INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT13/**11/1**	
Original: ENGLISH	25 October 2013	
1992 Fund Administrative Council	**92AC11/A18**	●
1992 Fund Executive Committee	**92EC59**	●
Supplementary Fund Assembly	**SA9**	●
1971 Fund Administrative Council	**71AC31**	●

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

(held from 21 to 25 October 2013)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Administrative Council **(92AC11/ A18)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee **(92EC59)**	Ms Ginette Testa (Panama)	Ms Odile Roussel (France)
Supplementary Fund	Assembly **(SA9)**	Mr Sung-bum Kim (Republic of Korea)	Mrs Birgit Sølling Olsen (Denmark) Mr Mustafa Azman (Turkey)
1971 Fund	Administrative Council **(71AC31)**	Captain David J F Bruce (Marshall Islands)	Ms Susana Garduño Arana (Mexico)

CONTENTS

		Page
	Opening of the sessions	**4**
1	**Procedural matters**	**5**
1.1	Adoption of the Agenda	5
1.2	Election of Chairmen	5
1.3	Examination of credentials – Establishment of the Credentials Committee	6
1.3	Examination of credentials – Report of the Credentials Committee	6
1.4	Grant of observer status	6
2	**Overview**	**7**
2.1	Report of the Director	7
3	**Incidents involving the IOPC Funds**	**9**
3.1	Incidents involving the IOPC Funds	9
3.2	Incidents involving the IOPC Funds – 1971 Fund: *Vistabella*, *Aegean Sea* and *Iliad*	9
3.3	Incidents involving the IOPC Funds – 1971 Fund: *Nissos Amorgos*	10
3.4	Incidents involving the IOPC Funds – 1971 Fund: *Plate Princess*	13
3.5	Incidents involving the IOPC Funds – 1992 Fund: *Erika*	15
3.6	Incidents involving the IOPC Funds – 1992 Fund: *Prestige*	15
3.7	Incidents involving the IOPC Funds – 1992 Fund: *Solar 1*	17
3.8	Incidents involving the IOPC Funds – 1992 Fund: *Volgoneft 139*	18
3.9	Incidents involving the IOPC Funds – 1992 Fund: *Hebei Spirit*	20
3.10	Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina	22
3.11	Incidents involving the IOPC Funds – 1992 Fund: *King Darwin*	23
3.12	Incidents involving the IOPC Funds – 1992 Fund: *Redfferm*	23
3.13	Incidents involving the IOPC Funds – 1992 Fund: *JS Amazing*	27
3.14	Incidents involving the IOPC Funds – 1992 Fund: *Alfa I*	31
3.15	Incidents involving the IOPC Funds – 1992 Fund: *Haekup Pacific*	32
3.16	Incidents involving the IOPC Funds – 1992 Fund: *Nesa R3*	34
4	**Compensation matters**	**36**
4.1	Reports of the 1992 Fund Executive Committee on its 57th and 58th sessions	36
4.2	Election of members of the 1992 Fund Executive Committee	36
4.3	Report on the fifth meeting of the sixth intersessional Working Group	37
4.4	Report on the second meeting of the seventh intersessional Working Group	38
4.5	STOPIA 2006 and TOPIA 2006	40
4.6	Information for claimants – Guidelines for presenting claims in the tourism sector	40
4.7	The role of Member States	41
4.8	Compensation for claims for VAT by central governments	42
4.9	Assessment methods of the IOPC Funds	47
5	**Financial reporting**	**58**
5.1	Submission of oil reports	58
5.2	Report on contributions	59
5.3	Report on investments	60
5.4	Report of the joint Investment Advisory Body	60
5.5	Report of the joint Audit Body	61
5.6	2012 Financial Statements and Auditor's Reports and Opinions	63
6	**Financial policies and procedures**	**65**
6.1	Measures encouraging the submission of oil reports	65
6.2	Audit Body members' skills requirements for the fifth Audit Body	66
6.3	Appointment of the External Auditor	67

7	**Secretariat and administrative matters**	**68**
7.1	Secretariat matters	68
7.2	Appointment of members and substitute members of the Appeals Board	69
7.3	Relocation of the IOPC Funds' offices	70
8	**Treaty matters**	**72**
8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol	72
8.2	Review of international non-governmental organisations having observer status	72
8.3	Winding up of the 1971 Fund	72
8.4	Preparation for the entry into force of the 2010 HNS Protocol	81
8.5	Implementation of the Conventions into national law	82
9	**Budgetary matters**	**86**
9.1	Budgets for 2014 and assessments of contributions to the General Fund	86
9.2	Assessment of contributions to Major Claims Funds and Claims Funds	88
9.3	Transfer within the 2013 budget	89
10	**Other matters**	**89**
10.1	Future sessions	89
10.2	Any other business	90
11	**Adoption of the Record of Decisions**	**90**

