INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 8	IOPC/APR13/**8/1**	
Original: ENGLISH	24 April 2013	
1992 Fund Executive Committee	**92EC58**	●
1971 Fund Administrative Council	**71AC30**	●
1992 Fund Working Group 6	**92WG6/5**	●
1992 Fund Working Group 7	**92WG7/2**	●

RECORD OF DECISIONS OF THE APRIL 2013 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 22 to 24 April 2013)

Governing Body (session)		**Chairman**	**Vice-Chairman**
1992 Fund	Executive Committee **(92EC58)**	Ms Ginette Testa (Panama)	Mrs Odile Roussel (France)
	Working Group **(92WGR6/5)**	Mr Volker Schöfisch (Germany)	
	Working Group **(92WGR7/2)**	Mrs Birgit Sølling Olsen (Denmark)	
1971 Fund	Administrative Council **(71AC30)**	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

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ANNEXES

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

Annex II Mandate and composition of the Consultation Group on the winding up of the 1971 Fund

Opening of the sessions

1971 Fund Administrative Council

0.1 The 1971 Fund Administrative Council Chairman opened the 30th session of the Administrative Council.

1992 Fund Executive Committee

0.2 The 1992 Fund Executive Committee Chairman opened the 58th session of the Executive Committee.

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/APR13/1/1**	**92EC**	**71AC**		

The 1971 Fund Administrative Council and 1992 Fund Executive Committee adopted the Agenda as contained in document IOPC/APR13/1/1.

1.2

Examination of Credentials – Establishment of Credentials Committee **Document IOPC/APR13/1/2**	**92EC**			
Participation		**71AC**		
Examination of Credentials – Report of the Credentials Committee **Document IOPC/APR13/1/2/1**	**92EC**			

1.2.1 In accordance with Rule (iv) of its Rules of Procedure, the 1992 Fund Executive Committee appointed the delegations of Singapore, Spain and Tunisia as members of the Credentials Committee.

1.2.2 The States Members of the 1992 Fund Executive Committee present at the sessions are listed at Annex I, including an indication of other 1992 Fund Member States, States having at any time been Members of the 1971 Fund, non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

1.2.3 After having examined the credentials of the States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/APR13/1/2/1 that all fifteen members of the Executive Committee had submitted credentials which were in order.

1.2.4 The Executive Committee expressed its sincere gratitude to the members of the Credentials Committee for its work during this session.

2 Overview

2.1

Report of the Director	**92EC**	**71AC**		

2.1.1 The Director gave an oral report on the activities of the IOPC Funds since the October 2012 sessions of the governing bodies, some of which would also be dealt with under specific 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 during the week. He referred to the *Erika* incident in France, the *Prestige* incident in France and Spain, the *Volgoneft 139* incident in the Russian Federation, 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 one of the main issues that had occupied the time of the Secretariat since the October 2012 sessions of the governing bodies had been the winding up of the 1971 Fund. He recalled that the 1971 Fund Administrative Council had established a Consultation Group at its last session to 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 session. He noted that this Group had met twice since October 2012 and that the Chairman of the Consultation Group had put forward a document containing recommendations as regards the outstanding incidents and outstanding oil reports and contributions.

2.1.4 With respect to the 1992 Fund sixth intersessional Working Group, the Director noted that the only outstanding issue to be resolved under the mandate of the Working Group was that of interim payments. He also noted that the International Group of P&I Associations (International Group) and the Secretariat had held a number of constructive and useful meetings since October 2012 on this issue with the aim of finding a solution which would be agreeable to both the International Group and the IOPC Funds. However, as the subject was complex and difficult, he noted that no form of wording suitable to both parties had yet been found and that discussions were continuing. The Director noted that he and the Chairman of the sixth intersessional Working Group were of the view that, given that the issue of interim payments was the only outstanding one and it was being proposed that this issue would continue to be discussed on a bilateral basis between the Director and the International Group, it might be timely to close the sixth intersessional Working Group. The Director noted that it was being proposed that he would report to the 1992 Fund Assembly once a solution on the issue of interim payments which would be agreeable to both the International Group and the IOPC Funds had been found and it would then be up to the Assembly to decide if the Director's recommendation for an agreement was acceptable.

2.1.5 The Director was also pleased to note that four documents had been submitted for consideration by the 1992 Fund seventh intersessional Working Group on the definition of 'ship' which would be holding its second meeting this week.

2.1.6 With respect to external relations, the Director was pleased to report that the Supplementary Fund Protocol would enter into force for Turkey on 5 June 2013, bringing the number of Supplementary Fund Member States to 29.

2.1.7 He was also pleased to report that the 2012 Incident Report and Annual Report had been published and were available both on the IOPC Funds' website and in hard copy. In this context, he also reported that the new Funds' website was up and running in all three official languages and that positive feedback had been received. With respect to other outreach activities, the Director reported that he and other 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 hazardous and noxious substances (HNS) liability and compensation regime in Australia, Indonesia, Italy, Japan, Malta, Morocco, Netherlands Antilles, Republic of Korea and Singapore since October 2012 and that reports on these activities could be found on the Funds' website. The Director also reported that the next annual IOPC Funds' Short Course would be held from 11-15 November 2013 and that a circular calling for nominations for participation in the Course would be sent out in May. In this regard, he expressed his gratitude to the International Maritime Organization (IMO), INTERTANKO, the International Chamber of Shipping (ICS), the International Group and the International Tanker Owners Pollution Federation Ltd (ITOPF) for continuing to provide their support to this Course.

2.1.8 The Director also reported that he had hosted an informal lunch meeting for UK-based representatives from intergovernmental and non-governmental organisations which had responsibilities or activities in fields related to those of the IOPC Funds, particularly in connection with pollution and environmental matters, maritime and shipping affairs, marine insurance, production or transport of oil or relevant questions of international law. He noted that the lunch meeting had been particularly well attended and that he had been honoured to welcome the IMO Secretary-General, Mr Koji Sekimizu to the IOPC Funds' offices for the first time.

2.1.9 As reported to the 1992 Fund Assembly in October 2012, the Director also recalled that the current office lease on Portland House, which expires on 24 March 2015, would not be renewed as the property was being redeveloped by the landlord. The United Kingdom Government refunds 80% (£381 200 pa) of the rent for the 23rd floor and for the storage space, resulting in 20% (£95 300 pa) being payable by the 1992 Fund. The Director noted that any move would have budgetary consequences for the IOPC Funds and that he would keep the 1992 Fund Assembly informed of any developments in his discussions with the UK Government in finding alternative office premises. In this respect, the Director reported that meetings with the UK Government had taken place in respect of a search for new premises and that discussions would continue.

2.1.10 The Director reported that, in accordance with instructions received from the 1992 Fund Assembly in October 2012, he had prepared a document for submission to the IMO Legal Committee concerning the possible consequences of discrepancies between insurance policies, blue cards and certificates issued under the 1992 Civil Liability Convention (1992 CLC).

2.1.11 He reported that he had presented the document to the Legal Committee at its 100th session held from 15-19 April 2013 and that the debate had concentrated on two separate issues, firstly whether States issuing the CLC certificates had an obligation to investigate the terms, conditions and cover provided in certificates (blue cards) presented by insurers and, secondly, whether, as a consequence, States would have a financial liability to the 1992 Fund, should the Fund suffer a loss as a result of the insurance cover being insufficient.

2.1.12 He noted that the initial view of the Legal Committee was that it was not in a position to provide legal advice to the IOPC Funds on a particular case. He reported that, in respect of the first issue, several delegations had stated that States did have an obligation under Article VII(2) of the 1992 CLC to investigate the conditions of cover provided in certificates (blue cards) presented by insurers, especially where the insurer was not so well-known or did not have a good reputation. He observed that, in respect of the second issue, several States had noted that the Convention did not provide for channelling of liability to the State, but that it would be a matter of national law in that State to determine whether the State in that particular case had been negligent.

2.1.13 The Director also reported that the Legal Committee had endorsed the guidelines on the reporting of HNS contributing cargo as adopted at the Workshop organised by IMO in cooperation with the IOPC Funds in November 2012. He noted that these guidelines were available on the HNS website and would facilitate the work of States considering ratification of the 2010 HNS Protocol.

2.1.14 The Director drew the attention of the governing bodies to the fact that these last two matters were of relevance to the 1992 Fund Assembly and he would report in more detail on them to the October 2013 session of the Assembly.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/APR13/3/1**	**92EC**	**71AC**		

The 1971 Fund Administrative Council and the 1992 Fund Executive Committee took note of document IOPC/APR13/3/1, which contained information on documents for the April 2013 meetings relating to incidents involving the IOPC Funds.

3.2

Incidents involving the IOPC Funds – 1971 Fund: ***Plate Princess*** **Document IOPC/APR13/3/2**		**71AC**		

3.2.1 The 1971 Fund Administrative Council took note of document IOPC/APR13/3/2 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 (Bolivarian Republic of Venezuela).

3.2.2 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).

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

3.2.4 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).

Decisions taken by the 1971 Fund Administrative Council at its 2011 and 2012 sessions

3.2.5 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.

3.2.6 It was also recalled that at its October 2011 session, the 1971 Fund Administrative Council had decided to reconfirm the instructions given 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 Civil Liability Convention (1969 CLC) and to report back to the 1971 Fund Administrative Council at its next session.

3.2.7 It was further recalled that at its April 2012 session, the 1971 Fund Administrative Council had decided to reconfirm its instructions given in March 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.

3.2.8 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 also 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 IMO.

3.2.9 It was further recalled that at its October 2012 session after considering the report by Dr Thomas Mensah on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC, the 1971 Fund Administrative Council had decided to maintain its decision taken in March 2011, which had been reconfirmed subsequently in October 2011 and April 2012, instructing 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 had also instructed the Director to continue to defend the interests of the 1971 Fund in any legal court actions in Venezuela.

Claim by FETRAPESCA

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

3.2.11 It was also recalled that in October 2011 FETRAPESCA had requested the withdrawal of its claim from the Maritime Court of First Instance, but that the Court had rejected this request.

3.2.12 It was further recalled that in September 2012 the 1971 Fund was 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.

3.2.13 It was noted that in October 2012 the 1971 Fund filed an appeal against the February 2009 judgement and later that month the claimants' lawyers filed an application to withdraw the FETRAPESCA claim (second request to withdraw the claim) but this application was refused by the Court on the basis that the Court had already rendered a judgement in 2009.

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

3.2.14 It was recalled that in October 2012 the claimants' 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. In accordance with the instructions given to the Director by the 1971 Fund Administrative Council in October 2012 not to make any payment in respect of this incident and to oppose the enforcement of the judgement, no settlement discussions had taken place.

Claim by Puerto Miranda Union – legal proceedings on liability

3.2.15 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, to pay the damages suffered by the claimant to be quantified by court experts, and that this judgement had been confirmed by the Maritime Court of Appeal of Caracas and the Supreme Court.

3.2.16 It was also recalled that in February 2011 the 1971 Fund had submitted an appeal to the Constitutional Section of the Supreme Court, but that in June 2011 the Constitutional Section of the Supreme Court had dismissed the 1971 Fund's appeal against the judgement of the Supreme Court on liability.

Claim by Puerto Miranda Union – legal proceedings on quantum

3.2.17 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 plus costs, and that this judgement was confirmed in July 2011 by the Maritime Court of Appeal. 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 was denied and that the 1971 Fund had appealed this decision.

3.2.18 It was also recalled that in November 2011, the Supreme Court rejected the 1971 Fund's application for leave to appeal the July 2011 judgement of the Court of Appeal, so in March 2012 the 1971 Fund appealed to the Constitutional Section of the Supreme Court against the decision of the Supreme Court denying leave to appeal.

3.2.19 It was further recalled that in August 2012 the Constitutional Section of the Supreme Court rejected the 1971 Fund's appeal against the judgement of the Supreme Court regarding the quantum of the loss.

Enforcement of the judgement

3.2.20 It was recalled that in March 2012 the Puerto Miranda Union 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 for BsF 2 844 982.95 constituting the shipowner's limitation fund, and that later in March 2012 the Puerto Miranda Union submitted pleadings to the Maritime Court of First Instance requesting the shipowner and the 1971 Fund to voluntarily comply with the provisions of the judgement by the Court of Appeal.

