INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT12/**11/1**
Original: ENGLISH	19 October 2012

1992 Fund Administrative Council	**92AC10/A17**	●
1992 Fund Executive Committee	**92EC56**	●
Supplementary Fund Assembly	**SA8**	●
1971 Fund Administrative Council	**71AC29**	●

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

(held from 15 to 19 October 2012)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Administrative Council **(92AC10/ A17)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee **(92EC56)**	Ms Ginette Testa (Panama)	Mr Samuel Darse (India)
Supplementary Fund	Assembly **(SA8)**	Mr Sung-bum Kim (Republic of Korea)	Mrs Birgit Sølling Olsen (Denmark) Mr Isao Yoshikane (Japan)
1971 Fund	Administrative Council **(71AC29)**	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

CONTENTS

Opening of the sessions

1992 Fund Administrative Council

0.1 The Chairman of the 1992 Fund Assembly attempted to open the 17th session of the Assembly at 9.30 and 10.00 but the Assembly failed to achieve a quorum on both occasions. Only the following 47 Member States of the 1992 Fund were present at that time, whereas a quorum required 55 States to be present:

Algeria	Germany	Panama
Angola	Ghana	Philippines
Argentina	Greece	Poland
Australia	Grenada	Qatar
Bahamas	Islamic Republic of Iran	Republic of Korea
Bulgaria	Italy	Russian Federation
Cameroon	Japan	Singapore
Canada	Liberia	Spain
China[<1>]	Malaysia	Sri Lanka
Cyprus	Malta	Sweden
Denmark	Marshall Islands	Syrian Arab Republic
Ecuador	Mexico	Tunisia
Estonia	Morocco	Turkey
Fiji	Netherlands	United Kingdom
Finland	Nigeria	Uruguay
France	Norway	

0.2 It was recalled that, at its 7th session, the 1992 Fund Assembly had adopted 1992 Fund Resolution N°7 whereby, whenever the Assembly failed to achieve a quorum, the Administrative Council established under Resolution N°7 should assume the functions of the Assembly, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions.

0.3 In view of the fact that no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 10th session of the 1992 Fund Administrative Council, acting on behalf of the 17th session of the 1992 Fund Assembly[<2>].

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

Supplementary Fund Assembly

0.5 The Supplementary Fund Assembly Chairman opened the 8th session of the Assembly.

1971 Fund Administrative Council

0.6 The 1971 Fund Administrative Council Chairman opened the 29th session of the Administrative Council.

1992 Fund Executive Committee

0.7 The 1992 Fund Executive Committee Chairman opened the 56th session of the Executive Committee.

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

<2> From this point forward, references to the '10th session of the 1992 Fund Administrative Council' should be taken to read '10th session of the 1992 Fund Administrative Council, acting on behalf of the 17th session of the 1992 Fund Assembly'.

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

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/OCT12/1/1**	**92AC**	**92EC**	**SA**	**71AC**

The 1992 Fund Administrative Council, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/OCT12/1/1.

1.2

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

1992 Fund Administrative Council Decision

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

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

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

Supplementary Fund Assembly Decision

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

Chairman: Mr Sung-bum Kim (Republic of Korea)
First Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)
Second Vice-Chairman: Mr Isao Yoshikane (Japan)

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

1971 Fund Administrative Council Decision

1.2.5 The 1971 Fund Administrative Council elected the following delegates to hold office until the next regular session of the Administrative Council:

Chairman: Captain David J F Bruce (Marshall Islands)
Vice-Chairman: Mr Andrzej Kossowski (Poland)

1.2.6 The Chairman thanked, also on behalf of the Vice-Chairman, the 1971 Fund Administrative Council for the confidence shown in them.

1.3

Examination of Credentials – Establishment of Credentials Committee **Document IOPC/OCT12/1/2**	**92AC**	**92EC**	**SA**	
Participation				**71AC**
Examination of Credentials – Report of the Credentials Committee **Document IOPC/OCT12/1/2/1**	**92AC**	**92EC**	**SA**	

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

1.3.2 The governing bodies also recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (see documents 92FUND/A.13/25, paragraph 7.9 and SUPPFUND/A.4/21, paragraph 7.11).

1992 Fund Administrative Council Decision

1.3.3 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Australia, Grenada, Italy, Mexico and Tunisia as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Debate

1.3.5 After having examined the credentials of the delegations of the 1992 Fund and Supplementary Fund Member States, and of the delegations of States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/OCT12/1/2/1 that credentials had been received from 52 Member States of the 1992 Fund, including States members of the Executive Committee and the Supplementary Fund, and that 51 were in order. It was noted that credentials had been submitted but were not in full compliance with the Rules of Procedure in respect of Belgium and had not yet been submitted by the Syrian Arab Republic.

1.3.6 The Credentials Committee was pleased to note an improvement by Member States both in the timely submission of credentials and in conformity with the IOPC Funds' credentials policy. The Committee expressed its hope that this trend would continue.

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

1.4

Request for observer status	**92AC**		**SA**	

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

2 Overview

2.1

Report of the Director **Document IOPC/OCT12/2/1**	**92AC**		**SA**	**71AC**

2.1.1 The Director introduced his report on the activities of the IOPC Funds since the October 2011 sessions of the governing bodies, emphasising that the report only covered those activities of the IOPC Funds which he felt merited specific mention in the context of his general report to the governing bodies and that some of these activities were also dealt with in detail under individual agenda items.

2.1.2 With respect to compensation matters, the Director referred to a number of key developments all of which would be discussed in detail at the 56th session of the 1992 Fund Executive Committee or at the 29th session of the 1971 Fund Administrative Council. He pointed out that the *Alfa I* incident, which had taken place in Greece in March 2012, was the first incident which had taken place in a Member State of the Supplementary Fund although it was likely that the Supplementary Fund would not be called upon to pay compensation. He also referred to the *JS Amazing* and *Redfferm* incidents in Nigeria, the *Hebei Spirit* incident in the Republic of Korea and the *Plate Princess* incident in the Bolivarian Republic of Venezuela.

2.1.3 The Director reported that the 1992 Fund sixth intersessional Working Group on large numbers of claims for small amounts had held its fourth meeting in April 2012. He noted that a document containing the fourteen revised proposals relating to the role Member States could play following an incident would be discussed later in the week along with four proposed amendments to the Claims Manual and guidance documents. He reported that the next meeting of the Working Group would be held in the spring of 2013.

2.1.4 The Director also reported that the seventh intersessional Working Group on the definition of 'ship' had held its first meeting in April 2012. He noted that the majority of delegations who had taken the floor had requested further information from the relevant stakeholders before a full debate could take place and had indicated that they needed more time to consider the issues and the consequences of a change in the definition. He noted that assistance had been offered by a number of industry representatives from organisations with observer status to the 1992 Fund in carrying out further research and obtaining further specific data in advance of the next meeting of the Working Group in spring 2013. He also noted that Member States had agreed to look into national practices and that a Consultation Group had been established to ensure that some discussion could take place and progress could be made before the next meeting of the Working Group in 2013.

2.1.5 With respect to staffing, the Director reported that he had appointed Mr Ranjit Pillai (Sri Lanka) to the position of Deputy Director with effect from 1 May 2012 and that Mr Pillai would also continue in his position as Head of the Finance and Administration Department. He reported that he had also appointed Mr Matthew Sommerville (United Kingdom), formerly Technical Adviser/Claims Manager, to the post of Head of the Claims Department with effect from 8 March 2012 at the D1 level and that he had decided that the role of Head of the Claims Department and that of the Technical Adviser should be combined given Mr Sommerville's previous role as Technical Adviser. He also reported that Ms Emer Padden (Ireland) had been appointed to the post of External Relations and Conference Coordinator and that she had taken up her appointment on 9 January 2012.

2.1.6 With respect to external relations, the Director reported that, as a result of a circular calling for nominations for participation in the IOPC Funds' Short Course to be held from 19 to 23 November 2012, sixteen nominations had been received from twelve 1992 Fund Member States. He reported that as a result of the selection process, nominees from eleven Member States had been offered a place on the Course which was kindly being supported by the International Maritime Organization (IMO), INTERTANKO, the International Chamber of Shipping (ICS), the International Group of P&I Associations (International Group) and the International Tanker Owners Pollution Federation Ltd (ITOPF).

2.1.7 The governing bodies noted that since their October 2011 sessions, the Secretariat had continued to organise informal regional lunch meetings at its offices for London-based representatives of Member States and non-Member States and that such meetings had been held for representatives from Africa, the Middle East and Europe. They noted that, in addition to providing the opportunity to ask questions and for an exchange of views on various subjects such as the running of Funds' meetings, oil reporting, the contributions system, incidents and claims handling and the status of the Hazardous and Noxious Substances (HNS) Convention these meetings provided the opportunity for the Secretariat to draw the representatives' attention to the importance of correctly implementing the Conventions and the support of the Secretariat was offered in this regard. They further noted that, given their success, the Secretariat intended to continue to hold such gatherings at regular intervals.

2.1.8 The governing bodies noted that Interspill 2012, the European oil spill conference and exhibition, had taken place in March 2012 in London and that the IOPC Funds' Secretariat had been a member of the steering committee which organised the event which had been attended by more than 1 200 visitors. It was also noted that the Director, the Head of the Claims Department/Technical Advisor and the Head of External Relations and Conference Department had presented or chaired sessions at the conference and that the Secretariat had also had a stand at the exhibition which had attracted a large number of visitors seeking further information on the work of the Funds or requesting guidance on the claims process and admissibility criteria. It was noted the IOPC Funds' Secretariat, together with ITOPF and a P&I Club (Skuld Club), had also run a claims and compensation short course attended by 16 participants in the framework of the conference.

2.1.9 The governing bodies noted that Mauritania, Montenegro and Niue had ratified the 1992 Conventions and that they would enter into force between November 2012 and June 2013 while the Supplementary Fund Protocol would also enter into force for Montenegro in November 2012, bringing to 28 the number of Member States of the Supplementary Fund. They also noted that the Secretariat had continued its efforts to boost the engagement of Member States and encourage the involvement of non-Member States. Since the October 2011 sessions of the governing bodies, members of the Secretariat had participated in national or regional seminars or workshops relating to the international oil pollution liability and compensation regime or to the HNS liability and compensation regime in Azerbaijan, Bulgaria, Costa Rica, Japan, Malaysia, Norway, Papua New Guinea, Senegal and Thailand. They noted that, where required, the implementation of the Conventions and the situation with respect to outstanding oil reports or contributions had been discussed with the appropriate authorities in these countries.

2.1.10 The Director reported that outstanding contributions continued to be of great concern to IOPC Funds' Member States and to the Secretariat. He reported that legal action was on-going in the Russian Federation to recover amounts owed to the Funds and that the Secretariat had also been actively taking steps to resolve outstanding contributions due from the former Union of Soviet Socialist Republics and the former Socialist Federal Republic of Yugoslavia. He noted that Member States not correctly implementing the 1992 Fund Convention in their national legislation was also of concern as shown in the case of South Africa where contributors had questioned their obligation to pay contributions.

2.1.11 The Director recalled that at the April 2012 session of the 1992 Fund Assembly, the International Group had reported that the European Council had adopted restrictive measures against the Islamic Republic of Iran that would prohibit the execution of contracts relating to the purchase, import and transport of crude oil, petroleum and petrochemical products originating in Iran and that these restrictions would take effect as from 1 July 2012. As instructed by the Assembly at that session, the Director reported that he was monitoring the situation and no spills involving Iranian tankers or Iranian persistent oil had taken place that would have any impact on the international oil pollution compensation regime.

2.1.12 The Director pointed out that the European Council Regulations had not changed the provisions of the International Conventions and that therefore the compensation available under the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund regime should be available in the event of an oil spill. He commented, however, that sanctions might create difficulties in ensuring the prompt payment of compensation to victims and that these difficulties would have to be resolved so that victims were compensated as soon as possible.

2.1.13 The Director said that, in the event of an incident where sanctions would affect the payment of compensation by the 1992 Fund, he would convene a session of the 1992 Fund Executive Committee where Member States would be able to examine the particular circumstances of the case and would give such instructions to the Director as to the payment of compensation to victims as required. He further reported that it was likely that authorisation from the United Kingdom authorities to transfer monies to Islamic Republic of Iran would be required in the same manner as the 1992 Fund was currently requesting authorisation from the United Kingdom authorities to receive payments from contributors based in the Islamic Republic of Iran. The governing bodies noted that the Director intended to continue to monitor the situation and would report any developments to them as required.

2.1.14 The Director reported that the IOPC Funds and IMO had agreed an extension on the lease of premises that the Funds use at IMO Headquarters. The extended lease started in October 2012 and will be valid until October 2022.

2.1.15 Looking ahead, the Director commented that, whilst it was comforting to note that the frequency of incidents had reduced over the years, the important role still played by the Funds had nevertheless been apparent during the past year with the involvement of the 1992 Fund in three new incidents, the *Alfa I*, *JS Amazing* and *Redfferm*, and that the main priority for the IOPC Funds would, as always, continue to be the prompt payment of compensation to victims of oil pollution. With respect to other activities which would be high on the Secretariat's agenda, the Director said that the Secretariat would continue to work actively, in consultation with IMO, on the preparations for the entry into force of the HNS Convention and on the setting up of the HNS Fund, as well as on the winding up of the 1971 Fund where substantial progress had already been made but there were still some outstanding matters to be resolved.

2.1.16 The Director expressed his gratitude to all those without whom the international compensation regime would not function, mentioning in particular the Member States, the P&I Clubs, the oil industry in Member States and the international shipping community. He also recognised the very strong support that the IMO continued to provide to the IOPC Funds. He thanked the Audit Body and the Investment Advisory Body, the representatives of the External Auditor, the Funds' lawyers and experts and, last but not least, all the members of the Secretariat for their dedication to the Funds over the past year.

2.1.17 In concluding, the Director noted that this was his first report to the regular autumn sessions of the governing bodies since his election as Director. He said that working for the IOPC Funds was interesting, challenging and rewarding and he thanked Member States for having placed their confidence in him.

Debate

2.1.18 The delegation of the Islamic Republic of Iran thanked the Director for his Report. In particular, that delegation welcomed the views expressed by the Director in respect of the monitoring of the restrictive measures adopted by the European Council against the Islamic Republic of Iran. It shared the Director's view regarding the possible impact of the European Council Regulations on the 1992 Civil Liability and Fund Conventions and was pleased to note that the Director had pointed out that the Regulations had not changed the provisions of the International Conventions.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/OCT12/3/1**		**92EC**	**SA**	**71AC**

3.1.1 The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT12/3/1, which contained information on documents for the October 2012 meetings relating to incidents involving the IOPC Funds.

3.1.2 The Supplementary Fund Assembly noted that the *Alfa I* incident was the first to occur in a State Party to the Supplementary Fund Protocol but that it was very unlikely that the incident would exceed the limit under the 1992 Fund Convention.

3.2

Incidents involving the IOPC Funds – 1971 Fund: *Vistabella, Aegean Sea* and *Iliad* **Document IOPC/OCT12/3/2**				**71AC**

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT12/3/2 concerning the *Vistabella*, *Aegean Sea* and *Iliad* incidents.

Vistabella

3.2.2 It was recalled that the 1971 Fund had commenced summary proceedings against the shipowner's insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal in Guadeloupe. It was recalled, however, that the insurer had opposed the execution of the judgement.

3.2.3 It was also recalled that in March 2008 the Court had delivered a judgement in the 1971 Fund's favour but that the insurer had appealed against this judgement in the Court of Appeal in Trinidad and Tobago.

3.2.4 The Administrative Council noted that in a judgement rendered in July 2012, the Court of Appeal in Trinidad and Tobago had refused enforcement of the judgement of the Court of Appeal in Guadeloupe. It was noted that in its judgement the Court had argued that the Insurance Act of Trinidad and Tobago set out a rule of public policy that provided that a contract of insurance issued in that jurisdiction should be governed by the law of Trinidad and Tobago and be subject to the jurisdiction of the Courts of Trinidad and Tobago. It was noted that the Court had therefore concluded that to enforce a judgement in which the French courts had assumed jurisdiction and applied French law would be contrary to public policy.

3.2.5 The Administrative Council noted that the 1971 Fund had requested the Court of Appeal leave to appeal the judgement to the Privy Council.

Aegean Sea

3.2.6 It was recalled that on 30 October 2002 a global settlement had been concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour, which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident. It was also recalled that the 1971 Fund had undertaken to notify the Spanish State of any proceedings to which the Spanish State was not a Party and not to accept the claims brought in the proceedings.

3.2.7 It was recalled that a number of claimants from the fisheries and mariculture sectors who had not reached agreement with the Spanish State on the amount of their losses had initiated civil proceedings against the Spanish Government and the 1971 Fund in the Court of First Instance in La Coruña.

3.2.8 It was noted that only one claim by a fish pond owner, totalling €799 921, was still pending in the civil proceedings. It was also noted that in a judgement delivered in July 2012 the Court of First Instance had decided to award the claimant €363 746 plus interest since the date of the incident, but that since the claimant had not included the pilot/Spanish Government in the proceedings, the 1971 Fund would only be liable in respect of 50% of the awarded amount, ie €181 873.

3.2.9 It was also noted that the 1971 Fund had appealed against the judgement. It was further noted that the Director continued to hold discussions with the Spanish State on a possible way forward.

3.2.10 The Administrative Council noted that the Spanish State would, under the global settlement with the 1971 Fund, pay any amounts awarded by the courts.

Iliad

3.2.11 The Administrative Council noted that despite the 1971 Fund's request to the Liquidator in July 2010 to expedite the hearing of the limitation proceedings, there had been no developments in this regard. It was noted that now the Liquidator or one of the claimants would have to issue a summons to the 527 parties for a new date to be fixed for a hearing before the Court of Nafplion.

3.2.12 The Administrative Council noted that, taking into account the total claim amount approved by the Liquidator (€2 125 755) and applicable interest, it seemed unlikely that the final adjudicated amount would exceed the limitation sum of €4.4 million. It was also noted that claims representing approximately one third of the Liquidator-approved amount might be found to be time-barred by the Court. The Administrative Council noted, however, that although the likelihood of the 1971 Fund having to pay compensation appeared to be slim, 446 claimants had filed appeals against the Liquidator's Report and that the total claimed amount was €11 million. It was noted, therefore, that the 1971 Fund would continue to monitor the legal proceedings.

3.3

Incidents involving the IOPC Funds – 1971 Fund: ***Nissos Amorgos*** **Document IOPC/OCT12/3/3 and IOPC/OCT12/3/3/1**				**71AC**

3.3.1 The 1971 Fund Administrative Council took note of the information contained in documents IOPC/OCT12/3/3, submitted by the Secretariat, and IOPC/OCT12/3/3/1, submitted by the International Group of P&I Associations, concerning the *Nissos Amorgos* incident.

DOCUMENT IOPC/OCT12/3/3, SUBMITTED BY THE SECRETARIAT

Criminal proceedings

3.3.2 The 1971 Fund Administrative Council recalled that in a judgement rendered in May 2000, the Criminal Court in Cabimas had held the master liable for the damage arising as a result of the incident.

3.3.3 It was also recalled that the Bolivarian Republic of Venezuela had presented a claim for pollution damage in the Criminal Court in Cabimas for Bs29 220 619 740 (BsF 29 220 620 or US$60 250 396) against the master, the shipowner and the Gard Club.

3.3.4 It was further recalled that in February 2010 the Maracaibo Criminal Court of First Instance had held that the master, the shipowner and the Gard Club had incurred a civil liability derived from the criminal action and had ordered them to pay to the Venezuelan State the amount claimed, plus BsF 57.7 million plus indexation, interest and costs but that the 1971 Fund had not been condemned to make any payment. It was recalled that in its judgement, the Maracaibo Criminal Court of First Instance had denied the shipowner the right to limit its liability.

Judgement rendered by the Maracaibo Criminal Court of Appeal

3.3.5 It was recalled that in March 2011, the Maracaibo Criminal Court of Appeal had upheld the judgement of the Maracaibo Criminal Court of First Instance and had dismissed the appeals by the master, the shipowner, the Gard Club and the 1971 Fund. It was also recalled that the 1971 Fund, the master, shipowner and Gard Club had appealed to the Supreme Court (Criminal Section) but that the Court had not yet delivered its judgement.

3.3.6 The Administrative Council noted that in the Director's view, the judgement rendered by the Maracaibo Criminal Court of Appeal raised a number of issues as set out in paragraphs 3.3.7-3.3.11.

Shipowner's limitation

3.3.7 It was noted that the Director was of the view that in this instance there were no grounds under the 1969 Civil Liability Convention (1969 CLC) upon which the shipowner should be denied the right to limit its liability.

Time bar

3.3.8 It was recalled that the legal actions by the Bolivarian Republic of Venezuela in the Civil and Criminal Courts had been brought against the shipowner and the Gard Club and that the 1971 Fund was not a defendant in these actions. It was also recalled that at its October 2005 session the 1971 Fund Administrative Council had endorsed the Director's view that the claims by the Bolivarian Republic of Venezuela were time-barred *vis-à-vis* the 1971 Fund, since Article 6.1 of the 1971 Fund Convention required that, in order to prevent a claim from becoming time-barred in respect of the 1971 Fund, a legal action had to be brought against the Fund within six years of the date of the incident.

Admissibility of claims

3.3.9 It was recalled that the claims by the Bolivarian Republic of Venezuela related to environmental damage had been calculated on the basis of theoretical models and that the governing bodies of the 1971 Fund had taken the view that claims for compensation for damage to the marine environment calculated on the basis of theoretical models were not admissible. It was further recalled that at its July 2003 session, the 1971 Fund Administrative Council had considered that the claims by the Bolivarian Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 CLC and the 1971 Fund Convention and that these claims should therefore be treated as inadmissible.

Liability of the 1971 Fund to pay compensation

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

3.3.11 It was noted that the judgement was subject to appeal to the Supreme Tribunal and, potentially, to the Constitutional Section of the Supreme Tribunal. It was noted, however, that if the judgement of the Venezuelan courts became enforceable on the shipowner and the Gard Club, the question would arise as to whether any compensation would be payable by the 1971 Fund.

Civil proceedings

3.3.12 The 1971 Fund Administrative Council noted that the master, shipowner and Gard Club had requested the Supreme Court (Civil Section) to order the transfer of the shipowner's limitation fund, originally constituted in the criminal proceedings, to the Civil Section of the Supreme Court where all the pending civil claims arising from the incident had been consolidated. It was noted that the Supreme Court (Civil Section) had not yet decided on this request.