ANNEXES

Annex I	List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
Annex II	Working Group on issues related to the definition of 'ship' – Revised terms of reference
Annex III	2014 administrative budget tables for the 1992 Fund, Supplementary Fund and 1971 Fund

Opening of the sessions

0.1 Prior to the opening of the sessions of the IOPC Funds' governing bodies, the Chairman of the 1992 Fund Assembly paid tribute to the late Mr Richard Shaw, who had represented the observer delegation of Comité Maritime International (CMI) since 1996, who sadly passed away on 16 October 2013. He recalled that Mr Shaw had been a highly respected lawyer and delegate and that, latterly, he had collaborated on an important study for the 1992 Fund on the issue of interim payments. The Chairman said that Mr Shaw would be greatly missed and, on behalf of all the delegates, expressed his sincere condolences to Mr Shaw's family.

1992 Fund Administrative Council

0.2 The Chairman of the 1992 Fund Assembly attempted to open the 18th session of the Assembly at 9:30 and 10:00 but the Assembly failed to achieve a quorum on both occasions. Only the following 53 Member States of the 1992 Fund were present at that time:

Algeria	Ghana	Norway
Argentina	Greece	Oman
Australia	Grenada	Panama
Bahamas	India	Philippines
Belgium	Ireland	Poland
Brunei Darussalam	Islamic Republic of Iran	Qatar
Bulgaria	Italy	Republic of Korea
Cameroon	Japan	Russian Federation
Canada	Kenya	Singapore
China[<1>]	Latvia	Spain
Colombia	Liberia	Sweden
Cyprus	Malaysia	Turkey
Denmark	Marshall Islands	United Arab Emirates
Ecuador	Mexico	United Kingdom
Estonia	Morocco	Uruguay
Fiji	Netherlands	Vanuatu
France	New Zealand	Venezuela (Bolivarian Republic of)
Germany	Nigeria	

0.3 Since the quorum required 56 States to be present and no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 11th session of the 1992 Fund Administrative Council, acting on behalf of the 18th session of the 1992 Fund Assembly[<2>].

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

Supplementary Fund Assembly

0.5 The Supplementary Fund Assembly Chairman opened the 9th session of the Assembly.

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

<2> From this point forward, references to the '11th session of the 1992 Fund Administrative Council' should be taken to read '11th session of the 1992 Fund Administrative Council, acting on behalf of the 18th session of the 1992 Fund Assembly'.

1971 Fund Administrative Council

0.6 The 1971 Fund Administrative Council Chairman opened the 31st session of the Administrative Council.

1992 Fund Executive Committee

0.7 The 1992 Fund Executive Committee Chairman opened the 59th session of the Executive Committee.

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

1 Procedural matters

1.1	**Adoption of the Agenda** **Document IOPC/OCT13/1/1**	**92AC**	**92EC**	**SA**	**71AC**

The 1992 Fund Administrative Council, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/OCT13/1/1.

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

1992 Fund Administrative Council Decision

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

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

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

Supplementary Fund Assembly Decision

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

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

1.2.4 The Chairman thanked, also on behalf of the two Vice-Chairmen, the Supplementary Fund Assembly for the confidence shown in them. He also expressed appreciation, on behalf of the Assembly, for the work of the outgoing second Vice-Chairman, Mr Isao Yoshikane (Japan).

1971 Fund Administrative Council Decision

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

Chairman: Captain David J F Bruce (Marshall Islands)
Vice-Chairman: Ms Susana Garduño Arana (Mexico)

1.2.6 The Chairman thanked, also on behalf of the Vice-Chairman, the 1971 Fund Administrative Council for the confidence shown in them. He also expressed appreciation, on behalf of the Administrative Council, for the work of the outgoing Vice-Chairman, Mr Andrzej Kossowski (Poland).

1.3

Examination of credentials – Establishment of the Credentials Committee **Document IOPC/OCT13/1/2**	**92AC**	**92EC**	**SA**	
Examination of credentials – Report of the Credentials Committee **Document IOPC/OCT13/1/2/1**	**92AC**	**92EC**	**SA**	

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

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

1992 Fund Administrative Council Decision

1.3.3 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Bahamas, France, New Zealand, Singapore and Spain as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Debate

1.3.5 After having examined the credentials of the delegations of the 1992 Fund and Supplementary Fund Member States, and of the delegations of States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/OCT13/1/2/1 that credentials had been received from 62 Member States of the 1992 Fund, including States members of the Executive Committee and the Supplementary Fund, and that all were in order.