3.2.21 It was also recalled that the Maritime Court of First Instance had accepted the request of the Puerto Miranda Union concerning the enforcement of the judgement and ordered the shipowner and the 1971 Fund to pay the amounts awarded by the Maritime Court of Appeal, but that in April 2012 the 1971 Fund submitted pleadings to the Maritime Court of First Instance requesting the Court to stay the enforcement of the judgement. In the pleadings the 1971 Fund argued that, according to Article 4.5 of the 1971 Fund Convention, the amount of compensation corresponding to the 1971 Fund should be distributed to all recognised victims of the incident in accordance with the accepted amounts of the damage. Therefore on the basis of the principle of equal treatment of all claimants contained in the 1969 CLC, no payments could be made until the claim by FETRAPESCA had reached a final stage in the proceedings.

3.2.22 It was further recalled that in August 2012 the master submitted pleadings also requesting the Court to stay the enforcement of the judgement on the basis of the equal treatment of claimants under Article V.4 of the 1969 CLC.

3.2.23 The 1971 Fund Administrative Council recalled that subsequently the Puerto Miranda Union lawyers filed a petition requesting the Court to clarify that the payment should be made to the Puerto Miranda Union through its lawyers rather than to each fisherman claimant individually, and that the 1971 Fund opposed the petition and requested the Court to maintain payment to each claimant in order to ensure that each claimant received compensation directly.

3.2.24 It was noted that in October 2012, the Constitutional Section of the Supreme Court had issued an explanatory judgement stating that the lawyers could receive the payments, rather than making payment to the fishermen claimants directly, and that in December 2012 the Banco Venezolano de Credito had filed a cheque at Court for BsF 2 844 982.95 corresponding to the amount of the guarantee issued to cover the limitation fund.

3.2.25 It was further noted that the Puerto Miranda Union lawyers had also filed pleadings at Court requesting an embargo over the Fund's assets, specifically over the contributions owed to the 1992 Fund by Petróleos de Venezuela SA (PDVSA), Venezuela's State-owned oil company, which as at 22 April 2013 amounted to some £65 000.

3.2.26 It was noted that the 1971 Fund had filed pleadings to oppose the measures requested by the Puerto Miranda Union on the basis that the *Plate Princess* incident related solely to the 1971 Fund, not the 1992 Fund, and that any amounts owed by PDVSA were in respect of monies owed to the 1992 Fund, not the 1971 Fund. Furthermore, the 1971 Fund's lawyers argued that the reference to 'Fund' in the claimant's pleadings should only refer to the 1971 Fund and not the 1992 Fund.

3.2.27 It was also noted that in late January 2013 the Maritime Court of First Instance rejected the 1971 Fund's arguments on the basis that the 1971 Fund as an international compensation body should respond in relation to compensation matters, and that the 1992 Fund was an interested party in relation to the eventual decision regarding any contributions owed by PDVSA. Furthermore, in February 2013 the Puerto Miranda Union requested clarification of the judgement of the Maritime Court of First Instance arguing that the previous judgement, which imposed liability on the 1971 Fund, should refer to the 1992 Fund because Venezuela was now only a member of the 1992 Fund.

3.2.28 It was further noted that the 1971 Fund had filed pleadings in opposition highlighting that it was only the 1971 Fund, and not the 1992 Fund that was involved in the *Plate Princess* incident.

Intervention by the delegation of the Bolivarian Republic of Venezuela

3.2.29 In response to the Secretariat's presentation, the delegation of the Bolivarian Republic of Venezuela made the following statement, which has been included in its entirety (original Spanish):

'Thank you Mr Chairman,

The Bolivarian Republic of Venezuela thanks the Director for the document presented. Distinguished delegates and friends;

It should be emphasised that because the majority of the points set out in this document by the Director have been thoroughly discussed in previous documents and that there is now a firm and final judgement which does not allow for any further appeals, Venezuela invites the distinguished delegates who wish for further clarification to read, among others, the statement made by this delegation in October 2011, which was annexed to the Record of Decisions of that session (document IOPC/OCT11/11/1), in which it we gave a clear warning that failure to respect the legal system of a sovereign authority of a Member State and thus failure to comply with the wording of the Convention could have serious repercussions. We will therefore confine ourselves to discussing the new aspects which have arisen since March 2011 when this country, in the light of the final decision rendered by the Venezuelan courts, requested the Director to inform the Member States of the 1992 Fund and proceed with the compensation of its citizens, in accordance with the provisions of the 1992 Protocol, which amended the 1971 Fund Convention, ratified by Venezuela on 28 April 1998.

Now, the Director's report states that in April 2012, "The 1971 Fund submitted pleadings requesting the Court to stay the enforcement proceedings on the basis of the principle of the equal treatment of claimants, until the claim by FETRAPESCA had reached a final stage in the proceedings". On this aspect, we must point out that the Court refused to suspend the stay of enforcement proceedings requested, both with respect to the IOPC Fund and the owner, and ordered both to pay compensation to the victims voluntarily.

In January 2013, the shipowner complied with the order, by means of a deposit in the amount of the guarantee which had been established as a fund to limit his liability.

In January, the Puerto Miranda Fishermen's Union, in the light of the IOPC Fund's refusal to comply with the order, requested the court to order an executive embargo over the moneys owed by the State-run company PDVSA to that organisation.

The IOPC Fund opposed the measure arguing that the *Plate Princess* incident concerned the 1971 Fund and not the 1992 Fund and that the judgement to be enforced stated that the payments should be established in accordance with the resolutions adopted by the internal organs of the IOPC Fund, etc. All the arguments were rejected by the Court.

The trade union requested the Court to extend the request for embargo, requesting that it should apply to all the Fund's assets anywhere in the world that these existed. This request was granted in a judgement rendered in March this year, which also established that, in addition to the 60 million SDR already ordered, the IOPC Fund must pay an additional sum for enforcement costs.

Likewise, with respect to FETRAPESCA's claim, it is not true that the court rejected its request for withdrawal of the claim (paragraph 5.3 of the Director's report) as no court can deny the right to withdraw a claim, given that withdrawals are a matter of law even before they are homologised. Similarly, with regard to FETRAPESCA's claim, that claim was sufficiently discussed, in the sense that FETRAPESCA released the IOPC Fund from any obligation which it might have towards it. For its part, the IOPC Fund requested the Court to suspend the judgement based on FETRAPESCA's claim and the Court refused that request.

On the basis of this, this delegation must inform the 1992 Fund Executive Committee as follows:

(1) The 1992 Protocol amended the 1971 Fund Convention.

(2) The 1992 Protocol establishes in Article 27 that "The 1971 Fund Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single document".

(3) The 1992 Protocol establishes in its Article 37 that the Fund shall remain a legal person.

(4) Furthermore that the Protocol establishes that "Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person who has suffered pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention".

(5) In application of the purposes of the Fund to pay compensation to victims of oil pollution damage, it shall do so to the extent that the protection established in the 1992 Civil Liability Convention is inadequate, meaning that "the reference to the 1992 Civil Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 corresponding to that Convention, and also the 1971 Fund Convention".

The *Plate Princess* incident occurred on 27 May 1997. In June 1997, the 1971 Fund Executive Committee instructed the Director to pay the claims of the Puerto Miranda Union and FETRAPESCA, as stated in the Record of Decisions, document 71FUND/EXC.54/10. This decision was endorsed in the October session of the same year. In that same month, the Director of the Fund engaged Venezuelan lawyers, in accordance with the power conferred in him under the 1992 Fund Convention.

Venezuela ratified the 1992 Fund Protocol, which amended the 1971 Fund Convention, on 28 April 1998, with the passing of the law by its legislative body approving the said Protocol. Thus, Venezuela had already signed the Protocol at the Conference convened by IMO on 27 November 1992.

Likewise, in accordance with the provisions of Article 31 of the 1992 Fund Protocol, on 3 June 1998, Venezuela denounced the 1971 Fund Convention and the 1969 Civil Liability Convention. Consequently by April 1998, or in actual fact, one year later (April 1999), Venezuela ceased to be Party to those Conventions, thus, given that there was an instruction from the Executive Committee to pay all the claims generated as a result of the *Plate Princess* incident, responsibility for paying that compensation passed to the 1992 Fund, under the provisions of Article: 1 (the amended Convention is the 1971 Fund Convention); 3 (constitution of the 1992 Fund); 6 (the Fund will compensate any victim who has not obtained full compensation under the Civil Liability Convention); 27 (the 1971 Fund Convention and the 1992 Protocol shall be read and interpreted together as one single instrument), among other things.

The Administrative Council of the 1971 Fund was created after 2000 for the purpose of paying compensation for incidents that were outstanding and then to liquidate the 1971 Fund, distributing its assets among the States which had contributed to it. This decision was necessary because the assets of the 1971 Fund could not pass to the 1992 Fund, as not all the countries had signed the amending Protocol.

At the date of creation of the Administrative Council, Venezuela had formed part of the 1992 Fund and hoped that the Director would proceed to compensate its citizens in accordance with the decision taken by the Executive Committee.

For all these reasons, I request that our statement should be entered in the Record of Decisions.

Thank you very much, Mr Chairman'

Debate

3.2.30 One delegation stated that it was concerned to hear of the latest development concerning the inclusion of the 1992 Fund in the Court proceedings relating to the embargo over the Fund's assets and asked the Director whether the 1992 Fund's lawyers in Venezuela would be involved in defending the 1992 Fund's rights. In response the Director stated that the 1992 Fund did not have any lawyers in Venezuela but that he would report to the 1992 Fund Assembly in October 2013 and seek instructions.

3.2.31 Another delegation asked whether the 1971 Fund would be relieved of liability if the Venezuelan courts agreed that the 1992 Fund had liability to pay compensation to the victims. In response the Director stated that he did not know the answer but that it was his belief that both the 1971 Fund and the 1992 Fund would be considered liable, and that it was his impression that the Venezuelan courts did not consider the 1971 and 1992 Funds to be separate legal entities.

3.2.32 A further delegation referred to the previous decisions taken by the 1971 Fund Administrative Council at its 2011 and 2012 sessions and reaffirmed that it stood by these decisions. It also stated that the 1971 Fund and the 1992 Fund were separate legal entities and agreed with the Director that the embargo was against the letter and spirit of the international Conventions. That delegation recalled that Dr Thomas Mensah had previously considered the involvement of the 1992 Fund in his legal analysis, and recalled his conclusions that there was no liability on the part of the 1992 Fund. That delegation further stated that the matter might need to be considered in the future by the 1992 Fund Assembly.

3.2.33 The Director confirmed that the report by Dr Mensah had been provided to the 1971 Fund Administrative Council in October 2012 and that this report had included consideration of the 1992 Fund's involvement. He further recalled that Dr Mensah had concluded that there were no grounds to include the 1992 Fund, as the 1971 Fund and 1992 Fund were separate legal entities.

3.2.34 Another delegation reaffirmed its belief that the 1971 Fund should not make any payment in regard to this incident and that this did not constitute an obstacle to the winding up of the 1971 Fund. That delegation also stated that it had serious concerns regarding the embargo over the contributions to the 1992 Fund, but that there was no meeting of the 1992 Fund Assembly at this session to discuss that matter further.

3.2.35 A number of delegations further stated that although the amount of the contributions owed to the 1992 Fund by PDVSA was not significant, there was a fundamental principle at stake. They therefore agreed with the Director that the embargo was against the letter and spirit of the Conventions. Moreover, one delegation requested the Director to take all steps to protect the 1992 Fund.

3.2.36 In response, the delegation of the Bolivarian Republic of Venezuela stated that the issue regarding the involvement of the 1992 Fund had been raised previously and in April 2012 the Director had agreed to consult IMO regarding this issue, but that IMO had not been consulted and Dr Mensah who had provided the legal opinion was not from IMO.

3.2.37 That delegation also stated that it was not correct to say that nothing had happened between 1997 and 2005 as the Fund had decided in principle to pay compensation, and that there had been a full judicial process in which the Fund had been a participant from the outset. It also commented that had compensation been paid, the costs would have been much lower. That delegation added that the case had been stayed pending a judgement by the Courts which was rendered in 2005, at which time the Fund had been informed, and that the question had previously been discussed at length.

3.2.38 That delegation concluded by stating that the position of Venezuela was that compensation should be paid by the 1992 Fund in the *Plate Princess* incident.