DOCUMENT IOPC/OCT12/3/3/1, SUBMITTED BY THE INTERNATIONAL GROUP OF P&I ASSOCIATIONS

3.3.13 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT12/3/3/1 submitted by the International Group of P&I Associations.

Intervention by the International Group of P&I Associations

3.3.14 The International Group of P&I Associations made the following statement:

> 'One of the purposes of this intervention is draw to the attention of the Administrative Council to the possible implications of a judgement from the Supreme Tribunal on the shipowner's appeal from the Maracaibo Criminal Court of Appeal in so far as they may affect the 1971 Fund. As mentioned in the International Group submission, four months after the spill, a limitation fund was established in the Cabimas Court in accordance with Article VI of the 1969 CLC, the Court accepted the owner's right to limit and released the ship from arrest. No appeal was made from this decision and at no time has there been an allegation that the incident was attributable to actual fault or privity on the part of the owner.
>
> In the intervening period admissible claims have been paid in accordance with the current practice of the time, firstly the shipowner paying up to the approximate CLC limitation sum, and subsequently payments being made by the 1971 Fund. In 2006 an audit was made by the Gard Club and the Fund encompassing all the compensation payments and joint claims-handling expenses incurred respectively by the Club and the 1971 Fund. A provisional adjusting balance has been settled, based on the 1969 CLC limitation amount and the corresponding proportions of claims-handling costs to be borne by both parties. However it is not possible to complete the audit since there are still outstanding claims.
>
> Fourteen years after the decision of the Cabimas Court that the owner had the right to limit, the Maracaibo Criminal Court of Appeal overturned the decision, holding that the shipowner did not have the right to limit liability. This decision is subject to appeal to the Supreme Tribunal. The Club shares the view of the Director that there are no grounds to hold that the shipowner is not entitled to limit liability. Nonetheless there remains the possibility that the Supreme Tribunal will uphold the decision of the Maracaibo Court of Appeal and that the limitation fund guarantee will be encashed in partial satisfaction of the judgement. This would mean that the shipowner will have paid twice the limitation fund and in accordance with the practice adopted between the Club and the Fund, namely that an audit should be made at the end of the case to ensure that the various financial outgoings were correctly distributed between them, the Club would look to the Fund for reimbursement of any sum above the limitation amount. Of course, the Club hopes that it will not come to this, but we feel that it is important to at least raise it at this stage given the most recent court judgement.'

Debate

3.3.15 A number of delegations expressed concern with respect to the implementation of the Conventions by the Bolivarian Republic of Venezuela and with respect to the decisions of the Venezuelan courts.

3.3.16 One delegation, while not wishing to take a position on the claim at this stage, observed that there were potentially serious issues for the CLC and Fund regime to consider. That delegation expressed concerns with respect to the admissibility of the claim by the Venezuelan Government and to the Maracaibo Court of Appeal's decision regarding the shipowner's right to limit its liability. The same delegation expressed the view that, if the court maintained its decision on the shipowner's right to limit its liability, it would be difficult for the Administrative Council to decide how the burden should be shared between the shipowner/its insurer and the 1971 Fund.

3.3.17 Another delegation, while associating itself with the comments of the other delegations, expressed the view that, although there was not yet a decision to take, the comments by the delegations that had intervened should be seen as a warning that the fundamental principles of the Conventions, and in particular the provisions regarding time bar and shipowner's limitation, should not be disregarded.

3.3.18 A number of other delegations expressed their agreement with these comments.

3.4

Incidents involving the IOPC Funds – 1971 Fund: ***Plate Princess*** **Documents IOPC/OCT12/3/4 and IOPC/OCT12/3/4/1**				**71AC**

3.4.1 The 1971 Fund Administrative Council took note of document IOPC/OCT12/3/4 which contained information on the *Plate Princess* incident which occurred in May 1997 when 3.2 tonnes of crude oil contained within 8 000 tonnes of ballast water were spilled in Puerto Miranda (Venezuela).

3.4.2 It was recalled that in October 2005, more than eight years after the spill had taken 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).

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

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

3.4.5 It was recalled that at its March 2011 session, the 1971 Fund Administrative Council had given instructions to the Acting Director not to make any payments in respect of this incident and to continue to monitor the outcome of the legal actions in Venezuela.

3.4.6 It was also recalled that at its October 2011 session, the 1971 Fund Administrative Council had decided to reconfirm the instructions given to the Acting Director in March 2011, and had also instructed the Acting Director to prepare a report on the points raised in the intervention by the Venezuelan delegation at its October 2011 session and on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC, and to report back to the 1971 Fund Administrative Council at its next session.

3.4.7 It was further recalled that at its April 2012 session, the 1971 Fund Administrative Council had decided to reconfirm its instructions given in March 2011 and October 2011 to the Director not to make any payment 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 4.5 of the 1971 Fund Convention on equal treatment of claimants.

3.4.8 It was also recalled that the 1971 Fund Administrative Council had 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. It was recalled that the Administrative Council had also instructed the Director to examine the points raised by the delegation of Venezuela in their third intervention at the April 2012 meeting in consultation with the Legal Affairs and External Relations Division of the IMO.

Claim by Puerto Miranda Union – Legal proceedings on liability

3.4.9 It was recalled that in February 2009, the Maritime Court of First Instance had issued a judgement in which it accepted the claim by Puerto Miranda Union and ordered the master, shipowner and 1971 Fund, although not a defendant[3], to pay the damages suffered by the claimant, to be quantified by court experts. This judgement had been confirmed by the Maritime Court of Appeal of Caracas and the Supreme Court.

3.4.10 It was recalled that after an appeal by the 1971 Fund, the Constitutional Section of the Supreme Court had dismissed the 1971 Fund's appeal against the judgement of the Supreme Court on liability.

Legal proceedings on quantum

3.4.11 It was recalled that in March 2011, the Maritime Court of First Instance had issued a judgement in which it ordered the 1971 Fund to pay BsF 400 628 022[4], plus costs. This judgement had been confirmed in July 2011 by the Maritime Court of Appeal.

3.4.12 It was also recalled that the master, shipowner and the 1971 Fund had applied to the Maritime Court of Appeal for leave to appeal to the Supreme Court but this had been denied, and that the 1971 Fund had appealed that decision.

3.4.13 It was further recalled that in November 2011 the Supreme Court had rejected the 1971 Fund's application for leave to appeal the July 2011 judgement of the Court of Appeal. It was noted that in August 2012, the Constitutional Section of the Supreme Court had also rejected the 1971 Fund's subsequent appeal against the decision of the Supreme Court denying leave to appeal, regarding the quantum of the loss.

Enforcement of the judgement

3.4.14 It was recalled 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.

3.4.15 It was further recalled that later in March 2012, the Puerto Miranda Union had submitted a request to the Maritime Court of First Instance to request the shipowner and the 1971 Fund to voluntarily comply with the provisions of the judgement by the Court of Appeal, and that the Maritime Court of First Instance had accepted the request of Puerto Miranda Union concerning the enforcement of the judgement and ordered the shipowner and Fund to pay the amounts awarded by the Maritime Court of Appeal.

3.4.16 It was also recalled that in April 2012, the 1971 Fund had requested the Maritime Court of First Instance to stay the enforcement of the judgement, on the basis of the principle of equal treatment established in Article 4.5 of the 1971 Fund Convention, and that, consequently, no payments could be made until there was a final judgement in the claim by FETRAPESCA. It was noted that in August 2012, the Master had also submitted pleadings requesting a stay of the enforcement, and that in September 2012, the Maritime Court of First Instance had rejected the request by the Master and the 1971 Fund.

3.4.17 It was also noted that in September 2012, the claimant's lawyers had requested the Constitutional Section of the Supreme Court to amend its judgement rendered in August 2012, and to issue a new decision ordering the defendants to make payment not to the fishermen themselves, but to the Puerto Miranda Union. It was noted that the 1971 Fund had opposed this request.

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[3] The Venezuelan Court, in its interpretation of the Conventions, concludes that the 1971 Fund, having been notified, is obliged automatically to pay compensation.

[4] The court experts calculated that the total amount available for compensation under the 1969 CLC and the 1971 Fund Convention (60 million SDR) was equivalent to BsF 403 473 005 and that the compensation payable by the 1971 Fund should be BsF 400 628 022 (BsF 403 473 005 minus BsF 2 844 983).

Claim by FETRAPESCA

3.4.18 It was recalled that in February 2009, the Maritime Court of First Instance had accepted the claim by FETRAPESCA against the shipowner and master of the *Plate Princess*, and had ordered the payment of damages suffered by the claimant, to be quantified by court experts, but that the 1971 Fund had not been notified of the judgement.

3.4.19 It was recalled that in October 2011, the claimants had applied to the court to withdraw the claim, (first request to withdraw the claim) but that this application had been rejected by the Maritime Court of First Instance.

3.4.20 It was noted that in September 2012, the 1971 Fund had been formally notified for the first time of the judgement which had been rendered by the Maritime Court of First instance on liability in February 2009. The judgement comprised two documents; the first document contained the decision imposing liability on the shipowner and master, and requested the 1971 Fund to be notified of this decision. It also stated that the quantum of compensation would be assessed by court experts to be appointed at a later date. The second document, which also formed part of the judgement, contained a decision which condemned the 1971 Fund to pay compensation to the claimants in excess of the shipowner's liability.

3.4.21 It was noted that in early October 2012, the 1971 Fund had filed an appeal against the February 2009 judgement.

3.4.22 It was also noted that in October 2012, the claimant's lawyers had filed an application to withdraw the FETRAPESCA claim (second request to withdraw the claim), and that this application had been refused by the court.

Offer by FETRAPESCA and Puerto Miranda Union to negotiate a settlement with the 1971 Fund

3.4.23 It was noted that in October 2012, the claimant's lawyers had requested the 1971 Fund's Venezuelan lawyer to consider whether the 1971 Fund would be prepared to negotiate a settlement of the Puerto Miranda Union and FETRAPESCA claims on a similar basis to that employed in respect of the fishermen's claims in the *Nissos Amorgos* incident. It was noted that the Secretariat had not yet responded to this request, pending instructions from the 1971 Fund Administrative Council.

Meeting at the Venezuelan Embassy

3.4.24 It was noted that in June 2012, the Director and Deputy Director had responded to an invitation from the Ambassador of the Bolivarian Republic of Venezuela in London to discuss the *Plate Princess* incident. In response to concerns expressed by the Vice-Minister of Transport at the meeting that the claimants had not been compensated, the Director had explained that the claims were time-barred as decided by the 1971 Fund Administrative Council in May 2006, and that the Administrative Council had instructed the Director not to make any payment in respect of the incident and to oppose any enforcement of the judgement on the basis of Article X of the 1969 CLC and Article 4.5 of the 1971 Fund Convention, on equal treatment of claimants.

Further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC

3.4.25 It was noted that, in accordance with the instructions given to the Director in April 2012 to conduct a further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC, the Director had engaged Dr Thomas A Mensah, an expert on matters relating to the Law of the Sea, maritime law, international environmental law and public international law, and the Executive Secretary of the Diplomatic Conferences which had adopted the 1969 CLC and 1971 Fund Convention. It was further noted that Dr Mensah's legal opinion was attached at Annex II to document IOPC/OCT12/3/4/1.

3.4.26 It was noted that Dr Mensah had concluded that, in his view, the decision of the courts in Venezuela on the issue of time bar was patently incorrect as the rights of the claimants to compensation under Article 4 had been extinguished because no action had been bought under Article 4 within three years from the date when the damage occurred, and no notification of action against the owner or his guarantor for compensation under the 1969 CLC had been given to the 1971 Fund within that period, as required under Article 7, paragraph 6 of the 1971 Fund Convention.

3.4.27 It was also noted that Dr Mensah had concluded that there was strong support for the contention that the judgement of the Venezuelan Court relating to the quantum of damages was based on evidence that was not genuine and which had been falsified for the purpose of obtaining compensation, and that accordingly the 1971 Fund had a very strong case for challenging the enforcement of the judgement in the courts of other contracting states based on the grounds that the judgement had been obtained by fraud. It was further noted that Dr Mensah had concluded that before an English court, it would be open to the 1971 Fund to challenge the enforcement of the judgement both under the 1971 Fund Convention and also under English common law.

3.4.28 In respect of the issue of the due process of law, it was noted that Dr Mensah had concluded that the 1971 Fund was fully entitled to challenge the enforcement of the judgement of the Venezuelan Court by asserting that it had not been afforded a fair opportunity to present its case before the Venezuelan Court, both under Article 8 of the 1971 Fund Convention coupled with Article X of the 1969 CLC, and by reference to the English common law which also recognised the right of a party to contest the enforcement of the judgement of a foreign court on the ground that it had not been given a reasonable opportunity to present its case.

3.4.29 In response to the third intervention of the delegation of Venezuela at the April 2012 session of the 1971 Fund Administrative Council, it was noted that Dr Mensah had concluded that the intervention was not supported in fact or in law, and that the claim that Venezuela 'automatically became a party to the 1992 Protocol' when the 1971 Fund Convention entered into force for Venezuela was factually incorrect. It was further noted that Venezuela did not become a Party to the 1992 Fund Convention until July 1999, and that the claim of Venezuela that 1992 Fund Member States were under any liability in respect of incidents that occurred when the 1971 Fund Convention was in force, even when they were not members of the 1971 Fund, had no basis in law, and was in fact in direct conflict with the express provisions of the 1971 Fund Convention and the principles of the general international law of treaties.

Debate

3.4.30 The delegation that originally requested the Director to conduct the legal analysis in April 2012 expressed its gratitude to the Director and Dr Mensah, noting that the 1971 Fund Administrative Council's previous decisions had been endorsed by Dr Mensah, a respected expert. That delegation commented that any future course of action should take account of Dr Mensah's legal opinion, and was of the view that the 1971 Fund Administrative Council should maintain its original decision taken in March 2011.

3.4.31 In response to one delegation's request for clarification regarding paragraph 24 of his legal opinion, Dr Mensah confirmed that if a victim who had been granted rights of enforcement under a judgement sought to enforce that judgement, it would be for the Court before which the victim appeared to decide whether the original judgement was enforceable.

3.4.32 Another delegation stated that the matter of a compromise solution had previously been discussed and that it had been considered that only a small amount could be paid, and that this should be based on an assessment by the Secretariat, with possible deductions of legal costs incurred by the 1971 Fund. That delegation doubted whether the claimants would accept such a small amount and was of the view that no further contributions should be levied for this incident. That delegation also considered that, on the basis of the legal opinion, it was difficult to encourage the Secretariat to try and reach a compromise as this might send the wrong signal to the claimants. The delegation stated however, that if the 1971 Fund Administrative Council were to decide to instruct the Director to reach a compromise solution, it would support such a decision, but not encourage it.

3.4.33 Another delegation fully supported all of Dr Mensah's conclusions. That delegation further stated that it would be difficult for it to support a compromise solution as compensation payments would have to be justified by that delegation to its contributors. It did not know what position the contributors would take if asked to pay contributions in respect of this incident. Several other delegations supported this observation and were of the view that there should be no payment and no compromise.

3.4.34 In response to a question from one delegation, the Director clarified that the legal costs incurred in the last year and in the fourteen years since the incident began were detailed in Annex IV of document IOPC/OCT12/9/2/3.

3.4.35 One delegation questioned why the 1971 Fund was continuing to intervene in the legal proceedings in Venezuela and asked whether this would enable the claimants to argue that the 1971 Fund had accepted the legitimacy of the decisions of the Venezuelan courts, particularly as the 1971 Fund Administrative Council had decided not to make any payment in this incident. The Director stated that, unless the 1971 Fund appealed the 2009 FETRAPESCA judgement, this judgement would become final, and this could prejudice the 1971 Fund's ability to argue in any subsequent enforcement action that due process of law had not been followed.

1971 Fund Administrative Council Decision

3.4.36 The 1971 Fund Administrative Council decided to maintain its decision taken in March 2011, and which had been reconfirmed subsequently in October 2011 and April 2012, to the Director not to make any payment in respect of this incident and to oppose the enforcement of the judgement. The 1971 Fund Administrative Council also instructed the Director to continue to defend the interests of the 1971 Fund in any legal court actions in Venezuela.

3.4.37 Additionally, the 1971 Fund Administrative Council instructed the Director to report any developments to the next session of the 1971 Fund Administrative Council.

3.5

Incidents involving the IOPC Funds – 1992 Fund: *Erika* Documents IOPC/OCT12/3/5 and IOPC/OCT12/3/5/1		**92EC**		

3.5.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/OCT12/3/5, IOPC/OCT12/3/5/1 and IOPC/OCT12/3/5/2 concerning the *Erika* incident.

Legal proceedings involving the 1992 Fund

3.5.2 The Executive Committee noted that six actions remained pending against the 1992 Fund involving a total of 20 claimants with a total claimed amount of €10.4 million.

Global settlement

3.5.3 It was recalled that in October 2011 the Director had signed on behalf of the 1992 Fund a global settlement with Steamship Mutual, Registro Italiano Navale (RINA) and Total, together with bilateral agreements with Steamship Mutual and RINA. It was recalled that under the agreement, the four

parties had undertaken to withdraw all proceedings against each other and waived any rights which they might have in relation to the *Erika* incident against each other.

3.5.4 It was also recalled that, in a bilateral agreement between Steamship Mutual and the 1992 Fund, Steamship Mutual had undertaken to pay to the 1992 Fund a lump sum of €2.5 million as a contribution to the agreement and that the 1992 Fund had undertaken to meet any judgements against Steamship Mutual and/or the 1992 Fund and to indemnify Steamship Mutual if the judgements were enforced against Steamship Mutual.

3.5.5 It was further recalled that, in another bilateral agreement between RINA and the 1992 Fund, RINA had undertaken to pay to those civil parties who agreed to settlement, the amounts awarded by the decision of the Criminal Court of Appeal in Paris.

3.5.6 It was noted that, in accordance with the bilateral agreement between Steamship Mutual and the 1992 Fund, Steamship Mutual had paid to the 1992 Fund a lump sum of €2.5 million.

3.5.7 It was also noted that, in accordance with the bilateral agreement between RINA and the 1992 Fund, RINA had paid all civil parties who agreed to settlement the amounts awarded by the decision of the Criminal Court of Appeal.

3.5.8 It was further noted that, in accordance with the general agreement, the parties would withdraw their actions and that it was expected that this would be done before the end of 2012.

Criminal proceedings

3.5.9 It was recalled that in a judgement delivered in March 2010, the Court of Appeal in Paris had confirmed the judgement of the Criminal Court of First Instance which had held criminally liable for the offence of causing pollution: the representative of the shipowner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society (RINA) and Total SA. It was also recalled that the Criminal Court of Appeal had held that Total SA could benefit from the channelling provisions in the 1992 CLC and was therefore exempt from civil liability. It was recalled, however, that the Criminal Court of Appeal had confirmed the civil liability imposed on the other three parties. It was also recalled that the four parties and a number of claimants had appealed against the judgement to the Court of Cassation.

Judgement by the Court of Cassation

3.5.10 The Executive Committee noted that on 25 September 2012 the Criminal Section of the Court of Cassation had rendered its judgement.
Jurisdiction

3.5.11 It was noted that in its judgement the Court of Cassation had decided that the French courts had jurisdiction to determine both criminal and civil liabilities arising from the *Erika* incident even though the sinking of the vessel had taken place in the Exclusive Economic Zone (EEZ) of France and not within its territory and/or territorial waters. It was also noted that in its judgement, the Court, based on a number of dispositions of the United Nations Convention on the Law of the Sea (10 December 1982, Montego Bay), justified France exercising its jurisdiction to impose sanctions on those responsible for an oil spill from a foreign-flagged vessel in the EEZ of France causing serious damage in its territorial sea and coastline.

Criminal liabilities

3.5.12 It was noted that the Court of Cassation had confirmed the decision by the Criminal Court of First Instance and by the Criminal Court of Appeal concerning criminal liability, as follows:

- the representative of the shipowner and the president of the management company were found guilty of a lack of proper maintenance, leading to general corrosion of the ship;

- RINA was found guilty for its imprudence in renewing the *Erika*'s classification certificate on the basis of an inspection that fell below the standards of the profession; and
- Total SA was found guilty of imprudence when carrying out its vetting operations prior to the chartering of the *Erika*.

Civil liabilities

3.5.13 The Executive Committee noted that the Court of Cassation had held that RINA and Total SA were covered by the channelling provisions of the 1992 CLC, although they could not rely on them since the damage resulted from their personal acts or omissions, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3.5.14 In relation to RINA, it was noted that the Court of Cassation had decided that the Court of Appeal had been wrong in deciding that a classification society could not benefit from the channelling provisions contained in Article III.4 of the 1992 CLC. It was noted, however, that the Court had decided that the damage had resulted from RINA's recklessness and that therefore RINA could not rely on the protection awarded by the 1992 CLC.

3.5.15 In relation to Total SA, it was noted that the Court of Cassation had quashed the decision by the Court of Appeal and decided that, since the damage had resulted from Total SA's recklessness, it could not rely on the protection awarded by the 1992 CLC.

3.5.16 It was also noted that the Court of Cassation had confirmed the amounts awarded by the Court of Appeal in respect of material, moral and pure environmental damages.

3.5.17 It was noted that the judgement by the Court of Cassation would have no financial impact on the 1992 Fund which was not a defendant and that all civil parties who had been awarded damages by the First Instance judgement or by the Criminal Court of Appeal had been paid or had been offered compensation by Total SA and RINA.

3.5.18 It was noted that the judgement was available in its original French language version via the Incidents section of the IOPC Funds' website: www.iopcfunds.org.

Intervention by the French delegation (Original French)

3.5.19 The delegation of France made the following statement:

> 'The French delegation thanks the Director for his presentation of the judgement rendered by the Court of Cassation on 25 September 2012.
>
> The Court of Cassation indeed held that the French criminal judge had jurisdiction in proceedings against those responsible for a discharge of oil outside French territorial waters by a foreign ship because of the gravity of the damage.
>
> The Court of Cassation also sent a strong signal to all those engaged in maritime transport by confirming the criminal liability of the shipowner, the management company, the classification society and the charterer, and by refusing the channelling of liability as set out in the CLC Convention, notably because of the inexcusable faults committed by them.
>
> The recognition of the ecological damage is also a significant aspect of the judgement. This decision should invite us to engage in reflection within the IOPC Funds to develop our mechanisms so as to align them with the new expectations of States, especially their coastal communities, concerning compensation for ecological damage.
>
> The French delegation hopes that this decision will help to ensure that more attention is paid to maritime safety and protection of the environment by all those engaged in maritime transport.'

