971 Fund <i>or</i> IOPC Fund 1971	1992 Fund <i>or</i> IOPC Fund 1992	Supplementary Fund <i>or</i> IOPC Supplementary Fund

- 37.1.2 The Assembly noted that in certain circumstances it would be necessary or appropriate to refer to the 1971 Fund, the 1992 Fund and the Supplementary Fund together, and agreed that the following terminology should be used: 'International Oil Pollution Compensation Funds' as the full name, and 'IOPC Funds' as the abbreviated expression.

- 37.1.3 The Assembly noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 9th extraordinary session and 16th session respectively, agreed to the use of the terminology set out in paragraphs 37.1.1 and 37.1.2.

37.2 Logo

- 37.2.1 The Assembly decided that the same logo as the one used by the 1971 Fund and the 1992 Fund should also be used by the Supplementary Fund.

- 37.2.2 The Assembly noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 9th extraordinary session and 16th session respectively, agreed that the same logo should be used for all three Organisations.

Other matters

38 Date of next session

The Assembly decided to hold its next session (1st extraordinary session) during the week of 17-21 October 2005.

39 Any other business

39.1 Joint Resolution on the Joint Secretariat

- 39.1.1 The Assembly noted the view expressed by the Director in document SUPPFUND/A.1/38 that the relationship between the 1971 Fund, the 1992 Fund and the Supplementary Fund, which as decided by the governing bodies should be administered by a joint Secretariat and have a single Director, may not be easily understood by those who were not familiar with the treaty instruments establishing these Organisations. It was noted that the Director had concluded that it would be

useful, therefore, if these decisions were consolidated in a single document. It was also noted that the Director had proposed that the governing bodies should adopt a joint Resolution on this matter. The Assembly noted the Director's view that such a Resolution might be useful in the Funds' dealings with banks and other financial institutions and when the Funds issued powers of attorney or became involved in legal proceedings.

39.1.2 The Assembly adopted the text of the draft of a Joint Resolution on the Joint Secretariat of the 1992 Fund, 1971 Fund and Supplementary Fund as contained in Annex IV.

39.2 Statement by the representative of the Secretary-General of IMO

Mr Gaetano Librando, on behalf of the Secretary-General of IMO, reiterated IMO's best wishes for the future of the Supplementary Fund and hoped that its membership would increase rapidly but that the Supplementary Fund would never be called upon to pay compensation.

40 Adoption of Record of Decisions

The draft Record of Decisions, as contained in document SUPPFUND/A.1/WP.2, was adopted, subject to certain amendments.

* * *

ANNEX I

COMPOSITION AND MANDATE OF THE JOINT AUDIT BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

- 1 The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: one named Chairman nominated by 1992 Fund Member States, five named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations (“outsider”), with expertise and experience in audit matters nominated by the Chairman of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director at least six weeks in advance of the session at which the election will take place.
- 2 Members of the Audit Body shall hold office for three years, once renewable. Of the first Audit Body to be elected, the term of three of those elected from 1992 Fund Member States shall not be renewable.
- 3 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole. The members elected from 1992 Fund Member States shall not receive any instructions from their Governments.
- 4 Travel and subsistence expenses of the six members of the Audit Body elected from 1992 Fund Member States shall be paid by the Organisations. The member not related to the Organisations (“outsider”) shall be paid travel expenses and an appropriate fee.
- 5 The Audit Body shall:
 - (a) review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;
 - (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;
 - (c) discuss with the External Auditor the nature and scope of each forthcoming audit;
 - (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
 - (f) make appropriate recommendations to the governing bodies.
- 6 The Audit Body shall normally meet at least twice a year. The Chairman of the Audit Body and the External Auditor may request that additional meetings should be held. The meetings shall be convened by the Director, in consultation with the Chairman of the Audit Body.
- 7 The External Auditor, the Director and the Head of the Finance and Administration Department shall normally be present at the meetings.

- 8** The Chairman of the Audit Body shall report on its work to each regular session of the governing bodies.
- 9** Every three years the functioning of the Audit Body and its mandate shall be reviewed by the governing bodies on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX II

MANDATE OF THE JOINT INVESTMENT ADVISORY BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

- 1 The Investment Advisory Body of the International Oil Pollution Compensation Funds 1971 and 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 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.

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ANNEX III

BUDGET FOR 2005

ADMINISTRATIVE EXPENDITURE FOR THE SUPPLEMENTARY FUND

		Budget appropriations for the period 3 March - 31 December 2005
		£
I	Management fee payable to 1992 Fund	125 000
II	Administrative costs relating only to the Supplementary Fund (such as fees of External Auditor, legal experts and consultants)	50 000
III	Reimbursement with interest of payments made prior to 3 March 2005 by the 1992 Fund on behalf of the Supplementary Fund	50 000
Total		225 000

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ANNEX IV

**Resolution on the Joint Secretariat
adopted on 22 March 2005
by the Assembly of the International Oil Pollution Compensation Fund, 1992, the
Administrative Council of the International Oil Pollution Compensation Fund, 1971 and the
Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003**

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

THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1971
(1971 Fund), and

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

NOTING that the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 entered into force on 3 March 2005, thereby establishing the Supplementary Fund,

AWARE that since the establishment of the 1992 Fund in 1996, the 1971 Fund and the 1992 Fund have been administered by a joint Secretariat headed by a single Director,

RECALLING that from 1996 to 1998 the Secretariat of the 1971 Fund administered the 1992 Fund, whereas since 1998 the Secretariat of the 1992 Fund has served as Secretariat of the 1971 Fund also,

RECOGNISING the benefits of the present arrangement,

BELIEVING that a similar arrangement in respect of the Supplementary Fund would be beneficial,

CONSIDERING that the 1992 Fund, the 1971 Fund and the Supplementary Fund should be administered by one Secretariat headed by a single Director,

TAKING THE VIEW that the most appropriate arrangement would be for the Secretariat of the 1992 Fund to function as the Secretariat not only of the 1971 Fund but also of the Supplementary Fund and that the Director of the 1992 Fund, in addition to being *ex officio* Director of the 1971 Fund, should also be *ex officio* Director of the Supplementary Fund.

DECIDE

1. The Secretariat of the 1992 Fund shall as hitherto administer the 1971 Fund and shall also administer the Supplementary Fund.
2. The Director of the 1992 Fund shall continue *ex officio* to be Director of the 1971 Fund and shall also *ex officio* be Director of the Supplementary Fund.