INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 12	IOPC/APR12/**12/1**
Original: ENGLISH	27 April 2012

1992 Fund Assembly	**92AES17**	●
1992 Fund Executive Committee	**92EC55**	●
1971 Fund Administrative Council	**71AC28**	●
1992 Fund Working Group 6	**92WG6/4**	●
1992 Fund Working Group 7	**92WG7/1**	●

RECORD OF DECISIONS OF THE APRIL 2012 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 24 to 27 April 2012)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Assembly **(92AES17)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee **(92EC55)**	Ms Ginette Testa (Panama)	Mr Samuel Darse (India)
	Working Group **(92WGR6/4)**	Mr Volker Schöfisch (Germany)	
	Working Group **(92WGR7/1)**	Mrs Birgit Sølling Olsen (Denmark)	
1971 Fund	Administrative Council **(71AC28)**	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

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ANNEXES

Opening of the sessions

1992 Fund Assembly

0.1 The Chairman of the 1992 Fund Assembly attempted to open the 17th extraordinary session of the Assembly at 9.30 but failed to achieve a quorum. At 10.10 however, the following 53 1992 Fund Member States were present and a quorum was therefore achieved:

Algeria	Ghana	Philippines
Antigua and Barbuda	Greece	Poland
Argentina	Grenada	Portugal
Australia	Islamic Republic of Iran	Qatar
Bahamas	Italy	Republic of Korea
Bulgaria	Japan	Russian Federation
Cameroon	Kenya	Saint Lucia
Canada	Liberia	Singapore
China[<1>]	Malaysia	Spain
Cyprus	Malta	Sri Lanka
Denmark	Marshall Islands	Sweden
Dominican Republic	Mexico	Trinidad and Tobago
Ecuador	Morocco	Tunisia
Estonia	Mozambique	Turkey
Fiji	Netherlands	United Kingdom
Finland	Nigeria	Uruguay
France	Norway	Venezuela (Bolivarian Republic of)
Germany	Panama	

1992 Fund Executive Committee

0.2 The 1992 Fund Executive Committee Chairman opened the 55th session of the Executive Committee.

1971 Fund Administrative Council

0.3 The 1971 Fund Administrative Council Chairman opened the 28th session of the Administrative Council.

0.4 The 57 Member States present at the sessions are listed in Annex I, including an indication of States having at any time been Members of the 1971 Fund, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/APR12/1/1/Rev.1**	**92A**	**92EC**	**71AC**		

The 1992 Fund Assembly, 1992 Fund Executive Committee and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/APR12/1/1/Rev.1.

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

1.2

Examination of Credentials – Establishment of the Credentials Committee Document IOPC/APR12/1/2	**92A**	**92EC**			
Participation			**71AC**		
Examination of Credentials – Report of the Credentials Committee Document IOPC/APR12/1/2/1	**92A**	**92EC**			

1.2.1 The governing bodies recalled that at its March 2005 session the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman, to examine the credentials of delegations of Member States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.

1992 Fund Assembly Decision

1.2.2 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Assembly appointed the delegations of Algeria, Antigua and Barbuda, Australia, Mexico and the Russian Federation as members of the Credentials Committee.

1992 Fund Executive Committee

1.2.3 The 1992 Fund Executive Committee took note of the appointment of the Credentials Committee by the 1992 Fund Assembly.

Debate

1.2.4 After having examined the credentials of the delegations of the 1992 Fund Member States, and of the delegations of States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/APR12/1/2/1 that credentials had been received from 57 Member States of the 1992 Fund, including 14 States members of the Executive Committee, and that all were found to be in order.

1.2.5 The 1992 Fund Assembly noted that, during its scrutiny of credentials, the Credentials Committee had noted in its report that a number of credentials had been issued by persons who did not correspond to those identified in Rule 9 of the 1992 Fund Assembly Rules of Procedure, ie the Head of State, Head of Government, Minister of Foreign States or the Ambassador or High Commissioner or by an appropriate authority as determined by the Government and communicated to the Director. The Assembly further noted that the Credentials Committee had observed that some credentials were being signed by persons, including some Alternate Representatives to the International Maritime Organization (IMO), stating that they were acting upon the instructions of the holders of one of these offices but that there was no background justification that the person who had signed the letter was 'an appropriate authority as determined by the Government and communicated to the Director'.

1.2.6 The governing bodies noted that the Credentials Committee had suggested in its report that, given the additional flexibility provided by the governing bodies at their March 2011 sessions to allow credentials to be issued also by the Ambassador or the High Commissioner, Member States might wish to review their own policies as to who should be authorised to issue their credentials. The Credentials Committee had also recommended that those identified in Rule 9 should be used as a matter of preference, or that they officially communicate details of any delegated authority to the Director of the IOPC Funds.

1.2.7 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the April 2012 sessions.

1.3	**Request for observer status**	**92A**				

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

2 Overview

2.1	**Report of the Director**	**92A**		**71AC**		

2.1.1 The Director was pleased to inform the governing bodies that he had been in touch with the former Director, Mr Willem Oosterveen, who had been back working in the Ministry of Justice in The Netherlands since the beginning of the year, and was, to quote him, 'slowly, slowly – getting better and better'.

2.1.2 The Director then provided delegations with an oral report on the major activities of the IOPC Funds since the October 2011 sessions of the governing bodies. He referred, in particular, to the recruitment process which had taken place for the position of Head of the Claims Department and the subsequent appointment of Mr Matthew Sommerville (United Kingdom), formerly Technical Adviser/Claims Manager, to that position as of 8 March 2012.

2.1.3 Mr Maura reminded the governing bodies that the issue of contingency arrangements for the Director and senior Secretariat personnel, and in particular the appointment of a Deputy Director, had been discussed at the October 2011 sessions and that he had requested time to consider this issue. He said that he had since fully considered this matter and that his proposals were reflected in document IOPC/APR12/4/1 for the consideration of the 1992 Fund Assembly at its current session (see section 4.1).

2.1.4 Mr Maura reported that a new member of staff had been recruited since the October 2011 sessions of the governing bodies. It was noted that Ms Emer Padden (Ireland) had been appointed as the External Relations and Conference Coordinator and had taken up her post on 9 January 2012.

2.1.5 With respect to compensation matters, Mr Maura referred to a number of key developments, all of which would be discussed in detail at the 28th session of the 1971 Fund Administrative Council and the 55th session of the 1992 Fund Executive Committee (see section 3). He made particular reference to a new incident, the *Alfa I* (Greece), which had occurred in March 2012. He referred to the *JS Amazing* incident in Nigeria which had first been reported to the 1992 Fund Executive Committee in October 2011 and for which the time bar was approaching, as well as another incident in Nigeria which had occurred in March 2009 at Tin Can Island, Lagos. Mr Maura explained that the latter incident had been reported to the 1992 Fund in January 2012, that, at the time of the sessions, no claims had been filed against the 1992 Fund and that time bar provisions under the Conventions were also likely to apply to this incident very soon.

2.1.6 Mr Maura also reported that the *Hebei Spirit* incident of 2007 continued to provide one of the biggest challenges yet faced by the 1992 Fund, with nearly 129 000 individual claims submitted so far, mainly from the Korean fishing sector. He provided the governing bodies with some of the key figures in connection with this incident as at 28 March 2012, stating, *inter alia*, that 91% of the claims submitted had been assessed and that KRW 155 794 million had been paid by the Skuld Club. Mr Maura explained that when the incident was reported to the 1992 Fund Executive Committee he would be recommending to the Executive Committee that the level of payments be maintained at 35% so as to avoid an overpayment situation. He reported that in January 2012, the Beijing Supreme Court had dismissed the action brought by the 1992 Fund against Samsung C&T Corporation (Samsung C&T) and Samsung Heavy Industries (SHI). He further reported that the owner and the insurer of the *Hebei Spirit* had concluded a settlement agreement with Samsung C&T and SHI under which Samsung C&T and SHI would pay the amount of US$ 10 million to the owner and its insurers. In accordance with the agreement signed by the 1992 Fund and the ship's interests in January 2009, the 1992 Fund had recently recovered 50% of the sum paid, ie US$ 5 million.

2.1.7 With respect to the *Plate Princess* incident, Mr Maura reported that he had received a communication from the Embassy of the Bolivarian Republic of Venezuela to the United Kingdom informing him that a Supreme Tribunal judgement had been rendered to the effect that all appeals in respect of the legal proceedings taken in the Venezuelan courts in respect of the *Plate Princess* incident had been exhausted. He had been requested to notify Member States of this judgement for the purpose of expediting immediate payment of compensation to Venezuelan nationals. Mr Maura explained that it was for this reason that a session of the 1971 Fund Administrative Council had been convened at short notice and that two documents had therefore been submitted in respect of the *Plate Princess* incident for the consideration of the 1971 Fund Administrative Council.

2.1.8 With respect to external relations, Mr Maura was pleased to report that the 2011 edition of the report on Incidents involving the IOPC Funds had been published in March 2012 and that the Annual Report 2011 would be made available during the course of the week.

2.1.9 Mr Maura reported that the Secretariat had held two further informal regional lunch meetings at its offices for London-based representatives of Member States and non-Member States from Africa and from the Middle East and surrounding regions. He noted that eleven such meetings had now taken place and that a number of valuable new contacts had been made. He said that, at the latest meeting, Secretariat staff had taken the opportunity to show the guests the new Document Services website and helped them to register for email notifications of newly-published documents.

2.1.10 Mr Maura said that delegates would have noted that, in light of the decision taken in October 2011, hard copies of documents for the April 2012 meetings of the governing bodies had not been sent out by post for the first time but that hard copies were available in the pigeon holes outside the room. Mr Maura also reported that a new format of incident-related documents had been introduced on an experimental basis and that the documents now only contained the most recent developments on the incident, with Annex I to each document containing all the background information concerning that particular incident. He said that the Secretariat would appreciate any comments on the new format with a view to continuing it for future meetings.

2.1.11 Mr Maura reported that the Secretariat had participated in Interspill 2012, the oil spill conference and exhibition, which had taken place from 13-15 March 2012 in London and that over 1 300 professionals from the oil spill industry from 70 countries had attended the event. He said that the IOPC Funds had shared a stand with IMO and thanked them for their cooperation. He pointed out that the IOPC Funds had also run a short course on claims and compensation and given presentations on current IOPC Funds issues and on 50 years of response technology as well as chairing a session on communications and social media.

2.1.12 Mr Maura reported that outstanding contributions were of great concern to the IOPC Funds' Member States and to the Secretariat and that he wished, therefore, to provide an update on developments since the October 2011 sessions of the governing bodies.

2.1.13 With respect to the Russian Federation, Mr Maura reported that the claims against three contributors by the 1971 and 1992 Funds had been rejected by the Court of First Instance and the Court of Appeal and that the Secretariat was considering an appeal in the Court of Cassation to continue with the legal action. He noted that with respect to the case against a fourth contributor by the 1992 Fund, the Court of Appeal had set the date of 27 April 2012 for its judgement. He said that the Permanent Representative to IMO and the Deputy Minister of Transport of the Russian Federation had been kept informed of the legal actions and their outcomes at each stage.

2.1.14 With respect to South Africa, he reported that contributions amounting to over £1 million were outstanding from three out of the six contributors in South Africa who had questioned their obligation to pay contributions under the Convention as implemented in South African national law. He said that, at a recent meeting held with the Permanent Representative of South Africa to IMO, the Secretariat had been assured that the issue of implementation of the 1992 Fund Convention into national law was being addressed by the Government of South Africa as a priority.

2.1.15 With respect to the former Union of Soviet Socialist Republics (USSR), and more specifically with respect to Georgia, Mr Maura reported that the Secretariat had been informed that a contributor to the 1971 Fund no longer existed and written confirmation of the same was awaited. He said that there were also two contributors in Azerbaijan with outstanding contributions and the 1971 Fund, through the Embassy of the Republic of Azerbaijan in London, had written to the State Oil Company of Azerbaijan Republic to verify the existence of the oil companies.

2.1.16 On a final point, Mr Maura reported that the European Union had adopted a Regulation in March 2012 imposing sanctions on business conducted with the Islamic Republic of Iran. He noted that the International Group of P&I Clubs had submitted an information document on this difficult issue which would be discussed in the 1992 Fund Assembly. He added that the Secretariat was monitoring this issue with interest and welcomed the discussion in the Assembly later in the week.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds Document IOPC/APR12/3/1		**92EC**	**71AC**		

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council took note of document IOPC/APR12/3/1, which contained information on documents for the April 2012 meetings relating to incidents involving the IOPC Funds.

3.2

Incidents involving the IOPC Funds – 1971 Fund: *Plate Princess* Documents IOPC/APR12/3/2/Rev.1 and IOPC/APR12/3/2/1			**71AC**		

3.2.1 The 1971 Fund Administrative Council took note of documents IOPC/APR12/3/2/Rev.1 and IOPC/APR12/3/2/1 containing information on the *Plate Princess* incident which occurred in May 1997, when 3.2 tonnes of crude oil contained within some 8 000 tonnes of ballast water were spilled in Puerto Miranda (Venezuela).

3.2.2 The 1971 Fund Administrative Council also took note of the Director's presentation concerning these documents and recalled that in October 2005, more than eight years after the spill took place, the 1971 Fund had been formally notified as an interested party of two claims by two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union. It was also recalled that this was the first notification of these two claims (first notification).

3.2.3 It was recalled that in May 2006, the 1971 Fund Administrative Council had decided that the two claims by two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union, were time-barred in respect of the 1971 Fund.