Debate

3.5.20 One delegation emphasised that the Court of Cassation judgement was important, especially considering the parties which had been found guilty by the Court, as it could have implications for other cases. That delegation stated that it awaited the Director's future detailed analysis.

3.5.21 The observer delegation of IACS stated that the 1992 Fund Executive Committee should take into account that both in the US, in the context of the *Prestige* incident, and also in France, in the context of the *Erika* incident, there were final decisions entitling classification societies to take advantage of the channelling provisions in the 1992 CLC even though they were not specifically mentioned in the Convention. That observer delegation further stated that the principle of sovereign immunity for classification societies acting on behalf of the Flag state had by implication been accepted by the Court of Cassation in France.

3.6

Incidents involving the IOPC Funds – 1992 Fund: *Prestige* Documents IOPC/OCT12/3/6 and IOPC/OCT12/3/6/1		**92EC**		

3.6.1 The 1992 Fund Executive Committee held a meeting in private pursuant to Rule 12 of the Rules of Procedure. During the private meeting, covered by paragraphs 3.6.2 to 3.6.29 below, only representatives of Member States of the 1992 Fund and members of the Secretariat were present.

3.6.2 The Executive Committee took note of the information contained in documents IOPC/OCT12/3/6 and IOPC/OCT12/3/6/1 concerning the *Prestige* incident.

Claims for compensation – Spain

3.6.3 It was recalled that the claims handling office in La Coruña had received 845 claims totalling €1 037 million, including 15 claims from the Spanish Government totalling €984.8 million.

3.6.4 It was noted that the claims excluding those of the Spanish Government, had been assessed for €3.9 million and that interim payments totalling €564 976 had been made, mainly at 30% of the assessed amount. It was noted that compensation payments made by the Spanish Government to claimants had been deducted when calculating the interim payments.

3.6.5 It was recalled that the claims submitted by the Spanish Government had been assessed at €300.2 million. It was also recalled that two payments had been made to the Spanish Government totalling €115 million minus €1 million, subject to a bank guarantee and an undertaking to pay all claimants in Spain.

Claims for compensation – France

3.6.6 It was recalled that the claims handling office in Lorient had received 482 claims totalling €109.7 million, including the claims by the French Government totalling €67.5 million. It was also recalled that the claims submitted to the claims handling office had been assessed for €57.5 million and that interim payments totalling €5.6 million had been made at 30% of the assessed amounts.

3.6.7 It was recalled that the claims submitted by the French Government had been assessed at €38.5 million. It was also recalled that no payment had been made to the French Government, as the Government was standing last in the queue.

3.6.8 It was noted that a meeting had taken place in September 2012 between the Secretariat, its experts and the French Government to discuss the assessment of the French Government's claim.

Claims for compensation – Portugal

3.6.9 It was recalled that the Portuguese Government had submitted a claim totalling €4.3 million in respect of the costs incurred in clean up and preventive measures, which had been assessed at €2.2 million. It was also recalled that the 1992 Fund had made a payment of €328 488, corresponding to 15% of the assessed amount.

Legal proceedings in Spain – Criminal investigation

3.6.10 It was recalled that in July 2010 the Criminal Court in Corcubión had decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. It was also recalled that in the decision, the Court had stated that the London Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several. It was also recalled that the Court had also decided that the shipowner, the management company and the Spanish State were vicariously liable.

3.6.11 It was further recalled that the proceedings had been transferred to another court, the Audiencia Provincial in La Coruña (Criminal Court in La Coruña), which would conduct the criminal trial. It was noted that in June 2012 the Criminal Court in La Coruña had decided that the hearing would start on 16 October 2012 and that it was expected that the hearing would continue until May 2013. It was also noted that the Court would review the criminal liabilities and decide on the compensation due in respect of this incident.

Civil claims

3.6.12 It was noted that some 2 500 claims had been lodged in the legal proceedings before the Criminal Court in Corcubión, including 174 claims by French parties and a legal action brought by the Spanish Government, not only on its own behalf but also on behalf of regional and local authorities and a number of other claimants or groups of claimants.

3.6.13 It was also noted that the experts engaged by the 1992 Fund had assessed all court claims by individual claimants in Spain, for which supporting documentation had been submitted, for a total of €2 116 407. It was also noted that interim payments totalling €364 135 had been made at 30% of the assessed amount, taking into account the aid received from the Spanish Government, if applicable. It was also noted that claimants in 407 of the court actions had received payments as a result of a settlement agreement with the Spanish Government and that the assessment of these claims was included in the subrogated claim submitted by the Spanish Government.

Legal proceedings in France

3.6.14 It was noted that actions by 121 claimants remained pending in French courts, with claims amounting to €79.1 million, and that some 174 French claimants, including various communes, had joined the criminal proceedings in Spain.

Legal action by the Spanish State against ABS in the United States

3.6.15 It was recalled that the Spanish State had taken legal action against ABS, the classification society that certified the *Prestige*, before the District Court of First Instance in New York, requesting compensation for all damage caused by the incident, estimated to exceed US$1 billion. It was also recalled that the District Court issued a judgement in August 2010, granting ABS' Motion for Summary Judgement and again dismissing Spain's claims against ABS and that the Spanish State had appealed against this judgement.

3.6.16 The Executive Committee noted that in August 2012 the Court of Appeals for the second circuit had delivered a judgement, holding that the Spanish State had not produced sufficient evidence to establish that ABS had acted in a reckless manner.

3.6.17 It was noted that the Court of Appeals had not addressed the legal issue of whether ABS owed a duty to coastal states to avoid reckless behaviour, leaving the possibility of that legal issue to be decided in another case.

3.6.18 It was also noted that the Spanish State had not appealed against the judgement of the Court of Appeals but that it had until the end of November 2012 to submit its appeal.

Legal action by the French State against ABS in France

3.6.19 It was recalled that in April 2010, the French State had brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of ABS. It was noted that the defendants had opposed this action relying on the defence of sovereign immunity.

3.6.20 It was noted that the judge had referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings, before dealing with any other matters.

Possible legal action by the 1992 Fund against ABS in Spain

3.6.21 It was recalled that the Director had been advised by the 1992 Fund's Spanish lawyer that an action against ABS in Spain would face procedural difficulties. It was recalled that criminal proceedings had been brought in Spain against four parties and that ABS was not a defendant in the proceedings. It was also recalled that under Spanish law, when a criminal action had been brought, any action for compensation based on the same or substantially the same facts as those forming the basis of the criminal action, whether against the defendants in the criminal proceedings or against other parties, could not be pursued until the final judgement had been rendered in the criminal case. It was noted, therefore, that a recourse action by the 1992 Fund against ABS in Spain would not be possible for procedural reasons, for a number of years.

Possible legal action by the 1992 Fund against ABS in France

3.6.22 The Executive Committee noted that the judgement of the French Court of Cassation in respect of the *Erika* incident had been rendered on 25 September 2012 and that the Director was examining the judgement in detail with the 1992 Fund's French lawyer and would report to the Executive Committee at its spring 2013 session.

3.6.23 It was noted that in its judgement the Court of Cassation had stated that, in relation to the classification society, RINA, the Court of Appeal had been wrong in deciding that a classification society could not benefit from the channelling provisions contained in Article III.4 of the 1992 CLC. It was noted, however, that the Court of Cassation had decided that the damage had resulted from RINA's recklessness and that therefore RINA could not rely on the protection awarded by the 1992 CLC.

3.6.24 It was also noted that the Court of Cassation had not addressed the question of whether the classification society would have been entitled to take advantage of the immunity of jurisdiction, as would the Maltese State (the Flag State of the *Erika*), since RINA was deemed to have renounced such immunity by having taken part in the criminal proceedings.

3.6.25 The Executive Committee recalled that the Director had been advised by the Fund's French lawyer that in a possible action against ABS in France in the context of the *Prestige* incident, the Court would most likely apply French Law. It was noted that the Court of Cassation judgement in the *Erika* incident, which held RINA liable for the pollution arising from the *Erika* incident, could constitute a precedent that would be followed by a French court in an action against ABS in the *Prestige* incident.

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

3.6.27 The 1992 Fund Executive Committee recalled that the IOPC Funds' policy in respect of recourse actions was to take such action whenever appropriate to recover any amounts paid by them from shipowners or other parties on the basis of the applicable national law and that if matters of principle were involved, the question of costs should not be a decisive factor for the Fund when considering whether to take legal action and that the decision as to whether or not to take such action should be made on a case-by-case basis, in light of the prospect of success within the legal system in question (document FUND/EXC.42/11, paragraph 3.1.4).

3.6.28 The Executive Committee noted that the Director had recommended to bring a recourse action against ABS in France prior to 13 November 2012 as an interim measure to avoid the action becoming time-barred under French law. A decision could then be taken at a future session of the Executive Committee whether to continue the recourse action or withdraw it on the basis of an analysis of the judgement of the Court of Cassation and other additional information received.

1992 Fund Executive Committee Decision

3.6.29 The 1992 Fund Executive Committee authorised the Director to bring a recourse action against ABS in France prior to 13 November 2012 as an interim measure to avoid the action becoming time-barred under French law. The Executive Committee also instructed the Director to report back on developments in respect of this recourse action at a future session.

3.7

Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT12/3/7		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of the document IOPC/OCT12/3/7, which contained information relating to the *Solar 1* incident.

Claims for compensation

3.7.2 It was noted that as at 1 August 2012, some 32 466 claims had been received and that payments totalling PHP 987 million (£14.3 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. The Executive Committee noted that all claims had now been assessed and that the local claims office had been closed.

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

Legal proceedings by the Philippine Coastguard (PCG)

3.7.4 The Executive Committee recalled that the PCG had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations. It was recalled that an offer of settlement for PHP 104.8 million (£1.61 million) for both claims had been accepted by PCG. It was noted that the 1992 Fund's lawyers were liaising with the PCG's lawyer with regard to obtaining the signature required on the settlement documentation but that due to a number of changes in personnel at the PCG matters had been delayed. It was noted that it was hoped that progress would be made in the very near future.

Legal proceedings by 967 fisherfolk

3.7.5 It was recalled that a civil action totalling PHP 286.4 million (£4.4 million) for property damage as well as economic loss had been filed in August 2009 by a law firm in Manila representing claims from 967 fisherfolk.

3.7.6 It was noted that a pre-trial hearing had taken place in July 2012 in order to explore the possibility of an amicable settlement and that the Court had ordered that mediation hearings take place in August and September 2012 before a court-accredited Mediator. It was also noted that the 1992 Fund's lawyer had met with the claimants' lawyers before the first mediation hearing in August, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings. It was further noted that during this meeting, the claimants' lawyers had not prepared any formal documentation furthering their case and that no progress had been made in settling the matter at the first mediation meeting in August 2012. It was noted that a proposal for an amicable settlement would be put forward in due course by the claimants' lawyers but, in the absence of such submissions, the matter would proceed to an initial pre-trial hearing in late October 2012.

Legal proceedings by a group of municipal employees

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

3.7.8 It was noted that the Guimaras Court had ordered that a pre-trial hearing take place in July 2012 in order to explore the possibility of an amicable settlement and that during this pre-trial hearing, the Court had ordered that a mediation hearing before a court-accredited Mediator take place in August 2012. It was also noted that the 1992 Fund's lawyer had met with the claimants' lawyers before the first mediation hearing in August, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings. It was further noted that the claimants' lawyers had made no further proposals nor had they produced further evidence, and that consequently, no progress had been made in discussions between the claimant's lawyers and the Fund's lawyer. It was also noted that unless further evidence was presented, the matter would proceed to mediation and that an initial pre-trial hearing would take place in late October 2012.

3.8

Incidents involving the IOPC Funds – 1992 Fund: ***Volgoneft 139*** **Document IOPC/OCT12/3/8**		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT12/3/8 concerning the *Volgoneft 139* incident.

Insurance gap

3.8.2 The Executive Committee recalled that in February 2008, the Arbitration Court of the city of Saint Petersburg and Leningrad Region had ruled that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million). It was also recalled that the 1992 Fund had appealed against the Court's ruling, arguing that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 174.4 million) and that therefore the Court's ruling which had established the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended. It was further recalled that the Court of Appeal, the Court of Cassation and the Supreme Court had confirmed the decision of the Arbitration Court of the city of Saint Petersburg and Leningrad Region.

Quantum and merits of claims for compensation

3.8.3 The Executive Committee noted that in July 2012 the Arbitration Court of the city of Saint Petersburg and Leningrad Region had delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million (£9.9 million), including legal interest.

3.8.4 It was noted that the Court had decided that the shipowner/Ingostrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should compensate in excess of 3 million SDR. It was noted that since the 1992 CLC limit applicable at the time of the incident was 4.5 million SDR, there remained an 'insurance gap' of some 1.5 million SDR.

3.8.5 The Executive Committee noted that in August 2012, the 1992 Fund had appealed against the judgement and that in September 2012, the Court of Appeal had confirmed the judgement by the Arbitration Court. It was noted, however, that the 1992 Fund would appeal against the judgement.

Debate

3.8.6 One delegation remarked that at the beginning of the incident there had been three issues to be resolved. The issues of 'methodika' and *force majeure* had already been resolved, but the 'insurance gap' issue remained. That delegation suggested that the Secretariat and the Russian Government should explore together ways to solve the 'insurance gap'.

3.8.7 A number of delegations that took the floor were in favour of the 1992 Fund starting to make payments above the 1992 CLC limit of 4.5 million SDR. One delegation stated that, taking into consideration that the purpose of the 1992 Fund was to compensate victims of oil pollution damage, that claimants had cooperated with the 1992 Fund in the assessment process and that five years had elapsed since the incident, the 1992 Fund should commence payments. Some delegations suggested, in particular, that the 1992 Fund should pay only the private claimants, who should not suffer the consequences of the lack of proper implementation of the Conventions.

3.8.8 One delegation expressed the view that since the 'insurance gap' was due to an error by the Russian Government by omitting to publish the new Convention limits in the Russian Official Gazette, the Russian Government should take responsibility.

3.8.9 Another delegation suggested that the 'insurance gap' could be offset against the claims by the Russian Government. In reply to this intervention, the Director clarified that the claimants entitled to the highest amounts of compensation in this incident were government departments which, due to internal legislation, could not renounce the recovery of all expenditure claimed.

3.8.10 Several delegations that took the floor were of the opinion that no payments should be made in this incident until the issue of the 'insurance gap' had been solved. These delegations were of the view that renewed efforts should be made to solve this case. The Director stated that the Secretariat had already held several discussions with the Russian Government and that it was happy to renew these discussions.

3.8.11 One delegation expressed the view that, before the 1992 Fund could start making payments, the insurer would have to first pay up to the limit of 3 million SDR as established by the Court. The Director stated that the insurer had in the past informed the Secretariat that it did not intend to pay any compensation to victims of the spill until there was a final court decision.

1992 Fund Executive Committee Decision

3.8.12 The Executive Committee noted that although a number of delegations had suggested that the 1992 Fund should try to pay compensation to the victims of this incident, the majority of delegations considered that the 'insurance gap' had first to be resolved before the 1992 Fund could start making payments. The Executive Committee instructed the Director to continue discussions with the claimants and the Russian authorities to explore a solution to the 'insurance gap' and revert to the Executive Committee with a proposal at a future session.

3.9

Incidents involving the IOPC Funds – 1992 Fund: ***Hebei Spirit*** **Document IOPC/OCT12/3/9 and IOPC/OCT12/3/9/1**		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT12/3/9, submitted by the Secretariat and document IOPC/OCT12/3/9/1, submitted by the Republic of Korea in respect of the *Hebei Spirit* incident.

3.9.2 The Executive Committee noted that in a statement, the Korean delegation thanked the Skuld Club and the IOPC Funds for their efforts to pay compensation and assess claims as promptly as possible.

Claims situation

3.9.3 The 1992 Fund Executive Committee noted that as at 15 October 2012, 128 400 individual claims totalling KRW 2 578 billion had been registered. It also noted that 128 311 claims had been assessed at a total of KRW 179.9 billion, out of which 83 946 claims had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 168 billion in respect of 37 108 claims, and that the remaining claims were being assessed or additional information was being requested from the claimants.

Small scale non-fisheries related claims

3.9.4 The Executive Committee recalled that in 2009 the Director had instructed 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 and that at the April 2012 sessions of the governing bodies, the Director had presented some preliminary conclusions from its application.

3.9.5 The Executive Committee noted that the application of this new methodology had led to the positive assessment of claims from 605 businesses that would otherwise have been rejected. These businesses 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.

3.9.6 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.

3.9.7 The Executive Committee noted that in a statement, the Korean delegation welcomed the efforts of the Secretariat to explore alternative methods to assess small scale non-fisheries claims.

Limitation proceedings by the owner of the Hebei Spirit

3.9.8 The 1992 Fund Executive Committee noted that the Limitation Court held its last investigation hearing in August 2012. It was noted that at the time of the hearing, 127 483 claims totalling KRW 4 023 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with them. The Executive Committee further noted that as a matter of Korean law and practice, no further claims could be registered nor could changes be made to the amounts claimed. It was noted that the decision of the Court was expected in December 2012.

3.9.9 The Executive Committee took note of the concerns of the Republic of Korea regarding the status of their claims in the limitation proceedings and noted the request of the Republic of Korea that, since the vast majority of the private claims had been assessed, the Secretariat should now focus on the assessment of the claims for which the Korean Government had expressed its intention to 'stand last in the queue'.

Debate

3.9.10 One delegation asked the Secretariat whether the Fund could accommodate the request of the Korean Government to accelerate the assessment of the claims for which the Korean Government was 'standing last in the queue'. The Secretariat confirmed that the assessment of those claims had commenced and that all efforts were being made to finalise the assessments as soon as possible.

Level of payments

3.9.11 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.

3.9.12 The 1992 Fund Executive Committee noted that the total amount of assessed claims so far was KRW 179.9 billion (£102.4 million) which corresponded to 99.9% of all the claims, excluding the claims by the Korean Government, who were 'standing last in the queue'. It was also recalled that the total amount available for compensation under the 1992 CLC and 1992 Fund Convention was 203 million SDR or KRW 321.6 billion (£183.4 million). It was further noted that, on the basis of the current level of assessed claims and taking into consideration that the majority of the remaining claimants were currently 'standing last in the queue', it would be possible for the 1992 Fund to raise the level of payments to 100%.

3.9.13 It was also noted, however, that the Director had also considered that the total amount claimed in the limitation proceedings was KRW 4 023 billion (£2 291 million) and that the total amount of the claims submitted in the *Hebei Spirit* Centre was KRW 2 775 billion (£1.5 billion).

3.9.14 It was further noted that the majority of the claimants who had received interim compensation had not agreed the quantum of their claims and had therefore maintained their action in the limitation proceedings or in court.

3.9.15 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 and that the level of payments should be reviewed at the next session.

Debate

3.9.16 The delegations who took the floor took the view that it would be premature to raise the level of payments until there was more certainty with regard to the decision of the Limitation Court and endorsed the Director's proposal to maintain the level of payments at 35% of the established claims.

1992 Fund Executive Committee Decision

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

3.10

Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina **Document IOPC/OCT12/3/10**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT12/3/10 concerning the incident in Argentina.

Criminal proceedings

3.10.2 It was recalled that in March 2008 the Federal Court of Comodoro Rivadavia (Criminal Section) had completed the investigatory phase of the criminal proceedings by concluding that the spill came from the *Presidente Arturo Umberto Illia (Presidente Illia)*. It was noted that five persons including the master, officers and crew had been charged with a water pollution offence under Argentine environment law, whilst the shipowner's representative (Superintendente) was charged under Argentine criminal law with having hidden information and evidence.

3.10.3 It was noted that the accused persons had pleaded not guilty which had led to the opening of the trial phase. It was recalled that the shipowner and the insurer maintained that the *Presidente Illia* was unlikely to have caused the damage and that the oil that had reached the coast must have come from another source.

Civil proceedings

3.10.4 It was noted that 22 actions, representing 83 claimants, remained pending against the owner of the *Presidente Illia* and the West of England Club in the Federal Court of Comodoro Rivadavia (Civil Section), and that these actions also included the 1992 Fund either as a defendant or as an interested third party.

3.10.5 It was recalled that the 1992 Fund, based on the investigations of its experts, had submitted pleadings in the Federal Court of Comodoro Rivadavia (Civil Section) arguing that the most likely source of the spill was the *Presidente Illia*. It was recalled, however, that in its pleadings the 1992 Fund also considered the possibility that the source of the spill could have been another ship, the *San Julian*, which was close to the area at the time of the incident.

3.10.6 It was recalled that in December 2010 the 1992 Fund had brought an action in a Civil Court of Buenos Aires against the owner of the *San Julian* and its insurer in order to protect its compensation rights in case the Argentine courts were to find that the spilling vessel was not the *Presidente Illia* but the *San Julian.* The Executive Committee noted the parties had agreed to stay the proceedings pending the resolution of the criminal proceedings.

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

Claims situation

3.10.8 The Executive Committee noted that 331[<5>] claims for compensation for a total of AR$53.3 million and US$391 294 had been submitted, that 220 claims had been assessed at a total of AR$5.2 million and US$121 799, and that payments totalling AR$4.3 million and US$115 949 had been made by the West of England Club. It was also noted that among the 220 assessed claims, 41 had been rejected. It was further noted that the remaining claims were the subject of court proceedings or were time-barred.

[<5>] The majority of claims were originally submitted by individuals. Investigations have revealed that many of these individuals work in groups and their claims have therefore been consolidated, as appropriate, into group claims.

3.11

Incidents involving the IOPC Funds – 1992 Fund: ***King Darwin*** **Document IOPC/OCT12/3/11**		**92EC**		

3.11.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT12/3/11. It was noted that on 27 September 2008, the Marshall Islands-registered oil tanker *King Darwin* (42 010 GT) had released approximately 64 tonnes of bunker C fuel oil into the waters of the Restigouche River during discharging operations in the Port of Dalhousie, New Brunswick, Canada.

Claims for compensation

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

Legal actions

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

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

3.11.5 It was noted that there had been no developments since the October 2011 meeting.

3.12

Incidents involving the IOPC Funds – 1992 Fund: ***JS Amazing*** **Document IOPC/OCT12/3/12**		**92EC**		

3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT12/3/12 and the presentation by the Secretariat relating to the *JS Amazing* incident.

3.12.2 It was recalled that in May 2011, the 1992 Fund had been informed of a spill which had occurred in June 2009 from the tanker *JS Amazing* which had spilled an unknown quantity of low pour fuel oil into the Warri River, Delta State, Nigeria. It was recalled that the incident was not widely reported outside of Nigeria and no record of any insurance cover could be found with a P&I Club from the International Group of P&I Associations.