3.2.39 In response, the Director confirmed that he had been asked to examine the involvement of the 1992 Fund in conjunction with the Legal and External Relations Division of IMO and that the document dealing with this issue had been submitted to the 1971 Fund Administrative Council in October 2012, although the delegation of the Bolivarian Republic of Venezuela had not been present at that session. The Director confirmed that he had followed the instructions of the 1971 Fund Administrative Council and that it had been IMO who had suggested the involvement of Dr Mensah.

3.2.40 The observer delegation of IMO confirmed that the 1971 Fund Secretariat had consulted with IMO and that it had been the suggestion of the Legal and External Relations Division of IMO to instruct Dr Mensah as an independent legal expert. Regarding the identity of the two Funds, that delegation agreed with Dr Mensah that the 1971 Fund and 1992 Fund were two different legal persona.

3.2.41 One delegation commented that the involvement of the 1992 Fund was an issue to be taken into account and questioned the amount paid to date for legal representation in Venezuela. That delegation asked whether there had been any recent developments since February 2013.

3.2.42 In response, the Director stated that he did not have the information on the amount paid to date for legal representation in Venezuela available but would provide it at the October 2013 session of the 1971 Fund Administrative Council if required, and that there had been no further developments to report.

3.2.43 The 1971 Fund Administrative Council noted the information provided by the Secretariat, the delegation of the Bolivarian Republic of Venezuela and the other delegations.

3.3

Incidents involving the IOPC Funds – 1992 Fund: ***Erika*** **Documents IOPC/APR13/3/3, IOPC/APR13/3/3/1 and IOPC/APR13/3/3/2**	**92EC**			

3.3.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/APR13/3/3 submitted by the Secretariat, IOPC/APR13/3/3/1 submitted by France and IOPC/APR13/3/3/2 submitted by Conference of Peripheral Maritime Regions of Europe (CPMR).

DOCUMENT IOPC/APR13/3/3 SUBMITTED BY THE SECRETARIAT

3.3.2 The 1992 Fund Executive Committee took note of document IOPC/APR13/3/3 submitted by the Secretariat which contained details of recent developments in the *Erika* incident.

Legal proceedings involving the 1992 Fund

3.3.3 It was noted that only one action remained pending against the 1992 Fund with a total amount claimed of €87 467.

Judgement by the Court of Cassation (Criminal section)

3.3.4 The Executive Committee noted that, in the Director's view, even if the judgement was not enforceable against the 1992 Fund, there were two aspects which merited consideration, namely:

- Channelling of liability; and
- Environmental and moral damage.

Channelling of liability

3.3.5 It was noted that the Court of Cassation had decided that a classification society could be included in Article III.4(b) of the 1992 CLC as 'any other person who, without being a member of the crew, performs services for the ship' and could therefore benefit from the channelling provisions of the 1992 CLC. It was noted, however, that the protection of Article III.4 was subject to the behaviour of the party in question and that in this case the Court of Cassation had decided that Registro Italiano Navale was guilty of 'recklessness' as defined by the 1992 CLC and therefore could not benefit from the channelling provisions.

3.3.6 It was also noted that the Court of Cassation had also found that the other three accused parties, namely the representative of the shipowner (Tevere Shipping), the President of the management company (Panship Management and Services Srl) and Total SA, by being reckless had lost the protection provided by the channelling provisions in the 1992 CLC.

3.3.7 It was further noted that, after finding that the four accused parties were not protected by the 1992 CLC, the Court of Cassation, applying French law, had decided that these parties were liable to pay compensation.

Environmental damage

3.3.8 It was recalled that the Court of Cassation had upheld the decision of the Court of Appeal which had awarded compensation for environmental damage, thus approving the principle under French law of the right to compensation for pure environmental damage. It was noted, however, that the Court of Cassation had taken care to place on record that its decision was not binding upon the 1992 Fund since it had not been party to the criminal proceedings.

3.3.9 It was noted that in the Director's view compensation for environmental damage had serious difficulties of application, namely who would have the right to claim since there was no identifiable victim and how to quantify the damage.

3.3.10 Concerning entitlement to claim for compensation, it was noted that the Court of Cassation had approved the formula used by the Court of Appeal which proposed to give the right to claim for this type of damage to persons having the legal mission to maintain and improve the environment: local and regional authorities who, under French law, had the mission to protect the environment and associations for the protection of the environment.

3.3.11 It was noted, however, that in the Director's view the most important difficulty was the quantification of environmental damage when there was no market value to ascertain any economic loss. It was noted that some jurisdictions tried to assess this damage by using abstract models to obtain a lump sum which were not admissible under the 1992 Civil Liability and Fund Conventions.

3.3.12 It was noted that the Court of Cassation had approved the method used by the Court of Appeal to reach an award for environmental damage of €100 000 to €500 000 to the local authorities and €1 million to €3 million to the regions. It was further noted that the damage awarded for this concept was not documented, that there was no proof of any damage additional to that already covered by other types of claims like clean up and that the damage awarded could not be quantified except using, as the Court did, a theoretical model.

DOCUMENT IOPC/APR13/3/3/1 SUBMITTED BY FRANCE

3.3.13 The delegation of France introduced its document on the *Erika* incident.

3.3.14 It was noted that the Court of Cassation had ruled on the application of Article III.4 of the 1992 CLC, which bars the filing of a claim for compensation against certain persons 'unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result'. It was noted that the Court of Cassation had held that the shipowner's agent, the management company, the classification society and the ship's charterer fell within the list of persons set out in Article III.4 of the Convention, and could enjoy the channelling of liability, unless they had committed an inexcusable fault which caused the damage, but that since these persons had acted recklessly and thus caused the damage, they could not rely on the provisions of the 1992 CLC and consequently, in their case, it was French national law that was applied to them.

3.3.15 It was noted that the classification society RINA, which issued the ship's classification certificate allowing the *Erika* to sail despite general corrosion, claimed that it should be granted the same immunity from the jurisdiction as enjoyed by the State of Malta, considering that it had the prerogatives of a public authority delegated by that State in the framework of its statutory ship certification activities. It was further noted that in its judgement of 30 March 2010, the Paris Court of Appeal granted immunity from the jurisdiction to the classification society, RINA, on the grounds that issuing the classification certificate contributed to the provision of a public service, namely improvement of safety of navigation. However, the Court of Appeal considered that RINA had unequivocally renounced the immunity of jurisdiction that it might have enjoyed by participating in the report that led to its summons before the Criminal Court. It was noted that the Court of Cassation confirmed RINA's unequivocal renunciation of immunity of jurisdiction but did not rule on the question of whether RINA could enjoy such immunity.

3.3.16 It was noted that in its judgement of 16 January 2008, the Criminal Court recognised the principle of compensation for damage resulting from pollution of the environment for certain local authorities and associations. It was noted that on 30 March 2010, the Court of Appeal not only confirmed the existence of environmental damage in French law, but also extended the scope of its application to all local authorities and all environmental protection associations. The Court of Cassation confirmed this interpretation.

3.3.17 It was further noted that the Court of Cassation applied the French law on civil liability, which allows full compensation for damage suffered by the victims. The accused could not rely on the provisions of the 1992 CLC in the light of the inexcusable faults which they committed.

DOCUMENT IOPC/APR13/3/3/2 SUBMITTED BY CONFERENCE OF PERIPHERAL MARITIME REGIONS OF EUROPE (CPMR)

3.3.18 The observer delegation of CPMR introduced its document on the *Erika* incident.

3.3.19 It was noted that in the view of CPMR the judgement of the Court of Cassation was of considerable importance and could inspire changes in national, international and, where applicable, European law. It was noted, however, that in the view of CPMR the conclusions of the Court of Cassation did not impose new obligations on the 1992 Fund, which was not a party to the proceedings.

3.3.20 It was noted that the Court of Cassation had decided that pure environmental damage was subject to compensation in the *Erika* case, considering that it was not fair to give immunity to persons liable through their fault for damage caused to the environment on the pretext that nature did not belong to anyone in particular. It was noted that in the Court's view any act of wrong-doing had to be subject to a penalty.

3.3.21 It was further noted that in France, a bill submitted on 23 May 2012 to the Senate was currently being debated to follow up the judgement rendered by the Court of Cassation by including in the Civil Code the obligation to repair, preferably in kind, the damage caused to the environment by the person causing the damage.

Debate

3.3.22 One delegation, while confirming that in its view the Court's decision was in line with the Conventions, stated that there were three aspects of the judgement that were important. Concerning the recognition of France's jurisdiction in an incident occurring outside its territorial waters, this delegation recalled that by virtue of Article II (a) (ii) of the 1992 CLC this Convention applied to pollution damage caused not only in the territorial waters of a Contracting State but also in the exclusive economic zone (EEZ) of a Contracting State or equivalent. In addition that delegation recalled that by virtue of Article IX.2 of the 1992 CLC each Contracting State must ensure that its Courts possess the necessary jurisdiction to entertain actions for compensation under the 1992 CLC. That delegation reported that in its country action was being taken to ensure courts did have the necessary jurisdiction. That delegation also stated that in some countries the Fund could never be a party in criminal proceedings, which can create a problem when the criminal courts also deal with civil claims, since if the Fund is not involved in those cases it cannot defend the application of the Conventions. That delegation also expressed concern that the Court had justified the award of environmental damage, not admissible under the Conventions, by excluding the application of the Conventions on the basis of Article III.4, which presented a danger that in future, national courts could be tempted to use this formula to award damages not admissible under the Conventions.

3.3.23 Another delegation stated that although the Fund was not affected by the Court of Cassation's judgement there were major issues that might have consequences for the international regime, in particular the channelling provisions, the jurisdiction of the coastal State in cases of pollution in their EEZ and the issue of environmental damage. That delegation expressed concern that national courts should not be encouraged to circumvent the restrictions in the Conventions by applying other laws.

3.3.24 Another delegation agreed that the important precedents derived from the judgement were the liability of classification societies and the jurisdiction of the courts in coastal States to adjudicate on criminal liability for environmental damage in their EEZ. This delegation also questioned the compatibility of French legislation with MARPOL.

3.3.25 Another delegation agreed that the judgement raised concerns on how courts could find ways to circumvent the Conventions.

3.3.26 The observer delegation of ICS stated that the Court decision was also of concern to shipowners, especially the application of the criminal law of the coastal State, which did not at the time conform to MARPOL, to foreign ships in their EEZ and the interpretation of the 1992 CLC to open liability to parties other than the registered owner, which creates uncertainty and possibly problems of insurance, especially with the type of claims accepted in the judgement. That delegation also expressed concern that even if the Court had stated that the Fund was not affected by the judgement, the Court's interpretation of pollution damage might endanger the uniform application of the Conventions.

3.3.27 The French delegation stated that in French law, criminal proceedings can deal with civil claims, as is the case in other jurisdictions, and that in these cases it was the national law that was applied. That delegation also stated that the issue of compliance with MARPOL was a matter for IMO, not for the Fund to discuss. That delegation further stated that the Court of Cassation correctly applied the Conventions in applying the French law on civil liability.

3.3.28 In summing up, the Chairman of the 1992 Fund Executive Committee noted the information provided by the Secretariat, the delegation of France and the observer delegation of CPMR and that only one action remained pending against the 1992 Fund with a total amount claimed of €87 467. The Chairman noted that the discussion had focussed on the judgement by the Court of Cassation which was delivered in September 2012 and the main issue discussed was the jurisdiction of the criminal

courts in France for a spill which had occurred in the EEZ. The chairman also noted that some delegations were of the opinion that the actions taken by France were in accordance with the Conventions and it had taken into account the provisions contained in Article III.4 of the 1992 CLC. Regarding the classification society RINA and all liable parties, it was noted that the Court of Cassation's decided that the four accused were reckless, and for this reason, they were not able to benefit from the channelling provisions and were therefore held liable for the damage caused under French law.

3.3.29 The Chairman noted from the points made during the discussion that legal systems differed from country to country and the French criminal courts could rule on civil matters. She noted that the 1992 Fund had not been party to the criminal proceedings. She further noted that some delegations had expressed concerns about the compatibility of MARPOL with national law but pointed out that this should be raised separately with the Legal Committee of IMO.

3.3.30 The Chairman concluded by noting that this judgement, although not binding on the 1992 Fund, was interesting and consideration should be given to the possible implications for other Member States should a similar situation arise in the future and that the 1992 Fund would follow any developments closely.