3.2.4 It was also recalled that in March 2007, the 1971 Fund was formally notified of both claims as an interested party for the second time (second notification).

Claim by FETRAPESCA

3.2.5 It was also recalled that in February 2009, the Maritime Court of First Instance had accepted the claim by FETRAPESCA, and had ordered payment of damages in an amount to be quantified by court experts. It was recalled that the 1971 Fund had not been formally notified of this judgement.

Claim by Puerto Miranda Union

3.2.6 It was recalled that in a judgement rendered in March 2011, the Maritime Court of First Instance had ordered the shipowner to pay BsF 2 844 983 (£424 000), and the 1971 Fund, although not a defendant, to pay BsF 400 628 022 (£58.8 million), plus costs.

3.2.7 It was also recalled that in March 2011, the master, shipowner and the 1971 Fund appealed the judgement on quantum to the Maritime Court of Appeal, but that in July 2011 the Maritime Court of Appeal dismissed their appeal. It was further recalled that the 1971 Fund requested leave from the Maritime Court of Appeal to appeal to the Supreme Tribunal, but this was refused. It was recalled that the 1971 Fund had requested leave to appeal the decision by the Maritime Court of Appeal to the Supreme Tribunal.

1971 Fund Administrative Council Decision in October 2011

3.2.8 It was recalled that in October 2011, the 1971 Fund Administrative Council decided to confirm its instructions given in March 2011 to the Director not to make any payments in respect of this incident and to continue to monitor the outcome of the legal proceedings in Venezuela. It was further recalled that the 1971 Fund Administrative Council had instructed the Director to prepare a report on the points raised in the intervention by the Venezuelan delegation during the October 2011 session.

3.2.9 It was noted that the Director's report on the points raised in the intervention by the Venezuelan delegation was attached to document IOPC/APR12/3/2/Rev.1 at Annex II.

Developments in the claim by FETRAPESCA

3.2.10 It was noted that in October 2011, the FETRAPESCA fishermen's union had requested the withdrawal of the claim to the Maritime Court of First Instance. In a decision issued later in October 2011, the Maritime Court of First Instance rejected FETRAPESCA's request.

Developments in the claim by Puerto Miranda Union

3.2.11 It was noted that the Supreme Tribunal had rejected the 1971 Fund's request for leave to appeal the July 2011 judgement of the Maritime Court of Appeal in connection with the quantum of the loss.

3.2.12 It was noted that in March 2012, the Puerto Miranda Union had submitted a request to the Maritime Court of First Instance to order the Banco Venezolano de Credito to transfer to the Court the amount of the bank guarantee constituting the shipowner's limitation fund.

3.2.13 It was also noted that in March 2012, the Puerto Miranda Union had also submitted a request to the Maritime Court of First Instance to order the shipowner and the 1971 Fund to voluntarily comply with the provisions of the judgement by the Court of Appeal, and that the 1971 Fund had submitted pleadings opposing this order.

3.2.14 It was further noted that in March 2012, the 1971 Fund had appealed to the Constitutional Section of the Supreme Tribunal against the decision of the Supreme Tribunal denying leave to appeal on the issue of the quantum of compensation. It was noted that the outcome of the appeal was pending.

Director's legal analysis

3.2.15 It was recalled that in October 2011, the 1971 Fund Administrative Council had instructed the Director to prepare a report on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 Civil Liability Convention (1969 CLC).

3.2.16 The 1971 Fund Administrative Council noted that the Director had considered the matter and had also considered the provisions in Article 4, paragraph 5 of the 1971 Fund Convention regarding the principle of equal treatment under the Conventions, insofar as those related to payments of compensation, and had considered the provisions of Article 8 of the 1971 Fund Convention and the provisions of Article X of the 1969 CLC.

Other international conventions containing similar provisions

3.2.17 The 1971 Fund Administrative Council noted that a number of international conventions contained identical 'fraud exceptions' expressed in the same or similar terms to the 1969 CLC and 1971 Fund Convention,[<2>] and several others contained similar provisions.[<3>]

3.2.18 It was also noted that the Director understood that many other international conventions which did not contain a fraud exception contained an exception where recognition and enforcement would be contrary to public policy in the enforcing State.[<4>]

Fraud exception

3.2.19 With respect to Article X of the 1969 CLC, the Director noted that any judgement given by a Court with jurisdiction which is enforceable in the State of origin where it is no longer the subject of ordinary forms of review shall be recognised in any Contracting State, subject to two exceptions, namely where the judgement was obtained by fraud, or where the defendant was not given reasonable notice and a fair opportunity to present its case.

3.2.20 The Director's comments to the 1971 Fund Administrative Council in October 2010 were recalled, where he stated that it was of great concern that the judgement of the Maritime Court of Appeal had accepted documentation which was known not to be genuine and to have been falsified for the purposes of obtaining compensation. The Director recalled that the experts appointed by the 1971 Fund had examined the sets of invoices produced as evidence of normal catch incomes and had concluded that they had been falsified. They were not issued on the dates alleged, nor did they reflect the true expenditure incurred. It was also noted that the witnesses at the hearing before the Maritime Court of First Instance had accepted that the invoices had been prepared after the spill while purporting to pre-date the incident. Notwithstanding this, the Maritime Court of Appeal had accepted that the information in those documents should be used in the calculation of the losses.

3.2.21 It was noted that in the Director's view, the fact that the documentation had been falsified, combined with the implausibility (ie not having the appearance of truth, probability or acceptability) of the outcome of the compensation awarded to the claimants rendered the judgement unenforceable under Article X, paragraph 1(a).

3.2.22 The 1971 Fund Administrative Council noted that the Director therefore considered that the 1971 Fund Administrative Council would be entitled to refuse payment on the grounds of Article X, paragraph 1(a) of the 1969 CLC.

<2> The Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels 1989 (Article 20); The Convention on Liability of Operators of Nuclear Ships and Additional Protocol 1962; The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (Article 40(1)); The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Article 10(1)); The Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal 1999 (Article 21(1)); and The Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources 1977 (Article 12(1)).

<3> The Convention on a Code of Conduct for Liner Conferences 1974 (Article 39(2)(b)) and The Convention on Choice of Court Agreements 2005.

<4> The Arrest Convention 1999 (Article 7(5)); The European Convention on State Immunity 1972 (Article 20(2)); The New York Convention on Recognition of Foreign Arbitral Awards 1959 (Article V(2)); and The European Judgements Regulation 44/2001 (Article 34(1)).

Due process of law exception

3.2.23 The 1971 Fund Administrative Council also recalled the Director's comments in October 2010 that, shortly after the spill had occurred, the 1971 Fund had appointed an expert who visited the terminal where the incident occurred and reported that no fishery or other economic resources were known to have been contaminated or affected.

3.2.24 The Director also recalled that the 1971 Fund had no indication as to the alleged nature and extent of the damage and loss until April 2008 when the amended claim was submitted to the Maritime Court of First Instance. By that time, there was no possibility for the 1971 Fund to carry out any meaningful investigation into the damages detailed in the amended claim. Furthermore, documentary evidence submitted by the claimants in support of their claim was not available to the 1971 Fund before the points of defence had to be submitted.

3.2.25 The 1971 Fund Administrative Council noted that for these reasons, the Director remained of the view that, given the circumstances, the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case and therefore considered that the 1971 Fund Administrative Council would also be entitled to refuse payment on the grounds of Article X, paragraph 1(b) of the 1969 CLC.

Equal treatment

3.2.26 The Director stated that Article 8 of the 1971 Fund Convention was conditional upon the provisions of Article 4, paragraph 5 of the 1971 Fund Convention. It was noted that Article 4, paragraph 5 of the 1971 Fund Convention provides:

> 'Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.'

3.2.27 In this regard, the Director pointed out that FETRAPESCA had obtained a judgement by the Maritime Court of First Instance which condemned the 1971 Fund to pay compensation to be quantified by court experts. FETRAPESCA had requested the withdrawal of the claim but the Court had rejected this request and therefore the judgement in its favour remained valid even though the losses had not yet been quantified.

3.2.28 The 1971 Fund Administrative Council noted that, applying the provisions of Article 4, paragraph 5 of the 1971 Fund Convention, the aggregate amount available to pay compensation under the 1969 CLC and the 1971 Fund Convention ie 60 million SDR, should be distributed such that the proportion should be the same for all established claims. Accordingly, the 1971 Fund Administrative Council noted that the proportion of the available compensation due would not be known until any losses suffered by FETRAPESCA had been established by a final judgement from a competent court.

3.2.29 The 1971 Fund Administrative Council noted that irrespective of the interpretation of the provisions of Article X of the 1969 CLC, it was the Director's opinion that the 1971 Fund Administrative Council should not, at the present time, authorise payment of the losses awarded to the Puerto Miranda Union.

Information provided by the Bolivarian Republic of Venezuela

3.2.30 The 1971 Fund Administrative Council also took note of document IOPC/APR12/3/2/1 submitted by the Secretariat at the request of the Embassy of the Bolivarian Republic of Venezuela informing the Director that in March 2012 all the ordinary and extraordinary appeals in respect of the legal proceedings taken in the courts in the Bolivarian Republic of Venezuela in respect of the *Plate Princess* incident had been exhausted with the rendering of judgement N°AA20-C-2011-000615 of 21 November 2011. The 1971 Fund Administrative Council noted that

the Bolivarian Republic of Venezuela had requested that the decision be notified to the States Parties to the 1992 Fund Convention and of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, for the purpose of expediting immediate payment to Venezuelan nationals in accordance with the provisions of the said Protocol.

The first intervention by the delegation of the Bolivarian Republic of Venezuela (original Spanish)

3.2.31 In response to the Director's presentation, the delegation of the Bolivarian Republic of Venezuela made the following statement (the first of three), which was given to the Secretariat and has been included in its entirety:

'Thank you Mr Chairman and thank you to the Secretariat for the document presented.

Esteemed colleagues from the Member States, before beginning my statement, I would like to request that my statement should be included in full, as established by the Chairman, and I would like to emphasise certain key points.

The long drawn out nature of the case is obvious, almost 15 years, which clearly reflects a fitting process under the rule of law throughout the proceedings and the many different stages and courts. It reflects a sound legal system in a sovereign state, with a final and definitive decision in its highest court. To persist in seeking to challenge this would be a violation of the sovereignty of my State. This was fully discussed and roundly and clearly rejected in our courts. LET US ASK OURSELVES, DOES THAT MEAN WE DO NOT ACCEPT THIS DECISION? And the other question would be: DOES THE FUND HAVE CAPACITY NOT TO ACCEPT IT? This is clearly manipulation and is totally false. When we came to the point of suggesting FRAUD AND THAT THERE WAS NO OPPORTUNITY FOR DEFENCE. That is why this delegation finds itself obliged to emphasise and expand on various points contained in document IOPC/APR12/3/2/Rev.1, as the rest is not necessarily open to discussion, emphasising that it has already been decided by the Supreme Court of our State, and the brandishing of these arguments merely confuses and manipulates opinion among us. Moreover, it has been repeatedly explained throughout the long history of the case. Now we come to the aspects which need further examination.

DOCUMENT IOPC/APR12/3/2/Rev.1

4. DEVELOPMENTS SINCE OCTOBER 2011

4.1 In October, this delegation reported to this Assembly that FETRAPESCA had withdrawn its claim, thereby absolving the Fund from any liability. This delegation again provides a copy of that document to the Secretariat.

4.2 and 4.3
These points refer to the execution of the judgement of 24 September 2009, and of the judgement which calculated the quantum, both of which ordered the shipowner and the Fund to compensate the losses caused to the Venezuelan artisanal fishers by the Plate Princess spill.

4.4
In March 2012, the Fund lodged an Appeal for Review in the Constitutional Chamber of the Supreme Court of Justice, which in our opinion, showed clear disrespect for what had been decided by the Supreme Court itself on 21 November 2011, when it held that all possible avenues of recourse in the case had been exhausted. This appeal does not suspend the execution of the judgement.

5. REPORT OF THE DIRECTOR ON THE STATEMENT OF VENEZUELA OCT/2011

This point was not discussed by the Director in the body of the document, but in an annex, in order to prevent the statement by the Venezuelan delegation to the Funds' Governing Bodies in October 2011 forming part of the content of the document which was produced. This practice by the Fund Director on repeated occasions prevented the delegates of the Member States carrying out an objective analysis of the Plate Princess incident, which was prejudicial to the interests of the Member States, as it considerably increased the compensation to the victims in terms of interest, lost profit, expenses and legal costs.

6. LEGAL ANALYSIS OF THE DIRECTOR

With regard to the Fund's refusal to pay, relying on the provisions of Article X of the 1969 Civil Liability Convention, it should be recalled that in October 2009, when the Venezuelan delegation demanded payment of the compensation to the victims of the Plate Princess incident, in accordance with the final decision handed down on 24 September of that year, the then Director, invoking Article X of the 1969 CLC, requested authorisation from the Administrative Council to file extraordinary appeals against the judgment which ordered the Fund to pay compensation to Puerto Miranda Union, Zulia State. However, the Director advised the Assembly that the decision of the highest Venezuelan court with respect to the extraordinary appeals would be binding on the Fund, in accordance with Article 8 of the Fund Convention (document IOPC/09/3/2/1).

When the Secretariat put the presumption of FRAUD to the Assembly, the Assembly authorised the Director to file extraordinary appeals which would review the substance of the case. These appeals were all decided against the Fund, so it is an aberration to persist with this sterile argument which is not even contemplated in the Fund Convention. It would appear, therefore, that the Fund feels that it is endowed with supra legal character, with power to question judicial decisions of its Member States, and with sufficient authority to ignore the principle of "*pacta sunt servanda*" and thereby, in the name of the States, violates the Charter of the United Nations.