Marine Board of Inquiry Report

3.12.3 It was noted that in March 2012, the Nigerian Federal Ministry of Transport had established a Marine Board of Inquiry which published its report in April 2012. As a consequence of which, further facts and information were made available to the Secretariat. It was further noted that the report had concluded that there were three main reasons why the incident had occurred, namely poor ship handling, no safe minimum manning levels and the presence of an unqualified master and crew. It was also noted that the incident was caused by the *JS Amazing* hitting the remains of a mooring dolphin, the existence and location of which were known prior to the incident.

Insurance of the JS Amazing

3.12.4 It was recalled that when the Secretariat first reported the incident to the 1992 Fund Executive Committee in October 2011, the identity of the insurer was unknown. The Executive Committee noted that subsequently the Secretariat had been informed that the *JS Amazing* was insured with the South of England P&I Club (SEPIA) for the 2008 and 2010 policy years.

3.12.5 It was further noted that the Certificate of Entry from SEPIA for the 2008 policy year contained a clause which stated that cover for liability in respect of cargo on board the entered ship was only provided when such cargo was of a non-persistent nature.

3.12.6 Furthermore, it was also noted that no documentation had to date been provided confirming the terms of the insurance at the date of the incident in June 2009, or the identity of the insurer at that time. It was noted that it therefore appeared that the *JS Amazing* was not insured in accordance with the requirements of Article VII of the 1992 CLC, at the time of the incident.

Class certification

3.12.7 It was noted that amongst the documents tendered to the Marine Board of Inquiry was a Certificate of Class for Hull and Machinery Equipment issued by the International Surveys Bureau which stated that the vessel was not classed to carry heavy grade oil.

Issues arising from the Secretariat's visit to Nigeria in June 2012

3.12.8 It was noted that in June 2012, the Director, the Claims Manager dealing with the incident and two Fund experts had visited Nigeria and had expressed their gratitude for the assistance offered to them by the Nigerian authorities. However, it was noted that there remained a number of issues which required further examination, including the fact that the owner of the *JS Amazing* had not paid any compensation to claimants nor had the shipowner limited its liability by establishing a limitation fund in accordance with Article V of the 1992 CLC.

3.12.9 It was also noted that when this incident was first reported in October 2011, the Executive Committee was informed of an earlier spill which had occurred from a vandalised oil pipeline in the same area and that this matter also required further examination.

Claims submitted for compensation

3.12.10 It was noted that in May 2012, a claim for NGN 30.5 billion (£121.5 million) was filed against the shipowner, the joint liquidators of SEPIA and the 1992 Fund, by representatives of 248 communities allegedly affected by the spill and that the 1992 Fund experts were examining the information provided. It was noted that in July 2012, the 1992 Fund had applied to strike itself out as a defendant but had sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner.

Intervention by the Nigerian delegation

3.12.11 The delegation of Nigeria stated that it was making every possible effort to assist the Secretariat to resolve the many uncertainties which still existed in relation to this incident. That delegation also noted the Director's conclusions that it was too early to recommend that payments be made.

Debate

3.12.12 Several delegations noted that there were many uncertainties which would need to be resolved before any payments of compensation could be made. One delegation stated that this incident constituted a catalogue of unfortunate circumstances and that the big challenge facing the Secretariat was to ensure that only genuine claimants were paid and that contributors to the 1992 Fund were protected,

especially in circumstances where it was unfortunate that the shipowner currently appeared unwilling to pay any form of compensation. This view was endorsed by other delegations.

3.12.13 Another delegation stated that the purpose of the compensation regime was not to provide a social security system, but to pay compensation to victims of oil pollution, and that it was necessary for the claimants to prove a link of causation between the pollution and the damage claimed. That delegation also drew the attention of the 1992 Fund Executive Committee to the provisions of Article V.2 of the 1992 CLC, which provided that the shipowner would not be able to limit its liability if the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. That delegation also stated that it was premature to recommend that payment be made.

3.12.14 Another delegation questioned whether it was possible to arrest other vessels in the same ownership to force the shipowner to establish a limitation fund.

3.12.15 One delegation questioned whether any form of analysis of the oil spilled from the Warri-Escravos pipeline compared to the oil spilled from the *JS Amazing* had been conducted, and whether it was possible to ascertain the amount of damage from each spill separately. That delegation stated that if it was not possible to say with certainty that the alleged damage came from the *JS Amazing* tanker, rather than the Warri-Escravos crude oil pipeline, then that delegation would see major difficulties in paying compensation. It further stated that it was the responsibility of the Contracting State to ensure that vessels operating in its waters were properly insured and classed, and given that the incident was caused by the remains of the mooring dolphin, the existence and location of which were known, there was an element of blame attributable to the Contracting State, which raised the question of whether the 1992 Fund could make any recovery from the Member State, if it eventually paid compensation.

1992 Fund Executive Committee

3.12.16 The 1992 Fund Executive Committee noted that there were a number of issues to resolve in the incident, including the apparent unwillingness of the shipowner to accept liability in accordance with the 1992 CLC and the absence of a proven link of causation between the incident and the alleged damages. The Executive Committee noted that any compensation would need to be based on established losses, before it could authorise the Director to make compensation payments.

3.12.17 The 1992 Fund Executive Committee also noted that the Director intended to continue working with the Nigerian authorities and the claimants to examine the issues arising from the incident and that he would revert to the 1992 Fund Executive Committee with a recommendation in the future.

3.13

Incidents involving the IOPC Funds – 1992 Fund: *Redfferm* Document IOPC/OCT12/3/13		**92EC**		

3.13.1 The 1992 Fund Executive Committee took note of document IOPC/OCT12/3/13 and the presentation made by the Secretariat regarding the *Redfferm* incident.

3.13.2 It was recalled that in late January 2012, the Secretariat had been informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria. It was recalled that initial reports had indicated that the tanker *MT Concep* was trans-shipping some of its cargo of low pour fuel oil (LPFO) into a barge, the *Redfferm*, when at some point during trans-shipment, a spill had occurred. It was noted, however, that further facts had since been made available to the Secretariat which clarified that it was the barge *Redfferm* which had sunk on 30 March 2009 following the cargo trans-shipment operation from the *MT Concep*, as a consequence of which the cargo of between 500 and 650 tonnes of LPFO on board the barge, had spilled into the waters surrounding the site, which had then impacted upon the neighbouring Tin Can Island area.

Developments since April 2012

3.13.3 It was noted that in June 2012 the Director, the Claims Manager dealing with the incident and two Fund experts had visited Nigeria to ascertain further facts of the incident, meet with the Nigerian authorities and shipowners and visit the affected area. It was noted that during discussions with the Nigerian authorities, it appeared that there was no information available on the Nigerian Ship Registry regarding the ownership of the barge, but that the Secretariat had been informed orally that the owner at the time of the incident was Captain Orizu and that the barge had been adapted into a floating dock, but the whereabouts of the owner and of the dock were unknown. It was also noted that the Nigerian Port Authority (NPA) had no written records regarding the movements of the barge prior to the spill.

3.13.4 It was noted that further information had been ascertained as a result of the visit to Nigeria by the Secretariat, as reported in document IOPC/OCT12/3/13.

3.13.5 It was noted that in March 2012, representatives of 102 communities allegedly affected by the incident had filed legal proceedings against, *inter alia*, the 1992 Fund for US$26.25 million. It was also noted that the 1992 Fund had applied to be removed from the legal proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. It was also noted that the claimants' lawyer had agreed to stay the proceedings against the 1992 Fund in order that the assessment process could commence without the need for the 1992 Fund to simultaneously defend a legal action.

Redfferm as a 'sea-going ship'

3.13.6 It was noted that there was no documentary evidence showing earlier trans-shipment operations involving the *Redfferm* at sea, but that the NPA had stated that the size of the barge did not prevent it from being an ocean-going barge and that what mattered was whether it could be used for ocean transportation.

3.13.7 It was noted that, according to information provided to the Secretariat, it was unusual for trans-shipment operations to take place off the finger jetty of Tin Can Island where the *Redfferm* incident had taken place. As there was presently no evidence to show that previous trans-shipment operations involving the *Redfferm* had taken place at sea, the Director was of the view that further investigation was required in order to determine whether the *Redfferm* fell within the concept of a 'sea-going ship or other seaborne craft'.

Claims submitted for compensation

3.13.8 It was noted that with regard to the claim for US$26.25 million submitted by representatives of the 102 communities allegedly affected by the incident, this contained no calculations or justifications for the figures claimed. It was also noted that it appeared unlikely that the shipowner would have sufficient assets to pay the claims for compensation and it was therefore possible that the 1992 Fund would have to pay the claims for compensation from the outset and then decide whether to attempt to recover the sums from the shipowner by way of a recourse action in the future.

3.13.9 It was noted that information had been provided very recently detailing the locations of the 102 communities and the numbers of individuals within the communities allegedly affected by the spill, and that this information was being examined by the 1992 Fund's experts.

3.13.10 It was also noted that the claimants were artisanal fishermen who would find it very difficult to prove their losses and that this might therefore be a suitable case for 'fast track' assessment of claims if the 1992 Fund Executive Committee were to decide to pay compensation. It was noted that the Secretariat was working with the Government of Nigeria to ascertain the facts of the case and, if applicable, to determine the compensation due to the victims under the Conventions.

Intervention by the Nigerian delegation

3.13.11 The delegation of Nigeria thanked the Secretariat for its comprehensive document and summary of the incident and said that it recognised that there was a need to establish whether the *Redfferm* barge was a 'sea-going ship or other seaborne craft'.

Debate

3.13.12 One delegation stated that, subject to the verification of the various questions raised in document IOPC/OCT12/3/13, if fast track compensation could be paid, then that delegation would be satisfied that the work of the sixth intersessional Working Group had been useful.

3.13.13 In response to a question from one delegation as to whether the areas to the south of Snake Island and Sagbokeji Island were impacted by the spill, the Secretariat replied that when the Secretariat had visited the spill site in June 2012, they had not been able to visit those areas. The Secretariat added that the area in question was a tidal area, and that this was an issue that required further investigation.

3.13.14 A number of delegations stated that it was too early to make payments at this stage given the uncertainty over a number of issues including whether the barge *Redfferm* was a sea-going vessel. In this respect, one delegation stated that one line of enquiry could be to consider whether the barge had been subject to periodic surveys, and whether she was registered in accordance with Nigerian legislation. In this regard, the delegation of Nigeria stated that they had records of oil barges in their Registry and would provide the information to the Secretariat.

3.13.15 Another delegation stated that the coastal State had responsibility for vessels trading and sailing within its waters and that the coastal State should therefore assume responsibility over those vessels.

1992 Fund Executive Committee

3.13.16 The 1992 Fund Executive Committee noted that the Director should first establish whether the barge *Redfferm* constituted a 'sea-going ship or other seaborne craft', as described in Article I.1 of the 1992 CLC, before any decision regarding payment of compensation could be taken.

3.13.17 The 1992 Fund Executive Committee also noted that the Director would continue to work closely with the Nigerian authorities and the claimants to ascertain the facts of the case and, if applicable, to determine the compensation due to the victims, and would report back to the 1992 Fund Executive Committee at its next session.

3.14	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/OCT12/3/14**		**92EC**		

3.14.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT12/3/14 dealing with the *Alfa I* incident.

3.14.2 It was recalled that on 5 March 2012, the tanker *Alfa I* had hit a submerged object while crossing Elefsis Bay near Piraeus, Greece and had sank in 18-20 metres of water. The incident had resulted in the tragic loss of the master's life.

3.14.3 The 1992 Fund Executive Committee recalled that, at the time of the incident, *Alfa I* was believed to have been loaded with some 2 070 tonnes of cargo, of which 1 800 tonnes were various persistent mineral oils and 270 tonnes of non-persistent gas oil. However, the exact amount of the cargo and bunkers on board at the time of the incident was not known.

3.14.4 It was recalled that an unknown quantity of oil had been released from the tanker and oil had impacted some 13 kilometres along the shoreline of Elefsis Bay, contaminating a number of local beaches. Clean-up operations had been conducted at sea and on the shoreline.

3.14.5 The 1992 Fund Executive Committee noted that salvage activity focussing on the removal of the cargo had taken place between 13 March and 28 April 2012. It was also noted that in late August 2012 the clean-up contractors had provided documentation and an estimate of the costs incurred during the operation.

3.14.6 The 1992 Fund Executive Committee recalled 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 the response operations at sea had also been contracted to carry out the manual cleaning of the shoreline affected. The Executive Committee noted, that according to the reports provided by the clean-up contractor, cleaning of the equipment used during response operations had been completed by about 5 June 2012.

Site visit by the Secretariat

3.14.7 It was noted that in May 2012 members of the Secretariat had visited the location of the sunken tanker and the areas affected by the spill. They had also met with the shipowner's insurers to discuss the details of the insurance arrangements. The Executive Committee also noted that the 1992 Fund had appointed experts to monitor and investigate the circumstances surrounding the incident and a Greek lawyer to advise the Fund on the legal issues arising from the incident.

The shipowner and the insurance policy of the Alfa I

3.14.8 The 1992 Fund Executive Committee noted that the shipowner was Via Mare Shipping Company, Greece and that the vessel was under the management of Blue Iris Shipping.

3.14.9 The Executive Committee noted that the shipowner was insured with Aigaion Insurance Company and that the tanker's insurance policy was provided for trading in Greek waters only. The Executive Committee also noted that the policy was limited to €2 million and included the warranty 'Warranted non-persistent cargoes only'.

3.14.10 The Executive Committee further noted that the shipowner's insurer had issued certificates (blue cards) to the Central Port Authority of Piraeus in respect of liability under the Bunkers Convention and liability under the 1992 CLC. On the basis of this information, the Greek authorities had issued a certificate of insurance in the form of the draft in the Annex to the text of the 1992 CLC specifying, *inter alia*, Aigaion Insurance Company as the insurers.
Claims for compensation

3.14.11 The 1992 Fund Executive Committee noted that in June 2012 the Elefsis Harbour Master had imposed a fine on the shipowner for €150 000 in respect of the pollution due to the incident and had also issued an order for the reimbursement of the costs and expenses of the Greek State for the clean-up operation amounting to €260 000.

3.14.12 The Executive Committee noted that in late August 2012 the clean-up contractors had submitted a claim for €13.3 million to the shipowner for the period of 5 March 2012 to 30 June 2012. The information provided was being examined by the Secretariat.

The 1992 Civil Liability and Fund Conventions

3.14.13 The 1992 Fund Executive Committed recalled that Greece was Party to both the 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.

3.14.14 It was recalled that since the tonnage of *Alfa I* (1 648 GT) was below 5 000 units, the limitation amount applicable under the 1992 CLC was 4.51 million SDR (€5.53 million). The total amount available for compensation under the 1992 CLC and 1992 Fund Convention was 203 million SDR (€248.9 million).

3.14.15 The Executive Committee noted that the 1992 Fund would be liable to pay compensation to the victims of the spill if the total amount of damages were to exceed the limitation amount applicable under the 1992 CLC or if the shipowner was financially incapable of meeting his obligations in full and any insurance provided did not cover or was insufficient to satisfy the claims for compensation, after the claimants had taken all reasonable steps to pursue the legal remedies available to them (Article 4.1(b) of the 1992 Fund Convention).

Director's considerations

3.14.16 It was noted that since the 1992 Fund was not aware of the precise amount of the cargo and its specification, it was therefore not known whether the *Alfa I* was carrying more than 2 000 tonnes of persistent oil at the time of the incident. It was also noted that in the event that the *Alfa I* was not carrying more than 2 000 tonnes of persistent oil, the primary liability for any pollution damage caused as a result of the incident under the 1992 CLC rested with the shipowner who would be entitled to limit his liability to 4.51 million SDR (€5.53 million).

3.14.17 The Executive Committee noted that following discussions with the 1992 Fund's Greek and English lawyers, the Director was of the view that Aigaion Insurance would be *prima facie* liable to pay compensation for the damages caused by the spill.

3.14.18 It was noted that there was a contradiction in the terms of the insurance policy and the certificate (blue card) because the insurance policy was limited to some €2 million, with an express warranty permitting the carriage of non-persistent mineral oils only. However, the certificate (blue card) stated that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

3.14.19 The Executive Committee noted that the Director was of the view that if the shipowner's insurer were to refuse payment of compensation for pollution damage on the grounds that the policy of insurance contained a warranty or that the policy was limited to €2 million, the 1992 Fund might wish to consider whether to contest the terms of the insurance provided.

3.14.20 The Executive Committee noted that, since the document had been published, the shipowner's insurer had informed the Secretariat that it was in discussion with his underwriter to increase its cover to the full amount applicable under the 1992 CLC (4.51 million SDR). It was further noted that the Secretariat had only been informed verbally and had requested that the shipowner's insurer confirm this in writing.

Debate

3.14.21 One delegation expressed the view that, considering the level of uncertainties in respect of the contradiction of the terms of the insurance policy and the certificates, it was premature to take any decision at present and that further information was required prior to making any payment.

1992 Fund Executive Committee Decision

3.14.22 The 1992 Executive Committee decided that further investigations into the incident were required before a decision could be taken as to whether to authorise the Director to start making payments in respect of this incident. The Director was instructed to continue monitoring the developments in respect of the *Alfa I* and report to the Executive Committee at its next session.

4 Compensation matters

4.1

Reports of the 1992 Fund Executive Committee on its 54th-55th sessions	**92AC**			

The 1992 Fund Administrative Council noted the reports of the 54th and 55th sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT11/11/1/1 and IOPC/APR12/12/1) and expressed its gratitude to the Executive Committee's Chairman, its Vice-Chairman and its members for their work.

4.2

Election of members of the 1992 Fund Executive Committee Document IOPC/OCT12/4/1	**92AC**			

4.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT12/4/1.

1992 Fund Administrative Council Decision

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

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Angola
France	Australia
India	Finland
Japan	Grenada
Singapore	Liberia
Spain	Poland
United Kingdom	Panama
	Tunisia

4.3

Report on the fourth meeting of the sixth intersessional Working Group Documents IOPC/OCT12/4/2 and IOPC/OCT12/4/2/1	**92AC**			

4.3.1 The 1992 Fund Administrative Council took note of documents IOPC/OCT12/4/2 and IOPC/OCT12/4/2/1, introduced by the Chairman of the sixth intersessional Working Group, Mr Volker Schöfisch (Germany), regarding progress on the work of the Working Group.

4.3.2 It was noted that the Working Group had held four meetings (June 2010, March and July 2011 and April 2012), considering the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses and also the question of the funding of interim payments to claimants.

4.3.3 It was noted that at its April 2012 meeting, the Working Group had discussed revisions to the Claims Manual, the role of Member States following oil spill incidents and issues relating to interim payments.

Proposed revisions to the Claims Manual

4.3.4 It was noted that four amendments to the 1992 Fund Claims Manual had been proposed in document IOPC/APR12/10/2 and a proposal had been made to produce new guidance documents for claims arising in the tourism sector to assist those putting together and supporting claims in that sector, in a similar manner to the guidance available in the fisheries and mariculture sector.

4.3.5 The four proposed amendments to the Claims Manual were detailed under the categories of:

- Fast track assessment of small claims;
- Fraudulent claims;
- Target time frames for claims handling; and
- The use of economic models.

4.3.6 It was noted that some minor amendments had been proposed to the wording of the proposals in document IOPC/APR12/10/2 and that the revised text would be presented to the 1992 Fund Assembly in document IOPC/OCT12/4/3.

The role of Member States

4.3.7 It was noted that fourteen proposals relating to the role Member States could play following an incident had been made in document IOPC/APR12/10/3 and that the Working Group had recommended that some minor amendments be made before presenting the revised proposals to the 1992 Fund Assembly in October 2012, as contained in document IOPC/OCT12/4/4.

4.3.8 It was noted that this document contained proposals made by Member States which they could pick and choose to use as they deemed necessary with no obligation. It was noted that the proposals were not 'exhaustive' but formed an open list which could be developed further in time, and/or which might be subject to future amendment by the 1992 Fund Assembly.

4.3.9 It was noted that the Director had suggested that the Working Group recommend the 1992 Fund Assembly to instruct the Secretariat to publish the proposals in the form of a guidance note with worked examples, highlighting the tools that Member States might wish to use in the event of an oil spill affecting their territory.

Issues relating to interim payments

4.3.10 With regard to the issue of interim payments, the 1992 Fund Administrative Council noted that two documents IOPC/APR12/10/1 and IOPC/APR12/10/4 had been presented at the April meeting of the sixth intersessional Working Group. Annex II to document IOPC/APR12/10/1 contained the results of a legal analysis conducted by Mr Måns Jacobsson (a former Director of the IOPC Funds) and Mr Richard Shaw of the Comité Maritime International relating to the issue of interim payments. Annex I to document IOPC/APR12/10/4 submitted by the observer delegation of the International Group of P&I Associations contained the wording of a draft 1992 Fund Assembly Resolution relating to the practice of making interim payments which was submitted for consideration to the Working Group. With regard to the text of the draft Resolution, it was noted that it had been agreed that the International Group should continue its discussions with the Director and the Secretariat and that the Working Group would meet again during the spring 2013 sessions of the governing bodies.

4.3.11 The Chairman of the 1992 Fund Administrative Council expressed his gratitude to the sixth intersessional Working Group for the work conducted and took note of the remaining work that would be required by the spring 2013 sessions of the governing bodies.

4.4

Revision of the Claims Manual **Document IOPC/OCT12/4/3**	**92AC**			

4.4.1 The 1992 Fund Administrative Council took note of document IOPC/OCT12/4/3 regarding the work conducted by the sixth intersessional Working Group relating to four proposed amendments to the Claims Manual.

4.4.2 It was noted that the sixth intersessional Working Group had at its fourth meeting held in April 2012, discussed the advantages and disadvantages of each proposal. The proposals discussed were:

- 'Fast track' assessment of claims;
- Fraudulent claims;

- Target time frame for assessing claims; and
- Use of economic models.

4.4.3 It was noted that the sixth intersessional Working Group had at its fourth meeting, recommended that some minor amendments be made to the proposals before submitting them to the 1992 Fund Assembly for approval, and that these amendments were contained within document IOPC/OCT12/4/3.

4.4.4 It was also noted that the Working Group had supported a recommendation to the 1992 Fund Assembly that it consider developing and publishing new guidance documents on presenting claims in the tourism sector similar to those already published on fisheries assessments; 'Guidelines for presenting claims in the fisheries, mariculture and fish processing sector' and 'Technical guidelines for assessing fisheries sector claims'.