3.4

Incidents involving the IOPC Funds – 1992 Fund: ***Prestige*** **Document IOPC/APR13/3/4**	**92EC**			

3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR13/3/4.

Claims by the Spanish Government

3.4.2 It was recalled that the Spanish Government had submitted claims for an amount of €984.8 million which had been assessed at €300.2 million. It was also recalled that a payment of €115 million had been made to the Spanish Government.

Claims by the French Government

3.4.3 It was recalled that the French Government had submitted a claim for €67.5 million which had been assessed at €38.5 million. It was noted that a meeting had taken place in September 2012 to discuss the assessment of the French Government's claim and that a letter had been received from the French Government setting out the reasons for disagreement with the Fund's assessment of their claim.

3.4.4 It was noted that in the French Government's claim a number of items had been identified which in principle were admissible but which lacked proof. It was also noted that a further reassessment of the claim was now being undertaken.

3.4.5 It was noted that one of the reasons for disagreement on the French Government's claim was that value added tax (VAT) had been deducted when calculating the assessment.

3.4.6 It was recalled that no payment had been made to the French Government, since the Government was 'standing last in the queue'.

Claims for VAT

3.4.7 The Executive Committee noted that VAT had been excluded in the assessment of the Spanish and French Government claims.

3.4.8 It was noted that the French Government had stated that under French law the State was entitled to recover the VAT it had paid to contractors engaged in the clean-up operations since this was an expense that the State had in fact incurred.

3.4.9 It was noted that there was no doubt that a private individual or a company subject to VAT would be entitled to recover VAT with their claim and that similarly, regional or local authorities, being separate legal persons from central government, should also be entitled to receive compensation for the VAT they had to pay since otherwise they would not receive full compensation for their losses.

3.4.10 It was noted, however, that the 1992 Fund had rejected the claim for VAT from both the French and the Spanish Governments in the *Prestige* incident since the State would then be both the entity paying the VAT and receiving the VAT and it could therefore be argued that the State had suffered no loss since on the one hand it was paying VAT and on the other it was receiving VAT.

3.4.11 It was noted that although the above had been the policy followed by the IOPC Funds over the years, in a number of cases VAT had been paid in respect of government claims due to diverse circumstances.

3.4.12 It was noted that the Director intended to submit a document on the question of the admissibility of claims for VAT by governments to the 1992 Fund governing bodies for consideration in the future but that he would prefer to wait until the French Government had had an opportunity to submit their legal opinion on the issue, so as to facilitate a balanced discussion.

Intervention by France

3.4.13 The French delegation thanked the Director for the document and confirmed that the French Government disagreed with the Director's view on VAT. That delegation stated that it considered that under French law the State was entitled to recover the VAT since this was an expense that the State had in fact incurred and that they intended to submit their legal opinion on the issue in due course.

Legal proceedings in Spain – Criminal investigation

3.4.14 It was recalled that in July 2010 the Criminal Court in Corcubión had decided that four persons should stand trial for criminal 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 noted, however, that since the chief officer had not been located, the proceedings had continued only against the other three parties. Concerning civil liability, it was recalled that the Court had decided that the London Club and the 1992 Fund were directly liable for the damages arising from the incident, that their liability was joint and several and that the shipowner, the management company and the Spanish State were vicariously liable.

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

Civil claims

3.4.16 It was noted that under Spanish law, civil claims may be submitted in criminal proceedings as the criminal court will decide not only on criminal liability but also on civil liability derived from the criminal action. It was also noted that the Criminal Court was acting as a Limitation Court awarding compensation for losses suffered as a result of the spill. It was further noted that the 1992 Fund had been a party to the proceedings from the beginning, as a party with strict civil liability under the 1992 Fund Convention.

3.4.17 It was noted that 2 531 claims had been lodged in the legal proceedings before the Criminal Court in Corcubión.

Legal proceedings in France

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

Legal action by Spain against the American Bureau of Shipping (ABS) in the United States

3.4.19 It was recalled that Spain 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.

3.4.20 It was also recalled that in August 2012 the Court of Appeals for the Second Circuit had delivered a judgement holding that Spain had not produced sufficient evidence to establish that ABS had acted in a reckless manner. It was also recalled 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.

3.4.21 It was noted that Spain had not appealed against the judgement and that therefore the judgement by the Court of Appeals for the Second Circuit was now final.

Legal action by France against ABS in France

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

3.4.23 It was also recalled 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.

Legal action by the 1992 Fund against ABS in France

3.4.24 It was recalled that at its October 2012 session the 1992 Fund Executive Committee had 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. It was noted that in October 2012 the 1992 Fund had brought a recourse action against ABS in the Court of First Instance in Bordeaux.

Debate

3.4.25 One delegation asked whether under Spanish law a criminal court was indeed entitled to pass judgements related to civil liability matters, whether this meant that there would not be parallel civil proceedings and whether the 1992 Fund could therefore be held liable to pay compensation awarded by the Criminal Court. The Director confirmed that under Spanish law the Criminal Court would be in a position to decide not only on criminal liability but also on civil liability derived from the criminal action and would also act as a Limitation Court awarding compensation for losses suffered as a result of the spill. The Director further noted that, for this reason and differently from the case of the *Erika* incident, the 1992 Fund had been a party to the criminal proceedings from the beginning as a party with strict civil liability under the 1992 Fund Convention.

3.5

Incidents involving the IOPC Funds – 1992 Fund: ***Volgoneft 139*** **Document IOPC/APR13/3/5**	**92EC**			

3.5.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR13/3/5.

Legal issues

3.5.2 It was recalled that there had been a number of legal issues in this incident, including the application of 'Metodika' and the defence of *force majeure*, which had been resolved. It was noted, however, that the issue of the 'insurance gap' remained to be resolved.

The 'insurance gap'

3.5.3 It was recalled that in February 2008 the Arbitration Court of Saint Petersburg and Leningrad Region had issued a ruling, declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million). It was also recalled that the Court of Appeal, the Court of Cassation and the Supreme Court had confirmed the decision of the Arbitration Court of Saint Petersburg and Leningrad Region, maintaining that Russian courts should apply the limits as published in the Russian Official Gazette at the time when the incident occurred. It was also recalled that these decisions had resulted in there being an insurance gap of 1.51 million SDR (RUB 58.5 million).

Legal issues – Quantum and merits of claims for compensation

3.5.4 It was recalled that in June 2012 the Court had delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million, including legal interest, and that in addition, the Court order had awarded some claimants' court fees and expenses totalling RUB 318 969 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

3.5.5 It was also recalled that in the judgement, the Court had decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident as published by the Russian Official Gazette.

3.5.6 It was noted that the 1992 Fund had appealed against the judgement by the Arbitration Court, but that the judgement had been confirmed by the Court of Appeal in September 2012 and the Court of Cassation in January 2013. It was also noted that the 1992 Fund had appealed the judgement before the Supreme Court.

Meetings with the Russian authorities

3.5.7 It was noted that the Director and other members of the Secretariat had visited the Russian Federation in December 2012 and February 2013 where they had met with representatives of the Russian Ministry of Transport, Ingosstrakh and claimants. It was noted that at the meetings the Director had reiterated the Fund's position and the urgent need to find a solution to the 'insurance gap' so that compensation could be paid to the victims of the spill.

Director's proposal

3.5.8 The 1992 Fund Executive Committee noted that three possible solutions had been considered for the 'insurance gap' of RUB 58.5 million as set out in paragraph 6.1 of document IOPC/APR13/3/5. It was noted, however, that the first possible solution to resolve the 'insurance gap', ie to deduct the insurance gap *pro rata* between all claimants, would not be fair as the private claimants would be penalised when they had no responsibility for the 'insurance gap'. It was also noted that although a second

solution to resolve the 'insurance gap' had been considered, ie to deduct the 'insurance gap' from the regional authority, the necessary approval to proceed with this solution had not been obtained.

3.5.9 The Executive Committee noted that the remaining option to resolve the 'insurance gap' was to deduct the insurance gap *pro rata* across the three government claimants, as set out in paragraph 7.7 of document IOPC/APR13/3/5. It was noted that the Director proposed to adopt this interim solution, whereby the private claimants would receive compensation in full and the 'insurance gap' would be distributed *pro rata* between the three government agencies, namely the regional authority, the local authority and the federal agency (Rosprirodnadzor). It was noted that the Director considered this to be an interim solution for the 'insurance gap' and that he intended to carry on discussions with the Russian authorities.

Debate

3.5.10 The majority of delegations that took the floor expressed their support for the Director's proposal contained in paragraph 7.7 and 7.8 of document IOPC/APR13/3/5. Most delegations emphasised that payments should commence so that individual claimants who have no responsibility for the problem of the insurance gap were not unduly penalised.

3.5.11 One delegation, however, while expressing sympathy with the claimants, expressed concern for the lack of formal agreement between the three government claimants and the Fund. That delegation suggested that the Director should continue negotiations with the three government claimants to reach an agreement on the 'insurance gap'. That delegation proposed an alternative solution whereby private claimants would be paid immediately for the amount based on the first solution referred to in paragraph 3.5.8 and the claimants would receive the remaining of the claim once the Fund enters into an agreement with governmental agencies. That delegation also stated that the payment to three governmental claimants could be withheld until an agreement with governmental agencies was reached. Other delegations, while supporting the Director's proposal, also expressed their concern that an agreement should be reached with the government claimants.

3.5.12 The Director explained that his proposal was for an interim solution and that so far no formal agreement with the Government claimants had been reached. He also explained that Ingosstrakh had stated their intention to pay compensation only when there was a final court decision.

3.5.13 The Russian delegation expressed its support for the Director's proposal and stated that they were willing to continue negotiations to reach an agreement in respect of the three government agencies.

1992 Fund Executive Committee Decision

3.5.14 The 1992 Fund Executive Committee decided to authorise the Director to pay private claimants in full according to the Court ruling and make interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap', as set out in paragraph 7.7 of document IOPC/APR13/3/5. The Executive Committee also instructed the Director to continue its discussions with the Russian authorities to reach an agreement on the 'insurance gap'.

3.6

Incidents involving the IOPC Funds – 1992 Fund: ***Hebei Spirit*** **Document IOPC/APR13/3/6**	**92EC**			

3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR13/3/6, submitted by the Secretariat in respect of the *Hebei Spirit* incident.

Claims situation

3.6.2 The 1992 Fund Executive Committee noted that as at 22 April 2013, 128 403 individual claims totalling KRW 2 578 billion had been registered. It also noted that 128 385 claims had been assessed at a total of KRW 184.1 billion, out of which 87 171 claims had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 172 billion.

Limitation proceedings

3.6.3 The 1992 Fund Executive Committee recalled that 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 recalled that as a matter of Korean law and practice, no further claims could be registered nor could changes be made to the amounts claimed.

3.6.4 The Executive Committee noted that in January 2013 the Court had issued its decision regarding the distribution of the *Hebei Spirit* limitation fund, assessing the damages arising out of the *Hebei Spirit* incident at a total of KRW 736 billion and rejecting 64 270 claims.

3.6.5 The Executive Committee noted that the Court, in its decision, had stated that it did not consider itself bound by the 1992 Fund's Claims Manual in determining the scope of compensation for damages arising from the *Hebei Spirit*, although it had made clear that the claimants would still had to prove a link of causation between the damage and the incident for their claim to be considered admissible for compensation.

3.6.6 The Executive Committee noted that the main differences involving points of principle had been found in the fisheries sector claims, where the Court had accepted losses on the basis of abstract formulas, which ignored actual production data provided by the claimants themselves, as well as future losses also based on theoretical calculations. It further noted that the Court had also accepted a number of claims by the Korean central and local authorities for periods extending well beyond the time when the Court itself considered that there was no further impact on other claimants.

3.6.7 The Executive Committee further noted that the Secretariat, together with the Fund's experts and lawyers, had analysed the judgement in order to ascertain whether it was necessary to appeal and considered the following elements:

- whether the claims in the Limitation Court corresponded to the claims submitted by the same persons to the 1992 Fund;
- whether the Court's assessment corresponded or was comparable to the 1992 Fund's assessment; and
- whether the difference in assessment was due to a matter of principle or was based on calculation methods which were not admissible under the 1992 Fund's criteria.

3.6.8 The Executive Committee noted that as a consequence of this analysis, the 1992 Fund had appealed the judgement of the Limitation Court in respect of 63 163 claims where there were matters of principle involved. The Executive Committee further noted that some 86 578 individual claimants had also appealed.