7. WITH REGARD TO FRAUD AND EQUAL TREATMENT

With reference to the Director's observations on the provisions of Article 4, paragraph 5 of the 1971 Fund Convention, which indicate that if the amount of the claims against the Fund exceed the total amount of the compensation owed by it, the available amount will be shared proportionally between the claimants, thus as FETRAPESCA had obtained a judgment against the Fund, the proportion of the compensation available for the claimants would not be known until the losses suffered by Fetrapesca had been determined by a final judgment.

According to Venezuelan Law, as FETRAPESCA withdrew its legal action and execution of the judgment against the 1971 Fund on 7 October 2011, there is no claim by FETRAPESCA whatsoever against the Fund with respect to the Plate Princess incident. That is the meaning of the last paragraph of article 263 of the Civil Procedure Code, when it states "*the act by which the claimant withdraws or the defendant accepts the claim, is irrevocable, even before approval by the Court*". All the Member States attending the October 2011 sessions were informed of this, as during the reading of this delegation's statement, a certified copy of the withdrawal of FETRAPESCA's claim was delivered to the Secretariat of this body. Thus what the Director stated earlier is false!

In the light of the foregoing, we emphasise that there is a serious risk of non-compliance with the letter of the Convention, relying or basing ourselves on another Convention, which would be unacceptable to this delegation and we would be setting a highly negative precedent for any other Member State that might find itself in a similar situation in the future.

This delegation also asks the Director, in this regard, for his opinion on what authority can confirm or decide whether a document is forged or false as he defines it?

Thank you very much.'

Interventions by other delegations

3.2.32 One delegation stated that having listened to the Director's presentation and the intervention of the delegation of the Bolivarian Republic of Venezuela, it wished to make three points to the 1971 Fund Administrative Council, the first of which had not been emphasised sufficiently before, namely that, between the years of 1997 and 2005, no developments had taken place in this incident, to the extent that the claims had become time-barred. This issue constituted a fundamental hurdle to that delegation, meaning that no claims could be paid.

3.2.33 That delegation stated that the second point to note was that for a spill of 3.2 tonnes of oil to have been adjudged to cause claims amounting to the full limit of liability under the 1971 Fund Convention was highly contentious and suspicious, especially when compared to the assessment of earnings of the fishermen in the *Nissos Amorgos* case which had occurred at approximately the same time. That delegation stated, furthermore, that when discussing equal treatment of claimants, the difference between the two cases was very difficult to reconcile. That delegation continued by stating that it was very important that the contributors to the Fund were reassured that when assessments were made, they were fair and reasonable, otherwise the compensation system would break down if such claims were allowed to be paid as there was something very questionable regarding the evidence.

3.2.34 Finally, that delegation stated that when the 1971 Fund had been notified after the time bar, it had not been given a fair opportunity to present its case or to examine the evidence before submitting its defence and this constituted another major obstacle, such that the delegation would have great difficulty in authorising payment under these circumstances.

3.2.35 Another delegation stated that, given that the case had continued for fifteen years, it was in the interests of all parties to find a solution and apply the Conventions, but that there were a variety of issues to be clarified beyond the previous delegation's comments. That delegation stated that some issues, such as the mention of fraud, damaged the discussions. That delegation also requested a list of the States which were Members of the 1971 Fund at the time of the incident which was then provided to delegates during the discussions.

3.2.36 Another delegation stated that this case was important for the future of the compensation regime itself. That delegation stated that there were five major difficulties with the judgement presented, namely that a spill of 3.2 tonnes of oil could never have caused the losses as adjudged by the court experts and that the losses of income per boat of the fishermen were very high. In addition, the claims were time-barred and the 1971 Fund did not have to accept the judgement of a national court in a case of fraud or if the Fund had not been given a reasonable opportunity to defend itself. Accordingly, that delegation fully supported the views of the Director.

3.2.37 Another delegation stated that as mentioned by the delegation of the Bolivarian Republic of Venezuela, the principle *'pacta sunt servanda'* which meant 'agreements must be honoured' was what, in the delegation's opinion, the 1971 Fund Administrative Council was doing in applying Article 8 of the 1971 Fund Convention and Article X of the 1969 CLC. It also stated that it was up to the 1971 Fund Administrative Council to decide whether the exceptions of Article 8 of the 1971 Fund Convention applied. That delegation noted that there had already been a long debate on this issue and that a decision had been taken, that there had been fraud, and that the 1971 Fund had not been given a

fair opportunity to present its case. That delegation further stated that there had been a decision by the 1971 Fund Administrative Council not to pay the claims and it had not heard anything to convince it to change its views regarding that decision taken some time ago.

3.2.38 Another delegation stated that it was important for the IOPC Funds to take account of decisions of the national courts but that it was also important that the Funds should be able to examine those decisions and defend itself. That delegation also noted that a final decision to pay the Puerto Miranda Union claimants could not be taken until there was a final judgement in respect of the FETRAPESCA claim.

3.2.39 Another delegation noted that there was no request for a decision at this stage but that there was a matter of principle at stake.

3.2.40 A number of other delegations also noted that it was highly improbable that a spill of 3.2 tonnes of oil had resulted in one of the highest amounts of compensation awarded in the history of the 1971 Fund.

3.2.41 Upon a request from one delegation for a comparison of the amount of oil spilled in the *Nissos Amorgos* incident and the amount of oil spilled in the *Plate Princess* incident, the Director stated that in the *Plate Princess* incident, some 3.2 tonnes had been spilled, whereas in the *Nissos Amorgos* incident some 3 600 tonnes had been spilled.

3.2.42 Another delegation stated that there was no alternative but not to pay the Puerto Miranda Union claimants, since the losses suffered by the FETRAPESCA claimants had not been established. That delegation noted that if the 1971 Fund Administrative Council were to authorise payment, there would be a problem relating to Article 8 of the 1971 Fund Convention and Article X of the 1969 CLC. That delegation stated that it had not yet stated its final view regarding Article X but that taking that decision would probably be unavoidable in the near future. That delegation also noted that there were similar provisions in other international conventions but that it was quite unusual for these to be applied. That delegation noted that in the courts of its country, Article X, paragraph 1(b) would apply to notice given by the court of the legal proceedings, rather than notice given by the claimant. The fact that a claim was submitted late would not in itself constitute failure to give reasonable notice. That delegation requested the Director to provide a more detailed analysis of Article X of the 1969 CLC, but noted that it should not hesitate to invoke Article X once it had been convinced of its applicability.

3.2.43 Another delegation stated that, due to the fact that the claims were time-barred, the great inconsistency of the figures, the lack of clarity as to how the loss had increased to £113 million and the lack of authenticity of the supporting documentation, it endorsed the actions of the Director. That delegation concluded that there were no grounds on which to make payment.

3.2.44 Another delegation, whose State was not at the time of the incident a Party to the 1971 Fund, questioned who had the responsibility to decide whether there was evidence of fraud, whether it was the national courts or if there were other procedures in place. That delegation stated that it was normally the national court that made a decision as to the acceptability of evidence.

The second intervention by the delegation of the Bolivarian Republic of Venezuela (original Spanish)

3.2.45 The delegation of the Bolivarian Republic of Venezuela made the following statement (the second of three), which was given to the Secretariat and has been included in its entirety:

> 'With regard to the comments by the distinguished delegates on the document presented by the Director on the PLATE PRINCESS case, and the comments by the delegation of Venezuela, I would like to inform you of the following:
>
> With regard to the quantity of oil spilled.
>
> The spillage started at 00:15 hours, when the ship was loading oil and deballasting at the same time. After eight hours had elapsed, a large oil spill was noticed. The authorities initially produced a report estimating the slick around the ship at 20 barrels.

Subsequently, when the cargo tanks were measured against the pumped oil, it was determined that the spillage of crude was in excess of eight thousand tonnes, and the ballast spillage was estimated at a similar amount.

The Fund Executive Committee immediately, in June and October 1997, authorized the Director to pay all the affected victims. In October, the Director postponed the payments, stating that he was carrying out an investigation into the causes of the spillage. This investigation was carried out by a Canadian company and the report, which confirmed that the spilled oil exceeded 8,000 tonnes, was sent to the court by the shipowners and accepted by the Fund.

With regard to the length of the proceedings and the fact that the Fund could not defend itself.

Also in June 1997, the Fund estimated the limitation of the shipowner's liability to 3 million special drawing rights, as laid down in the 1992 Protocol to the Civil Liability Convention. The shipowner issued a bank guarantee in accordance with the limit indicated by the Fund. In 1998, after the payment of the compensation to the victims had been approved by the Fund Executive Committee, the shipowner sought to withdraw the guarantee in the Venezuelan courts and the victims appealed to the Supreme Court. This appeal suspended the actions and paralysed the proceeding until 2005, when it was decided that the shipowner could not withdraw the guarantee because he had an objective liability for the damage caused. Up to then, the Fund had still not fulfilled its obligation to pay the victims as decided by the Executive Committee and Venezuela complained about the delay and submitted to the Secretariat the decision of the Supreme Court which upheld the guarantee. At the October 2005 session, the Director stated that the claims were time-barred and that the case should be referred to the Venezuelan courts to decide on the time-bar issue. In November 2005, the Director authorized its lawyers to defend the Fund's position with regard to the time barring in the Venezuelan courts. In 2006, the Director asked the Administrative Council to declare the claims time-barred. The Fund participated in the proceedings at all stages, it contested the claim, submitted evidence, appealed and exercised all the ordinary and extraordinary remedies available in Venezuelan law, and now that it has a decision against its interests, it proposes not to comply with it.

The Director also alleged that the Union's claim was time-barred, not only under the provisions of the Convention, but also according to Venezuelan law as a result of the lapsing of the action due to inactivity. The Director further stated that the Constitutional Chamber had declared it unnecessary to analyse this argument, as using the time-bar as a defence was inadmissible in relation to environmental questions under Venezuelan law.
In this regard, the Venezuelan delegation clarifies that there was an attempt to distort the decisions handed down by the Venezuelan Supreme Court, as the Director deliberately, in his document, used the terms "**lapse**" and "**timebar**" synonymously, but these are in fact two totally separate legal concepts in Venezuelan law.

In Venezuelan law, LAPSING is a penalty for inaction by the parties to a proceeding, a prolonged lack of movement in the proceeding which suggests a loss of interest in obtaining a final judgement to resolve the dispute. It does not extinguish the effects of decisions issued, nor the evidence resulting from the documents nor the rights claimed. It merely prohibits re-submitting the claim before the expiry of 90 successive days following the declaration that it has lapsed.

With regard to the Quantum.

The quantum has increased significantly and will continue to increase while the Fund maintains its position of not paying the victims' compensation. This case has been running for over 15 years and the initial amount of material damages claimed has

increased due to loss of profit, interest, inflation, legal expenses and court costs. The number of fishermen is over 4 000, working in over 800 boats and in addition 304 line fishermen.

You are also informed that all these explanations have already been published in previous years' documents presented to this Assembly and all the documents which support the veracity of the information provided are held in the file on the Plate Princess case in the Venezuelan Court archives.'

Interventions by other delegations

3.2.46 One delegation stated that the matter of payment of claims was important because it was in the spirit of the Conventions to pay compensation. That delegation also stated that it was not clear as to the stage reached in the proceedings, the date on which the 1971 Fund had been notified, whether this was 2006 or 1997, or whether FETRAPESCA had withdrawn its claim.

3.2.47 Another delegation, whose State was not at the time of the incident a Party to the 1971 Fund, raised its concern that at the last session of the 1971 Fund Administrative Council, a decision had been taken that due process of law had not been followed, whereas the delegation of the Bolivarian Republic of Venezuela had stated that the Court had decided that due process of law had been followed. The delegation stated that it was the purpose of the 1971 Fund to compensate victims and that there had been no doubt that there had been pollution and victims; the question was how much and how they had been affected. That delegation stated that the 1971 Fund should explore the possibility of finding a way of offering some compensation to the victims, which could be validated by the 1971 Fund. The view expressed by that delegation was supported by two other delegations.

3.2.48 One delegation requested the Director to clarify two points, namely, whether notice of the claim against the master and shipowner had been given to the 1971 Fund in 1997, and whether the Director could confirm that it was the custom of the Organisation for the Director to request authority at the outset of an incident to settle claims up to a certain level.

3.2.49 The Director stated that the reference to notification was a reference to a requirement for formal legal notice to be given to the Fund in accordance with the text of the Conventions and in this respect, the first formal notification had been given in 2005 in London through diplomatic channels, more than eight years after the incident. The Director noted that the 1971 Fund had been aware that the spill had taken place in 1997 and that an expert had been sent to the loading terminal and had reported that there was minimal damage, but that this was not the same as formal notification required under the Conventions.

3.2.50 Regarding the authorisation to settle claims, the Director explained that it was the custom for the Director to request authorisation to settle claims up to a level specified in the Fund's Internal Regulations. The Director noted that payment would only be made on documented claims and that no details of the claim by the Puerto Miranda Union claimants had been received until 2008.

3.2.51 In response to a question regarding whether there was any other international legal jurisdiction to which the 1971 Fund could appeal, the Director stated that the Constitutional Section of the Supreme Tribunal was the last possibility for appeal. Answering another question from the same delegation, the Director also clarified that on the 17 October 2011, the Maritime Court of First Instance had rejected FETRAPESCA's request that the Court accept the formal withdrawal of the claim.