Debate

4.4.5 The delegations which took the floor thanked the Working Group and the Secretariat for the drafted amendments.

4.4.6 A number of delegations suggested further amendments to the draft text aimed at clarifying the extent to which economic models would be used in assessing claims by small-scale businesses.

4.4.7 Some delegations expressed concern that the declaration which the claimant was required to sign (Annex II, paragraph 1.5.1) would discourage victims from making a claim. Those delegations requested clarification as to the legal value and consequences of a claimant making such a declaration. The Director replied that a request for such a declaration was standard practice in the insurance industry when dealing with claims for compensation and that signing the declaration gave notice to the claimant that the 1992 Fund would carefully examine the claim and would reserve the right to inform the national authorities of any fraudulent evidence submitted.

4.4.8 Taking into account the points raised by various delegations, the Secretariat published a revised document (document IOPC/OCT12/4/WP.1) to be used as the basis for further discussions.

4.4.9 The delegations which took the floor agreed with the proposed revisions to the Claims Manual, as contained in document IOPC/OCT12/4/WP.1 subject to minor amendments and agreed that the Secretariat should develop guidance documents in respect of claims in the tourism sector similar to those already published in respect of claims in the fisheries sector.

1992 Fund Administrative Council Decisions

4.4.10 The 1992 Fund Administrative Council approved the text of the revised Claims Manual as set out at Annex II, subject to some minor editorial changes, and instructed the Director to issue a new edition of the Claims Manual with the approved amendments.

4.4.11 The 1992 Fund Administrative Council further instructed the Director to prepare guidance documents in respect of claims in the tourism sector similar to those already published in respect of claims in the fisheries sector.

4.5

Role of Member States **Document IOPC/OCT12/4/4**	**92AC**			

4.5.1 The 1992 Fund Administrative Council took note of document IOPC/OCT12/4/4 in relation to the work conducted by the sixth intersessional Working Group on proposals relating to the role Member States could play following an oil spill incident.

4.5.2 It was noted that the sixth intersessional Working Group had at its fourth meeting held in April 2012, discussed the advantages and disadvantages of fourteen proposals for the measures that Member States could take in the event of a spill, as detailed in document IOPC/APR12/10/3.

4.5.3 The proposals discussed were:

- Standing last in the queue;
- Subrogation of claims settled by the State;
- Cooperation agreements between Member States and P&I Clubs;
- Reimbursement of overpayment of interim payments;
- Memorandum of Understanding with domestic insurance bodies;
- Grouping claims/claimants;
- National expert list;
- Expert Mediation panel;
- *Pro forma* Memorandum of Understanding between Member State, IOPC Funds and P&I Club;
- Access to statistical data;
- Standard reference prices;
- Coordination between Member State delegates attending IOPC Funds' meetings and response agencies;
- Use of social security systems; and
- Publication of guidance on the role of Member States.

4.5.4 It was noted that the sixth intersessional Working Group had at its fourth meeting, recommended that some minor amendments be made to the proposals before submitting them to the 1992 Fund Assembly for approval, and that these proposals were contained in document IOPC/OCT12/4/4.

4.5.5 The Working Group had also noted that Member States would be free to decide which, if any, of the proposals (or other measures) they wished to utilise as there was no obligation under the 1992 Civil Liability and Fund Conventions for Member States to apply any such measures. It was also noted that the Working Group had recognised that the impact upon claimants in each Member State might depend on which proposal was adopted, and that therefore Member States might wish to consult with the shipowner's P&I Club and/or the Director of the IOPC Funds prior to applying any of the measures.

Debate

4.5.6 A number of delegations stated that they appreciated the recommendation to the 1992 Fund Assembly that the Secretariat be instructed to publish a guidance document setting out the various actions and approaches that Member States could take to assist claimants in resolving their claims as quickly as possible. Noting that there was no obligation upon the Member State to use the proposals contained within document IOPC/OCT12/4/4, several delegations noted that it would be beneficial to provide feedback to the Secretariat and 1992 Fund Assembly on the proposals, if used following an incident.

4.5.7 One delegation stated that in addition to the proposals contained within document IOPC/OCT12/4/4, it would be helpful for governments if the Secretariat could draft additional guidelines to assist them when submitting claims, and an information note to Member States listing the documents that must be provided to the IOPC Fund's experts when the government prepares its claim. The Director agreed that this would be beneficial and that the Secretariat would do this.

4.5.8 Another delegation stated that the guidance document which was to be produced by the Secretariat should emphasise the effectiveness of combining a number of the proposals contained within document IOPC/OCT12/4/4.

4.5.9 In response to one delegation's suggestion that the words *'Pro forma'* be replaced by the word 'Model', in paragraph 10 of document IOPC/OCT12/4/4, the Director agreed that this would be amended.

4.5.10 Another delegation stated that it would be beneficial to include within the guidance document, case studies of incidents and examples where the proposals had been utilised in the past, as an aide to Member States in deciding whether to use a proposal following an incident.

4.5.11 The Director added that in June 2010, the Executive Committee had instructed him to develop in conjunction with the 1992 Fund's experts and taking into account any input from Member States, a guidance document addressing the principles of reasonable fishery restrictions. The Director noted that such a document would be beneficial in assisting Member States when they had to impose restrictions on fishery activities, so that they would be compatible with the criteria for admissibility of claims set by the governing bodies of the 1992 Fund, and thus facilitate the payment of compensation. The Director stated that the Secretariat would draft the guidance document and present it to the 1992 Fund Assembly at a future session.

1992 Fund Administrative Council Decision

4.5.12 The 1992 Fund Administrative Council noted with gratitude the outcome of the Working Group meetings and authorised the Director to publish a guidance document setting out the various 'tools' that Member States could use to assist them in the event of an oil spill. The Administrative Council also noted that the Director intended to update this document on a regular basis in light of information received from Member States regarding their experience applying these tools and that he would report any changes to the governing bodies.

4.6

Report on the first meeting of the seventh intersessional Working Group Document IOPC/OCT12/4/5	**92AC**			

4.6.1 The 1992 Fund Administrative Council took note of the report on the first meeting of the seventh intersessional Working Group, held on 26 April 2012, as contained in document IOPC/OCT12/4/5.

4.6.2 In presenting the report to the 1992 Fund Administrative Council, the Chairman of the Working Group highlighted that the Director had, during the April 2012 meeting of the Working Group, provided a general overview to the Working Group of document IOPC/OCT11/4/4, containing Professor Lowe's legal analysis regarding the interpretation of the definition of 'ship' that had been introduced at the October 2011 session of the Assembly, and was now considered the 'base document' for the work of the Group.

4.6.3 The Chairman of the Working Group noted that the Working Group had considered the following issues, as detailed in section 6 of document IOPC/OCT12/4/5:

(a) whether floating storage and offloading units (FSOs) and floating storage units (FSUs) fell within the definition of 'ship' within Article I.1 of the 1992 CLC;
(b) whether one year was a reasonable time period to allow for a vessel to remain at anchor prior to resuming its carrying voyage and still qualify as a 'ship' under Article I.1 of the 1992 CLC and whether the decision should be made in the light of the particular circumstances of the case;
(c) whether the 1992 Fund Assembly should confirm its decision, taken in October 2006, that oil discharged into 'permanently or semi-permanently' anchored vessels engaged in ship-to-ship oil transfer operations should qualify as contributing oil for the purposes of Article 10.1 of the 1992 Fund Convention;
(d) whether the 1992 Fund Assembly should decide that since the 'mother' vessels described in paragraphs 5.1 to 5.3 of document IOPC/OCT10/4/3 were not 'permanently or semi-permanently' at anchor, the oil onboard them qualified as 'received' for the purposes of Article 10 of the 1992 Fund Convention; and
(e) whether one year was a reasonable time period beyond which a vessel should be considered 'permanently or semi-permanently' at anchor, and therefore whether oil received in such vessels should qualify as contributing oil for the purposes of Article 10.1 of the 1992 Fund Convention and whether the decision should be made in the light of the particular circumstances of the case.

4.6.4 The Chairman noted that many delegations had participated in the discussions regarding the proposals raised by the Director in October 2011 and that, in general, the Working Group had considered that the definition of 'ship' was a sensitive issue with serious consequences and had requested both more time and more information before a full debate could take place. The Chairman also noted that in particular, many of the delegations who had spoken had been hesitant to agree to a one-year time period to allow for a vessel to remain at anchor prior to resuming its carrying voyage and still qualify as a 'ship' under Article I.1 of the 1992 CLC, without further data on the practices within Member States.

4.6.5 It was noted that the Chairman had suggested that a small Consultation Group should be established consisting of States from a wide geographical distribution and with differing views on the topics raised. The delegations of Canada, France, Germany, Italy, Japan, Norway, Panama and the Republic of Korea agreed to participate in the group and it was noted that the Chairman had also invited representatives from industry to participate.

4.6.6 The Chairman confirmed that the next meeting of the Working Group would take place in spring 2013, but that the Consultation Group would meet in the interim period before the next meeting to ensure that some progress could be made during the course of the year.

Debate

4.6.7 One delegation expressed its gratitude to the Chairman of the Working Group for document IOPC/OCT12/4/5, but drew attention to the terms of reference under which the Working Group had been established, as detailed in Annex III of document IOPC/OCT11/11/1. That delegation noted that the mandate of the seventh intersessional Working Group included, *inter alia*, the obligation to analyse the consequences that different interpretations outlined in document IOPC/OCT11/4/4 and other related documents may or could have on the coverage of and contributions to the international compensation regime, and to recommend to the 1992 Fund Assembly a uniform approach to the interpretation of the definition of 'ship' under Article I.1 of the 1992 CLC and Article 10 of the 1992 Fund Convention. That delegation noted that the Chairman of the Working Group had established a small Consultation Group to address the issues, but that it was clear that it was not within the remit of the Consultation Group to completely reopen the debate on the definition of 'ship', but to use document IOPC/OCT11/4/4 and Professor Lowe's legal opinion, as the basis for the discussions within the Consultation Group.

4.6.8 In response to one delegation's request to be included within the Consultation Group, the Chairman noted that the intention behind establishing the Consultation Group was to assist the Chairman in gathering information and analyses and then to report back to the seventh intersessional Working Group. Delegations that were not included in the Consultation Group were free to discuss matters with the Chairman.

4.6.9 An observer delegation stated that for industry to assist the Working Group with relevant and useful information, it was necessary that the Working Group put precise questions to them, so that the answers could assist the Working Group.

4.6.10 Two delegations noted that in paragraph 6.2.4 of the French and Spanish versions of document IOPC/OCT12/4/5, the word 'code' should be translated as the words 'cote' (French version) and 'cota' (Spanish version) respectively.

4.7

STOPIA 2006 and TOPIA 2006 **Document IOPC/OCT12/4/6**	**92AC**		**SA**	

4.7.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT12/4/6 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.7.2 It was noted that the International Group had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 039 tankers as of February 2012.

4.7.3 It was noted that the International Group had reported to the Secretariat that as of February 2012 all of the tankers which were insured by one of the members of the International Group and reinsured through its pooling arrangements, were also entered in TOPIA 2006. It was also noted that the number of tankers not entered in TOPIA 2006 at that time, because they were not participating in the pooling arrangements of the International Group, was 478.

5 Financial reporting

5.1

Submission of oil reports **Document IOPC/OCT12/5/1**	**92AC**		**SA**	**71AC**

5.1.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT12/5/1.

5.1.2 The governing bodies noted that the submission rate of oil reports in 2012 had improved significantly, compared to those of previous years, with 85 out of 108 Member States having reported their tonnage information by mid-October. It was noted that, despite the number of States with outstanding reports, the financial consequences of the missing reports were limited. Regarding the 1992 Fund, the governing bodies noted that the 85 States that had submitted reports for 2011 were estimated to account for some 96% of the total contributing oil.

5.1.3 It was noted in particular that Cambodia and Grenada submitted in 2012 all of their outstanding reports for 11 consecutive years. It was also noted that Belize and Papua New Guinea, which had outstanding reports for seven and eight years, respectively, had submitted all of their outstanding reports. Mauritania, a former 1971 Fund Member State which had seven years of outstanding reports, had submitted all of them.

5.1.4 The governing bodies noted that 23 States had outstanding reports for the 1992 Fund. However, eight of them had outstanding reports for one year only. Another five had outstanding reports for two or three years. It was also noted that one Member State of the Supplementary Fund had yet to submit an oil report for 2011. The Secretariat expressed serious concerns about seven States that had never submitted any oil reports since becoming Members of the Funds a number of years ago.

5.1.5 The importance of submitting timely and accurate oil reports was emphasised, as it ensures the compensation regime functions properly and can therefore provide the protection it is supposed to provide to Member States. The Secretariat reiterated the importance of designating a focal point dedicated to the task of submitting oil reports, and having proper handover whenever there is personnel change. It was noted that the Secretariat had also begun to reach out to Member States more actively with frequent contacts with State representatives both in London and overseas. It was noted that one of the goals of the outreach strategy was to improve further the oil report submission rates.

5.1.6 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the information and urged Member States concerned to submit their outstanding oil reports.

5.2

Report on contributions **Document IOPC/OCT12/5/2**	**92AC**		**SA**	**71AC**

5.2.1 The governing bodies took note of the information on contributions to the IOPC Funds contained in document IOPC/OCT12/5/2.

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

5.2.3 The 1992 Fund Administrative Council noted that the relevant authority in South Africa, through its representative in London, had informed the Secretariat that steps were being taken to fully implement the 1992 Fund Convention into the national legislation of South Africa in order to resolve the matter of South Africa's outstanding contributions which made up a large percentage of the total outstanding contributions due to the 1992 Fund.

5.2.4 In particular, the governing bodies noted the outcome of the legal actions commenced by the 1992 Fund and the 1971 Fund against contributors in the Russian Federation to recover the outstanding contributions due to the 1992 Fund and the 1971 Fund. It was noted that in judgements rendered in July 2012 the Court had rejected the Funds' request since under Russian civil law the claims by the 1971 Fund and the 1992 Fund had become time-barred. The governing bodies noted the intention of the Funds to appeal in these cases to the Highest Arbitration Court, the final tribunal in the Russian Federation. With respect to a third contributor, it was noted that the file had been returned to the Arbitration Court by the Highest Arbitration Court and the hearing date was yet to be fixed.

Debate

5.2.5 One delegation asked the Director to explain why the claims by the 1971 Fund and the 1992 Fund had become time-barred. The Director replied that that the invoices had been addressed to the contributors but sent to the Ministry of Transport of the Russian Federation based on the information provided in the oil reports. He further stated that in the past, contributions had been received from the Government of the former Union of Soviet Socialist Republics (USSR) and from the Government of the Russian Federation and that no payment of contributions to the IOPC Funds had ever been received from the contributors directly.

5.2.6 In reply to an intervention by another delegation regarding the response of the Russian Federation (as a Member State) to the developments in the legal proceedings, the Director reported that the Secretariat had brought the developments on the legal proceedings to the attention of the Russian authorities, both at meetings in London and by letter in November 2011 and February 2012. He said that the Russian authorities had also been kept informed of recent developments.

5.2.7 The governing bodies also noted that claims for contributions had been filed with the administrators of Petroplus Refining & Marketing Ltd, United Kingdom and Petroplus Marketing AG, Switzerland which had gone into liquidation in 2012.

5.2.8 With regard to the 1971 Fund, the governing bodies also noted the efforts made by the Secretariat in following up outstanding contributions due from contributors in the former USSR and the former Socialist Federal Republic of Yugoslavia. It was noted that the issue of time bar and absence of legal basis for the obligation to pay contributions had been raised by a contributor in Bosnia and Herzegovina.

5.2.9 The 1971 Fund Administrative Council noted that the practices of other international bodies with respect to liabilities of the former USSR and former Yugoslavia were not relevant since as Member States they had not undertaken the responsibility to pay contributions under Article 14 of the 1971 Fund Convention. The obligation to pay contributions rested with the individual contributors in those States.

5.3

Report on investments **Document IOPC/OCT12/5/3**	**92AC**		**SA**	**71AC**

5.3.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the Director's report on the IOPC Funds' investments during the period 1 July 2011 to 30 June 2012 contained in document IOPC/OCT12/5/3. The governing bodies noted the number of institutions used by the Funds for investment purposes and the amounts invested by each Fund.

5.3.2 The governing bodies recognised that the London Clearing Bank base rate and European Central Bank Refi rate were low and that this had had a considerable impact on the yields achieved by the Funds on their investments. It was noted that investment yields on Korean Won deposits earned a much higher yield compared to Pounds Sterling or Euro deposits.

5.3.3 The governing bodies took note of the fact that investments with Barclays Bank, one of the Funds' house banks, exceeded the normal limit during most of the reporting period. This was as a result of implementing the hedging policy through the purchase of Korean Won, which is not a freely convertible currency, and investing these funds with Barclays Bank (Seoul) in relation to the *Hebei Spirit* incident (Hedging Guideline 8). The governing bodies, however, noted that a Korean Won account had been opened with ING Bank (Seoul) and that Korean Won deposits were held with five institutions, namely, Korea Exchange Bank, Barclays Bank, BNP Paribas, Standard Chartered Bank Korea and ING Bank (Seoul).

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

5.3.5 The governing bodies also noted that an 'Extendable Collar' instrument had been entered into by the 1992 Fund in September 2011 to hedge for the *Hebei Spirit* incident and that it provided protection against Korean Won strengthening against Pounds Sterling whilst allowing participation in favourable moves in the exchange rate, within a pre-determined range.

5.4

Report of the joint Investment Advisory Body **Document IOPC/OCT12/5/4**	**92AC**		**SA**	**71AC**

5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the Supplementary Fund and the 1971 Fund, contained in the Annex to document IOPC/OCT12/5/4.

5.4.2 The 1992 Fund Administrative Council noted that any surplus Euros in respect of the *Erika* incident would be sold prior to the closure of the *Erika* Major Claims Fund. It was also noted that hedging for Euro liabilities in respect of the *Prestige* incident was some 76%, and the Korean Won liability in respect of the *Hebei Spirit* incident was some 58% on the basis that the Fund's liability was KRW 179.4 billion (78% assuming that the Fund's liability was some KRW 134.8 billion).

5.4.3 It was noted that the IAB had recommended the Director open a Korean Won account with ING N.V Korea to hold Korean Won, in addition to the accounts held with Barclays Bank (Seoul), Korea Exchange Bank, Standard Chartered Bank Korea and BNP Paribas (Seoul).

5.4.4 The 1992 Fund Administrative Council noted the IAB's view that, given the amount of liability, there would be no need to hedge for the *Volgoneft 139* incident, should the Director be given the authority to make compensation payments.

5.4.5 It was also noted that in respect of the *Hebei Spirit* incident a Dual Currency Investment had been undertaken during the reporting period between Pounds Sterling and Korean Won with the added benefit of higher yield, and an 'Extendable Collar' contract had been entered into which gave the 1992 Fund the right to participate in favourable rates while providing protection against strengthening of the Korean Won *vis-à-vis* Pounds Sterling.

5.4.6 It was also noted that the IAB had recommended to the Director that Bank of Scotland, previously classified as a house bank, be removed from the list of approved institutions as it no longer met the Funds' criteria.

5.4.7 The governing bodies took note that the Director, based on the IAB's recommendation, had introduced a tiered lending list whereby only financial institutions which exceeded the Funds' investment criteria prescribed in the Internal Investment Guidelines would qualify for investments longer than three months. Lending would be permitted up to three months with institutions that met the ratings required in the Internal Investment Guidelines and for those where the credit ratings were under review, with a possible downgrade in the future, lending was restricted to one month.

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

5.4.9 The governing bodies also took note of the concern expressed by the IAB with regard to the current uncertainty in the financial markets due to continuing problems in the Eurozone and noted that the IAB, in discharging its mandate, monitored the credit ratings of financial institutions to ensure that the IOPC Funds' investments were placed in the safest institutions.

5.5

Report of the joint Audit Body **Document IOPC/OCT12/5/5**	**92AC**		**SA**	**71AC**

5.5.1 The Chairman of the Audit Body, Mr Emile Di Sanza, introduced the joint Audit Body's report to the governing bodies, as set out in document IOPC/OCT12/5/5, which dealt with how the Audit Body, which had been elected in October 2011, discharged its responsibilities under its mandate and how it carried out its programme of activities. He stressed that first and foremost the work of the Audit Body was defined by its mandate and that its activities were derived from this mandate as well as from instructions and decision of the Funds' governing bodies. He said that, in setting its priorities and in the conduct of its work, the Audit Body was mindful of the balance required between the management responsibilities of the Secretariat and the oversight role of the Audit Body and that the Audit Body was mindful of the respective mandates and responsibilities of other entities with whom it dealt.

5.5.2 The governing bodies noted that the Audit Body's programme was structured under five main areas, the first of which was its core function of ascertaining the effectiveness of the Funds' management and financial systems, as reported on under section 3.1 of the Audit Body's report. The governing bodies noted that Audit Body carried out this function largely through its review and consideration of the work of the External Auditor. They noted that the Audit Body had reviewed the External Auditor's planning report for the audit of the 2011 Financial Statements and had been fully satisfied with the risk-based approach and scope of the audit plan. They had also reviewed the interim and final results of the external audit. It was further noted that the Audit Body was satisfied that the Funds were managed with due regard to effective internal controls and that recommendations by the External Auditor were suitably addressed by the Secretariat.

5.5.3 With respect to its work relating to reviewing the effectiveness of the Funds' risk management procedures discussed in section 3.2 of the Audit Body's report, Mr Di Sanza noted that it was the Secretariat's role to identify and manage risks whilst the Audit Body's oversight centred on ensuring that the Secretariat's risk management framework was adequate. He reported that the Audit Body had been reassured by the extent of management's commitment to risk awareness and by the manner in which risk management was embedded in management procedures. He also reported that the Audit Body had previously noted that the introduction of the Web-based Claims Handling System would facilitate a significant improvement in the control of claims but that of particular interest now was the

potential for greater management oversight of claims handling efficiency and costs. Mr Di Sanza also reported that the Audit Body was jointly monitoring with the Secretariat improvements in the accuracy of oil reports arising from the use of Lloyds' List Intelligence and that the Audit Body believed that, with some continued refinements, the use of the database would provide a valuable tool to the Funds' Secretariat in improving the accuracy and timeliness of oil reports.