Level of payments

3.6.9 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.

3.6.10 The 1992 Fund Executive Committee recalled that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was 203 million SDR or KRW 321.6 billion. The Executive Committee noted that, on the basis of the current level of assessed claims (KRW 184.1 billion) it would be possible for the 1992 Fund to raise the level of payments to 100%.

3.6.11 The Executive Committee noted, however, that the total amount claimed in the limitation proceedings was KRW 4 023 billion but that the Limitation Court had assessed these claims at KRW 736 billion.

3.6.12 The Executive Committee also noted that some 86 578 claimants had appealed the decision of the Limitation Court and that the amount of the appeals was in the region of KRW 1 200 billion. The Executive Committee further noted that, considering the difference between the amount claimed in the limitation proceedings and the amount assessed by the Court and in view of the number of claims rejected by the Court and the number that had been appealed, the Director considered that there was still a risk that the Court of Appeal might increase significantly the amount awarded by the Limitation Court.

3.6.13 The 1992 Fund Executive Committee noted that, in view of the disparity between the amounts claimed in the limitation proceedings and the amount awarded by the Limitation Court, the Director considered it premature to raise the level of payments, since it was not yet known what position would be taken by the Court of Appeal.

3.6.14 The Executive Committee further noted that the Director had therefore 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 its next session.

Debate

3.6.15 The delegation of the Republic of Korea thanked the Secretariat for the analysis of the Limitation Court's judgement. That delegation further informed the Executive Committee that some 15 000 claimants had withdrawn their appeals and that more withdrawals were expected. That delegation urged the Fund to seek settlement with those claimants willing to settle on the basis of the Court's decision, as long as the decision by the Court was not against the Fund's criteria of admissibility.

3.6.16 One delegation asked for confirmation as to the total amount of admissible claims and whether the Fund and its lawyers had taken a pragmatic approach to the filing of appeals in Court. The Secretariat confirmed that the amount currently assessed by the Fund was KRW 184.1 billion. The Secretariat further confirmed that the Fund had only appealed against the Limitation Court decisions involving issues of principle.

1992 Fund Executive Committee Decision

3.6.17 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.

3.7

Incidents involving the IOPC Funds – 1992 Fund: ***JS Amazing*** **Document IOPC/APR13/3/7**	**92EC**			

3.7.1 The 1992 Fund Executive Committee took note of document IOPC/APR13/3/7, which contained information relating to the *JS Amazing* incident.

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

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

3.7.4 It was further recalled that in March 2012, the Nigerian Federal Ministry of Transport had established a Marine Board of Inquiry to carry out an investigation into the cause of the spill and that in April 2012 it had published its report.

3.7.5 It was recalled that in May 2012 a claim for NGN 30.5 billion (£128.8 million) was filed against, *inter alia*, the 1992 Fund by representatives of 248 communities allegedly affected by the spill.

3.7.6 It was also noted that following the October 2012 session of the Executive Committee, the Secretariat wrote to the Nigerian Federal Ministry of Transport requesting assistance with a number of outstanding issues in order to ascertain further facts of the *JS Amazing* incident but that no response had yet been received.

Legal proceedings

3.7.7 It was noted that in July 2012 the 1992 Fund had applied to strike itself out as a defendant but sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.

3.7.8 It was also noted that in February 2013 the 1992 Fund's Nigerian lawyer had advised that the case had been transferred from the Federal High Court in Asaba to a new Federal High Court recently established in Warri, Delta State. As a consequence, it was further noted that the 1992 Fund's motion to strike itself out as a defendant and to be replaced as an intervenor had been adjourned to an as yet unspecified date in the future.

3.7.9 It was noted that the Secretariat had recently been informed that upon a request by the claimants, the Federal High Court in Warri had ordered the arrest of the *JS Amazing*, pending the provision of a bank guarantee to cover the claimants' claim or the shipowner depositing the sum of NGN 30.5 billion into court and that the matter had been adjourned until late April 2013.

Difficulties arising from the incident

3.7.10 It was noted that no steps appeared to have been taken by the shipowner to pay the first tier of compensation in accordance with the provisions of Article III (1) of the 1992 CLC.

3.7.11 It was also noted that the Secretariat had not seen any evidence to show that the *JS Amazing* was insured in accordance with the provisions of Article VII of the 1992 CLC at the time of the incident.

3.7.12 It was recalled that when this incident was first reported to the 1992 Fund Executive Committee in October 2011, the Executive Committee was informed of an earlier spill which had occurred from a vandalised oil pipeline in the same area. It was noted that no additional information had been provided to enable the Secretariat to report further in this regard.

3.7.13 It was also noted that there was a large amount of unregulated oil refining that occurred in the Niger Delta area and the likelihood was that there was a high degree of contamination from these operations as well as previous oil spills in the area. These issues raised additional difficulties for the Fund's experts when attempting to differentiate between the contamination that resulted from the *JS Amazing* incident and earlier contamination from previous spills.

3.7.14 It was further noted that very limited information had been submitted on behalf of a number of the communities allegedly affected by the spill and that this information did not enable the Fund's experts to verify the losses claimed. In many instances the information was at variance with the figures contained within the documents which were prepared by the Nigerian Oil Spill Detection and Response Agency following the joint investigation visit undertaken with PPMC between July and September 2009.

3.7.15 It was recalled that at its October 2012 session, the 1992 Fund Executive Committee had noted that the claimants would likely find it very difficult to prove their losses or to establish a link of causation between the claim and the contamination caused by the spill, and that as time progressed the likelihood of obtaining accurate information relating to the incident decreased. Similarly, the prospects of the Fund's experts being able to accurately calculate the quantum of losses without verified documents in support decreased as time progressed.

3.7.16 It was noted that the Director regretted that due to the safety issues in the area concerned, it was not possible for the 1992 Fund's experts to visit the areas affected by the spill.

3.7.17 It was also noted that given the difficulties referred to above, the Director regretted that he could not currently recommend to the 1992 Fund Executive Committee that he be instructed to make payment of compensation to the claimants in respect of the incident.

Intervention by the delegation of Nigeria

3.7.18 The delegation of Nigeria stated that it was aware of the delay between the incident occurring and the 1992 Fund being informed of the incident and understood the challenges faced by the 1992 Fund and its experts, but stated that it did not have any further evidence or documents in respect of the claim, and therefore awaited the outcome of the court proceedings in Nigeria.

3.8

Incidents involving the IOPC Funds – 1992 Fund: ***Redfferm*** **Document IOPC/APR13/3/8**	**92EC**			

3.8.1 The 1992 Fund Executive Committee took note of document IOPC/APR13/3/8 which contained information relating to the *Redfferm* incident.

3.8.2 It was recalled that in January 2012 the Secretariat had been informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank during or following the cargo trans-shipment from the tanker *MT Concep*. The barge's cargo of between 500 and 650 tonnes of low pour fuel oil (LPFO) spilled into the waters surrounding the site which then impacted upon the neighbouring Tin Can Island area.

3.8.3 It was further recalled that a claim was filed in March 2012 against, *inter alia*, the 1992 Fund by 102 communities allegedly affected by the incident for US$26.25 million and that in October 2012 information was provided by the claimants' lawyer detailing the locations of the 102 communities and the numbers of individuals within the communities allegedly affected by the spill.

3.8.4 It was noted that following the October 2012 sessions of the Executive Committee, the Secretariat wrote to the Nigerian Federal Ministry of Transport requesting assistance with a number of outstanding issues in order to ascertain further facts of the incident, but that no reply had yet been received.

3.8.5 It was also noted that in March 2013, the 1992 Fund was informed by its Nigerian lawyer that the Nigerian authorities were establishing a Marine Board of Inquiry for the *Redfferm* incident.

Legal proceedings

3.8.6 It was noted that in June 2012, the 1992 Fund had applied to strike itself out as a defendant but sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.

3.8.7 It was further noted that in February 2013, the Federal High Court in Lagos decided that the 1992 Fund could not be removed from the proceedings as a defendant and replaced as an intervenor and that the 1992 Fund had appealed this decision.

Valuations submitted

3.8.8 It was noted that in January 2013, the Secretariat received a valuation of the losses incurred by 63 communities within two local government areas of Lagos State based on three years' loss of income and damage to the environment which amounted to NGN 1.89 billion (£8 million). Furthermore, in late January 2013 the Secretariat received an addendum to the valuation which revised it to NGN 2.8 billion (£12 million).

Analysis of the valuations submitted

3.8.9 It was noted that the Secretariat had seen limited contemporaneous evidence regarding the incident including minutes of meetings held between June and October 2009 between the leaders of five communities on Snake Island and the Nigerian authorities which recorded that the Chairman of the meeting considered that the five communities on Snake Island were within the area impacted by the incident but that any communities outside Snake Island were not within the area of impact and hence not entitled to receive compensation.

3.8.10 It was also noted that the valuation received in January 2013, had been undertaken in August 2012 and had calculated three years' worth of loss of income based on a spill of some 5 000 tonnes, whereas in fact only between 500 and 650 tonnes of oil were believed to have been spilled.

3.8.11 It was further noted that there remained a number of issues and difficulties arising from the incident which made it difficult for the Director to currently recommend that he be instructed to make payment of compensation, including:

(i) the issue of whether the barge *Redfferm* constituted a 'seagoing vessel or seaborne craft' as described in Article I.1 of the 1992 CLC;
(ii) the large divergence of views in respect of the extent of the damage caused by the spill; and
(iii) the fact that the valuations provided were based on estimated losses of income and contained no justification and no evidence proving the losses claimed.

Intervention by the delegation of Nigeria

3.8.12 Following the Secretariat's presentation, the delegation of Nigeria made the following statement which has been included in its entirety:

> 'Please be informed that consequent upon the information received from the IOPC Funds during the last October 2012 session the Honourable Minister of Transport, Federal Republic of Nigeria acting under the enabling laws ie the Merchant Shipping Act inaugurated a Marine Board of Inquiry to look into the incident involving *MT Concep/Redfferm* oil spillage at Tin Can Island Lagos, Nigeria and the subsequent claims for compensation submitted to the Fund.
>
> The Board headed by a President, a Chief Magistrate took evidence on Oath/Affirmation from 24 witnesses and admitted 49 exhibits. They equally visited many of the affected communities along the Bagagry Creeks. During this period they discovered that there are

three main claims ie claims from communities represented by Mr Paul Ogedengbe, claims from communities represented by Mr Ogumma (P. KENNEY) and claims submitted by the Lagos State Government. The grand total of these claims is US$92.620 million.

The report of the Marine Board and the Nigeria position on this incident is already submitted to IOPC Funds Secretariat.

From the Report there are four issues for determination by the IOPC Funds:

- Whether *Redfferm* was a sea going vessel
- Whether there was a link of causation between the loss and the incident
- Whether *Redfferm* has classification
- Whether the claimants are entitled to compensation

We shall now discuss these issues seriatim;

ISSUE NO. I
We have established in the Report without fear of any contradiction that indeed the vessel was seagoing. See the decision of the IOPC Funds in the case of *Al Jaziah 1* in the year 2000. See also Document 71.12.4. See generally pages 16, 17 and 18 of our Volume I.

ISSUE NO. 2.
Please see page II of the Nigerian position, where we have proved beyond every doubt that the incident caused great loss to the individual, Communities and the Lagos State Government.

ISSUE NO.3.
The barge *Redfferm* whose GT was 430 has no classification as this is not mandatory under all the relevant laws. *Redfferm* was built in the year 2008 and as such at the time of the incident, she was not due for docking. Please see page 16 of our Volume I. Although she was built for inland waters but could still and indeed sail at sea. Therefore she was a sea going vessel within the meaning of Article 1.1 of the 1992 CLC which defines a ship as 'any sea going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship only if is actually in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

ISSUE NO. 4.
Having established the veracity of the Report and the fact that there is a link of causation between the loss and the incident, all the evidences and exhibits before the Board shows unequivocally that indeed these people were impacted and they are entitled to be compensated.

The Federal Republic of Nigeria now has before the IOPC Funds its position on the *MT Concep/Redfferm* oil spillage incident together with the Report of the Marine Board of Inquiry which is in four volumes.