1.3.6 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2013 sessions.

1.4

Grant of observer status **Document IOPC/OCT13/1/3**	**92AC**		**SA**	

1.4.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document IOPC/OCT13/1/3 regarding a request for observer status which had been received from the International Spill Control Organization (ISCO).

1.4.2 The representative of ISCO thanked the Director for his invitation to attend the session and the Administrative Council for considering its request for observer status. He stated that, if given the opportunity, ISCO would be an active participant in those discussions related to oil spill response and looked forward to their application for observer status being granted and to participating in future meetings.

1992 Fund Administrative Council Decision

1.4.3 The 1992 Fund Administrative Council decided to grant ISCO observer status to the 1992 Fund and welcomed the organisation to the IOPC Funds.

Supplementary Fund Assembly Decision

1.4.4 The Supplementary Fund Assembly took note of the decision of the 1992 Fund Administrative Council and welcomed ISCO as an observer to the Supplementary Fund.

2 Overview

2.1

Report of the Director **Document IOPC/OCT13/2/1**	**92AC**		**SA**	**71AC**

2.1.1 The Director introduced his report on the activities of the IOPC Funds since the October 2012 sessions of the governing bodies (document IOPC/OCT13/2/1). He pointed out that the IOPC Funds were celebrating 35 years since the entry into force of the 1971 Fund Convention and expressed his delight that, at the time of the session, the 1992 Fund had 111 Member States and the Supplementary Fund had 29 Member States. He added that he looked forward to welcoming Côte d'Ivoire as a member of the 1992 Fund and the Slovak Republic as member of the 1992 Fund and Supplementary Fund during 2014.

2.1.2 During his report the Director covered many activities of the IOPC Funds which he felt merited specific mention, several of which were also dealt with in detail under individual agenda items.

2.1.3 With respect to compensation matters, the Director referred to a number of key developments all of which would be discussed in detail at the 59th session of the 1992 Fund Executive Committee or at the 31st session of the 1971 Fund Administrative Council. He drew the governing bodies' attention in particular to a new incident involving the 1992 Fund, namely the *Nesa R3* which had occurred in Oman. He also referred to the *Haekup Pacific* and *Hebei Spirit* incidents in the Republic of Korea, the *Prestige* incident off the coast of Spain, the *Volgoneft 139* incident in Russian Federation and the *Nissos Amorgos* incident in the Bolivarian Republic of Venezuela.

2.1.4 The Director reported on the valuable work of the 1992 Fund sixth and seventh intersessional Working Groups which had both held meetings during 2013. In respect of the only outstanding issue remaining for the sixth intersessional Working Group, ie interim payments, the Director reported that discussions were well advanced and that he intended to submit a proposal to the governing bodies in spring 2014. He also referred to the latest recommendations made by the External Auditor on the use of external experts in the assessment of claims and the formal process which the Secretariat was developing for their selection and appointment and for monitoring or reviewing their work.

2.1.5 With respect to staffing, the Director took the opportunity to thank Mr Matthew Sommerville, Head of Claims Department/Technical Adviser, who had recently resigned, and three members of staff who had also left the Secretariat since the October 2012 sessions, namely Ms Françoise Ploux, Ms Paloma Scolari de Oliveira and Ms Zuhal Georgiades, for their contribution to the work of the IOPC Funds. He stated that the recruitment process for the Head of Claims Department was ongoing. However, he explained that he did not intend to make a separate appointment to the role of Technical Adviser, but instead he was considering the establishment of a Technical Advisory Body to be called upon as required.

2.1.6 The Director went on to address a number of treaty matters and developments in the international compensation regime. He informed the governing bodies that a legal opinion had been sought on the liability of Contracting States if the 1992 Fund Convention had not been correctly implemented. The opinion was submitted for consideration by the 1992 Fund Assembly at its October 2013 session. He also referred to the work being carried out by the Secretariat, in cooperation with IMO, on the promotion of the entry into force of the 2010 Hazardous and Noxious Substances (HNS) Protocol.

2.1.7 With respect to external relations, the Director reported on the success of the 2012 IOPC Funds' Short Course and on the arrangements for the next course which was set to take place during the week of 11 November 2013, with participants from ten 1992 Fund Member States. He took the opportunity to thank the International Maritime Organization (IMO), INTERTANKO, the International Chamber of Shipping (ICS), the International Group of P&I Associations and the International Tanker Owners Pollution Federation Ltd (ITOPF) for continuing to support the course.