5.5.4 Mr Di Sanza reported that the third key area of the Audit Body's activities was in respect of the review of the Organisations' Financial Statements and Reports and this was discussed in section 3.3 of the Audit Body's Report. He explained that the process began shortly before year-end with an appraisal by the Audit Body of the Secretariat's review of the presentation of its Financial Statements and accounting policies. He noted that the Financial Statements were then subject to a detailed review by the External Auditor and that the Audit Body considered the findings and comments by the External Auditor in its own review of the Financial Statements and at each stage of the annual audit process.

5.5.5 The governing bodies noted that, pursuant to its review of the Financial Statements and consideration of all relevant reports and comments by the External Auditor and in light of the assurances provided by the results of the external audit, the Audit Body recommended that the relevant governing body approve the accounts of the 1992 Fund, the Supplementary Fund and the 1971 Fund for the year ending 31 December 2011.

5.5.6 Mr Di Sanza reported that the Audit Body was mindful of the need for information, especially financial information, to be communicated effectively and that, in this regard, the Audit Body applauded the Secretariat for the format and contents of its annual reports as well as for significant enhancements to the Funds' website. He also reported that the adoption of the International Public Sector Accounting Standards (IPSAS) had been a challenging task but that the Secretariat had addressed this task in a thorough and transparent manner and that the resulting outcome had been positive. He said that the Audit Body continued to follow developments and, through its External Expert, had continued to participate in discussions with the Secretariat, the External Auditor and the IAB on the application of IPSAS.

5.5.7 Mr Di Sanza reported that section 3.4 of document IOPC/OCT12/5/5 outlined how the Audit Body addressed its role of promoting the understanding and effectiveness of the audit function within the Organisations. The governing bodies noted that the Audit Body met three times a year and worked to a structured agenda and detailed programme of activities. These meetings involved the participation of the Director, Secretariat staff as appropriate and representatives of the External Auditor, and provided a forum to discuss a broad range of matters relating to the Audit Body's mandate. In addition, they noted that the participation of one or more of the Chairmen of the Funds' governing bodies at meetings of the Audit Body further promoted effective communication. It was also noted that the IAB met with the Audit Body on an annual basis and gave a presentation on investment and financial risk. While recognising the separate and distinct mandate of the IAB, it was noted that the Audit Body found it particularly useful, in the exercise of its own mandate, to have a good understanding of the views of the members of the IAB on investment and financial risks, in particular in light of the instability and volatility in global markets and economies in recent years.

5.5.8 Mr Di Sanza reported that he had been pleased to have had the opportunity to present the Audit Body's three-year programme of activities to the April 2012 sessions of the governing bodies and noted that he was joined at these October sessions by the Audit Body's External Expert, Mr Michael Knight, and one other Member, Mr John Gillies. He stated that this ensured not only reporting of the activities of the Audit Body but also provided for better insight into the work of the Funds and appreciation of the perspectives of Member States.

5.5.9 The governing bodies also noted that, as called for in its mandate, the Audit Body intended to conduct a review of its own performance according to best practices and principles of oversight committees and present the results in its October 2014 report to the governing bodies. It was further noted that, in the course of its tenure, the fourth Audit Body would be endeavouring to support the nomination process of new candidates to the Audit Body by profiling skill requirements for effective membership and that it proposed to submit a document on this issue to the governing bodies at their October 2013 sessions.

5.5.10 Mr Di Sanza reported on activities related to how the Audit Body discharged its responsibility to report on the effectiveness of the relationship between the External Auditor and the Funds. He noted that, following the tender and selection process carried out by the Audit Body in 2010, the governing bodies had decided that the annual review and monitoring by the Audit Body would be the primary basis for determining if the external audit relationship with the Funds was effective. In this regard, he reported that in the course of the past year, the Audit Body had further defined the approach by which it considered this relationship and that that approach took into account the six elements that were listed in paragraph 3.5.3. He reported that the Audit Body had developed a statement regarding the effectiveness of the relationship between the Funds and External Auditor and for the period under review, the Audit Body was pleased to report that the working relationship and dialogue between the External Auditor and the Audit Body over the course of the conduct of the audit process had been constructive and suitably focused and that the work of the External Auditor was effective and of tangible value to the operations of the Funds.

5.5.11 In conclusion, Mr Di Sanza expressed his appreciation to Audit Body's External Expert and fellow members for their contribution to the work of the Audit Body. He also extended the Audit Body's gratitude to the Director and the Secretariat for their support and engagement in the work of the Audit Body. He acknowledged the very productive relationship between the Audit Body and the representatives of the External Auditor and expressed the Audit Body's appreciation to the members IAB for their frank exchange of information and expertise.

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

5.6

2011 Financial Statements and Auditor's Reports and Opinions Document IOPC/OCT12/5/6	**92AC**		**SA**	**71AC**
2011 Financial Statements and Auditor's Report and Opinion – 1992 Fund Document IOPC/OCT12/5/6/1	**92AC**			
2011 Financial Statements and Auditor's Opinion – Supplementary Fund Document IOPC/OCT12/5/6/2			**SA**	
2011 Financial Statements and Auditor's Report and Opinion – 1971 Fund Document IOPC/OCT12/5/6/3				**71AC**

5.6.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT12/5/6. The governing bodies dealt separately with their Organisation's respective Financial Statements for the financial year 2011. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT12/5/6/1, IOPC/OCT12/5/6/2 and IOPC/OCT12/5/6/3.

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

5.6.3 The governing bodies noted with appreciation, the Financial Statements of their respective Organisation, as well as the External Auditor's Reports and Opinions contained in Annexes III and IV of document IOPC/OCT12/5/6/1 (1992 Fund), Annex III of document IOPC/OCT12/5/6/2 (Supplementary Fund) and Annexes III and IV of document IOPC/OCT12/5/6/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2011 Financial Statements for each Organisation which were prepared under IPSAS, following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The governing bodies noted that the unqualified audit opinions on the financial statements were confirmation that the Organisations' internal financial controls had operated effectively.

5.6.4 The governing bodies noted the External Auditor's statement that of the previous year's four recommendations; one had been satisfactorily acted upon by the Secretariat, one had not been acted upon but was closed pending consideration in the future and implementation of the other two was to be reviewed by the External Auditor as part of the 2012 audit. The governing bodies also took note of the recommendations set out in the External Auditor's report on the 2011 Financial Statements.

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

Intervention by the delegation of France (Original French)

5.6.6 With respect to the recommendation in the External Auditor's report on the 2011 Financial Statements of the 1992 Fund relating to the process of selection and appointment of claims experts, the French delegation made the following statement:

> 'France emphasises its concern at the situation reflected in the Auditor's Recommendations with respect to the experts engaged by the IOPC Funds to evaluate claims for compensation. France notes, in light of these recommendations, that the procedure for recruitment of the experts is not transparent and that there may be some doubt not only with regard to their professional qualifications and experience but also their independence and impartiality. This situation is unacceptable. France wishes the Director of the IOPC Funds to address these questions promptly and to provide Member States, at the next session of the IOPC Funds, with evidence that steps have been taken by the Secretariat to guarantee the qualifications and independence of the experts. France also requests the Director to inform the Member States of the amounts paid to the experts each year, for all incidents in aggregate, and to explain the method of calculation of these fees.'

Response by the Director

5.6.7 In response to this intervention, the Director expressed his surprise at the points made by the delegation of France. He stated that the professional qualifications and experience of the experts engaged by the 1992 Fund were of the highest order. He emphasised that the 1992 Fund had always engaged highly respected experts who, in most cases, had been involved in oil pollution incidents for many years. He further stated that information with respect to the fees paid to the experts each year was provided by the Secretariat. In this regard, he referred to documents IOPC/OCT12/9/2/1, Annex V and document IOPC/OCT12/9/3/1, Annex II which contained the total amount of legal, technical and other fees paid by the 1992 Fund on a year-by-year basis since the beginning of each incident. The Director recognised, however, that the information was provided in different documents and might be difficult to find. He said that the Secretariat would endeavour to present the cost of experts in a consolidated document to the next regular session of the governing bodies.

5.6.8 With respect to the method of calculation of fees, the Director responded that it had been the normal practice of the IOPC Funds to engage experts on a daily/hourly basis since it was difficult to anticipate the time required to assess claims due to the unique nature of each claim. It was the responsibility of the Claims Managers to ensure that the time charged to the IOPC Funds was the time required depending on the nature and complexity of each individual claim. The rate of honorarium paid to each expert was agreed in advance before the work was carried out and reflected in a letter of engagement.

5.6.9 The Director stated that his initial responses to the recommendations of the External Auditor had been provided in document IOPC/OCT12/5/6/1 and that a meeting had already been scheduled to take place in November 2012 with the External Auditor to discuss the documentation required to demonstrate the suitability of the experts used.

Debate

5.6.10 One delegation enquired as to the procedure which was followed by the IOPC Funds in the selection of lawyers. The Director responded that lawyers were selected based on recommendations from maritime experts known to the Funds over many years and also on advice received from insurers with experience in the relevant jurisdiction. He added that the Funds also consulted lawyers within the Comité Maritime International since they were generally very familiar with the international Conventions and the activities of the IOPC Funds. He also stated that it was the Funds' policy to appoint the best available lawyers to ensure that the Funds' interests were protected.

5.6.11 The governing bodies noted the recommendation by the joint Audit Body that they approve the Financial Statements of the 1992 Fund, the Supplementary Fund and the 1971 Fund (document IOPC/OCT12/5/5, Annex, paragraph 3.3.5).

1992 Fund Administrative Council Decision

5.6.12 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2011.

Supplementary Fund Assembly Decision

5.6.13 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2011.

1971 Fund Administrative Council Decision

5.6.14 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2011.

6 Financial policies and procedures

6.1

Measures encouraging the submission of oil reports **Document IOPC/OCT12/6/1**	**92AC**		**SA**	**71AC**

6.1.1 The governing bodies took note of the information provided in document IOPC/OCT12/6/1 on measures to encourage timely and accurate submission of oil reports by the Member States.

6.1.2 The Secretariat expressed its gratitude to the States that participated in the improvement of the online reporting system, especially as the testing of the live system phase required more time and attention than the previous trials had. The governing bodies noted that the Secretariat had received feedback from five Member States (Australia, the Bahamas, Germany, Latvia and New Zealand) and was awaiting feedback from three additional States.

6.1.3 The Secretariat expressed special gratitude to Australia, as it was the first to use the system, identifying several errors in the system. It was reported that by the time the Bahamas tried the system several weeks later, all the errors and glitches had been fixed, enabling the user to update contributors' details and submit tonnage information online without any problems. It was also added that the login difficulties that posed a major challenge in the previous phase had been completely resolved. It was emphasised that the login process used the latest technology to simultaneously ensure a secure and user-friendly system.

6.1.4 The governing bodies noted that the Secretariat had also finished developing a user guide to accompany the online reporting system. It was further noted that the user guide could be used independently to help contributors and Member States with the submission of oil reports and that the user guide would be made available on the Funds' website in due course.

6.1.5 Highlighting again the benefits of the online reporting system, including a more secure and environment-friendly way of submitting oil reports, and access to past submission records and contributor contact details, the Secretariat encouraged more Member States to sign up to use the system. The Secretariat also indicated that it was making continuous improvements to the live system.

6.1.6 It was noted that in 2012, some 80% of the Member States and their contributors had used the new electronic oil reporting form to report contributing tonnage and to submit nil declarations. Taking into consideration the wide usage of this new form, the Director proposed that the governing bodies approve the adoption of the electronic oil reporting form as the new official template for submitting tonnage information and that, subsequently, the Annex to the Internal Regulations of the 1992 Fund and the Supplementary Fund be changed to reflect the adoption of the new form.

6.1.7 With regards to other measures encouraging the submission of oil reports, the governing bodies noted that following up on the Audit Body's initiative involving the use of independent data to assist Member States with the timely and accurate submission of oil reports, the Secretariat had begun using the data acquired from Lloyd's Intelligence Unit for the year 2010. It was noted that preliminary investigation showed the data to be very useful. For instance, for States that had yet to report any contributing oil, the data helped them identify potential contributors.

6.1.8 The governing bodies noted with satisfaction that the increased level of engagement by the Secretariat with authorities regarding outstanding oil reports was successful, resulting in a number of Member States submitting long overdue oil reports. It was also noted that in 2012, the Secretariat had continued to hold regional lunch meetings for Member and non-Member States, which had been used as an opportunity to discuss oil reporting issues.

Debate

6.1.9 Two delegations stated that the physical signatures in oil reports should be maintained, as a means to ensure the integrity of oil reports, and that submission should continue to be made by States, not by contributors. The Secretariat assured the delegations that the submission process would remain unchanged, that the online reporting system itself would continue to be developed at a manageable speed, and that any major changes would be presented to the governing bodies for approval prior to implementation.

6.1.10 One delegation requested clarification about the difference between the electronic reporting form and the online reporting system. The Secretariat clarified that the electronic reporting form was available to all contributors to facilitate the recording of tonnage information while the online reporting system had been developed for States to facilitate the fulfilment of their reporting obligations.

6.1.11 The delegation from the Philippines reiterated its opposition to using data collated by a private entity (Lloyd's Intelligence Unit) to verify data on oil reports submitted by Member States.

6.1.12 One delegation suggested that a footnote could be added to the oil reporting form to clarify that 'Member State' meant 'Contracting State' to the 1992 Fund Convention, to avoid confusion with the European Union membership among some contributors.

1992 Fund Administrative Council Decisions

6.1.13 The 1992 Fund Administrative Council approved the continuation of the online reporting system and its further improvement.

6.1.14 The 1992 Fund Administrative Council also approved the adoption of the electronic oil reporting form as the new official template for the submission of oil tonnage data and therefore the amendment of the Annex to the Internal Regulations.

Supplementary Fund Assembly Decision

6.1.15 The Supplementary Fund Assembly approved the adoption of the electronic oil reporting form as the new official template for the submission of oil tonnage data and therefore the amendment to the Annex to the Internal Regulations.

7 Secretariat and administrative matters

7.1

Secretariat matters **Document IOPC/OCT12/7/1**	**92AC**		**SA**	**71AC**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT12/7/1 regarding the operation of the Secretariat.

7.1.2 The governing bodies noted that Ms Emer Padden had been appointed to the post of External Relations and Conference Coordinator and had taken up her post on 9 January 2012.

7.1.3 The governing bodies further noted that, under the authority given to him by the 1992 Fund Assembly, the Director had decided to reclassify one of the posts of Translation Administrator (Spanish) in the External Relations and Conference Department to the G7 level. It was noted that the post had been renamed as Translation Coordinator and that Mrs Natalia Ormrod had been appointed to this post.

7.1.4 The governing bodies noted the amendments to:

(a) the new General Service salary scale (Annex C to the 1992 Fund Staff Rules); and
(b) the new base salary scale for staff in the Professional and higher categories (Annex A to the 1992 Fund Staff Rules).

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

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

7.1.6 It was noted that the pilot scheme was introduced in June 2011 after consultation with staff members and five staff members were awarded an amount of £17 867 in total. In 2012, five staff members in the General Service category received the award and the total amount spent was £15 235.

7.2	**Changes to Financial and Internal Regulations Document IOPC/OCT12/7/2**	**92AC**		**SA**	**71AC**

7.2.1 The governing bodies took note of document IOPC/OCT12/7/2 regarding amendments to their respective Financial Regulations and Internal Regulations to take into account the dual roles created by the combination of Deputy Director with that of Head of the Finance and Administration Department, and of the Head of the Claims Department with that of Technical Adviser.

1992 Fund Administrative Council Decision

7.2.2 The 1992 Fund Administrative Council decided to amend Financial Regulation 9.2 and Internal Regulations 7.13 and 7.14 to take into account the dual roles created. The amended Regulations are set out at Annex III, pages 1 and 2.

Supplementary Fund Assembly Decision

7.2.3 The Supplementary Fund Assembly decided to amend Financial Regulation 9.2 and Internal Regulations 7.10 and 7.11 to take into account the dual roles created. The amended Regulations are set out at Annex III, pages 3 and 4.

1971 Fund Administrative Council Decision

7.2.4 The 1971 Fund Administrative Council decided to amend Financial Regulation 9.2 and Internal Regulations 7.13 and 7.14 to take into account the dual roles created. The amended Regulations are set out at Annex III, pages 5 and 6.

7.3	**Changes to Internal Regulations Document IOPC/OCT12/7/2/1**			**SA**	**71AC**

7.3.1 The Supplementary Fund Assembly and the 1971 Fund Administrative Council noted that the 1992 Fund Assembly, at its April 2012 session, had approved the amendment to Internal Regulation 12 of the 1992 Fund (Delegation of authority in the absence of the Director) to take into account the new contingency arrangements for the Director. The governing bodies noted that 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 his behalf. It was further noted that a new paragraph had been included in Internal Regulation 12 of the 1992 Fund to the effect that if none of these staff members were available to assume the function of Director, the Chairman of the 1992 Fund Assembly should appoint a member of the Secretariat, other than those mentioned above, to carry out this function until the next regular or extraordinary session of the Assembly or until any one of the said senior members of the Secretariat was able to resume their responsibilities.

Supplementary Fund Assembly Decision

7.3.2 The Supplementary Fund Assembly decided to approve the amendments to Internal Regulation 12 of the Supplementary Fund to take into account the new contingency arrangements for the Director of the Supplementary Fund, as set out in Annex IV, page 1.

1971 Fund Administrative Council Decision

7.3.3 The 1971 Fund Administrative Council decided to approve the amendments to Internal Regulation 12*bis* of the 1971 Fund to take into account the new contingency arrangements for the Director of the 1971 Fund, as set out in Annex IV, page 2.

7.4

Information Services **Document IOPC/OCT12/7/3**	**92AC**		**SA**	**71AC**

7.4.1 The governing bodies noted the information contained in document IOPC/OCT12/7/3 regarding the information services provided by the IOPC Funds' Secretariat.

7.4.2 It was 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). The governing bodies noted that since August 2012 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, had been made available in the three official languages. The governing bodies also noted a number of other improvements which had been made to the site, including the introduction of links to reference documents within meeting documents.

7.4.3 The governing bodies noted that, following concerns expressed by a number of delegations at the April 2012 meetings regarding the late availability of documents for meetings, the Secretariat had made additional efforts to ensure documents were issued in all three languages sufficiently in advance of the meetings. The Secretariat confirmed that on the occasion of the October 2012 meetings the large majority of documents had been made available in all three working languages two weeks prior to the meetings. The Secretariat expressed its intention to continue to meet such deadlines whenever possible for future meetings but pointed out that the absence of a summer meeting in 2012 had had a significant impact on the Secretariat's ability to achieve that goal for the current sessions.

7.4.4 It was noted that, following the completion of the Document Services website, progress had continued on the redesign of the IOPC Funds' website. A presentation of the new website was given. Delegations were requested to inform the Secretariat if they had any specific comments to make by email to feedback@iopcfund.org. The governing bodies noted that the website was expected to be launched in English within the coming month and in French and Spanish shortly thereafter, before the end of 2012.

7.4.5 The governing bodies noted that from January 2013 a new unified numbering system would be introduced for IOPC Funds' information circulars to bring them into line with all other IOPC Funds documentation.

Debate

7.4.6 The governing bodies thanked the Secretariat for the presentation and congratulated it on the new website. Several delegations commented that the site was impressive and that they were looking forward to it being made available in the three official languages very soon.

7.4.7 A number of delegations also expressed appreciation for the improvements made to the Document Services website, particularly in respect of the introduction of the decisions database and overall interface of the site in French and Spanish. One delegation referred, in particular, to the usefulness of the decisions database, which it considered easy to navigate and to find the information sought.

7.4.8 Several delegations expressed their satisfaction and appreciation for the extra efforts by the Secretariat to ensure that the majority of documents had been made available two weeks before the meetings in English, French and Spanish, pointing out that this had a significant impact on the time delegations had to consult with their governments and to prepare for the meetings.

7.4.9 In response to a question from one delegation regarding the likelihood of the Secretariat introducing a database of key judgements and court decisions related to the IOPC Funds, the Director explained that the Secretariat had recently introduced the practice of making key judgements available via the IOPC Funds website and that this practice was to be continued with the new website. The Director pointed out that these judgements would be made available in their original language as the costs of translating them in all three official languages of the IOPC Funds would be too high.

8 Treaty matters

8.1

Status of the 1992 Fund Convention and the Supplementary Fund Protocol **Document IOPC/OCT12/8/1**	**92AC**		**SA**	

8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT12/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.

8.1.2 The governing bodies noted that as at the October 2012 sessions of the governing bodies, there were 108 Member States of the 1992 Fund and that three States, namely Montenegro, Mauritania and Niue had ratified the 1992 Fund Convention since October 2011, bringing the total number of 1992 Fund Member States to 111 by 27 June 2013. It was also noted that there were 27 Member States of the Supplementary Fund, and that the Supplementary Fund Protocol would also enter into force for Montenegro on 29 November 2012, bringing the number of Supplementary Fund Members to 28 on that date.

8.1.3 It was further noted with satisfaction that Turkey had ratified the Supplementary Fund Protocol and that the official notification would be sent by the Turkish authorities shortly.

8.1.4 The governing bodies noted that, with the increase in the number of Member States of the 1992 Fund in recent years, the Secretariat had been faced with a number of issues related to the lack of implementation of the dispositions of the Convention into national law.

8.1.5 It was further noted that at the October 2011 sessions of the governing bodies, the Audit Body had considered the potential difficulties caused by States who may or may not have fully implemented the Conventions into national law, specifically as regards the submission of oil reports and payment of contributions. At those sessions, the Director had agreed with the points made by the Audit Body and had stated that the Secretariat would consider taking a different approach to the way in which it offered assistance and developed relationships with Member States.

Debate

8.1.6 One delegation thanked the Secretariat for the detailed information provided regarding the status of the Conventions and stated that it would be useful for the IOPC Funds if the Secretariat could examine whether the IOPC Funds could recover from Member States any losses suffered as a result of their failure to correctly implement the Conventions.

8.1.7 The Director responded by stating that the issue of implementation was very important and that the Secretariat had begun to take a more proactive approach by working collaboratively with Member States to ensure that the Conventions were implemented correctly into national law. The Director confirmed that he would examine this matter and would report back to the governing bodies at a future session.

8.1.8 One delegation raised the question of whether the implementation of the Funds' Conventions could be included in the IMO Audit Scheme. The Director responded that he would look into this possibility but believed that this option had already been explored at an earlier date and the outcome had been that the IMO Audit Scheme focused mainly on technical Conventions and that the international compensation regime which was based on legal instruments fell outside the scope of the IMO scheme.

8.1.9 One delegation suggested that the way forward with respect to the matter of blue cards and insurance certificates could be to refer the issue to the IMO Legal Committee.