PRAYERS
That the IOPC Funds should quickly consider the various Reports before it on this issue and come up with a just and fair decision

For proper perusal of the exhibits attached and to establish the appositeness of same with the incident and evidences of witnesses, Nigeria should be duly represented whenever Reports will be considered.

That the IOPC Funds should hold that we have proved our case beyond every reasonable doubt and quickly come to the aid of the victims.

That in view of the foregoing, the IOPC should initiate the process of compensation to the Claimants in the sum of US$92.620 million

We place reliance on evidences adduced, exhibits tendered, relevant laws and decision's earlier reached by the IOPC Funds.

Thank you all.'

3.9

Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* **Documents IOPC/APR13/3/9 and IOPC/APR13/3/9/1**	**92EC**			

3.9.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/APR13/3/9 submitted by the Secretariat and IOPC/APR13/3/9/1 submitted by Greece.

DOCUMENT IOPC/APR13/3/9 SUBMITTED BY THE SECRETARIAT

3.9.2 The 1992 Fund Executive Committee recalled that on 5 March 2012, the tanker *Alfa I* hit the submerged wreck of the *City of Mykonos* while crossing Elefsis Bay near Piraeus, Greece. Shortly thereafter, the *Alfa I* listed over onto her starboard side and sank resulting in the tragic loss of the master's life.

Claims situation

3.9.3 The Executive Committee noted that no claims for compensation had to date been made against the 1992 Fund. However, in August 2012, the clean-up contractors had submitted a claim to the owners of the *Alfa I* for the sum of €13.3 million, covering the period from 5 March to 30 June 2012.

Recent developments

3.9.4 The Executive Committee noted that in December 2012, the clean-up contractors had submitted a further claim to the owners of the *Alfa I* for the sum of €1.049 million, covering the period from 1 July to 31 October 2012.

3.9.5 It was further noted that the clean-up contractors had written in February 2013 to the Piraeus Port Authorities, requesting them to authorise the immediate removal of the booms on the basis that the proportion of oil remaining in the wreck was minimal but that the removal had, however, not been confirmed.

Insurance policy

3.9.6 The Executive Committee recalled that the *Alfa I* had P&I cover including pollution risks with Aigaion Insurance Company, a fixed premium insurance provider. It also recalled that the terms of that policy contained a limit of liability as follows: 'Euro 2 000 000 combined single limit each vessel for all claims any one accident or occurrence' and that it also included the following express warranty: 'Warranted non-persistent cargoes only'.

3.9.7 It was also 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 2001 (Bunkers Convention) and liability under 1992 CLC. The Executive Committee recalled that on the basis of the blue card, the Greek authorities as the flag State 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 insurer.

3.9.8 The Executive Committee recalled that at its October 2012 session, the 1992 Fund Administrative Council acting on behalf of the 1992 Fund Assembly had suggested that the matter of blue cards and insurance certificates be referred to the Legal Committee of IMO for consideration.

3.9.9 The Executive Committee noted that a submission had been made to the Legal Committee by the IOPC Funds at its April 2013 session to consider a request for advice about the possible consequences of discrepancies between insurance policies, blue cards and certificates issued under the 1992 CLC.

3.9.10 The Executive Committee further noted that the Legal Committee had considered the matter and that the Director would report on the outcome to the 1992 Fund Assembly at its October 2013 session.

DOCUMENT IOPC/APR13/3/9/1 SUBMITTED BY GREECE

3.9.11 The Executive Committee noted the information in document IOPC/APR13/3/9/1 submitted by Greece.

Response operations

3.9.12 The Executive Committee noted that the shipowner, through a private clean-up company, had started clean-up operations on 14 March 2012 and that these operations had been completed by 18 May 2012 since when no further oil pollution had been reported.

3.9.13 It was also noted that pumping-out operations had been carried out both in the engine room and in the cargo spaces and that these operations had been completed by 18 May 2012. It was further noted that according to the Customs Service, 1 579 852 litres of fuel oil, 158 232 litres of Marine Gas Oil and 91 460 litres of oily residues had been reported as recovered from the wreck.

Penal and administrative sanctions

3.9.14 The Executive Committee noted that, following the incident, a criminal investigation had been commenced and the file had been submitted to the competent judicial authority in August 2012. It noted, furthermore, that the case had been taken up by the Council of Investigation of Marine Accidents which had completed its investigation from an administrative perspective.

3.9.15 The Executive Committee further noted that administrative sanctions had been imposed by a ministerial decision against the shipowner and that the amount of the fine to be paid was €150 000. It also noted that all expenses incurred by the Hellenic Coast Guard as a result of the use of its means, equipment and personnel totalling €222 482.65 had been charged to the shipowner.

Recent developments

3.9.16 The Executive Committee noted that, despite the fact that the pumping-out operations had ended on 18 May 2012, booms were still deployed at the wreck area at the shipowner's explicit request. It noted that the Central Port Authority of Elefsis was carrying out patrols in the area of the incident on a daily basis but that, as at 28 March 2013, no oil pollution had been observed.

3.9.17 The Executive Committee also noted that the Central Port Authority of Elefsis had informed the owners that if there was further oil pollution then the owners would be held responsible on the basis of the principle of the polluter pays.

3.9.18 The Executive Committee also noted that document IOPC/APR13/3/9/1 stated that the *Alfa I* had 1992 CLC and Bunkers Convention certificates, issued by the Central Port Authority of Piraeus, which were valid from 22 September 2011 to 22 September 2012.

3.9.19 Additionally it noted that these certificates, which were issued on the basis of certificates of insurance (blue cards) provided by Aigaion Insurance Company, certified explicitly that the *Alfa I* was insured, on the day of the incident, as provided by Article VII of the 1992 CLC and Article 7 of the Bunkers Convention.

3.9.20 It was further noted that prior to issuing the 1992 CLC and Bunkers Convention certificates, the Bank of Greece had issued a Certificate which had been submitted to the Central Port Authority of Piraeus, certifying that the insurance company was entitled to operate and provide the aforementioned insurance services.

3.9.21 It was noted that in the case of national insurance providers, the issuance of 1992 CLC and Bunkers Convention certificates by Port Authorities presupposes both the submission of a Certificate from the Bank of Greece certifying that the insurance company is entitled to operate and provide insurance services and the submission of a Statement of the insurance company, concerning each individual ship under its coverage, assuring that the specific ship is covered according Article VII of the 1992 CLC and Article 7 of the Bunkers Convention. Both of these requirements were met in the case of the *Alfa I*. It was noted that Port Authorities received only the insurance company statements (Blue Cards) and not the insurance contract as a whole, since they are not responsible to verify the validity of the financial information of the insurance contract.

3.9.22 The Executive Committee noted a previous incident on 23 September 2006 when the tanker *Ioannis* had also collided with the wreck of the *City of Mykonos* and which had resulted in the sinking of the *Ioannis*. It also noted that the Council of Investigation of Marine Accidents had determined that the liability of the incident was attributed to the master of the tanker *Ioannis*, without finding any deficiency in the provision of navigation aids marking the location of the wreck of the *City of Mykonos*.

3.9.23 The Executive Committee noted from the document submitted by Greece that the wreck of the *City of Mykonos* was properly marked on navigational charts of the area. It also noted that the Hydrographic Service of the Hellenic Navy had issued relevant navigational warning of the wreck of the *Alfa I* to mariners.

3.9.24 The Executive Committee noted that the file of the criminal investigation of the *Alfa I* incident had been submitted to the competent judicial authority on 1 August 2012 by the Central Port Authority of Elefsis. It also noted that the Report of the Marine Incident had been submitted to the competent judicial authority on 8 November 2012 by the Directorate of the Safety of Navigation of the Hellenic Ministry of Shipping, Maritime Affairs and the Aegean.

3.9.25 The 1992 Fund Executive Committee further noted that the Council of Investigation of Marine Accidents had found that the liability for this incident had been attributed to the master and not to any deficiency in the provision of navigation aids marking the location of the wreck of the *City of Mykonos*. It also noted that further action and/or proceedings were pending.

Debate

3.9.26 In responding to one delegation who had requested clarification as to whether the insurer would pay up to the 1992 CLC limit, the Secretariat confirmed that the insurer had previously stated that they would consider paying up to the shipowner's limit of liability, but that they had not confirmed this in writing.

3.9.27 In response to a number of delegations who sought further information regarding the feasibility of ascertaining the amount of oil on board the tanker at the time of the incident, the Secretariat confirmed that they had endeavoured to obtain further information but it was impossible to know the precise amount of oil on board the *Alfa I* at the time of loading, and it was not possible to ascertain the amount of oil lost during the incident or subsequently recovered.

3.9.28 In the view of a number of delegations, when an insurer issued a blue card, this represented a guarantee by that insurer, that the insurance provisions were in accordance with the relevant provisions of the 1992 CLC. Furthermore, there was some concern regarding this particular insurer who had issued a blue card without an underlying compliant insurance policy in accordance with the CLC provisions. This raised questions regarding other insurance policies which may have been issued by that insurer.

3.9.29 One delegation sought clarification on whether the Greek authorities had taken any action against the insurers. The delegation for Greece responded that they were not in a position to give an official answer at this time.

3.9.30 Another delegation stated that in their opinion it was the insurer and not the State which was liable in the event that the insurance policy was not in accordance with the relevant provisions of the 1992 CLC.

4 Treaty matters

4.1

Winding up of the 1971 Fund **Documents IOPC/APR13/4/1, IOPC/APR13/4/1/1 and IOPC/APR13/4/1/2**		**71AC**		

4.1.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/APR13/4/1, submitted by the Secretariat, document IOPC/APR13/4/1/1, submitted by the Chairman of the Consultation Group and document IOPC/APR13/4/1/2 submitted by the International Group in respect of the winding up of the 1971 Fund.

DOCUMENT IOPC/APR13/4/1 SUBMITTED BY THE SECRETARIAT

4.1.2 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund since October 2012 as set out in document IOPC/APR13/4/1.

4.1.3 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.

4.1.4 With respect to pending incidents, the Administrative Council noted that there were five pending incidents involving the 1971 Fund (ie *Vistabella*, *Aegean Sea*, *Iliad*, *Nissos Amorgos* and *Plate Princess*) and the Fund might have to pay compensation and/or legal costs in respect of these incidents. It noted that, as at 31 December 2012, the balances available in the 1971 Fund General Fund and the *Nissos Amorgos* and *Vistabella* Major Claims Funds were as follows:

	Balance at 31 December 2012
1971 Fund General Fund	£2 895 400
Nissos Amorgos Major Claims Fund	£2 206 000
Vistabella Major Claims Fund	-£2 800 (in deficit)
Total	**£5 098 600**

4.1.5 The 1971 Fund Administrative Council further noted that since Major Claims Funds had been established for the *Nissos Amorgos* and *Vistabella* incidents, payments relating to these two incidents were made from the balance of the respective Major Claims Fund and that any further expenses in relation to the *Vistabella* incident would be a loan from the General Fund (1971 Fund Financial Regulation 7.1(c)(iv)).

Non-submission of oil reports

4.1.6 The Administrative Council was pleased to note that since the document had been published, the one oil report outstanding for Kenya had been submitted and it would therefore probably be possible to refund approximately £21 000 to two contributors in Kenya. The Administrative Council noted, however, that, with respect to Guyana which had never submitted oil reports since its accession to the 1971 Fund Convention in 1998, the Secretariat had continued its efforts to obtain the outstanding oil reports, so far without success.

Contributors in arrears

4.1.7 The Administrative Council noted that, as at 13 March 2013, there were contributors in arrears totalling £310 058 in the former Socialist Federal Republic of Yugoslavia, the former Union of Soviet Socialist Republics (USSR) and the Russian Federation. The Administrative Council recalled that the 1971 Fund had commenced legal actions against the two contributors in arrears in the national courts of the Russian Federation. It also recalled that in July 2012, the Federal Arbitration Court of the Far Eastern circuit had rendered judgements on the two cases, both of which denied liability by the contributors by virtue of the time bar applicable under civil law. It noted that the 1971 Fund had appealed to the Highest Arbitration Court, which was the final Court in the Russian Federation, but this Court had in both cases found in favour of the contributors. It also noted that the 1971 Fund had issued invoices in accordance with the information provided in the oil reports submitted by the Russian authorities. It further noted that the Russian Government was a third party in the legal proceedings.