3.2.52 One delegation stated that it had some sympathy with the suggestion that the 1971 Fund should explore the possibility of paying some compensation and that it would not object to paying a small amount. That delegation stressed that it was Article X of the 1969 CLC that was relevant and that the 1971 Fund Administrative Council had to decide as to whether the exceptions in that Article applied. That delegation stated that, in this case, it was clear that there had been fraud and that the receipts had been falsified, and that the due process of law had not been followed as the proceedings had not been fair.

3.2.53 One delegation raised its concern that in accordance with Venezuelan Law the time-bar provisions were not applicable to environmental damage. That delegation considered that environmental claims could only be raised by a State, not by individual claimants. In response, the Director clarified that the claim by the Puerto Miranda Union was for damage to property and loss of income and not environmental damage. However, the Court had taken the view that the oil spill had caused environmental damage.

3.2.54 The delegation of the Bolivarian Republic of Venezuela made the following points:

- it was not the 1971 Fund Administrative Council that had to decide whether there had been fraud, but the Venezuelan courts, and they had already decided in this regard;

- in 2010, the 1971 Fund had filed an appeal to the Constitutional Section of the Supreme Tribunal, but that the Supreme Tribunal judgement had decided that there were no further appeals possible. Although the 1971 Fund had filed an extraordinary appeal, this did not suspend the enforcement of the judgement;

- in respect of the document provided by the Secretariat regarding the withdrawal of the FETRAPESCA claim, no tribunal could deny the right of a claimant to withdraw its claim, and that in FETRAPESCA's case, the Court only denied the formalisation of the withdrawal; and

- The Venezuelan delegation asked to enter in the Record of Decisions its objection to what had been stated on two occasions by one delegation, affirming fraud as a fact and stating that it was the IOPC Funds, once it had been decided by the Court of the States, who took the final decision on these two issues.

The third intervention by the delegation of the Bolivarian Republic of Venezuela (original Spanish)

3.2.55 The delegation from the Bolivarian Republic of Venezuela made the following statement (the third of three), which was given to the Secretariat and has been included in its entirety:

> 'Mr Chairman, I welcomed that we clarified at the beginning of the session that this meeting of the Council is limited to the participation of the Member States of the 1971 Fund, which is why we wish to expand on the reasons underlying the close relation between the 71 Fund and the 92 Fund. Let me explain!
>
> The 1971 Fund Convention was amended by the 1992 Protocol to the Fund, through the International Conference convened by the IMO. These Protocols entered into force in 27 November 1992. For Venezuela, the 1971 Fund Convention and its 1984 Protocol to amend it, entered into force on 28 November 1992 (that is, one day after the entry into force of the 1992 Protocol). Thus, given that Article 38 of the 1992 Protocol provides that "*Any instrument … deposited after the entry into force of an amendment … shall be deemed to apply to the Convention so amended, as modified by such amendment";* means that Venezuela was always a Party to the 1992 Fund Convention.
>
> In addition to the foregoing, the IMO Conference of 27 November 1992 also approved, *inter alia*, Resolution No. 3 on the need to avoid a situation where two incompatible conventions were in force (1992 Protocol and 1984 Protocol). This Resolution provided that the 1992 Protocols would be the instruments amending the 1969 Civil Liability Convention and the 1971 Fund Convention, in place of the 1984 Protocols, which would have ceased to apply. The Secretary General of the IMO, as depositary of the Protocols, was authorised to provide all assistance, in accordance with the treaty law and IMO and United Nations practice relating to the function of depositary, so that all the instruments deposited by States after the adoption of the 1992 Protocols would only facilitate the entry into force of the 1992 Protocols.

Thus, when the 1971 Fund Convention and its amending Protocol of 1984 entered into force for Venezuela, after 27 November 1992, that is, after the entry into force of the 1992 Protocols, Venezuela automatically became a party to the 1992 Protocols and was bound by them. Thus, the Plate Princess incident falls within those which involve the 1992 Fund.

It is also true that, in June 1997, the Fund established that the quantum limit applicable to the Plate Princess was estimated at 3 million Special Drawing Rights, because it was a ship of less than five thousand tonnes. If the 1992 Protocol to the Fund had not applied to Venezuela, the limit would have been fixed at 14 million Special Drawing Rights, as the minimum required under the 1969 Civil Liability Convention, prior to the 1992 Protocol.

We can also add that paragraph 6 of article 28 of the 1992 Protocol provides that "A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto".

From the above it can be deduced that Member States of the 1992 Protocol to the Fund, which at any time belonged to the 1971 Fund, would be bound by the provisions of the Protocol which amended the Convention, with respect to Member States of that Protocol who were party to the Convention prior to its amendment.'

Summary by the Chairman of the 1971 Fund Administrative Council

3.2.56 The Chairman of the 1971 Fund Administrative Council noted that the purpose of the IOPC Funds was to pay compensation and that it was always unfortunate when there was a delay in making payments to victims of oil spill incidents.

3.2.57 The Chairman also noted that the delegation of the Bolivarian Republic of Venezuela had handed in to the Director a copy of a document submitted to the Court in Venezuela on 7 October 2011 with regard to FETRAPESCA's request to withdraw its claim and that the Director had informed Member States of the decision taken on 17 October 2011 by the Maritime Court of First Instance rejecting FETRAPESCA's request, and had handed to the delegation of the Bolivarian Republic of Venezuela, a copy of this decision. In view of these developments, the Chairman noted that the 1971 Fund Administrative Council would require some clarification on this issue.

3.2.58 The Chairman noted that almost all of the delegations that had intervened in the discussions had agreed with the Director's view that Article X of the 1969 CLC applied, and that the 1971 Fund Administrative Council was entitled to refuse payment on those grounds. The Chairman also noted that the 1971 Fund Administrative Council should not, at the present time, authorise payment of the losses awarded to the Puerto Miranda Union, since the proportion of the available compensation due to the Puerto Miranda Union claimants would not be known until any losses suffered by FETRAPESCA had been established.

3.2.59 The Chairman also noted the proposal by two delegations for the 1971 Fund to explore the possibility of paying compensation to the victims.

1971 Fund Administrative Council Decision

3.2.60 The 1971 Fund Administrative Council decided to reconfirm its instructions given in March 2011 and October 2011 to the Director not to make any payments in respect of this incident and to oppose any enforcement of the judgement on the basis of Article X of the 1969 CLC and Article 4, paragraph 5 of the 1971 Fund Convention on equal treatment of claimants.

3.2.61 The 1971 Fund Administrative Council instructed the Director to conduct a further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC. The 1971 Fund Administrative Council also instructed the Director to examine the points raised by the Bolivarian Republic of Venezuela in their third intervention in consultation with the Legal Affairs and External Relations Division of the IMO.

3.2.62 The 1971 Fund Administrative Council also instructed the Director to continue to monitor the legal proceedings in Venezuela and to report back to the 1971 Fund Administrative Council at its next session.

3.3

Incidents involving the IOPC Funds – 1992 Fund: *Volgoneft 139* Document IOPC/APR12/3/3		**92EC**			

3.3.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR12/3/3.

3.3.2 The Executive Committee noted that hearings had taken place in October, November and December 2011 and February 2012 at the Arbitration Court of the city of Saint Petersburg and Leningrad Region in respect of the quantum and merits of claims for compensation. It was also noted that at the February 2012 hearing the Court had decided that all claimants had the right to legal interest according to Russian law and had ordered the claimants to submit their interest calculations. It was further noted that a hearing that had been scheduled for April 2012, when the court had been expected to reach a decision, had been postponed until late May 2012.

3.3.3 The Executive Committee noted that the Director would report to the 1992 Fund Executive Committee on any future developments with a view to receiving further instructions.

3.4

Incidents involving the IOPC Funds – 1992 Fund: *Hebei Spirit* Documents IOPC/APR12/3/4 and IOPC/APR12/3/4/1		**92EC**			

3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR12/3/4, submitted by the Secretariat and document IOPC/APR12/3/4/1, submitted by the Republic of Korea in respect of the *Hebei Spirit* incident.

DOCUMENT IOPC/APR12/3/4, SUBMITTED BY THE SECRETARIAT

Claims situation

3.4.2 The 1992 Fund Executive Committee noted that as at 24 April 2012, 28 868 claims totalling KRW 2 573 billion had been registered, totalling 128 384 individual claims. It also noted that 27 300 claims had been assessed at a total of KRW 166.6 billion, out of which 23 373 claims had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 157.7 billion in respect of 3 570 claims, and that the remaining claims were being assessed or additional information was being requested from the claimants.

Limitation proceedings by the owner of the Hebei Spirit

3.4.3 It was recalled that in February 2009, the Limitation Court had rendered an order for the commencement of limitation proceedings by the owner of the *Hebei Spirit*. It was noted that 127 474 claims totalling KRW 4 081 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with them.

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

Limitation proceedings by the operator of the Marine Spread

3.4.5 The Executive Committee noted that on 17 April 2012 the Supreme Court of the Republic of Korea had dismissed the appeal made by a number of claimants against the Appeal Court's decision to uphold the Limitation Court's decision to commence the limitation proceedings by the operator of the Marine Spread, Samsung Heavy Industries (SHI), in relation to the *Hebei Spirit* incident. The Executive Committee further noted that the Supreme Court's dismissal was not subject to any other appeal and, thus, the limitation proceedings by SHI would now progress and the limitation fund would be distributed in due course to the claimants who had participated in the SHI limitation proceedings.

Small scale non-fisheries related claims

3.4.6 The Executive Committee recalled that in 2009 it had endorsed the Director's instruction to the 1992 Fund's tourism experts to develop an alternative assessment approach for assessing small non-fisheries claims in case the claimant was not able to prove his/her losses.

3.4.7 It was noted that, although the trial of this methodology was not yet finished, the Director considered that some preliminary conclusions could be drawn from its application.

3.4.8 The Executive Committee noted that the application of this methodology had led to the positive assessment of claims from 584 businesses that would otherwise have been rejected as they were not in possession of any documentation in support of their claims due to the non-requirement for trading information by the local tax system.

3.4.9 The Executive Committee also noted however that the methodology was found to be time-consuming and heavily dependent on direct observation of the business and on a sufficiently large pool of reliable information from comparable businesses in the areas on which to base the assessments.

Recourse action

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

3.4.11 It was recalled that in July 2011 the Supreme Court had started a reconciliation process with the parties, with the aim of exploring a possible settlement of the dispute.

3.4.12 The Executive Committee noted that in December 2011 the Supreme Court of the People's Republic of China, after concluding that the different positions of the parties in the reconciliation could not be bridged, had dismissed the 1992 Fund's application for retrial on the grounds of *forum non-conveniens*.

3.4.13 The Executive Committee noted that owner and the insurer of the *Hebei Spirit* had continued a reconciliation negotiation with Samsung C&T and SHI under the supervision of the Supreme Court and had concluded a settlement agreement under which Samsung C&T and SHI would pay the amount of US$ 10 million to the shipowner and its insurer.

3.4.14 The Executive Committee noted that the 1992 Fund had concluded an agreement with the owner and the insurer of the *Hebei Spirit* under which the 1992 Fund and the ship's interests would share the costs of the recourse actions and the proceeds of any recovery under a court judgement or settlement on a 50/50 basis, and that the 1992 Fund had received US$ 5 million from the owners and the insurers of the *Hebei Spirit*.

Level of payments

3.4.15 The 1992 Fund Executive Committee recalled that in June 2008 the Executive Committee, in view of the uncertainty as to the total amount of the admissible claims, had decided that the level of payments should be limited to 35% of the amount of the damage actually suffered by the respective claimants as assessed by the Fund. It was also recalled that in subsequent meetings, the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established claims.

3.4.16 The 1992 Fund Executive Committee noted that the most recent estimate of the total amount of the admissible losses caused by the spill as prepared by the Skuld Club's and the Fund's experts was some KRW 283 billion (£159 million).

3.4.17 It was noted, however, that although on the basis of the analysis by the experts it could be argued that there was room to revise the level of payments, the Director had also considered that the total amount claimed in the limitation proceedings was KRW 4 081 billion (£2 705 million) and that the total amount of the claims submitted in the *Hebei Spirit* Centre was KRW 2 573 billion (£1 450 million).

3.4.18 The Executive Committee further noted that the circumstances described above and the fact that it was not yet known which position the national courts would take with regard to the assessment of claims, had led the Director to the conclusion that it would be premature to raise the level of payments.

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

DOCUMENT IOPC/APR12/3/4/1, SUBMITTED BY THE REPUBLIC OF KOREA

3.4.20 The 1992 Fund Executive Committee took note of the document submitted by the Republic of Korea, which summarised the assessment progress since the beginning of the incident and the measures taken by the Korean Government to support the areas affected by the incident.

3.4.21 In its intervention, the delegation of the Republic of Korea expressed its appreciation for the work of the Secretariat and of the Skuld Club and the efforts made to implement an alternative methodology to provide compensation for small scale non-fisheries related claims.

3.4.22 The delegation of the Republic of Korea expressed concern, however, that the assessment rate of claimants in the capture fisheries sector, which comprised individuals who were suffering difficult economic conditions, was much lower than that in other categories of claims.

3.4.23 The delegation of the Republic of Korea further requested the Secretariat to make every effort necessary to complete assessment of all claims by June 2012 and to provide assistance where possible to the Limitation Court, including submission of documents relating to assessments which are requested by the Limitation Court.

1992 Fund Executive Committee Decision

3.4.24 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the amount of the established losses and to review the level of payment at the next session of the Executive Committee.