1992 Fund Administrative Council and Supplementary Fund Assembly

8.1.10 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted that the Director would examine the problems related the lack of implementation of the Conventions into national law and would study the possibility for the IOPC Funds of recovering from Member States any losses suffered as a result of their failure to implement correctly the Conventions into their national law, and that he would report back to the governing bodies at a future session.

8.1.11 The 1992 Fund Administrative Council and Supplementary Fund Assembly also noted that the Director would contact the Legal Affairs and External Relations Division of IMO to discuss whether the problems encountered in respect of the insurance requirements under the 1992 CLC could be included in the agenda of the IMO Legal Committee and would report back to the governing bodies at a future session.

8.2

Review of international non-governmental organisations having observer status **Document IOPC/OCT12/8/2**	**92AC**		**SA**	**71AC**

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

8.2.2 The governing bodies noted the information set out in document IOPC/OCT12/8/2, in particular Annex II regarding the attendance of international non-governmental organisations at the meetings of the IOPC Funds' governing bodies and the submission of documents by those organisations since the previous review in October 2009.

8.2.3 It was noted that in July 2012, the Director had written to all international non-governmental organisations which had been granted observer status, inviting them to submit their comments on whether, in their view, the continuance of observer status would be of mutual benefit. The governing bodies took note of the information contained in Annex III to document IOPC/OCT12/8/2, which set out the responses received from the organisations concerned. The governing bodies also noted the information contained in sections 3.3 and 4 of that document which detailed the contacts maintained between the organisations and the Secretariat during the previous three years and the Director's recommendation that all international non-governmental organisations which currently held observer status with the IOPC Funds should maintain that status until the next review in 2015.

8.2.4 In accordance with previous practice, the governing bodies set up a group of five Member States to establish whether the continuance of observer status for each international non-governmental organisation would be of mutual benefit, and to report its findings to the governing bodies. It was decided that the composition of the group should be as follows: Canada (Chairman), China, Liberia, Poland and Qatar.

8.2.5 Following meetings of the group on Tuesday 16 and Wednesday 17 October 2012, the Chairman reported back to the governing bodies as set out in paragraphs 8.2.6-8.2.10 below:

Report of the group established to carry out the review

8.2.6 The group considered that amongst those non-governmental organisations under review, there was a large number which maintained a very strong relationship with the IOPC Funds, regularly attending meetings and contributing to the discussions of the governing bodies on key issues through the submission of documents and/or interventions during meetings. In addition, outside of meetings, the group noted that several of those organisations remained in regular contact with the Secretariat, providing assistance and information that was of great use to the daily work of the IOPC Funds.

8.2.7 Having taken all of the information provided in document IOPC/OCT12/8/2 into account, with particular reference to sections 3 and 4 and Annexes II and III of the document, the group recommended that the governing bodies approve the continuation of observer status of the following non-governmental organisations:

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

8.2.8 With respect to the International Group of Liquefied Natural Gas Importers (GIIGNL), the group recommended that the governing bodies postpone consideration of that organisation's observer status until the next sessions, pending clarification by the Secretariat of some issues with this organisation.

8.2.9 The group also made the following observations and suggestions:

(i) The group recognised that CEFIC and WLPGA could make a significant contribution to the future work of the organisation in respect of HNS matters and recommended that the Secretariat develop a firmer relationship with those organisations and that letters should be sent to CEFIC and WLPGA strongly encouraging them to attend future meetings of the 1992 Fund Assembly.

(ii) The group was pleased to note that CPMR had recently begun to attend IOPC Funds' meetings after a period of absence and would encourage them to continue their participation in future meetings.

(iii) The group noted that the International Salvage Union had expressed its regret that it had been unable to attend IOPC Funds' meetings and recognised that this was due to the Organisation comprising a Secretariat of only one or two persons and not due to lack of interest. The group suggested that the Secretariat should maintain a relationship with ISU and encourage them to ensure they are able to participate if ever an issue of salvage should arise within IOPC Funds' meetings.

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

Debate

8.2.11 The governing bodies thanked the five Member State representatives who had carried out the review for their detailed report and recommendations.

8.2.12 One delegation expressed concern that excuses were being made for those organisations which were consistently absent at meetings of the governing bodies and proposed that the Secretariat should write to such organisations well in advance of the next sessions urging them to make every effort to attend, or risk having their observer status revoked at the next review in 2015. This intervention was supported by another delegation.

8.2.13 Another delegation expressed the view that the organisations in question were likely to attend sessions of the governing bodies when items of specific interest to them were under consideration, which could be of great benefit to the IOPC Funds.

8.2.14 The Chairman of the 1992 Fund Administrative Council referred to the recommendations of the review group which included further contact and interaction between the Secretariat and those organisations which had not regularly attended meetings in recent years. The Chairman also pointed out that the list of non-governmental organisations having observer status with the IOPC Funds was relatively small, that the IOPC Funds benefited from maintaining a good relationship with these organisations and that it was at no expense to the organisation to maintain such a relationship.

1992 Fund Administrative Council and 1971 Fund Administrative Council Decisions

8.2.15 The 1992 Fund Administrative Council and 1971 Fund Administrative Council endorsed the group's recommendations and decided that all international non-governmental organisations which currently held observer status with the IOPC Funds, except for one, should maintain that status until the next review in 2015. In respect of the International Group of Liquefied Natural Gas Importers (GIIGNL), it was decided that consideration of that organisation's observer status would be postponed until the next sessions of the governing bodies, pending clarification by the Secretariat of some issues with this organisation.

8.2.16 The 1992 Fund Administrative Council and 1971 Fund Administrative Council also took note of the suggestions set out in paragraph 8.2.9 and instructed the Secretariat to send letters to CEFIC, WLPGA, CPMR and ISU, in accordance with the suggestions of the review group.

Supplementary Fund Assembly Decision

8.2.17 The Supplementary Fund Assembly noted the 1992 Fund Administrative Council's decision as set out in paragraph 8.2.15 and decided that it did not wish to deviate from that decision in respect of any organisation.

Intervention by the WLPGA

8.2.18 The observer delegation of the WLPGA thanked the governing bodies for confirming their observer status with the IOPC Funds for a further three years and stated that it looked forward to participating in future sessions of the 1992 Fund Assembly, particularly in respect of HNS matters.

8.3

Winding up of the 1971 Fund **Document IOPC/OCT12/8/3**				**71AC**

8.3.1 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund set out in document IOPC/OCT12/8/3.

8.3.2 The 1971 Fund Administrative Council recalled that the 1971 Fund Convention had ceased to be in force on 24 May 2002 and did not apply to incidents occurring after that date but that this did not, however, in itself result in the winding up of the 1971 Fund. It was noted that under Article 44 of the 1971 Fund Convention, the 1971 Fund continued to meet its obligations in respect of the incidents which occurred before the Convention ceased to be in force and that the Administrative Council was required to take appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among contributors.

8.3.3 With respect to pending incidents, the 1971 Fund Administrative Council noted that there were five pending incidents involving the 1971 Fund and where the Fund might have to pay compensation and/or legal costs. With respect to the *Vistabella* incident, the 1971 Fund Administrative Council noted that the 1971 Fund was pursuing an action against the insurer to enforce a judgement but that it could withdraw the legal action at any time.

8.3.4 The Administrative Council also noted that the Director had had discussions with the Spanish Government with regard to the *Aegean Sea* incident with a view to the early winding up of the 1971 Fund.

8.3.5 With regard to the *Iliad* incident, although the amount to be paid was unlikely to exceed the 1969 CLC limit, the Administrative Council noted that the 1971 Fund would have to follow the legal proceedings which could last for several more years.

8.3.6 In respect of the *Nissos Amorgos* incident, there were three pending claims in court, two where the Bolivarian Republic of Venezuela was the claimant and one from three fish processors.

8.3.7 The 1971 Fund Administrative Council noted that with regard to the two claims by the Bolivarian Republic of Venezuela, the 1971 Fund Administrative Council had decided that neither claim was admissible under the 1969 CLC and 1971 Fund Convention as they were calculated on the basis of theoretical models. In addition, the claims were duplicated and in 2005 the Administrative Council had decided that they were time-barred *vis-à-vis* the 1971 Fund.

8.3.8 The 1971 Fund Administrative Council also noted that a judgement had been rendered in respect of one of the Government claims by the Court of Appeal in Maracaibo denying the shipowner's right to limit his liability and that the master, shipowner, his insurer and the 1971 Fund had appealed.

8.3.9 With regard to the claim by the three fish processors, the 1971 Fund Administrative Council recalled that in 2003 the fish processors had not demonstrated any loss and noted that there had been no developments in respect of these claims for some time.

8.3.10 With regard to the *Plate Princess* incident, the 1971 Fund Administrative Council noted that the legal proceedings in respect of the claim by the Puerto Miranda Union both on liability and quantum of compensation had come to an end before the Venezuelan Courts but that litigation was still pending in respect of the claim by FETRAPESCA. The 1971 Fund Administrative Council recalled that it had decided to maintain its decision taken in March 2011, subsequently reconfirmed in October 2011 and April 2012, to instruct the Director not to make any payments in respect of this incident.

8.3.11 With respect to the outstanding contributions, the 1971 Fund Administrative Council noted that the 1971 Fund had brought legal proceedings to recover contributions in arrears before the Russian Courts but that some courts had, however, considered the claims by the 1971 Fund time-barred. In other States where there were outstanding contributions, contributors had refused to pay contributions on the grounds that they were located in a country which had never been a Contracting State to the 1971 Fund Convention. The 1971 Fund Administrative Council noted that the Director was making further efforts to clarify both the existence of these contributors and the legal enforceability of the 1971 Fund's rights to obtain contributions from them.

8.3.12 The 1971 Fund Administrative Council noted that the Director considered that the 1971 Fund had made substantial progress in the winding up of the 1971 Fund and that the issues left to resolve were now very few but that, in his view, some of them might be difficult and might require bold decisions from the 1971 Fund Administrative Council.

8.3.13 The Administrative Council noted that, having discussed this matter with the Chairman of the Administrative Council, the Director considered that now might be an opportune time for the 1971 Fund Administrative Council to set up a Consultation Group composed of a small number of delegates from former Member States who could examine the outstanding issues with the Director and make recommendations to facilitate the process of winding up the 1971 Fund to the 1971 Fund Administrative Council at its next regular session.

Debate

8.3.14 One delegation stated that, although it appreciated the information provided by the Secretariat which gave a clear and complete picture of the situation relating to the 1971 Fund, it expressed its reservations as to the establishment of a Consultation Group which, in its view, would be premature given that there were still five incidents to be resolved. It was unlikely, in the view of that delegation, that these incidents would be resolved before the next regular session of the 1971 Fund Administrative Council. In the view of that delegation, the 1971 Fund might still, therefore, have to pay compensation to the victims of those incidents.

8.3.15 Another delegation requested clarification as to whether the 1971 Fund still held an insurance policy in the event of the oil spill affecting the 1971 Fund and, if so, how much of the 1971 Fund's liabilities were covered by that policy. The Director stated that that insurance policy had been taken out during the transitional period before the 1971 Fund Convention had ceased to be in force and it had expired.

8.3.16 Another delegation stated that it believed that now was the time to establish the Consultation Group to work towards the completion of the winding up of the 1971 Fund, but that the winding up should be achieved without losing the credibility of the 1971 Fund which had operated very successfully during its 33 year history. The overwhelming majority of the delegations which spoke also welcomed and supported the establishment of a Consultation Group.

8.3.17 The observer delegation of the International Group noted that four out of the five pending 1971 Fund incidents involved International Group P&I Clubs. It remarked, however, that the Consultation Group would be comprised of representatives of former 1971 Fund Member States and requested that the Consultation Group should liaise with the International Group.

8.3.18 The 1971 Fund Administrative Council overwhelmingly supported the proposal to establish a Consultation Group. The Chairman stated that he would consult with delegations as to the possible composition of the Group which should take into account a geographical balance and also those States which were large contributors to the 1971 Fund. It was also hoped that many of the members of the Group would be London-based so as to reduce the costs incurred by the establishment of the Group.

8.3.19 The 1971 Fund Administrative Council noted that a decision as to whether to establish a Consultation Group would only be taken once its terms of reference had been agreed.

1971 Fund Administrative Council Decision

8.3.20 The 1971 Fund Administrative Council approved the establishment of a Consultation Group to facilitate the process of winding up the 1971 Fund. The Consultation Group mandate and composition is provided at Annex V. The Administrative Council noted that the members would be acting in their personal capacity and that the Consultation Group had held its first meeting on 18 October 2012.

8.4

Preparation for the entry into force of the 2010 HNS Protocol **Document IOPC/OCT12/8/4**	**92AC**			

8.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT12/8/4, regarding the progress made since its April 2012 session on the administrative tasks necessary for setting up the Hazardous and Noxious Substances (HNS) Fund.

8.4.2 It was noted that the 'HNS Finder', which provided users with information on HNS classification criteria and whether a substance qualifies as contributing cargo was being used regularly by potential HNS receivers and future contracting States. It was also noted that the Secretariat was working closely with the IMO and the vendor who had developed the Finder to ensure on-going changes to the lists were reflected in the Finder. It was also noted that, following feedback received from potential HNS receivers, the Finder's interface had been modified to sort results by whether or not substances qualified as contributing cargo.

8.4.3 It was further noted that the Secretariat, in cooperation with IMO, had drafted guidelines for the reporting of HNS contributing cargo to assist ratifying States in meeting their reporting obligations as part of the ratification process. To this end, the Secretariat had consulted industry stakeholders, including the European Chemical Council, some potential receivers and the Federation of European Tank Storage Associations (FETSA). It was reported that the Secretariat had also developed a questionnaire for industry stakeholders, designed to cover a broad range of reporting issues. The results would be used as reference for setting up the four different accounts (General, Oil, Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG)) and establishing reporting procedures. The Secretariat thanked the delegation of the Netherlands for the assistance provided in the development of the reporting guidelines.

8.4.4 The 1992 Fund Administrative Council noted that, based on those consultations with industry stakeholders, potential receivers and FETSA, the Secretariat had decided not to pursue the development of a bespoke reporting system for the HNS Fund prior to the entry into force of the 2010 HNS Convention, as it would be a labour and resource intensive endeavour with limited additional value at this stage. It was also noted that prior to the HNS Convention entering into force, a straightforward electronic reporting form, resembling the new oil reporting form was required for industry. Entities receiving HNS would be able to use such a form in conjunction with the HNS Finder to indicate the total quantity of contributing substances on an annual basis, the details of which they would record using their comprehensive internal systems.

8.4.5 The Administrative Council noted that the IMO, in cooperation with the IOPC Funds, had organised a workshop on 12-13 November 2012 at the IMO on HNS reporting in preparation for the entry into force of the HNS Convention. It was noted that the workshop would provide an opportunity to finalise the interim HNS contributing cargo reporting guidelines, including the adoption of a reporting form for receivers. The Secretariat emphasised the importance of wide participation from States in the workshop.

8.4.6 The Secretariat also gave a brief presentation, which outlined who would be responsible for reporting requirements before and after the Convention's entry into force, as per the draft reporting guidelines. In particular, it was highlighted that until the time when the Convention entered into force, it was suggested that the physical receiver would be responsible for reporting, while contracting States would have the opportunity to identify all their potential contributors as defined in the 2010 HNS Protocol.

Debate

8.4.7 The 1992 Fund Administrative Council took note of the information and commended the Secretariat for the diligent work it had undertaken.

8.4.8 One delegation expressed concern over the uncertainty of not knowing when the 2010 HNS Convention would enter into force and questioned whether the 1992 Fund would indefinitely fund preparations for the entry into force of the HNS Convention.

9 Budgetary matters

9.1

Sharing of joint administrative costs between the 1992 Fund, the Supplementary Fund and the 1971 Fund Document IOPC/OCT12/9/1	**92AC**		**SA**	**71AC**

9.1.1 The governing bodies recalled that in March 2005 the governing bodies of the IOPC Funds had decided that the distribution of the costs of running the joint Secretariat should be made on the basis of the Supplementary Fund and the 1971 Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.

9.1.2 It was also recalled that it had been decided that the management fees payable by the Supplementary Fund and the 1971 Fund should be reviewed annually in view of changes to the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of these Funds.

9.1.3 The governing bodies noted the Director's proposal on the apportionment of joint administrative costs between the three Organisations, as set out in document IOPC/OCT12/9/1.

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

9.1.4 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council approved the Director's proposal that the Supplementary Fund and the 1971 Fund should pay flat management fees of £33 000 and £247 500 respectively to the 1992 Fund for the financial year 2013.

9.2

Budgets for 2013 and assessments of contributions to the General Fund Document IOPC/OCT12/9/2	**92AC**		**SA**	**71AC**
Budget for 2013 and assessment of contributions to the General Fund – 1992 Fund Document IOPC/OCT12/9/2/1	**92AC**			
Budget for 2013 and assessment of contributions to the General Fund – Supplementary Fund Document IOPC/OCT12/9/2/2			**SA**	
Budget for 2013 – 1971 Fund Document IOPC/OCT12/9/2/3				**71AC**

9.2.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT12/9/2 and considered the draft 2013 budget for the administrative expenses of the IOPC Funds' joint Secretariat and the assessment of contributions to the 1992 Fund General Fund and Supplementary Fund General Fund, as proposed by the Director in documents IOPC/OCT12/9/2/1 and IOPC/OCT12/9/2/2 respectively, and took note of document IOPC/OCT12/9/2/3 in respect of the 1971 Fund General Fund.

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

9.2.3 The governing bodies also noted the need to provide the Director with the authority to create, if required, one position in the Professional category at the P3 level within the budget resources available.

9.2.4 The governing bodies recognised that the above authorities granted the Director a certain amount of flexibility in the management of the Secretariat.

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

9.2.6 It was noted that there was an overall decrease of 5.8% in the draft joint Secretariat budget compared to the 2012 budget. The decrease was mainly due to a reduction in personnel costs, meeting costs where appropriation was for two meetings in the year instead of three and in travel costs.

9.2.7 The 1971 Fund Administrative Council noted the Director's view that the surplus on the 1971 Fund's General Fund as at 31 December 2013 should be sufficient to cover any payments of compensation, indemnification or other incident-related expenses payable by the General Fund, to be made after 31 December 2013, as well as the 1971 Fund's share of the administrative expenditure until the 1971 Fund was wound up.
Debate

9.2.8 With respect to the Director's proposal to levy £15 million to the General Fund for payment by 1 March 2013, one delegation stated that, bearing in mind that the Executive Committee at its 56th session had not authorised the Director to make compensation payments in respect of the *Redfferm*, *JS Amazing* and *Alfa I* incidents, it might be premature to levy contributions for compensation payments in respect of these incidents.

9.2.9 Taking into account the points made by that delegation, and since the governing bodies had not authorised the payment of compensation in respect of the three incidents mentioned in paragraph 9.2.8 above, the Director proposed to the 1992 Fund Administrative Council to defer the levies of £10 million for payment during the second half of 2013 in respect of the *Redfferm*, *JS Amazing* and *Alfa I*. He further proposed to the 1992 Fund Administrative Council to approve a levy of £5 million to the General Fund, payable by 1 March 2013.

1992 Fund Administrative Council Decisions

9.2.10 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create additional posts in the General Service category, as required, provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (ie up to £206 000, based on the 2013 budget).

9.2.11 The 1992 Fund Administrative Council granted the Director the authority to create one Professional post at P3 level subject to need and budget availability.

9.2.12 The 1992 Fund Administrative Council adopted the budget for 2013 for the administrative expenses of the 1992 Fund for a total of £4 388 660 (including the cost of the external audit for the 1992 Fund), as set out in Annex VI, page 1.

9.2.13 The 1992 Fund Administrative Council also approved the Director's estimate of 2013 expenditure in respect of the preparation for the entry into force of the HNS Convention.

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

9.2.15 The 1992 Fund Administrative Council decided to levy 2012 contributions to the General Fund of £15 million, with £5 million payable by 1 March 2013 and £10 million to be deferred. The Director was authorised to invoice all or part of the deferred levy set out above for payment during the second half of 2013, if and to the extent required but subject to a decision by the 1992 Fund Executive Committee authorising the Director to make payments in respect of *Redfferm*, *JS Amazing* and *Alfa I* incidents.

Supplementary Fund Assembly Decisions

9.2.16 The Supplementary Fund Assembly adopted the budget for 2013 for the administrative expenses of the Supplementary Fund for a total of £46 600 (including the cost of the external audit), as set out in Annex VI, page 2.

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

9.2.18 The Supplementary Fund Assembly decided that there should be no levy of 2012 contributions to the General Fund.

1971 Fund Administrative Council Decisions

9.2.19 The 1971 Fund Administrative Council adopted the budget for 2013 for the administrative expenses of the 1971 Fund for a total of £512 800 (including the cost of the external audit), as set out in Annex VI, page 3.

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

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

Conscious rewarding scheme

9.2.22 Within the framework of the discussions on the budget for 2013, it was noted that the Director had introduced a Conscious Rewarding Scheme to reward staff members for outstanding performance in their current role. It was also noted that the budget for any one year was limited to 1% of the total annual budget for salaries. It was further noted that in 2011 five staff members had been awarded a total of £17 867 and that in 2012 another five staff members had been awarded a total of £15 235.

Intervention by the delegation of France (Original French)

9.2.23 The delegation of France made the following intervention:

> 'France notes with satisfaction the reduction in the budget of the IOPC Funds Secretariat, observing that it is essentially linked to the reduction in the Management Team and the number of sessions per year. It invites the Director to continue his efforts in this direction in subsequent budgets.
>
> However, France questions the Conscious Rewarding Scheme introduced by the Director. In 2012, five staff members shared an award of £15 235, an average award per person of £3 047. The budget proposed for these awards in 2013 by the Director is £20 000. As the Secretariat only has a staff of 30, each person can expect to receive a substantial award at least every six years.
>
> France considers that the salary increases of 3% awarded to the staff every year, based on the United Nations rules, already go well beyond the increases awarded to civil servants in the Member States of the IOPC Funds. The amount of the bonuses does not seem appropriate in these times of crisis. France notes that the Assembly was informed by the Director of this new awards scheme but that no vote ever took place in the framework of the budget vote. For all these reasons, France requests that the conscious rewarding scheme should be abolished.'

Debate

9.2.24 The Director stated that the Conscious Rewarding Scheme was first introduced in 2011 as a mechanism to motivate staff and to reward them for taking on additional responsibilities. He added that the amount was very small in comparison with the overall administration costs of the whole Secretariat and that the benefits of continuing with this scheme far outweighed the cost.