Refund of VAT in respect of Italian incidents

4.1.8 The Administrative Council noted that, since 1991, a number of invoices in respect of the *Haven*, *Patmos* and *Agip Abruzo* incidents received from Italian law firms had been paid inclusive of Italian VAT. It further noted that in 1994 a request had been made by the 1971 Fund to the Italian Government for reimbursement for an amount of Lit 882 357 596 (€456 643) but that the matter had been in the Italian Supreme Court ever since. It also noted that in February 2013 the Fund's lawyers had advised that the Attorney General had pleaded against the Fund's request. It also noted that, due to the complexity of the matter, it was not easy to predict when the Supreme Court would decide.

DOCUMENT IOPC/APR13/4/1/1 SUBMITTED BY THE CHAIRMAN OF THE CONSULTATION GROUP

4.1.9 The Chairman of the Consultation Group, Mr Alfred Popp (Canada), presented the report of the Consultation Group. He recalled that at its October 2012 session, the 1971 Fund Administrative Council had decided to set up a Consultation Group composed of a small number of delegates from former 1971 Fund 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 Administrative Council at its next session.

4.1.10 Mr Popp reported that the Consultation Group had met twice since the October 2012 session of the Administrative Council and that, in accordance with its mandate, it was submitting its recommendations as to the steps to be taken to wind up the 1971 Fund.

Considerations of the Consultation Group

4.1.11 The Administrative Council noted the Consultation Group's view that if the 1971 Fund had to wait until all incidents and legal proceedings had come to an end, it would take a long time before the 1971 Fund could be wound up.

4.1.12 It also noted the concern of the Consultation Group that it would be difficult, both from a legal and practical point of view, for the 1971 Fund to levy further contributions. The Consultation Group had expressed the view that most former Member States of the 1971 Fund were now Parties to the

1992 Fund Convention and they would find it very difficult to request their contributors to pay contributions to the 1971 Fund.

4.1.13 It further noted that the Consultation Group was aware that the 1971 Fund now had only some £5.1 million available to resolve all the outstanding incidents and there was a risk that the monies available might not be enough unless the 1971 Fund Administrative Council took bold decisions to speed up the winding up of the 1971 Fund.

4.1.14 The Administrative Council noted that it was for these reasons that the Consultation Group considered that it would be wise now to accelerate the winding up of the 1971 Fund so that no further levies were required.

4.1.15 It also noted that the Consultation Group took the view that the 1971 Fund Administrative Council should instruct the Director to try to resolve as many of the outstanding issues as possible and put forward proposals for the winding up of the 1971 Fund for the consideration of the 1971 Fund Administrative Council at its October 2013 session.

4.1.16 The Administrative Council noted that the Consultation Group had also recommended that its mandate be amended so that it could continue its work until the October 2013 session of the Administrative Council. It noted, in addition, that the Group was of the view that the Administrative Council might wish to decide in October 2013, in light of legal and technical issues which remain to be addressed, whether the Consultation Group should continue its work and, if so, what should be its composition and mandate.

Outstanding 1971 Fund incidents

4.1.17 The Administrative Council noted the following recommendations made by the Consultation Group in respect of the five outstanding 1971 Fund incidents:

Vistabella

4.1.18 The Administrative Council noted the Consultation Group's recommendation that the 1971 Fund Administrative Council instruct the Director to negotiate through its lawyers a possible settlement with the insurance company and to make a proposal to the Administrative Council at its October 2013 session.

Aegean Sea

4.1.19 The Administrative Council noted the Consultation Group's recommendation that the 1971 Fund Administrative Council instruct the Director to continue his discussions with the Spanish Government in order to resolve this outstanding claim and to make a proposal to the Administrative Council at its October 2013 session.

Iliad

4.1.20 The Administrative Council noted the Consultation Group's recommendation that the 1971 Fund Administrative Council instruct the Director to explore a possible settlement with the North of England P&I Club with the assistance of the International Group of P&I Associations and to make a proposal to the Administrative Council at its October 2013 session.

Nissos Amorgos

4.1.21 The Administrative Council noted the Consultation Group's recommendation that the 1971 Fund Administrative Council instruct the Director to conclude the reconciliation of the joint costs and pay to the Gard P&I Club any amount due to it in respect of the joint costs and that he report to the Administrative Council at its October 2013 session.

Plate Princess

4.1.22 The Administrative Council noted that the Consultation Group had taken note that the decision had already been taken by the 1971 Fund Administrative Council to instruct the Director not to pay any compensation in respect of this incident and that the Group therefore considered that no recommendation in respect of this incident was required.

Outstanding oil reports

4.1.23 The Administrative Council noted the following recommendations made by the Consultation Group in respect of outstanding oil reports:

Guyana

4.1.24 The Administrative Council noted the Consultation Group's recommendation to the 1971 Fund Administrative Council to instruct the Director to continue his efforts to obtain the outstanding oil reports.

Kenya

4.1.25 The Administrative Council noted that the Consultation Group had recommended to the 1971 Fund Administrative Council to instruct the Director to continue his discussions with the Kenyan authorities to obtain the outstanding oil report but that this oil report had now been submitted so this issue had been settled.

Contributors in arrears

4.1.26 The Administrative Council noted the Consultation Group's recommendation that the 1971 Fund Administrative Council decide to write off contributions due from contributors in succession states of the former USSR (excluding the Russian Federation) and former Socialist Federal Republic of Yugoslavia.

4.1.27 It also noted the Consultation Group's recommendation with regard to the contributors in the Russian Federation that the 1971 Fund Administrative Council instruct the Director to raise the matter with the Russian Government given that the Fund had sent invoices to contributors in accordance with oil reports submitted by the Government and to report back to the October 2013 session of the Administrative Council.

DOCUMENT IOPC/APR13/4/1/2 SUBMITTED BY THE INTERNATIONAL GROUP OF P&I ASSOCIATIONS

4.1.28 The observer delegation of the International Group made the following statement which has been included in its entirety:

> 'This delegation's paper presents the position of the International Group on the winding up of the 1971 Fund, which is of direct relevance to the International Group given that there remain claims in court against International Group Clubs in three of the outstanding 1971 Fund cases.
>
> As our paper states, the International Group does not agree that a decision should be taken at this stage to wind up the 1971 Fund, partly for this very reason that there remains outstanding claims against International Group Clubs.

In the *Nissos Amorgos* and the *Iliad* incidents the amounts paid by the Clubs exceed their individual retention levels in the International Group pooling system, and any further amounts they may be required to pay will fall on all International Group Clubs. In the other case, the *Plate Princess*, there is a risk of such exposure, which likewise affects all International Group Clubs.

As has been noted, in the *Iliad* case there is potential claim against the 1971 Fund for indemnification. Furthermore any exposure incurred by any of the Clubs in excess of the relevant CLC limit, as a consequence of making interim payments whilst remaining exposed to further claims in court, will create the need for a financial adjustment between the Club and the 1971 Fund to ensure that the overall amount of compensation paid is correctly apportioned. Such an adjustment is based both on subrogation rights and on normal practices followed within the framework of cooperation between the Clubs and the Funds, as mentioned by the Director in his intervention albeit only in relation to joint costs in the *Nissos Amorgos*. The position with regard to the *Nissos Amorgos* incident was described by this delegation at last October's Fund meetings in document IOPC/OCT12/3/3/1. The Clubs have noted the views to the effect that the Fund might not be obliged to make any further payment to the Club in the *Nissos Amorgos* case for compensation paid, but the International Group respectfully does not agree with these views.

Clearly further payment would not be possible if the 1971 Fund is wound up. The Group, and the individual Clubs themselves involved in the outstanding cases, understand the position of the 1971 Fund and the desire to wind up the Fund as soon as possible. The Group and the Clubs concerned are open to discussions as to how this can best be achieved to the satisfaction of all paying parties and would be willing to discuss further with the Fund Secretariat and the Consultation Group depending on the discussions today and the recommendation of the Administrative Council in this regard.'

Debate

4.1.29 All delegations that spoke expressed their sincere appreciation to the Director and to the Chairman and other members of the Consultation Group for the work they had undertaken on the issue of the winding up of the 1971 Fund since the October 2012 session of the Administrative Council.

4.1.30 One delegation noted the concern expressed by the International Group in respect of the *Nissos Amorgos* incident in that there remained the possibility that the shipowner would have to pay the limitation fund twice and that, in accordance with past practice, the Club would look to the 1971 Fund for reimbursement of any sum above its limitation amount for that incident. That delegation asked what would happen if the £5.1 million remaining in the 1971 Fund was insufficient to cover this amount. The Director responded that there were two outstanding claims against the shipowner and the Club for US$60 million each but that they were duplicated claims, and that the Administrative Council had decided in 2003 that they were time-barred and that they were inadmissible as they had been calculated on the basis of theoretical models. The Director added that the judgement would be against the shipowner/insurer and not against the 1971 Fund.

4.1.31 Another delegation strongly supported the conclusion reached by the Consultation Group that the 1971 Fund should accelerate its winding up and that the Administrative Council should instruct the Director to take measures to do so. That delegation also noted that it would be practically impossible to collect a further levy from former 1971 Fund contributors and that the amount available in the 1971 Fund would decrease each day that the winding up was delayed. It further noted that, in accordance with Article 44.2 of the 1971 Fund Convention, the Administrative Council should take the necessary steps for the winding up of the 1971 Fund. That delegation, whilst noting the concerns expressed by the International Group, did not believe that the International Group's concerns justified prolonging the process of winding up of the 1971 Fund. That delegation also expressed the view that the Consultation Group could provide useful advice to the Director and that it should continue its work under its current terms of reference until the October 2013 session of the Administrative Council

and perhaps even longer depending on the progress of the winding up at that stage. Many delegations that spoke shared the views of this delegation and supported the renewal of the mandate of the Consultation Group until the October 2013 session of the Administrative Council.

4.1.32 The delegation of Spain confirmed the information provided by the Director in respect of the *Aegean Sea* incident. That delegation said that the responsible body within the Spanish Finance Ministry had indicated that that the Spanish Government would not oppose an out-of-court settlement between the 1971 Fund and the one remaining claimant and would pay the amount of such a settlement. That delegation noted that this decision had been taken in order to facilitate the winding up of the 1971 Fund. That delegation noted that, unfortunately, negotiations with the claimant had proved unsuccessful so far but that, in any case, a final judgement from the Court of Appeal in respect of this claim was expected before the summer of 2013. That delegation also noted that the document from the International Group deserved the full attention of the Administrative Council and that it was quite legitimate that the shipowner and his insurer should approach the 1971 Fund. That delegation hoped that a solution that was acceptable to all parties could be found.

4.1.33 Another delegation also shared the concerns of the International Group but felt that the 1971 Fund had no control over cases which were in court in respect of claims which were inadmissible and time-barred and would have to proceed with the winding up nevertheless.

4.1.34 The delegation of the Bolivarian Republic of Venezuela made the following statement which it requested to be included in its entirety (original Spanish):

'Thank you, Mr Chairman

The Bolivarian Republic of Venezuela thanks the Director and the Consultation Group for the documents presented. Distinguished delegates, we wish to point out that with respect to the winding up of the 1971 Fund, specifically in relation to the *Plate Princess* case, Venezuela has no objection to the closure of that Fund since victims of that incident would be compensated through the 1992 Fund as Venezuela has formally pointed out. We emphasise that this is nothing new and in the course of our statement we will demonstrate this. The incident occurred on 27 May 1997. In June 1997, the 1971 Fund Executive Committee instructed the Director to pay the claims of the Puerto Miranda Union and FETRAPESCA, as stated in the Record of Decisions, document 71FUND/EXC.54/10. This decision was endorsed in the October session of the same year. In that same month, the Director of the Fund engaged Venezuelan lawyers, in accordance with the power conferred on him under the 1992 Fund Convention.

Venezuela ratified the 1992 Fund Protocol, which amended the 1971 Fund Convention, on 28 April 1998, with the passing of the law by its legislative body approving the said Protocol. Thus, Venezuela had already signed the Protocol at the Conference convened by IMO on 27 November 1992.