2.1.8 The Director also referred to the successful launch of the new IOPC Funds' website which had been made available in English, French and Spanish since the October 2012 sessions. He informed the governing bodies of the positive feedback and increase in numbers of visitors to the various areas of the site. He confirmed that further features were under development and that the site would continue to be improved and updated on a regular basis. He invited delegations to pass any feedback directly to the Secretariat.

2.1.9 In terms of publications, the Director referred to the Annual Report 2012 and the publication Incidents involving the IOPC Funds 2012 which were both made available in early 2013, as well as the revised Claims Manual which was due to be published by November 2013.

2.1.10 The Director explained that the Secretariat had continued its efforts to boost the engagement of Member States and encourage the involvement of non-Member States. He pointed out that, since the October 2012 sessions, the Secretariat had hosted two further informal regional lunch meetings at its offices. He also pointed out that he and other members of the Secretariat had participated in national or regional seminars or workshops and conferences relating to the international oil pollution and/or HNS liability and compensation regimes in Australia, Colombia, Indonesia, Italy, Japan, Malta, Morocco, Netherlands Antilles, Portugal, Republic of Korea and Singapore. In addition the Secretariat had given presentations to a number of visiting universities.

2.1.11 The Director referred to section 7 of his report relating to the winding up of the 1971 Fund. The governing bodies noted that the 1971 Fund Administrative Council would be invited during the current session to consider the recommendations of the Consultation Group and decide whether to dissolve the 1971 Fund at its October 2014 session.

2.1.12 On the occasion of the 35th anniversary of the IOPC Funds, the Director pointed out that with 113 States having ratified the 1992 Fund Convention and 30 States having ratified the Supplementary Fund Protocol, it was clear that the international liability and compensation regime remained popular and was continuing to work well. Looking ahead, however, the Director stated that it was important that the IOPC Funds continued to evolve and to serve society as intended. The Director took the opportunity to express his gratitude to all Member States, the P&I Clubs, the oil industry in Member States and the international shipping community for their input and commitment to the work of the Organisations. He also recognised the great help and expertise that IMO continues to provide to the IOPC Funds. He thanked all Chairmen, members of the Audit Body and of the Investment Advisory Body and the representatives of the External Auditor. He expressed his particular appreciation to all the members of the Secretariat for their dedication to the Funds over the past 12 months.

Debate

2.1.13 Two delegations raised questions in relation to the Director's proposal to establish a Technical Advisory Body. The Director stated that he was considering appointing technical experts to be called upon as required, rather than appointing a full-time Technical Adviser as in the past. He confirmed that the costs would be covered by the administrative or incident budgets. The Chairman noted that the subject would be discussed in detail under Agenda item 7, Secretariat Matters.

3 Incidents involving the IOPC Funds

3.1	**Incidents involving the IOPC Funds** **Document IOPC/OCT13/3/1**		**92EC**	**SA**	**71AC**

The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT13/3/1, which contained information on documents for the October 2013 meetings relating to incidents involving the IOPC Funds.

3.2	**Incidents involving the IOPC Funds – 1971 Fund: *Vistabella, Aegean Sea* and *Iliad*** **Document IOPC/OCT13/3/2**				**71AC**

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT13/3/2 concerning the *Vistabella*, *Aegean Sea* and *Iliad* incidents.

Vistabella

3.2.2 It was recalled that the Court of Appeal in Guadeloupe had rendered a judgement in favour of the 1971 Fund for €1 289 483 plus interest and costs. It was also recalled that the 1971 Fund had brought summary legal proceedings against the insurer in Trinidad and Tobago to enforce the judgement. It was further recalled that the shipowner's insurers were opposing the enforcement and that in July 2012 the Court of Appeal in Trinidad and Tobago had decided in favour of the shipowner's insurer.

3.2.3 The Administrative Council recalled that in October 2012, the 1971 Fund had been awarded conditional leave to appeal to the Privy Council. It was noted that following the completion of formalities at court, final leave to appeal to the Privy Council had been granted in March 2013. It was further noted that thereafter the Fund's English lawyers had lodged notice of appeal at the Privy Council and that it was expected that the hearing would take place in June 2014.