3.5

Incidents involving the IOPC Funds – 1992 Fund: Incidents in Nigeria Document IOPC/APR12/3/5		**92EC**			

3.5.1 The 1992 Fund Executive Committee took note of document IOPC/APR12/3/5, which contained information relating to the *JS Amazing* and the *MT Concep*/*MT Redfferm* incidents, and of the presentation by the delegation of Nigeria regarding the *JS Amazing* incident.

JS Amazing

3.5.2 It was recalled that in May 2011, the 1992 Fund had been informed of a spill which had taken place in June 2009 when the tanker, *JS Amazing*, had spilled an unknown quantity of oil.

3.5.3 It was also recalled that the 1992 Fund had also been informed that two weeks prior to the spill from the *JS Amazing*, an oil spill had occurred from a vandalised Nigerian National Petroleum Corporation (NNPC)/Pipeline Products Marketing Corporation (PPMC) oil pipeline in the same area.

3.5.4 The Executive Committee noted that since the October 2011 sessions of the governing bodies, a number of developments had occurred, but that the Director noted that there was a risk that claimants would shortly have their claims time-barred.

3.5.5 It was also noted that the Nigerian Federal Ministry of Transport had established a Marine Board of Enquiry in 2012 to investigate the *JS Amazing* incident, and that the delegation of Nigeria had offered to provide a complete copy of the Marine Board of Enquiry Report to the Secretariat once it had been published.

3.5.6 It was noted that prior to the meetings of the governing bodies, the Secretariat had received part of a position statement from the Nigerian Federal Ministry of Transport, which quantified the impact of the incident as some US$ 14.8 million. It was also noted that the delegation of Nigeria had provided the remainder of the statement to the Secretariat during the meetings of the governing bodies.

Intervention by the delegation of Nigeria

3.5.7 The delegation of Nigeria stated that the President of the Marine Board of Enquiry was present and wished to make a statement.

3.5.8 The President of the Marine Board of Enquiry stated that a Marine Board of Enquiry had been constituted to examine the incident. The President of the Marine Board of Enquiry also stated that seventeen witnesses had testified during their investigation, and 52 exhibits had been produced. In addition, four memoranda were available attesting to the circumstances of the incident, and a visit had been made to the site of the incident.

Findings of the Marine Board of Enquiry

3.5.9 The President of the Marine Board of Enquiry stated that the Marine Board of Enquiry had found that:

- There had been an oil spill from the *JS Amazing*;
- The cause of the loss and damage was the loss of stability of the *JS Amazing*, which had been loading Low Pour Fuel Oil (LPFO), when it suddenly listed to 40 degrees and spilled approximately 1 500 tonnes of oil into the Warri River.
- The evidence of the witnesses, exhibits tendered and memorandums submitted all establish the fact that the loss and damages suffered were caused by the spill from the *JS Amazing*.

3.5.10 The delegation of Nigeria also stated that NNPC had paid approximately US$ 300 000 as a relief package to victims and that they would provide a full report on this aspect to the Secretariat.

Interventions by other delegations

3.5.11 One delegation noted that the incident had occurred almost three years before and that the 1992 Fund had only been recently informed of this spill. That delegation stated that it was very unsatisfactory for the 1992 Fund not to have been involved from the outset of the incident, as the claims for damages should better be assessed at the time of the incident, and it was therefore difficult to accomplish a long time after the event. That delegation stated that this would also cause problems in addition to a potential time bar of claims.

3.5.12 Another delegation also expressed its concern and asked whether the 1992 Fund could inform claimants of the approaching time bar.

3.5.13 The Director stated that the delegation of Nigeria were in the best position to inform the potential claimants of the impending time bar and the Director strongly recommended that the delegation convey to the claimants the need to protect their rights under the Conventions before the time bar expired.

1992 Fund Executive Committee

3.5.14 The Executive Committee took note of the concerns of the two delegations regarding the impending time bar, and that there were concerns that the damage could have come from the vandalised NNPC/PPMC oil pipeline in the same area.

3.5.15 The Executive Committee also noted that no claims had been filed against the shipowner or the 1992 Fund and that the Secretariat was awaiting further information from the delegation of Nigeria before being able to report back to the Committee.

MT Concep/MT Redfferm

3.5.16 The 1992 Fund Executive Committee noted that in late January 2012, the Secretariat was informed of this incident which was said to have occurred in March 2009 at Tin Can Island, Lagos, Nigeria.

3.5.17 The Executive Committee noted that the circumstances surrounding the incident were not clear, with one report indicating that the tanker *MT Concep* was involved in a tran-shipment operation with the barge *MT Redfferm* during which operation, the cargoes of both vessels, together totalling some 9 000 tonnes of oil, were spilled into the waters surrounding the tran-shipment site, causing contamination to the surrounding Tin Can Island and the communities living thereon.

3.5.18 However, it was noted that other news reports indicated that the *MT Redfferm* sank at its mooring at the finger jetty of Tin Can Island port, spilling its cargo of LPFO, causing contamination and preventing ships from berthing at the jetty. It was noted that the Secretariat had been provided with photos showing a crane barge being used to lift the *MT Redfferm* and it was therefore considered that the news reports were a more realistic account of the incident.

3.5.19 It was noted that the 1992 Fund had instructed lawyers in Nigeria to conduct a preliminary fact-finding investigation. It was also noted that the Secretariat had also made contact with the Nigerian Maritime Administration and Safety Agency (NIMASA) and had requested their assistance in providing further details of the incident. It was also noted that NIMASA had provided the Secretariat with a copy of its report of the incident which confirmed that it was the *MT Redfferm* which had sunk at its moorings in Tin Can Island, Lagos, spilling its cargo of oil.

3.5.20 It was noted that Nigeria was a Party to the 1992 CLC and 1992 Fund Convention. The limit of liability of the tanker *MT Concep* was estimated to be 6.48 million SDR (£6.6 million), whereas the limit of liability of the barge *MT Redfferm* was believed to be 4.51 million SDR (£4.6 million) based on a preliminary estimation of the size of the barge from photos provided to the Secretariat.

3.5.21 It was noted that so far, no claims had been presented and no legal proceedings against the 1992 Fund had been commenced.

Intervention by the delegation of Nigeria

3.5.22 The delegation of Nigeria stated that they had already commenced an enquiry into the incident and would provide a copy of the report to the governing bodies at its next session.

1992 Fund Executive Committee

3.5.23 The 1992 Fund Executive Committee noted that no claims had been filed against the 1992 Fund and that the Director had expressed his concerns regarding the issue of time bar, since the incident had occurred over three years before and the time-bar provisions of the Conventions were likely to apply very soon, if not already.

3.6

Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/APR12/3/6		**92EC**			

3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR12/3/6 dealing with the *Alfa I* incident.

3.6.2 It was noted that on 5 March 2012, the tanker *Alfa I* had hit a submerged object, most likely the marked wreck of the vessel *City of Myconos*, while crossing Elefsis Bay near Piraeus, Greece. The impact had caused a cut along the hull bottom plating of *Alfa I* of some 30 metres. Shortly thereafter *Alfa I* had listed over on her starboard side and had sunk. She had come to rest in 18 to 20 metres of water with her stern in contact with the seabed but the bow still visible above water. The incident had also resulted in the tragic loss of the master's life.

3.6.3 The 1992 Fund Executive Committee noted that at the time of incident, *Alfa I* was believed to have been loaded with some 2 070 tonnes of cargo. However, the exact amount and specifications of the cargo and bunkers on board at the time of the incident were not known.

3.6.4 It was noted that after sinking, an unknown quantity of oil had been released from the tanker through the manholes, vent pipes and sounding pipes and oil had impacted some 13 kilometres along the shoreline of Elefsis Bay. It was also noted that a salvage company had been engaged to stop the release of oil and had subsequently focussed on the removal of the cargo from *Alfa I* by 'hot tapping'.

3.6.5 The 1992 Fund Executive Committee noted that some 1 200 metres of booms had been deployed around the casualty and a further 200 to 300 metres of booms had been deployed to protect a marina and an oyster farm nearby. The company contracted to undertake response operations at sea was also contracted to carry out the manual cleaning of the shoreline affected.

3.6.6 The 1992 Fund Executive Committee further noted that no claims had been submitted against the shipowner, its insurer or the 1992 Fund. However, given the at-sea response and shoreline clean-up operations, it was likely that claims for substantial amounts would be submitted in the near future.

3.6.7 It was noted that the 1992 Fund had engaged experts to monitor the clean-up operations and gather information regarding the incident and the response. The 1992 Fund had also employed a Greek lawyer to advise the Fund on the legal issues arising from the incident.

The shipowner and its insurer

3.6.8 The 1992 Fund Executive Committee noted that the shipowner was insured with Aigaion Marine Insurance. It was further noted that the shipowner was understood to have an insurance policy providing a maximum cover of €2 million. This amount was unlikely to cover the cost of the incident.

The 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol

3.6.9 It was noted that Greece was a Party to both the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention and that Greece was also a Member State of the Supplementary Fund at the time of the incident.

3.6.10 It was noted that if the total amount of damages were to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund would be liable to pay compensation to the victims of the spill. Since the tonnage of *Alfa I* (1 648 GT) was below 5 000 units of tonnage, the limitation amount applicable under the 1992 CLC was 4.51 million SDR (€5.3 million). The total amount available for compensation under the 1992 CLC and 1992 Fund Convention was 203 million SDR (€236.9 million).

3.6.11 The 1992 Fund Executive Committee noted that the total amount available for compensation under the 1992 CLC, 1992 Fund Convention and the Supplementary Fund Protocol was 750 million SDR (€875.3 million). It was noted that it was, however, unlikely that claims arising from the incident would exceed the limit under the 1992 Fund Convention.

1992 Fund Executive Committee

3.6.12 The 1992 Fund Executive Committee noted that the Secretariat would continue to monitor developments in respect of this incident and would report on developments to the 1992 Fund Executive Committee and to the Supplementary Fund Assembly at their next sessions.

4 Secretariat and administrative matters

4.1

Contingency arrangements for the Director and senior Secretariat personnel Document IOPC/APR12/4/1	**92A**				

4.1.1 The 1992 Fund Assembly recalled that, at their October 2011 sessions, the governing bodies had discussed contingency arrangements for the Director and senior Secretariat personnel, and in particular the appointment of a Deputy Director. The Assembly also recalled that the Director had recognised the importance of the role and had agreed that a Deputy Director should be appointed. He had, however, requested time to consider this issue and to report back to the Assembly at some future date, putting forward solutions and setting out his proposals on this issue. The Assembly further recalled that the governing bodies had decided that it would be left to the Director to decide on delegation of authority in respect of Internal Regulation 12 (Delegation of Authority).

Appointment of a Deputy Director

4.1.2 The Assembly noted the proposals put forward by the Director in document IOPC/APR12/4/1. It noted that the Director had given careful consideration to the concerns expressed by the governing bodies and the Audit Body since the unfortunate illness of the previous Director. It further noted that, in light of these concerns and in accordance with the decision announced by the Director in October 2011 that a Deputy Director should be appointed, the Director had decided to appoint Mr Ranjit Pillai (Sri Lanka) to this position effective 1 May 2012. However, given that the Secretariat is a small body and overall responsibilities are clearly defined so as to operate effectively without duplication, the Assembly noted the Director's view that this was not a full-time role and that he had therefore decided that Mr Pillai would also continue in his position as Head of the Finance and

Administration Department, thus combining the roles of Deputy Director and Head of the Finance and Administration Department.

4.1.3 The Assembly also noted that the Director shared the view expressed by the Audit Body in October 2011 that, as the Deputy Director would also have responsibilities as Head of Department, his salary level should be higher than that of a Head of Department role alone (D1) and that the Director therefore recommended that the position of Deputy Director/Head of the Finance and Administration Department should be graded at D2. In this regard, the Assembly recalled that this was the grade accorded to the previous Deputy Director, Mr Joe Nichols, who had held the positions of Deputy Director/Technical Adviser until his resignation in August 2007.

Contingency arrangements

4.1.4 The Assembly noted that the Director had given due consideration to this issue and shared the view expressed by the Audit Body in October 2011 that the list of possible alternates 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 as set out in Internal Regulation 12 should be extended to include all the members of the Management Team and should indicate the seniority in which this list should apply.

4.1.5 The Assembly further noted that, accordingly, the Director had the intention to set up the following contingency arrangement in the Secretariat: in the event that the Director was unable to assume his functions, the Deputy Director/Head of the Finance and Administration Department, the Legal Counsel, the Head of the Claims Department/Technical Adviser or the Head of the External Relations and Conference Department, in that order, would act on the Director's behalf. It also noted that the Director would keep the contingency arrangements under review to ensure that at all times they took into account any significant changes in composition, role, responsibilities or availability of Management Team members.

4.1.6 The Assembly noted that the Director was also of the view that Internal Regulation 12 should also contain specific guidance as to what should happen in the event that none of those specified in paragraph 4.1.5 above were able to take up that responsibility. It noted that, for this reason, the Director was proposing the inclusion of a new paragraph in Internal Regulation 12 to the effect that if none of these staff members were available to assume the function of the Director, the Chairman of the 1992 Fund Assembly should 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 had been able to resume their responsibilities.

4.1.7 It was noted that the Annex to document IOPC/APR12/4/1 contained the existing and proposed new text of Internal Regulation 12 and that, should the 1992 Fund Assembly approve the proposed amendment, the Director would invite the 1971 Fund Administrative Council and the Supplementary Fund Assembly, at their next session, to approve the same amendment to the corresponding Internal Regulation of the 1971 Fund and Supplementary Fund. It was also noted that Administrative Instruction N^{o}2 would be amended accordingly by the Director.