Likewise, in accordance with the provisions of Article 31 of the 1992 Fund Protocol, on 3 June 1998, Venezuela denounced the 1971 Fund Convention and the 1969 Civil Liability Convention. Consequently, by April 1998, or in actual fact, one year later (April 1999) Venezuela ceased to be Party to those Conventions, thus, given that there was an instruction from the Executive Committee to pay all the claims generated as a result of the *Plate Princess* incident, responsibility for paying that compensation passed to the 1992 Fund, under the provisions of Article: 1 (the amended Convention is the 1971 Fund Convention); 3 (constitution of the 1992 Fund); 6 (the Fund will compensate any victim who has not obtained full compensation under the Civil Liability Convention); 27 (the 1971 Fund Convention and the 1992 Protocol shall be read and interpreted together as one single instrument), among others.

The Administrative Council of the 1971 Fund was created after 2000 for the purpose of paying compensation for incidents that were outstanding and then to liquidate the 1971 Fund, distributing its assets among the States which had contributed to it. This decision was necessary because the assets of the 1971 Fund could not pass to the 1992 Fund, as not all the countries had signed the amending Protocol.

At the date of creation of the Administrative Council, Venezuela had formed part of the 1992 Fund and hoped that the Director would proceed to compensate its citizens in accordance with the decision taken by the Executive Committee.

In October 2005, following a decision of the Venezuelan Supreme Court on the bank guarantee provided by the owner of the *Plate Princess*, the delegation of Venezuela requested the Director of the 1992 Fund to explain why the compensation relating to the *Plate Princess* incident had not been paid. The reply received from the Director was that the claim was time-barred and that the Venezuelan courts would have to decide the matter. In December 2005, the Director of the Fund granted a further power of attorney to the Venezuelan lawyers, this time in accordance with the provisions of the 1971 Fund Convention.

Subsequently, at the May 2006 Session, the Director requested the Chairman of the 1971 Fund Administrative Council to rule that the incident was time-barred under the 1971 Fund, a decision which the Venezuelan delegation considered to be detrimental to the 1992 Fund. However, it could not object as Venezuela was not at that time a party to that Convention and, according to the wording of the 1992 Fund, it was under that instrument that relevant compensation would fall. In April 2011, in the light of the final decision of the Venezuelan courts on the incident, Venezuela formally requested the Director of the IOPC Funds to inform the Member States of the 1992 Fund Protocol that they should proceed with the payment of the corresponding compensation, in accordance with the wording of the 1992 Fund Protocol.

On 16 January 2013, the shipowner deposited with the Venezuelan Court an amount corresponding to the limitation amount under the Civil Liability Convention, which had been calculated by the Director of the Fund, in accordance with the provisions of the 1992 Civil Liability Convention, and which had been presented to the Executive Committee at its June 1997 session.

The request by the Fishermen's Union that the Court should impose an embargo on the assets of the 1992 Fund in the form of moneys owed by the PDVSA, was replaced by the same Union. Instead, it requested the Court, in accordance with the 1992 Fund Convention, to order the embargo of any asset belonging to the 1992 Fund. It also requested the Court to enforce the embargo of the organisation's assets in the United Kingdom.

The counter pleadings by the Fund with respect to the claim by the Puerto Miranda Union were rejected by the Court. The Court upheld the embargo against the 1992 Fund's assets, and further ordered the Fund, in addition to the 60 million SDR, to pay additional costs resulting from the Fund's contempt and reluctance to discharge its obligation to pay the victims of the incident.

For all these reasons, I request that our statement should be entered in the Record of Decisions

Thank you very much, Mr Chairman'

4.1.35 Another delegation said that, while it understood the arguments in favour of winding up the 1971 Fund it had one reservation in that regard given that legal decisions were outstanding in respect of pending incidents.

4.1.36 One delegation was pleased to note that the outstanding oil report had been received from Kenya. That delegation also noted the practical and legal problems that would arise in levying contributions on contributors in former 1971 Fund Member States.

4.1.37 Another delegation supported the efforts of the Director and the Consultation Group in their efforts to wind up the 1971 Fund. That delegation agreed that the outstanding incidents were the most problematic and was of the view that contributions in arrears, missing reports and credit balances could be more easily addressed, although bold decisions would need to be taken by the Administrative Council.

4.1.38 Another delegation had noted the Consultation Group's view that the 1971 Fund Administrative Council should instruct the Director to try to resolve as many of the outstanding issues 'as soon as possible' had doubts as to whether that would be possible given that Article 44 of the 1971 Fund Convention stated that the 1971 Fund must meet its obligations in respect of any incident occurring before the Convention ceased to be in force. That delegation felt that it might be premature to consider that the 1971 Fund might be wound up in October 2013. There was broad agreement that the 1971 Fund has to meet its obligations before the final winding up.

4.1.39 The Chairman of the Consultation Group explained that the idea of the Consultation Group was that, between the April and October 2013 sessions of the Administrative Council, the Director would try to resolve any outstanding issues that he could and draw up final recommendations for submission to the October 2013 session of the Administrative Council.

4.1.40 In response to a query from one delegation as to what the Fund's position was with respect to the 1971 Fund's outstanding claim for the refund of VAT in respect of Italian incidents, the Director explained that this claim had been in the Italian Supreme Court since 1994. He noted that under Article 34 of the 1971 Fund Convention, the 1971 Fund had the right to reimbursement of VAT paid in respect of invoices from its experts but that had not been the view of the Italian courts so far and he was not very optimistic that a refund would be received.

4.1.41 One delegation suggested that the Administrative Council should recommend that the Director should investigate the matter of the Italian VAT and report back to the Administrative Council at its next session.

4.1.42 The delegation of Italy offered its assistance in investigating the matter with the Italian authorities. The Director thanked the delegation of Italy for its offer and said that he would liaise with the delegation in due course.

4.1.43 One delegation requested clarification as to whether the amount of VAT that was potentially receivable had been taken into account in the actual amount of the funds available in the 1971 Fund. The Deputy Director/Head of Finance and Administration responded that the VAT had not been included in the balance sheet as the old accounting standards which had been used by the 1971 Fund did not include this amount as the VAT was included under expenses and not recorded as amounts due for repayment. He said that, as of the 2012 Financial Statements, these amounts would be included in the Director's comments as possible amounts receivable. He also clarified that the contributions to be written off were provided for and included in the Financial Statements and so the figure in the table in paragraph 2.1 of document IOPC/APR13/4/1 was net of these figures.

4.1.44 The Chairman of the Administrative Council concluded that the majority of those delegations that had spoken were in favour of winding up the 1971 Fund within a reasonable time frame. He noted that the particular issue of concern was the limited funds available in the 1971 Fund and that any winding up would have to be completed while funds were still available otherwise a levy would be required. He noted that there was no appetite amongst former 1971 Fund Member States for a levy of further contributions. He also noted that several delegations had expressed their agreement with the recommendation of the Consultation Group that its mandate be extended so that it could continue its work until the October 2013 session of the Administrative Council.

1971 Fund Administrative Council Decision

4.1.45 The Administrative Council took the following decisions:

(i) With respect to the *Vistabella* incident, to instruct the Director to negotiate through its lawyers a possible settlement with the insurance company and to make a proposal to the Administrative Council at its October 2013 session;

(ii) With respect to the *Aegean Sea* incident, to instruct the Director to continue his discussions with the Spanish Government in order to resolve this outstanding claim and to make a proposal to the Administrative Council at its October 2013 session;

(iii) With respect to the *Iliad* incident, to instruct the Director to explore a possible settlement with the North of England P&I Club with the assistance of the International Group of P&I Associations, and to make a proposal to the Administrative Council at its October 2013 session;

(iv) With respect to the *Nissos Amorgos* incident, to instruct the Director to continue discussions with the Gard P&I Club and to report to the Administrative Council at its October 2013 session;

(v) With respect to the outstanding oil reports from Guyana, to instruct the Director to continue his efforts to obtain the outstanding oil reports;

(vi) To write off contributions due from contributors in successor states of the former USSR and former Socialist Federal Republic of Yugoslavia;

(vii) To instruct the Director to raise the matter of outstanding contributions from two contributors in the Russian Federation with the Russian Government, given that the Fund had sent invoices to contributors in accordance with oil reports submitted by the Government, and to report back to the October 2013 session of the Administrative Council;

(viii) To instruct the Director to try to resolve as many of the outstanding issues as possible so that the Administrative Council, at its October 2013 session, could take the decisions required to wind up the 1971 Fund;

(ix) To instruct the Director to put forward proposals for the winding up of the 1971 Fund for the consideration of the 1971 Fund Administrative Council at its October 2013 session;

(x) To instruct the Director to study the legal issues relating to the winding up of the 1971 Fund, in consultation with the Legal Affairs and External Relations Division of IMO; and

(xi) To amend the mandate of the Consultation Group so that it could continue its work until the October 2013 session of the Administrative Council.

4.1.46 The 1971 Fund Administrative Council approved the amendment of the mandate and composition of the Consultation Group so that it could continue its work until the October 2013 session of the Administrative Council. The amended mandate and composition is provided at Annex II.

5 <u>Other matters</u>

5.1

Any other business	92EC	71AC		

No items were raised under this agenda item.

6 1992 Fund sixth intersessional Working Group

6.1

Report of the fifth meeting of the sixth intersessional Working Group Document IOPC/APR13/6/3			92WGR6	

The 1992 Fund sixth intersessional Working Group held its fifth meeting on 23 April 2013. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2013.

7 1992 Fund seventh intersessional Working Group

7.1

Report of the second meeting of the seventh intersessional Working Group Document IOPC/APR13/7/5				92WGR7

The 1992 Fund seventh intersessional Working Group held its second meeting on 23 and 24 April 2013. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2013.

8 Adoption of the Record of Decisions

1971 Fund Administrative Council and 1992 Fund Executive Committee Decision

The draft Record of Decisions of the April 2013 sessions of the IOPC Funds' governing bodies, as contained in document IOPC/APR13/8/WP.1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 1992 Fund Member States and former 1971 Fund Member States present at the sessions

		1992 Fund Executive Committee	**Other 1992 Fund Member States**	**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	Colombia		●	●
12	Côte d'Ivoire[2]			●
13	Cyprus		●	●
14	Denmark		●	●
15	Dominican Republic		●	
16	Ecuador		●	
17	Estonia		●	●
18	Fiji		●	●
19	Finland	●		●
20	France	●		●
21	Germany		●	●
22	Ghana		●	●
23	Greece		●	●
24	Grenada	●		
25	India	●		●
26	Indonesia[3]			●
27	Islamic Republic of Iran		●	
28	Italy		●	●
29	Japan	●		●
30	Kenya		●	●
31	Liberia	●		●
32	Malaysia		●	●
33	Marshall Islands		●	●
34	Mexico		●	●
35	Morocco		●	●
36	Netherlands		●	●
37	New Zealand		●	●
38	Nigeria		●	●
39	Norway		●	●

[1] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.
[2] Côte d'Ivoire, a former 1971 Fund Member State, also has observer status with the 1992 Fund.
[3] Indonesia, a former 1971 Fund Member State, also has observer status with the 1992 Fund.

40	Oman		●	●
41	Panama	●		●
42	Philippines		●	
43	Poland	●		●
44	Qatar		●	●
45	Republic of Korea		●	●
46	Russian Federation		●	●
47	Saint Kitts and Nevis		●	●
48	Singapore	●		
49	Spain	●		●
50	Sweden		●	●
51	Tunisia	●		●
52	Turkey		●	
53	United Kingdom	●		●
54	Uruguay		●	
55	Vanuatu		●	●
56	Venezuela (Bolivarian Republic of)		●	●

1.2 Non-Member States represented as observers

		1992 Fund	1971 Fund
1	Chile	●	●
2	Guatemala	●	
3	Peru	●	●
4	Saudi Arabia	●	●
5	Ukraine	●	

1.3 Intergovernmental organisations

		1992 Fund	1971 Fund
1	European Commission	●	●
2	International Maritime Organization (IMO)	●	●
3	Maritime Organisation of West and Central Africa (MOWCA)	●	

1.4 International non-governmental organisations

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

* * *

ANNEX II

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

(as amended by the 1971 Fund Administrative Council at its 30th session held in April 2013)

The 1971 Fund Administrative Council, at its October 2012 session, had 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 had 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 had 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 had 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 had 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 had decided to establish a Consultation Group to work with the Director on the winding up of the 1971 Fund.

At its April 2013 session, the 1971 Fund Administrative Council noted the report of the Consultation Group and decided to extend the mandate and composition of the Consultation Group as follows:

Mandate

1. To continue 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/APR13/4/1/1;

2. To continue 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) (Chairman)
   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 conduct its work in English and no interpretation facilities will be provided.