9.2.25 Most delegations who took the floor shared the Director's view that the Conscious Rewarding Scheme was a useful tool for the Director to maintain staff motivation and reward good performance.

9.3

Assessment of contributions to Major Claims Funds and Claims Funds **Document IOPC/OCT12/9/3**	**92AC**		**SA**	**71AC**
Assessment of contributions to Major Claims Funds – 1992 Fund **Documents IOPC/OCT12/9/3/1**	**92AC**			
Assessment of contributions to Claims Funds – Supplementary Fund **Document IOPC/OCT12/9/3/2**			**SA**	
Assessment of contributions to Major Claims Funds – 1971 Fund **Document IOPC/OCT12/9/3/3**				**71AC**

9.3.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the Director's proposal for contributions to Major Claims Funds and Claims Funds for the three Organisations as outlined in documents IOPC/OCT12/9/3, IOPC/OCT12/9/3/1, IOPC/OCT12/9/3/2 and IOPC/OCT12/9/3/3.

1992 Fund Administrative Council Decisions

9.3.2 The 1992 Fund Administrative Council decided to postpone reimbursement of the surplus on the *Erika* Major Claims Fund to the contributors to that Major Claims Fund, until such time that all claims against the 1992 Fund are extinguished and the Major Claims Fund can be closed.

9.3.3 The 1992 Fund Administrative Council decided that there should be no levy of 2012 contributions in respect of the *Prestige* Major Claims Fund.

9.3.4 The 1992 Fund Administrative Council decided to levy £10 million in respect of the *Volgoneft 139* Major Claims Fund, the entire levy to be deferred, but subject to a decision by the 1992 Fund Executive Committee authorising the Director to make payments in respect of this incident. The Director was authorised to invoice all or part of the deferred levy set out above for payment during the second half of 2013, if and to the extent required.

9.3.5 The 1992 Fund Administrative Council decided that there should be no levy of 2012 contributions in respect of the *Hebei Spirit* Major Claims Fund.

9.3.6 It was noted that the 1992 Fund Administrative Council's decisions in respect of levies for 2012 contributions would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment/(Reimbursement) by 1 March 2013		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2011	1 531 655 979	15 000 000	5 000 000	0.0032644	10 000 000	0.0065289
Volgoneft 139	2006	1 533 148 406	10 000 000			10 000 000	0.0065225

Supplementary Fund Assembly

9.3.7 The Supplementary Fund Assembly noted that there had been no incidents which would or might require the Supplementary Fund to pay compensation or claims-related expenses, and that there was therefore no need to make contributions to any Claims Fund.

1971 Fund Administrative Council Decision

9.3.8 The 1971 Fund Administrative Council decided that there should be no levy of 2012 contributions in respect of either the *Vistabella* or the *Nissos Amorgos* Major Claims Funds.

10 Other matters

10.1

Future sessions **Document IOPC/OCT12/10/1**	**92AC**	**92EC**	**SA**	**71AC**

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

10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly, and the autumn session of the 1971 Fund Administrative Council during the week of 21 October 2013.

10.1.2 It was recalled that in April 2012 the Republic of Panama had offered to host the spring 2013 sessions of the governing bodies. The governing bodies noted, however, that after due consideration of a number of factors, Panama had informed the Director that it was not in a position to host those sessions. The governing bodies therefore agreed that their next sessions would take place during the week of 22 April 2013 in London. It was agreed that the fifth meeting of the sixth intersessional Working Group, the second meeting of the seventh intersessional Working Group and any other sessions as required would take place during that week.

10.1.3 In addition, the governing bodies noted that contingency arrangements had been made with IMO for the week of 1 July 2013 should an extra meeting become necessary.

1992 Fund Executive Committee Decision

10.1.4 The 1992 Fund Executive Committee decided to hold its 57th session on 19 October 2012, during which it would consider the date for its 58th session.

10.2

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

No items were raised under this agenda item.

11 Adoption of the Record of Decisions

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

The draft Record of Decisions of the October 2012 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT12/11/WP.1 and IOPC/OCT12/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly	1971 Fund Administrative Council
1	Algeria	●			●
2	Angola	●			
3	Argentina	●			
4	Australia	●		●	●
5	Bahamas	●	●		●
6	Belgium	●		●	●
7	Bulgaria	●			
8	Cameroon	●			●
9	Canada	●	●	●	●
10	China[<1>]	●			●
11	Cyprus	●			●
12	Denmark	●		●	●
13	Dominican Republic	●			
14	Ecuador	●			
15	Estonia	●		●	●
16	Fiji	●			●
17	Finland	●		●	●
18	France	●	●	●	●
19	Germany	●		●	●
20	Ghana	●			●
21	Greece	●	●	●	●
22	Grenada	●			
23	Ireland	●		●	●
24	Islamic Republic of Iran	●			
25	Italy	●	●	●	●
26	Japan	●		●	●
27	Kenya	●			●
28	Kuwait				●
29	Latvia	●		●	
30	Liberia	●			●
31	Malaysia	●	●		●
32	Malta	●			●
33	Marshall Islands	●			●
34	Mexico	●	●		●
35	Monaco	●			●
36	Morocco	●	●	●	●
37	Netherlands	●		●	●
38	Nigeria	●	●		●
39	Norway	●	●	●	●

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

40	Panama	●	●		●
41	Philippines	●			
42	Poland	●		●	●
43	Qatar	●			●
44	Republic of Korea	●	●	●	●
45	Russian Federation	●			●
46	Singapore	●			
47	Spain	●	●	●	●
48	Sri Lanka	●			●
49	Sweden	●		●	●
50	Syrian Arab Republic	●			●
51	Tunisia	●			●
52	Turkey	●	●		
53	United Kingdom	●		●	●
54	Uruguay	●			

1.2 Non-Member States represented as observers

		1992 Fund	**Supplementary Fund**	**1971 Fund**
1	Brazil	●	●	●
2	Guatemala	●	●	
3	Kuwait	●	●	
4	Saudi Arabia	●	●	●
5	Ukraine	●	●	
6	United States	●	●	●

1.3 Intergovernmental organisations

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

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund	1971 Fund
1	BIMCO	●	●	●
2	Conference of Peripheral Maritime Regions (CPMR)	●	●	
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 Associations	●	●	●
7	International Tanker Owners Pollution Federation Ltd (ITOPF)	●	●	●
8	International Union of Marine Insurance (IUMI)	●	●	
9	Oil Companies International Marine Forum (OCIMF)	●	●	●
10	World Liquid Petroleum Gas Association (WLPGA)	●	●	

* * *

ANNEX II

Approved text of the revised Claims Manual

(as amended by the 10th session of the 1992 Fund Administrative Council, acting on behalf of the 17th session of the 1992 Fund Assembly, held from 15-19 October 2012)

Pure economic loss

1.4.9 Under certain circumstances compensation is also payable for loss of earnings caused by oil pollution suffered by persons whose property has not been polluted (pure economic loss). For example, a fisherman whose nets have not been contaminated may nevertheless be prevented from fishing because the area of the sea where he normally fishes is polluted and he cannot fish elsewhere. Similarly, an owner of a hotel or a restaurant located close to a contaminated public beach may suffer losses because the number of guests falls during the period of the pollution.

1.4.10 Compensation may also be payable for the costs of reasonable measures, such as marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major pollution incident.

Use of economic models

1.4.11 Where insufficient documentary evidence is provided to support a claim and it is unjustified to request, or expect, additional data, compensation may be paid on the basis of an estimate of losses calculated from a recognised and reliable economic model. Any such economic model must be derived from actual data closely associated with the loss claimed and taken from the relevant sector or industry. The model would be carefully examined by the Fund and its experts to ensure that the data used, the assumptions made and the method of calculation were valid.

Environmental damage

1.4.12 Compensation is payable for the costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage. Contributions may be made to the costs of post-spill studies provided that they relate to damage which falls within the definition of pollution damage under the Conventions, including studies to establish the nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible.

1.4.13 Compensation is not paid in respect of claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. Nor is compensation paid for damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

Use of advisers

1.4.14 Claimants may wish to use advisers to assist them in presenting claims for compensation. Compensation is paid for reasonable costs of work carried out by advisers in connection with the presentation of claims falling within the scope of the Conventions. The question of whether such costs will be compensated is assessed in connection with the examination of the particular claim for compensation. Account is taken of the necessity for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate in the country concerned for work of that kind.

1.5 WHEN ARE CLAIMS ADMISSIBLE FOR COMPENSATION?

1.5.1 The 1992 Fund's governing bodies, that is, the Assembly and the Executive Committee, have emphasised that a uniform interpretation of the Conventions in all Member States is essential for the functioning of the compensation regime. They have established the Fund's claims policy and have adopted criteria on the admissibility of claims, that is, when claims qualify for compensation. The following general criteria apply to all claims:

- Any expense, loss or damage must actually have been incurred.
- Any expense must relate to measures that are considered reasonable and justifiable.
- Any expense, loss or damage is compensated only if and to the extent that it can be considered as caused by contamination resulting from the spill.
- There must be a reasonably close link of causation between the expense, loss or damage covered by the claim and the contamination caused by the spill.
- A claimant is entitled to compensation only if he or she has suffered a quantifiable economic loss.
- A claimant has to prove the amount of his or her expense, loss or damage by producing appropriate documents or other evidence.
- Claimants are required to make a declaration that their claims are a true reflection of their losses as follows:

  'My claim is, to the best of my knowledge and belief, a true and accurate reflection of my actual loss. It includes information on all financial or material gains I have received, including from clean-up activities, aid organisation or government funds, during the period claimed. I am aware that the IOPC Funds take the presentation of fraudulent documentation seriously and if they become aware that such documentation has been submitted in support of my claim, the IOPC Funds reserve the right to inform the appropriate national authority should that be the case.'

1.5.2 A claim therefore qualifies for compensation only to the extent that the amount of the loss or damage is actually demonstrated. All elements of proof are considered, but sufficient evidence must be provided to give the shipowner, his insurer and the 1992 Fund the possibility of making their own judgement as to the amount of the expense, loss or damage actually suffered. The extent to which claimants are able to reduce their losses is taken into account.

SECTIONS 1.5 – 2.6 continued……

2.7 HOW LONG DOES IT TAKE TO ASSESS AND PAY CLAIMS?

2.7.1 The 1992 Fund and the P&I Clubs try to reach agreement with claimants and pay compensation as promptly as possible. They may make provisional payments before a final agreement can be reached if a claimant would otherwise suffer undue financial hardship. However, provisional payments are subject to special conditions and limits, particularly if the total amount of claims exceeds the total amount of compensation available under the two 1992 Conventions.

2.7.2 The speed with which claims are agreed and paid depends largely on how long it takes for claimants to provide the required information. Claimants are therefore advised to follow this Manual as closely as possible and to co-operate fully with the Fund's experts and provide all information relevant to the assessment of the claims.

2.7.3 The working languages of the 1992 Fund are English, French and Spanish. Claims will be handled more quickly if claims, or at least claim summaries, are submitted in one of these languages.

Target time frame for assessing claims

2.7.4 Within one month of receipt of a completed claim form and registration of a claim, the Secretariat will aim to provide claimants with an acknowledgement of receipt of the claim together with an explanation of the assessment procedure which will be followed thereafter. Additionally within six months of registration of the claim, the Secretariat will aim to provide the claimant with an initial view in the form of a letter notifying the claimant, *inter alia*, of one of the following:

(a) Claim is admissible and is being assessed;
(b) Claim is admissible in principle but further supporting documents are required to assess the claim;
(c) Claim is admissible but further time is required to assess the claim;
(d) Claim is not admissible and it is therefore rejected.

Depending on the size and complexity of the incident, the Secretariat may have to apply longer time periods of which the claimant will be informed.

Fast track assessment of claims

2.7.5 In order to avoid undue delay in settlement of small claims, the 1992 Fund Executive Committee could decide, after considering the cost effectiveness and merit of assessing large numbers of small claims, to approve the use of 'fast track' assessments for that incident and set the quantum of a 'small' claim[<1>] for that incident. The availability of these 'fast track' assessments will be determined, on a case-by-case basis, by decision of the Executive Committee. 'Fast track' assessments will be made on the basis of a brief investigation by the Fund and its experts of the circumstances of the loss but must include confirmation that such losses did actually occur and that there was a clear link of causation with the incident. Alternatively claimants may prefer to await a settlement based on an in-depth, comprehensive assessment which will inevitably take longer. Claimants who disagree with the settlement offer under 'fast track' assessment will only have the assessment of their claim reconsidered based on the provision of new information proving their loss. This may result in higher or lower assessment than that first offered under the fast track assessment process.

SECTIONS 2.8 – 3.6.5 continued……

3.6.6 Claims are assessed on the basis of the information available when the reinstatement measures were undertaken. Compensation is paid only for reasonable measures of reinstatement actually undertaken or to be undertaken. Claims for economic loss as a result of environmental damage that can be quantified in monetary terms are assessed in a similar way to other economic loss claims.

* * *

[<1>] The quantum of what constitutes a 'small' claim will be decided by the Executive Committee on a case-by-case basis.

ANNEX III

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as amended by the 10th session of the 1992 Fund Administrative Council, acting on behalf of the 17th session of the 1992 Fund Assembly, held from 15-19 October 2012)

Regulation 9

Management of Monies

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

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

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

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

Category A Director, Deputy Director/Head of the Finance and Administration Department, Legal Counsel and Head of the Claims Department/Technical Adviser.

Category B Head of External Relations and Conference Department and Finance Manager

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

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as amended by the 10th session of the 1992 Fund Administrative Council, acting on behalf of the 17th session of the 1992 Fund Assembly, held from 15-19 October 2012)

Regulation 7

Settlement of claims

7.13 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

(a) in respect of the Head of the Claims Department/Technical Adviser be limited to approvals not exceeding £500 000 for a particular claim; and

(b) in respect of other officers:

(i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident; and

(ii) be limited to approvals not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

7.14 Any settlements made under Internal Regulation 7.13(a) shall be reported to the Director and those made under Regulation 7.13(b) to the Head of the Claims Department/Technical Adviser.

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND ESTABLISHED UNDER THE 2003 SUPPLEMENTARY FUND PROTOCOL

(as amended by the 8th session of the Supplementary Fund Assembly, held from 15-19 October 2012)

Regulation 9

Management of Monies

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

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

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

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

Category A Director, Deputy Director/Head of the Finance and Administration Department, Legal Counsel and Head of the Claims Department/Technical Adviser.

Category B Head of the External Relations and Conference Department and Finance Manager

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

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND ESTABLISHED UNDER THE 2003 SUPPLEMENTARY FUND PROTOCOL

(as amended by the 8th session of the Supplementary Fund Assembly, held from 15-19 October 2012)

Regulation 7

Settlement of claims

7.10 The Director may authorise another officer or other officers to make final or partial payment of claims or to make provisional payments. Such authority shall:

(a) in respect of the Head of the Claims Department/Technical Adviser be limited to payments not exceeding £500 000 for a particular claim; and

(b) in respect of other officers:

(i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident; and

(ii) be limited to payments not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

7.11 Any settlements made under Internal Regulation 7.10(a) shall be reported to the Director and those made under Regulation 7.10(b) to the Head of the Claims Department/Technical Adviser.

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 ESTABLISHED UNDER THE 1971 FUND CONVENTION

(as amended by the 29th session of the 1971 Fund Administrative Council, held from 15-19 October 2012)

Regulation 9

Management of Monies

9.2 The Director may authorise officers to act as signatories on behalf of the 1971 Fund in giving payment instructions. The 1971 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1971 Fund when signed as follows:

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

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

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

Category A Director, Deputy Director/Head of the Finance and Administration Department, Legal Counsel and Head of the Claims Department/Technical Adviser

Category B Head of the External Relations and Conference Department and Finance Manager

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

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1971 FUND CONVENTION

(as amended by the 29th session of the 1971 Fund Administrative Council, held from 15-19 October 2012)

Regulation 7

Settlement of Claims

7.13 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

(a) in respect of the Head of the Claims Department/Technical Adviser be limited to approvals not exceeding £500 000 for a particular claim; and

(b) in respect of other officers:

(i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident;

(ii) be limited to approvals not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

7.14 Any settlements made under Internal Regulation 7.13(a) shall be reported to the Director and those made under Regulation 7.13(b) to the Head of the Claims Department/Technical Adviser.

* * *

ANNEX IV

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND ESTABLISHED UNDER THE 2003 SUPPLEMENTARY FUND PROTOCOL

(as amended by the 8th session of the Supplementary Fund Assembly, held from 15-19 October 2012)

Regulation 12

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the 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 or her behalf in the fulfilment of the functions set out in Article 16 of the Supplementary Fund Protocol in conjunction with Article 29 of the 1992 Fund Convention, and to be the legal representative of the Supplementary Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chairman of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume their responsibilities.

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1971 FUND CONVENTION

(as amended by the 29th session of the 1971 Fund Administrative Council, held from 15-19 October 2012)

Regulation 12*bis*

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 1971 Fund Convention, and to be the legal representative of the 1971 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 on 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 V

MANDATE AND COMPOSITION OF THE
CONSULTATION GROUP ON THE WINDING UP OF THE 1971 FUND

The 1971 Fund Administrative Council, at its October 2012 session, noted that, pursuant to Article 43.1 of the 1971 Fund Convention, as amended by the 2000 Protocol thereto, the 1971 Fund Convention had ceased to be in force on 24 May 2002 when the number of States Parties fell below 25.

The Council also noted that, under Article 44.1 of the 1971 Fund Convention, if the Convention ceases to be in force, the Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

The Council further noted that, in accordance with Article 44.2 of the Convention, 'the Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund'.

The Council also noted that the function of the 1971 Fund Assembly had been delegated to the 1971 Fund Administrative Council by virtue of the Resolution N°13 as amended by Resolution N°15.

The Council noted that the 1971 Fund had made substantial progress in the winding up of the 1971 Fund and that the issues left to resolve were now very few but that some of them might be difficult and might require bold decisions from the 1971 Fund Administrative Council.

The 1971 Fund Administrative Council decided to establish a Consultation Group to work with the Director on the winding up of the 1971 Fund with the following mandate and composition:

Mandate

1. To examine the outstanding issues which need to be resolved before the 1971 Fund can be wound up, in particular with respect to pending incidents, outstanding oil reports and contributions in arrears, as indicated in document IOPC/OCT12/8/3;

2. To identify the possible steps to be taken by the 1971 Fund Administrative Council to resolve the outstanding issues and facilitate the process of winding up the 1971 Fund; and

3. To make recommendations as to the steps to be taken to wind up the 1971 Fund to the next session of the 1971 Fund Administrative Council.

Composition

1. The Consultation Group shall be composed of :

   Rear-Admiral Cristiano Aliperta (Italy)
   Ms Susana Garduño-Arana (Mexico)
   Colonel Khalil Loudiyi (Morocco)
   Mr Alfred Popp (Canada)
   Mr Noriyoshi Yamagami (Japan)

2. The Consultation Group may also wish to consult with the Chairman of the 1971 Fund Administrative Council, the Chairman of the 1992 Fund Assembly, the external expert on the joint Audit Body and any other stakeholders as determined by the Chairman of the Consultation Group.

3. The Consultation Group will elect its own Chairman.

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

* * *

ANNEX VI

Draft 2013 Administrative Budget for the 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2011 expenditure for 1992 Fund		2011 budget appropriations for 1992 Fund		2012 budget appropriations for 1992 Fund	2013 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 879 268*		*1 851 810*		2 061 860	2 060 260
(b)	Separation and recruitment	*126 046*		*35 000*		75 000	40 000
(c)	Staff benefits, allowances and training	*539 336*		*652 910*		721 425	670 650
	Sub-total		***2 544 650***		***2 539 720***	**2 858 285**	**2 770 910**
II	**General services**						
(a)	Rent of office accommodation (including service charges and rates)	*303 679*		*327 800*		347 000	340 800
(b)	IT (hardware, software, maintenance and connectivity) *	*57 501*		*154 000*		318 075	278 450
(c)	Furniture and other office equipment	*9 306*		*25 000*		26 000	19 000
(d)	Office stationery and supplies	*14 761*		*22 000*		22 000	20 000
(e)	Communications (courier, telephone, postage)**	*64 358*		*76 000*		45 000	45 000
(f)	Other supplies and services	*30 961*		*35 000*		35 000	35 000
(g)	Representation (hospitality)	*17 499*		*25 000*		25 000	25 000
(h)	Public Information	*277 607*		*275 000*		175 000	160 000
	Sub-total		***775 672***		***939 800***	**993 075**	**923 250**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' governing bodies and Intersessional Working Groups		***157 465***		***150 000***	**150 000**	**100 000**
IV	**Travel**						
	Conferences, seminars and missions		***111 419***		***150 000***	**150 000**	**100 000**
V	**Other expenditure (previously Miscellaneous expenditure)**						
(a)	Consultants' fees	*130 924*		*100 000*		150 000	150 000
(b)	Audit Body	*168 505*		*160 000*		180 000	167 000
(c)	Investment Advisory Body	*63 525*		*63 000*		66 150	68 500
	Sub-total		***362 954***		***323 000***	**396 150**	**385 500**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***63 000***		***60 000***	**60 000**	**60 000**
Total joint Secretariat expenditure I-VI (excluding External Audit fees)			***4 015 160***		***4 162 520***	**4 607 510**	**4 339 660**
VII	**External Audit fees 1992 Fund only**		*48 500*		*49 000*	49 000	49 000
Total Expenditure I-VII			***4 063 660***		***4 211 520***	**4 656 510**	**4 388 660**

2011 budget

**** Chapter II (b) - Office machines (IT hardware/software/maintenance)***

***** Chapter II (e) - Communications (courier, telephone, postage, e-mail/internet)***

Draft 2013 Administrative Budget for the Supplementary Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2011 EXPENDITURE	2011 BUDGET APPROPRIATIONS	2012 BUDGET APPROPRIATIONS	2013 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	56 000	56 000	59 500	33 000
II	Administrative expenses (including external audit fees)	3 600	13 600	13 600	13 600
Supplementary Fund Budget Appropriation		**59 600**	**69 600**	**73 100**	**46 600**

Draft 2013 Administrative Budget for 1971 Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2011 EXPENDITURE	2011 BUDGET APPROPRIATIONS	2012 BUDGET APPROPRIATIONS	2013 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	240 000	240 000	255 000	247 500
II	Costs for winding up of the 1971 Fund	47 245	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 300	15 400	15 400	15 300
1971 Fund Budget Appropriation		**297 545**	**505 400**	**520 400**	**512 800**