Management Team

4.1.8 The 1992 Fund Assembly noted that the organisation's strategic direction was developed and implemented by the Management Team which previously consisted of the Director, the Legal Counsel, the Heads of the Claims Department, Finance and Administration Department and External Relations and Conference Department and the Technical Adviser.

4.1.9 It further noted that the Director had appointed Mr Matthew Sommerville (United Kingdom), formerly Technical Adviser/Claims Manager, as Head of the Claims Department from 8 March 2012 and that the Director had decided that the role of Head of the Claims Department and that of the Technical Advisor should be combined given Mr Sommerville's previous role as Technical Advisor. It also noted that the Head of the Claims Department post was graded D1.

4.1.10 It was also noted that, following the appointment of Mr Sommerville in a dual role, the number of members of the Management Team had been reduced from six to five, ie Director, Deputy Director/Head of the Finance and Administration Department, Legal Counsel, Head of the Claims Department/Technical Adviser and Head of the External Relations and Conference Department.

4.1.11 The Assembly noted that Mr Thomas Liebert (France) had been appointed to the post of Head of the External Relations and Conference Department on 1 September 2010 at P5 level. It further noted that Mr Liebert had been serving in the post for some 18 months and had performed well in the role and that, in recognition of his performance, the Director had decided that Mr Liebert should now assume the full grade of the post at the level of D1, effective 1 May 2012. In this regard, it was recalled that this was the grade accorded to the previous incumbent of this post.

Debate

4.1.12 Delegations that took the floor expressed widespread support for the contingency arrangements proposed by the Director and for the appointment by the Director of Mr Ranjit Pillai as Deputy Director/Head of the Finance and Administration Department. They agreed with the Director's recommendation that the grade D2 would be appropriate for the position. They also noted with satisfaction that the Director had appointed Mr Matthew Sommerville as Head of the Claims Department (combined with his role as Technical Adviser) and the Director's decision that Mr Thomas Liebert would assume the full grade of the post of Head of the External Relations and Conference Department at D1 as of 1 May 2012.

4.1.13 The Assembly also noted that the Director would issue a new Administrative Instruction N^{o}2 (General delegation of authority) to cover the new contingency arrangements.

4.1.14 In respect of the Director's proposed change to Internal Regulation 12, one delegation expressed its concern that, by stating the order in which the members of the Management Team would assume responsibility for the Secretariat if the Director were unable to assume his functions, the Director would not have the desired flexibility and suggested that the words 'in that order' be removed. The Director clarified that, as stated in paragraph 2.2.2 of document IOPC/APR12/4/1, he would keep the contingency arrangements under review to ensure that all times they took into account any significant changes in composition, role, responsibilities or availability of Management Team members.

4.1.15 One delegation, whilst supporting the Director's proposals, expressed its view that it would be preferable in future that staffing matters be discussed without the relevant members of staff present to avoid any possible embarrassment on either side.

4.1.16 One delegation, whilst supporting the Director's proposals, expressed its view that internal promotions allowed for continuity in the Secretariat but the dynamics of staffing were important and hoped that the Director would look at outside recruitment in the future. Another delegation supported this view.

4.1.17 One delegation, whilst noting the recent appointments, expressed its view that geographical distribution was still a pending issue and requested the Director to take this into account in future recruitment. The Director responded that he recalled that this issue had been raised by the same delegation in October 2011 and that, whilst geographical distribution was one factor in the appointment of staff, competence was the most important factor.

4.1.18 In summing up, the Chairman expressed congratulations on behalf of the governing bodies to Mr Pillai, Mr Sommerville and to Mr Liebert. He said that the 1992 Fund Assembly had taken note of the proposal that staff members should not be present when their posts were being discussed.

1992 Fund Assembly Decisions

4.1.19 The 1992 Fund Assembly decided that the position of Deputy Director/Head of Finance and Administration Department should be graded at D2.

4.1.20 The 1992 Fund Assembly further decided that a new paragraph would be included in Internal Regulation 12 to the effect that in the event that the Director was unable to assume his functions, and that the Deputy Director/Head of the Finance and Administration Department, the Legal Counsel, the Head of the Claims Department/Technical Adviser or the Head of the External Relations and Conference Department, in that order, were not available to assume his functions, the Chairman of the 1992 Fund Assembly should appoint a member of the Secretariat, other than those mentioned, 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 had been able to resume their responsibilities. In this respect the Assembly noted that the Director would invite the 1971 Fund Administrative Council and the Supplementary Fund Assembly, at their next session, to approve the same amendment to the corresponding Internal Regulation of the 1971 Fund and Supplementary Fund.

4.1.21 The 1992 Fund Assembly decided to approve an amendment to Internal Regulation 12 as set out in Annex II to reflect the decision in paragraph 4.1.20.

4.2

Secretariat matters – Internships within the Secretariat **Document IOPC/APR12/4/2**	**92A**				

4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/APR12/4/2.

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

4.2.3 It was also recalled that at its October 2011 session, the 1992 Fund Assembly had noted that, as a result of a circular calling for nominations, a total of ten nominations had been received from 1992 Fund Member States by the deadline of 26 August 2011 and that all ten nominees had been accepted on the programme.

4.2.4 The 1992 Fund Assembly noted that the pilot internship training programme had taken place in London from 21 to 25 November 2011 and had been attended by nine nominees from 1992 Fund Member States (Antigua and Barbuda, Bahamas, Greece, Ireland, Latvia, Norway, Philippines, Poland and the Republic of Korea), the nominee for Brunei Darussalam unfortunately being unable to attend.

4.2.5 The Assembly further noted that the programme had been supported by IMO, the International Association of Independent Tanker Owners (INTERTANKO), the International Group of P&I Clubs and the International Tanker Owners Pollution Federation Limited (ITOPF) in delivering the programme. The Assembly also noted that the contributions of these four organisations were very important to the programme and to the participants' understanding of the relationships and common objectives of all stakeholders who operate under the Civil Liability and Fund Conventions.

4.2.6 The Assembly further noted the positive feedback from the participants, the only common suggestion made to improve the programme being a desire for more time for the practical exercises. It also noted that the participating organisations had indicated they would be happy to support further programmes of this type in the future.

4.2.7 The Assembly noted the Director's proposal to continue to run the internship programme for a maximum of ten self-funded participants from 1992 Fund Member States on an annual basis. The Assembly further noted his proposal that it be called the 'IOPC Funds' Short Course' in order to reflect its nature more accurately. It was also noted that, in the Director's view, the costs to the Secretariat should be limited to the time and effort of its own staff and provision of catering during the programme and that, if the programme became over-subscribed, the Secretariat would manage the selection process so that past participation and value to the Member States were taken into account.

Debate

4.2.8 The delegations of the Bahamas, Norway and Poland reported that their nominees had participated in the pilot programme and had found it of great benefit in understanding the international compensation regime and expressed their gratitude to the Secretariat. The delegation of the Republic of Korea, which had also had a nominee on the programme, conveyed its deep appreciation for the initiative taken by the Secretariat, despite its small number of staff, and expressed the hope that the programme would be further developed to include more hands-on claims assessment exercises.

4.2.9 Other delegations which spoke supported the Director's proposal that the programme be continued. One delegation said that it could fully attest to the value of similar courses that had been run with the assistance of the IOPC Funds' Secretariat in Papua New Guinea and in Brisbane, Australia. That delegation also said that, as the cost of travel to London to participate in the programme would be expensive for some Member States, it would encourage the IOPC Funds and other organisations to continue to hold regional workshops.

4.2.10 In response to a query from one delegation as to whether there was a waiting list of candidates for future courses, the Secretariat said that there had been ten nominations for the ten places on the pilot programme and that there was, therefore, no waiting list.

4.2.11 Another delegation, whilst expressing its full support for the programme, asked if an estimate had been made of the costs of candidates coming from outside the United Kingdom. The Director said that nominees were self-funded so the cost to the IOPC Funds was limited to the provision of the services of the Secretariat staff and refreshments.

4.2.12 A further delegation welcomed the Director's proposal to continue with the programme but said that the geographical distribution of participants should be observed in future.

4.2.13 The observer delegation of the International Chamber of Shipping (ICS) said that it had noted the pilot internship with interest and that it would welcome the opportunity to participate in any future courses if there was the opportunity to do so.

4.2.14 The Chairman of the 1992 Fund Assembly noted that there was overwhelming support for the Director's proposal to continue to run the internship programme and that a geographical distribution of participants was desirable.

1992 Fund Assembly Decision

4.2.15 The 1992 Fund Assembly decided to continue to run the internship programme for a maximum of ten self-funded participants on an annual basis and that the course would be known as the 'IOPC Funds' Short Course'. It was also decided that the Director would report back to the 1992 Fund Assembly on future courses as appropriate.

4.3

Document Services **Document IOPC/APR12/4/3**	**92A**				

4.3.1 The 1992 Fund Assembly noted the information contained in document IOPC/APR12/4/3 regarding the document-related services provided by the IOPC Funds' Secretariat.

4.3.2 The Assembly recalled that documents for all sessions of the governing bodies were available via the new Document Services website which was launched in August 2011 (www.iopcfunds.org/documentservices). It was noted that, in accordance with the decision by the governing bodies in October 2011 instructing the Secretariat to cease posting printed meeting documents to delegates, documents for the April 2012 sessions of the governing bodies had been made available in advance of the meetings via the website only. Delegations were encouraged to register on the site and subscribe to receive email alerts of newly published documents.

4.3.3 The Assembly noted that work was well underway on making both the interface of the Document Services website and the Decisions Database, one of the tools of the Document Services website, containing all decisions taken by the governing bodies since 1978, available in the three official languages.

4.3.4 It was noted that, following the completion of the Document Services website, progress had been made on the redesign of the IOPC Funds' website. A presentation of the initial framework and design of the website was given. Delegations were requested to inform the Secretariat if they had any specific comments to make or if there were any particular features that they would like to see in the new website by email to feedback@iopcfund.org. The Assembly noted that the project was expected to be completed during 2012 and that the new website would be launched as far as possible in the three official languages of the Organisations at the same time.

Debate

4.3.5 The 1992 Fund Assembly expressed its appreciation to the Secretariat for the presentation of the new website and congratulated it on the significant improvements that had been made to the general IOPC Funds' online services.

4.3.6 A number of delegations provided positive feedback in respect of the Document Services website. Several delegations stated that they looked forward to the interface of the site and the Decisions Database being made available in the three official languages of the Organisations. A number of delegations did, however, express concern with regard to the late availability of documents in advance of the April 2012 sessions in English, French and Spanish. The Director apologised for the late publication of some documents on this occasion, but pointed out that, whilst he would like to be able to provide documents three weeks in advance of the meetings, it was often very difficult for the Secretariat to do so, particularly with incident-related documents where developments often took place shortly before the meetings. The Director also explained that since, in general, documents were originally prepared in English, it was unfortunately inevitable that the French and Spanish translations of those documents would be finalised some time later than the English. He did, however, confirm that every effort would be made to ensure this delay was reduced in all three languages for future meetings.

4.3.7 In respect of the new design for the website, a number of delegations stated that the site appeared to contain much more accessible information and was more user-friendly with the introduction of interactive features into the site. One delegation referred to the Claims section of the new website and asked whether it would in future be possible to submit claims forms online. The Secretariat clarified that a specific online claims submission system was under development, but that in the interim the intention was to first make available a form that could be downloaded and completed via the new site. It was confirmed that eventually claimants would, however, have the possibility of also submitting claims online.

5 Financial reporting

5.1

Joint Audit Body: Core mandate and associated activites – Work programme December 2011-October 2014 Document IOPC/APR12/5/1	**92A**				

5.1.1 The Chairman of the Audit Body, Mr Emile Di Sanza, presented document IOPC/APR12/5/1 which set out the work programme of the fourth Audit Body covering the period December 2011 to October 2014. He reported that, whilst it was customary for the Audit Body to report on the previous year's activities at the October sessions of the governing bodies, the Audit Body had considered that it might be useful for the fourth Audit Body, which had been elected for a three-year term in October 2011, to present its work programme to Member States early in its tenure.

5.1.2 The 1992 Fund Assembly noted that, as outlined in Chart 1 of the document, the Audit Body operated on the basis of an annual cycle consisting of three meetings held in December, March and June. It also noted that, essentially, the nature of the work conducted at each of these meetings was defined by the mandate given to the Audit Body but that its work was also based on issues identified in the course of its dealings with the Secretariat and the External Auditor and in respect of instructions received from the Funds' governing bodies.

5.1.3 The Assembly also noted that Chart 2 presented the Audit Body's work programme for the period December 2011 to October 2014 and that the activities were grouped under five main headings: the Audit Body's responsibility for ascertaining the effectiveness of the Funds' management and financial systems; its role in reviewing the effectiveness of the Funds' risk management procedures; its review of financial statements and reports of the IOPC Funds; its role to promote the understanding and effectiveness of the audit function within the IOPC Funds; and its role in ascertaining the effectiveness of the external audit relationship with the Funds.

5.1.4 The Assembly noted that the Audit Body would be reporting on the outcome of its activities at the October 2012 sessions of the Funds' governing bodies.

Debate

5.1.5 The Chairman thanked Mr Di Sanza for his presentation which he hoped had improved Member States' understanding of the Audit Body's role and responsibilities. He said that he could attest to the professionalism and quality of the Audit Body as he had attended the last two meetings of the Audit Body in an observer capacity.

5.1.6 The 1992 Fund Assembly took note of the information contained in document IOPC/APR12/5/1.

6 Financial policies and procedures

6.1

Measures encouraging the submission of oil reports – Development of an online reporting system Document IOPC/APR12/6/1	**92A**				

6.1.1 The 1992 Fund Assembly took note of the information provided in document IOPC/APR12/6/1 submitted by the Secretariat, on measures to encourage timely and accurate submission of oil reports by Member States.

6.1.2 The Secretariat expressed its gratitude to the pilot States (Australia, Bahamas, China, Germany, Italy, Latvia, Malaysia, New Zealand and Turkey) for their participation in the development of the online oil reporting system. A demonstration of the system was carried out during the session. It was emphasised that the online reporting system offers a more secure, accurate and environmentally friendly way of submitting oil reports. It was also noted that the online system provides easy access to the oil submission history of States, similar to an electronic filing cabinet. It was also noted that the online reporting system is a means to easily access and update the contact information of contributors and State users.

6.1.3 It was noted that there were some technical issues that were being resolved at the time of the meeting and that the online system would be run in parallel with the current paper-based system for the time being.

6.1.4 It was further noted that the revised electronic oil reporting form which was developed in 2011, had been well received by the Member States. It was noted that the electronic form will continue to require the physical signatures from the contributor and the State authority for the time being.

6.1.5 The 1992 Fund Assembly noted that a progress report on the online reporting system would be submitted by the Secretariat to the October 2012 sessions of the governing bodies.

Debate

6.1.6 One delegation asked how the online submission of tonnage information would be verified. The Secretariat responded that as physical signatures were required for verification, State users were required to print and sign the PDF summary oil report that was created during the online submission process. It was explained that each PDF summary report also had a unique submission number, which could be used as verification.

6.1.7 A delegation from one of the pilot States expressed its full support for the project and its gratitude to the IOPC Funds Secretariat for their efforts in that matter and mentioned in particular that it will be very useful to be able to access the entire history of tonnage information and previous submissions.

6.1.8 The Chairman, on behalf of the 1992 Fund Assembly, thanked the pilot States for their participation and input into the development of the online oil reporting system.

7 Budgetary matters

7.1

Transfer within the 2011 budget **Document IOPC/APR12/7/1**	**92A**				

7.1.1 The 1992 Fund Assembly noted that the budget appropriation to cover consultants' fees under Chapter V – Miscellaneous expenditure in the 2011 budget was required to engage consultants for work which could not be undertaken by staff members. It also noted that the use of consultants might be required, for example, in connection with the continuing efforts to improve the operation of the Secretariat or to undertake studies of a general nature which were not related to specific incidents. It further noted that the budget appropriation in the 2011 budget for consultants' fees under Chapter V was £100 000, having been reduced from £150 000 in the 2010 budget.

7.1.2 The Assembly recalled that, at its October 2011 session, it had noted that the Secretariat had commenced legal action against contributors in the Russian Federation to recover the outstanding contributions due to the 1992 Fund. The Assembly noted that, since October 2011 when the cases were filed in the Courts, there had been hearings and judgements rendered by the Court of First Instance and the Court of Appeal in each of the cases. It further noted that the legal costs of pursuing contributors in arrears in the Russian Federation in 2011 amounted to over 50% of the appropriation (some £51 500) with the majority of the costs being incurred in the last quarter of 2011. The Assembly also noted that fees for studies on the definition of 'ship' and on interim payments made up the majority of the other costs under consultancy fees for 2011.

7.1.3 The Assembly noted that the above-mentioned expenses left a shortfall in respect of the appropriation for consultants' fees under Chapter V of some £31 000 and that the Director was entitled, under Financial Regulation 6.3, to make a transfer from other Chapters of 10% (ie £10 000 under Chapter V) to the appropriation to meet the additional consultants' fees. It further noted that the proposal of the Director was that he be authorised to make the necessary transfer from another chapter to Chapter V – Miscellaneous expenditure (consultants' fees) within the 2011 budget.

Debate

7.1.4 In response to a question from one delegation, the Director confirmed that the transfer did not constitute an increase to the overall administration budget for 2011 but merely a transfer from one chapter to another.

7.1.5 At the request of one delegation, the Director agreed to provide details of external consultants employed by the Secretariat during the last two to three years and the costs incurred and to submit a document to the 1992 Fund Assembly at its next session.

1992 Fund Assembly Decision

7.1.6 The 1992 Fund Assembly authorised the Director to make the necessary transfer to Chapter V – Miscellaneous expenditure from another chapter within the 2011 budget to cover the shortfall that exceeds the amount that can be transferred under Financial Regulation 6.3.

8 Treaty matters

8.1

HNS Convention and HNS Protocol Document IOPC/APR12/8/1	**92A**				

8.1.1 The 1992 Fund Assembly took note of the information contained in document IOPC/APR12/8/1, submitted by the Secretariat, regarding the progress made since its October 2011 session on the administrative tasks necessary for setting up the Hazardous and Noxious Substances (HNS) Fund.

8.1.2 It was recalled that the list of administrative tasks to be undertaken by the 1992 Fund Secretariat in connection with the setting up of the HNS Fund and the progress made so far in that regard had been reported at every session since October 2010.

8.1.3 It was recalled that, as agreed at the March 2011 session, a number of steps had to be taken first, in cooperation with IMO, to provide States with all the instruments and support required to be able to ratify the 2010 HNS Protocol. The 1992 Fund Assembly noted the progress made in that respect by the Secretariats of the 1992 Fund and the IMO since its last session in October 2011, as set out in section 3 of document IOPC/APR12/8/1.

8.1.4 The 1992 Fund Assembly noted that the HNS website was redeveloped in 2011 to take into account the Protocol of 2010 to the Convention and to enable users to easily monitor the status of the Convention and its implementation and provide them with easy access to all the relevant instruments, documentation and information required to ratify or accede to the 2010 Protocol. The website is accessible at www.hnsconvention.org.

8.1.5 It was noted that the HNS Finder, containing the consolidated list of HNS as defined in Article 1.5 of the 2010 HNS Protocol had been made accessible via the HNS website since January 2012. It was recalled that the HNS Finder had been designed to provide information on HNS classification criteria and whether or not a substance qualified as contributing cargo for the purpose of reporting, including the identification of the HNS account to which the substance belonged. A demonstration of the HNS Finder was carried out during the session.

8.1.6 It was noted that the 1992 Fund Secretariat had been working in close cooperation with IMO to develop and update the HNS Finder, but because of the dynamic and indicative nature of the list, the possibility of inadvertent omissions or inaccuracies could not be ruled out. It was noted that, at this stage, the HNS Finder had been designed as an optional tool to facilitate the entry into force of the 2010 HNS Protocol and that neither the 1992 Fund nor its Secretariat would accept liability or responsibility should there be any error.

8.1.7 It was recalled that, as previously reported at the October 2011 session of the 1992 Fund Assembly, work was underway by the 1992 Fund Secretariat to add a calculator function on to the HNS Finder, allowing receivers of HNS cargo to select substances qualifying for contribution, add volumes and produce a report to send to their respective States. The objective of a simplified HNS Calculator was to allow States engaged in the ratification or accession process to assist receivers of HNS with the preparation of reports on receipts of contributing cargo, as required under Article 45 of the 2010 HNS Convention.

8.1.8 It was noted that members of the 1992 Fund Secretariat had met with senior managers from the European Chemical Industry Council (CEFIC) at their Brussels office in February 2012 to obtain feedback on the HNS Finder and learn more about their operational and information needs. From that meeting it became clear that the adoption of uniform reporting guidelines, prior to the entry into force of the 2010 HNS Protocol was expected by the industry.

Debate

8.1.9 The IMO delegation reported on the latest developments with regards to HNS following the 99th session of the IMO Legal Committee held in April 2012. That delegation emphasised that, in order to avoid confusion, States intending to become Party to the 2010 HNS Convention should only ratify the 2010 HNS Protocol and not the 1996 HNS Convention. That delegation indicated that IMO was available to provide any legal assistance in that matter. In addition, that delegation indicated that the IMO website (www.imo.org) had information to assist States with the ratification/accession process, including the consolidated text of the 1996 Convention and 2010 Protocol, a searchable version of the International Maritime Dangerous Goods (IMDG) Code in effect in 1996, a model reporting form and the Circular letter N°3144 regarding substances listed in International Maritime Solid Bulk Cargoes (IMSBC) and IMDG Codes.

8.1.10 That delegation also reported that during the recent IMO Legal Committee meeting, the topic of potential headquarters for the HNS Fund was discussed. It was noted that while the decision would be ultimately taken by the HNS Fund Assembly at its first session, many delegations at the Legal Committee had expressed firm support and preference for locating the headquarters of the HNS Fund with that of the IOPC Funds in London. That delegation also used the opportunity to thank the IOPC Funds' Secretariat for their excellent cooperation on HNS matters.

8.1.11 One delegation asked whether the HNS calculator would be provided to potential Member States for free. The Secretariat confirmed that it would indeed be provided free of charge.

9 Other matters

9.1

Impact of European Council Regulation 267/2012 concerning restrictive measures against the Islamic Republic of Iran Document IOPC/APR12/9/1	**92A**				

9.1.1 The observer delegation of the International Group of P&I Associations (International Group) presented document IOPC/APR12/9/1 which provided information on the impact of European Council (EC) Regulation 267/2012 concerning restrictive measures against the Islamic Republic of Iran.

9.1.2 That delegation reported that on 23 March 2012 the European Council had adopted into EU Law Regulation 267/2012 as noted in paragraph 1.1 of document IOPC/APR12/9/1. It reported that the measures established in the Regulation included prohibitions on the purchase, import and transport of Iranian crude oil, petroleum and petrochemical products and loading bunker fuel that originated in Iran and also prohibited the provision of insurance related to these activities.

9.1.3 That delegation further reported that, from 1 May and 1 July 2012, in respect of prohibitions relating to petrochemicals and crude and petroleum products, the International Group Clubs and their reinsurers who were incorporated, domiciled or regulated in the European Union would be prohibited from providing P&I insurance cover to any ship carrying Iranian crude oil, petroleum or petrochemical products on any voyage anywhere in the world irrespective of whether the cargo was loaded in or outside Iran.

9.1.4 That delegation further reported that the prohibition on cover would also extend to any ship carrying Iranian bunker fuel in its bunker tanks irrespective of where the bunkers were taken on board and irrespective of the type of ship or cargo carried and that, again, this prohibition applied globally. Referring to paragraph 2.3 of document IOPC/APR12/9/1, Blue Card certificates issued by insurers for the purposes of Article VII of the 1992 Civil Liability Convention (1992 CLC) and Article 7 of the Bunkers Convention, 2001 would be rendered ineffective if ships engaged in prohibited activities. That delegation reported that all International Group Clubs' rules contained termination of cover or bar on recovery rights provisions, which would be triggered if shipowners carried out activities that were prohibited by sanctions legislation or which exposed the Club to the risk of sanctions. States Parties that had issued Bunker or CLC Convention State certificates on the basis of receiving Blue Cards would be notified by the Club concerned if it was found that one or more of its ships had performed a voyage in breach of the sanctions legislation and this would result in termination of cover and cancellation of the Blue Card. That delegation reported that it could, however, be that the Club concerned was unaware of the offending voyage until the voyage was being or had been performed. Therefore, States would not be able to rely on the ability of the underlying insurance to respond in the event of an incident occurring on a voyage which would place either the shipowner or his Club in breach of the measures. It reported that the three-month post-termination of cover provision established in paragraph 5 of Article VII of the 1992 CLC and paragraph 6 of Article 7 of the Bunkers Convention, 2001 would cease to have effect by virtue of the prohibition on insurance cover.

9.1.5 That delegation also reported that in paragraph 2.4 of document IOPC/APR12/9/1, it had drawn attention to the potential impact of the insurance prohibition on the international compensation regime. The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 as agreed between the International Group and the International Oil Pollution Compensation Funds provided a greater sharing of liability in the event of a spill occurring in a State Party to the 1992 Fund Convention and 2003 Supplementary Fund Protocol. That delegation reported that the prohibitions on insurance would mean that after 1 July 2012 a spill from a tanker carrying Iranian bunker oil or Iranian persistent oil as cargo would not be covered. It reported that, while alternative insurers might be able to provide cover for the purposes of the 1992 CLC, they might not be able to replicate the very high limits and breadth and scope of the cover currently provided by the International Group.

9.1.6 That delegation further reported that, more importantly, the cover provided by such alternative insurers would not extend to include the voluntary additional compensation provided by shipowners who were members of the International Group pursuant to STOPIA 2006 and TOPIA 2006 and that this potentially left the contributors to the IOPC Funds in a more vulnerable position as the oil receivers in States Parties would be required to step in if the alternative insurer could not pay claimants.

9.1.7 It was reported that States Parties to the Civil Liability and Bunkers Conventions would need to ensure that ships on their shipping registers and foreign flagged ships entering their ports and terminals that engaged or had engaged in the carriage of crude oil, petroleum and petrochemical products that originated in Iran carried valid and adequate insurance cover and their State certificates were valid and reflected the underlying insurance cover.

Intervention by the delegation of the Islamic Republic of Iran

9.1.8 The Islamic Republic of Iran made a statement which is contained in full at Annex III. At that delegation's request, certain elements of the intervention are included below.

'Mr Chairman, distinguished delegates,

In international law, there is a very basic principle that, when States become parties to an international treaty, they will be obliged to respect it and do not take measures that would negatively affect the principles, purposes and objects of such treaty as well as the interests of other parties. That is why Article 24 of the Vienna Convention on the Law of Treaties 1969, in accordance with '*Pacta Sunt Servanda*' principle stipulates that:

'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'.

The Islamic Republic of Iran believes that the European Council, in adopting Regulation 267/2012, failed to consider this fundamental principle. We see no *'Good Faith'* in performing the CLC and Fund 92 Conventions, by taking these unilateral measures that ignore the rights and interests of the State Parties including the Islamic Republic of Iran; the measures in shipping industry with huge impacts on persons and entities that have nothing to with current disputes between the EU and the Government of the Islamic Republic of Iran with regards to nuclear activities.

Mr Chairman, distinguished delegates,

Putting aside the political aspects, actions taken by European Council against the Islamic Republic of Iran with the impacts on other States and shipowners, not only are in contrary to the aforementioned international law rules and, therefore, prejudice and breach the obligations enshrined in CLC and Fund Conventions, but also are against the spirit prevailing upon IMO and IOPC Fund. Consequently, these restrictive and in fact discriminatory measures endanger the maritime safety and security as well as marine environment and, in case of IOPC Fund, prevent the innocent people who would suffer from the oil pollution that may happen in future at sea.

We strongly urge the Member States to be aware of these unilateral measures and make all necessary arrangements to preserve their rights granted in CLC and Fund Conventions. In addition we request, through you Mr Chairman, the Director of IOPC Fund, for the benefit of the members of Fund, reflect our great concern and strong objection to the relevant authorities of EU and report back to the next session of the Assembly or Administrative Council.'

Debate

9.1.9 One delegation raised the issue as to which party, the claimant or the insurer, would bear the burden of proof as to whether and to what extent the damages were caused by bunker oil which had originated in the Islamic Republic of Iran. That delegation had asked the European Union, through diplomatic channels, whether the Regulation would directly affect the provision of insurance or reinsurance, including property and third party liability coverage such as P&I, especially in respect of any vessel which carried bunker fuel. That delegation said that the response from the European External Action Service had been that it would be theoretically possible, but, in reality, very hard to identify whether the bunker fuel had originated in the Islamic Republic of Iran or not. That delegation expressed its view that when the victim claimed compensation from the insurer, particularly in respect of the bunker oil, it would be for the insurer to bear the burden of proof that the damages had been caused by oil which had originated in Iran and that, therefore, where the insurer wished to refuse the payment, it was not the claimant who should prove that the damages had been caused by the oil which

had not originated in Iran. That delegation sought clarification on the understanding of this point from the International Group.

9.1.10 In response, the International Group stated that it would be a question of fact in a particular case as to whether or not there was or had been Iranian oil on board which would trigger the termination clause; it would be determined on a case-by-case basis.

9.1.11 Another delegation agreed that there would be a direct impact on the international compensation regime as a result of the EC Regulation as it would affect third parties as stated in the document. That delegation suggested that instructions be given to the Director to monitor the situation so that a suitable solution could be found.

9.1.12 One delegation informed the Assembly that the EC Regulation had been adopted based on a serious situation. It was not for this forum to engage in a discussion of the political motives behind this initiative. That delegation said that it was the understanding of the EU Member States that the Regulation was in full compliance with their international obligations under the Civil Liability and Fund Convention. Furthermore these Conventions did not oblige certain States to provide insurance cover for the world oil tanker fleet. That delegation further noted that, regardless of these Conventions, should an oil tanker not be insured, the IOPC Funds would provide compensation in States Parties to the relevant Fund Convention. That delegation offered to provide interested delegates with a copy of the EC Regulation.

9.1.13 Another delegation asked the Director what the potential implications of the EC Regulation with respect to the international compensation regime would be in the event of a spill in their national waters. The Director stated that the EC Regulation had not changed the international Conventions such as the Civil Liability and Fund Conventions and therefore the compensation available under the CLC and Fund regime should provide protection in the event of a spill.

9.1.14 One delegation shared the concern expressed by a previous delegation in that the recent EC sanctions could interrupt the normal operation of the international compensation regime and this might affect innocent third party victims. That delegation suggested that the Director be instructed to monitor the situation and report back to the Assembly at its next session.

9.1.15 The Chairman thanked the International Group for the information provided. He reminded delegations that the issue raised by the International Group was part of a bigger picture and that the 1992 Fund Assembly should not enter a political area which had been decided outside the forum of the IOPC Funds' meetings. The Chairman also reminded delegations that the Bunkers Convention was under the auspices of IMO and was not dealt with by the IOPC Funds. In addition, he stated that he agreed with the Director's view that, irrespective of the EC Regulation, the CLC and Fund regime remained unchanged.

1992 Fund Assembly Decision

9.1.16 The 1992 Fund Assembly took note of the information provided by the International Group and instructed the Director to monitor the situation and report back to the Assembly at its next session.

9.2

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

9.2.1 The delegation of Panama made the following statement:

'Thank you Mr Chairman,

On this occasion, the Republic of Panama has the honour to address this distinguished forum to extend a very special invitation from the Director of the Maritime Authority of Panama, Mr Roberto Linares. As many of you will know, Panama is leader in ship registry, which is why our membership of this international Fund is of such great importance to us. That said, I should emphasise that, in our commitment to ensuring

compliance with the highest safety standards and international conventions, we would very much welcome the opportunity to host the spring session of the IOPC Funds in our country next year. Within the framework of other meetings that will be taking place and taking advantage of this occasion to show everyone the work of the expansion of the Panama Canal, which will be nearing completion next year, we hope that your capitals will be pleased to accept this invitation and we look forward to hearing your comments at the October session.

Thank you very much!'

9.2.2 The Chairman asked the delegations to take note of the invitation and stated that it would be discussed at the October meeting.

10 1992 Fund sixth intersessional Working Group

10.1

Report of the fourth meeting of the 1992 Fund sixth intersessional Working Group Document IOPC/APR12/10/5				**92WGR6**	

The 1992 Fund sixth intersessional Working Group held its fourth meeting on 25 and 26 April 2012. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2012.

11 1992 Fund seventh intersessional Working Group

11.1

Report of the first meeting of the 1992 Fund seventh intersessional Working Group Document IOPC/APR12/11/2					**92WGR7**

The 1992 Fund seventh intersessional Working Group held its first meeting on 26 April 2012. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2012.

12 Adoption of the Record of Decisions

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

The draft Record of Decisions of the April 2012 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/APR12/12/WP.1 and IOPC/APR12/12/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	1971 Fund Admin. Council
1.	Algeria	●		●
2.	Angola	●		●
3.	Antigua and Barbuda	●		●
4.	Argentina	●		
5.	Australia	●		●
6.	Bahamas	●	●	●
7.	Belgium	●		●
8.	Bulgaria	●		
9.	Cameroon	●		●
10.	Canada	●	●	●
11.	China [1]	●		●
12.	Côte d'Ivoire			●
13.	Cyprus	●		●
14.	Denmark	●		●
15.	Dominican Republic	●		
16.	Ecuador	●		
17.	Estonia	●		●
18.	Fiji	●		●
19.	Finland	●		●
20.	France	●	●	●
21.	Germany	●		●
22.	Ghana	●		●
23.	Greece	●	●	●
24.	Grenada	●		
25.	Islamic Republic of Iran	●		
26.	Italy	●		●
27.	Japan	●		●
28.	Kenya	●		●
29.	Liberia	●		●
30.	Malaysia	●	●	●
31.	Malta	●		●
32.	Marshall Islands	●		●
33.	Mexico	●	●	●
34.	Morocco	●	●	●
35.	Mozambique	●		●
36.	Netherlands	●		●
37.	Nigeria	●	●	●

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

		1992 Fund Assembly	1992 Fund Executive Committee	1971 Fund Admin. Council
38.	Norway	●	●	●
39.	Panama	●	●	●
40.	Philippines	●		
41.	Poland	●		●
42.	Portugal	●		●
43.	Qatar	●		●
44.	Republic of Korea	●	●	●
45.	Russian Federation	●		●
46.	Saint Lucia	●		
47.	Singapore	●		
48.	Spain	●	●	●
49.	Sri Lanka	●		●
50.	Sweden	●		●
51.	Syrian Arab Republic	●		●
52.	Trinidad and Tobago	●		
53.	Tunisia	●		●
54.	Turkey	●	●	
55.	United Kingdom	●		●
56.	Uruguay	●		
57.	Venezuela (Bolivarian Republic of)	●		●

1.3 Non Member States represented as observers

		1992 Fund	1971 Fund
1.	Saudi Arabia	●	●
2.	Ukraine	●	

1.3 Intergovernmental organisations

		1992 Fund	1971 Fund
1.	Conference of Peripheral Maritime Regions (CPMR)	●	
2.	European Commission	●	●
3.	International Maritime Organization (IMO)	●	●
4.	Maritime Organisation of West and Central Africa (MOWCA)	●	

1.4 International non-governmental organisations

		1992 Fund	1971 Fund
1.	BIMCO	●	●
2.	Comité Maritime International (CMI)	●	●
3.	International Association of Classification Societies Ltd (IACS)	●	
4.	International Association of Independent Tanker Owners (INTERTANKO)	●	●
5.	International Chamber of Shipping (ICS)	●	●
6.	International Group of P&I Clubs	●	●
7.	International Tanker Owners Pollution Federation Ltd (ITOPF)	●	●
8.	International Union of Marine Insurers (IUMI)	●	
9.	Oil Companies International Marine Forum (OCIMF)	●	●
10.	World Liquid Petroleum Gas Association (WLPGA)	●	

* * *

ANNEX II

Internal Regulation 12

(as amended by the 1992 Fund Assembly at its 17th extraordinary session held from 24-27 April 2012)

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Legal Counsel, the Head of the Claims Department/Technical Adviser or the Head of the External Relations and Conference Department, 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.

*** * ***

ANNEX III

Statement by the delegation of the Islamic republic of Iran

Agenda item 9 of the 17th extraordinary session of the 1992 Fund Assembly

25 April 2012

Thank you Mr Chairman,

The Islamic Republic of Iran considered the document IOPC/APR12/9/1 submitted by the International Group of P&I Associations containing useful information regarding the impact of European Council Regulation 267/2012 concerning restrictive measures against the Islamic Republic of Iran.

Mr Chairman,

Amongst points and concerns raised in the P&I document, we would like to draw your attention to the paragraph 2.4 explaining the impact of the restrictive measures on the 1992 CLC and IOPC Funds Regime and Paragraph 3 containing the conclusion. In particular, I read the last sentence of paragraph 3.1 and 3.2.

Paragraph 3.1 says: *"Important beneficiaries of the compensation which the system delivers are innocent third-party victims of maritime incidents rather than the intended sanctions targets"*.

Paragraph 3.2 says: *"To the extent that their interests are compromised by the EU sanctions measures, they will either go uncompensated or partly compensated or states and states contributors will have to provide the compensation or top up compensation which would otherwise have been delivered through the current P & I insurance cover arrangements."*

Mr Chairman, distinguished delegates,

In international law, there is a very basic principle that, when States become parties to an international treaty, they will be obliged to respect it and do not take measures that would negatively affect the principles, purposes and objects of such treaty as well as the interests of other parties. That is why Article 24 of the Vienna Convention on the Law of Treaties 1969, in accordance with "*Pacta Sunt Servanda*" principle stipulates that:

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

The Islamic Republic of Iran believes that the European Council, in adopting Regulation 267/2012, failed to consider this fundamental principle. We see no *"Good Faith"* in performing the CLC and Fund 92 Conventions, by taking these unilateral measures that ignore the rights and interests of the State Parties including the Islamic Republic of Iran; the measures in shipping industry with huge impacts on persons and entities that have nothing to with current disputes between the EU and the Government of the Islamic Republic of Iran with regards to nuclear activities.

Mr Chairman, distinguished delegates,

Putting aside the political aspects, actions taken by European Council against the Islamic Republic of Iran with the impacts on other States and shipowners, not only are in contrary to the aforementioned international law rules and, therefore, prejudice and breach the obligations enshrined in CLC and Fund Conventions, but also are against the spirit prevailing upon IMO and IOPC Fund. Consequently, these restrictive and in fact discriminatory measures endanger the maritime safety and security as well as marine environment and, in case of IOPC Fund, prevent the innocent people who would suffer from the oil pollution that may happen in future at sea.

We strongly urge the Member States to be aware of these unilateral measures and make all necessary arrangements to preserve their rights granted in CLC and Fund Conventions. In addition we request, through you Mr Chairman, the Director of IOPC Fund, for the benefit of the members of Fund, reflect our great concern and strong objection to the relevant authorities of EU and report back to the next session of the Assembly or Administrative Council.

In conclusion,

I should inform that, the Great Nation of the Islamic Republic of Iran has found its ways how to be independently developed in all aspects and scientific fields and nothing can stop it. This nation by relying upon its young scientists and without any help from the developed countries, now has proudly achieved high technologies in many sectors such as satellite, nanotechnology, stem cells and in particular peaceful nuclear industry, even though on this way, some of the best scientists have been innocently and cowardly martyred in the last four years.

It is an enigmatical question for the people of the Islamic Republic of Iran that, why certain countries don't like and welcome such achievements and developments by a developing country and on the contrary, play leading roles in taking all measures to deprive it from its fundamental and natural rights. We invite them to be realistic and recognise the rights of developing countries and get rid of self-made allegations as to the peaceful nuclear activities of the Islamic Republic of Iran. They should refrain from restrictive measures in all sectors that are useless as the experiences show and just cause pains to the innocent people and in addition deprive their people and entities from attractive oil and petrochemical markets of the Islamic Republic of Iran.

Finally, we should add that, if there are some concerns and disputes, the Government of the Islamic Republic of Iran, as declared on many occasions, is ready to discuss the matters which we believe that, most of them are derived from misunderstandings.

Thank you Mr Chairman.