Aegean Sea

3.2.4 The Administrative Council recalled that in a judgement delivered in July 2012 the Court of First Instance had awarded the last outstanding claimant in this case, a fishpond owner, €363 746 plus interest but that since the claimant had not included the pilot/Spanish Government in the proceedings, the 1971 Fund would only be liable in respect of 50% of the awarded amount, ie €181 873. It was also recalled that the 1971 Fund had appealed against the judgement. It was further recalled that the Spanish State would, under the agreement with the 1971 Fund, pay any amounts awarded by the Courts. The Administrative Council noted that in a judgement delivered in October 2013 the Court of Appeal had reduced the amount awarded to the claimant to €114 000 plus interest, of which the 1971 Fund would be liable for 50% plus interest and costs.

3.2.5 The Director reported that he had discussed this case with the Spanish Ambassador in London who had confirmed his willingness to assist the 1971 Fund.

3.2.6 The Spanish delegation confirmed the information given to the 1971 Fund Administrative Council by the Director and stated that the Spanish Embassy in London had been in contact with the Spanish Ministry of Finance with regard to this case and would inform the Secretariat of any further developments.

Iliad

3.2.7 It was noted that in July 2013 the shipowner and his insurer had informed the 1971 Fund that all the claimants had been duly summoned to the limitation proceedings. It was also noted that the hearing at the Court of Nafplion was scheduled for November 2013.

3.2.8 It was noted that taking into account the total claim amount approved by the liquidator and applicable interest, it seemed unlikely that the final adjudicated amount would exceed the limitation sum of €4.4 million and that in any event the claims were time-barred *vis-à-vis* the 1971 Fund. It was noted that although the likelihood of the 1971 Fund having to pay compensation appeared to be slim, it should be taken into account that 446 claimants had filed appeals against the liquidator's report, that the total claim amount of €10.8 million had yet to be determined by the Court and that the 1971 Fund would therefore have to continue monitoring the legal proceedings.

3.3

Incidents involving the IOPC Funds – 1971 Fund: ***Nissos Amorgos*** **Document IOPC/OCT13/3/3**				**71AC**

3.3.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT13/3/3 concerning the *Nissos Amorgos* incident.

Limitation of liability

3.3.2 It was recalled that in June 1997, the Criminal Court of Cabimas had held that the shipowner's liability was limited to Bs3 473 462 786 (US$7.3 million) and that the 1971 Fund's limit of liability was 60 million SDR (Bs39 738 409 500 or US$83 221 800).

3.3.3 It was recalled that in February 2010, the Maracaibo Criminal Court of First Instance had held that the master, the shipowner and the Gard Club had incurred a civil liability derived from the criminal action and had ordered them to pay to the Venezuelan State BsF 29 220 620 (US$60 million) plus indexation, interests and costs. It was also recalled that in its judgement the Court had denied the shipowner the right to limit his liability. It was also recalled that in its judgement, the Maracaibo Criminal Court of First Instance had stated that the 1971 Fund had a responsibility, as provided in Articles 2 and 4 of the 1971 Fund Convention, to intervene in those cases in which the compensation available under the 1969 CLC was insufficient.

3.3.4 It was also recalled that in March 2011, the Maracaibo Criminal Court of Appeal had upheld the judgement of the Maracaibo Criminal Court of First Instance and rejected the shipowner's request to limit its liability. It was further recalled that the Court of Appeal had also decided that it would be for the shipowner and his insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund.

3.3.5 The Administrative Council noted that in May 2013 the Supreme Court (Criminal section) had upheld the judgement of the Maracaibo Criminal Court of Appeal and the Maracaibo Criminal Court of First Instance, dismissing the appeals by the master, the shipowner, the Gard Club and the 1971 Fund. It was noted that this judgement was now final.

Meetings with the Gard Club and the International Group of P&I Associations

3.3.6 It was noted that a meeting had taken place with the Gard Club in Arendal, Norway in June 2013, between the Chief Legal Counsel and the Head of Claims from the Gard Club, Mr Alfred Popp, Chairman of the Consultation Group on the winding up of the 1971 Fund, Mr Gaute Sivertsen (Norway), and the Director of the IOPC Funds on behalf of the 1971 Fund.

3.3.7 It was noted that during the meeting it was mentioned that the Club would look to the Fund for reimbursement of any sum above the limitation amount. It was also noted, however, that the Director had stated that the 1971 Fund could only pay compensation arising from a legal obligation and that in this case, the judgement by the Supreme Court of Venezuela had not ordered the 1971 Fund to pay compensation.

3.3.8 It was also noted that a further meeting with the International Group of P&I Associations, the Gard Club, the Chairman of the Consultation Group and the Director had taken place in September 2013 and that although the parties had not reached an agreement, all parties had considered that it was important to continue the discussions.

Director's considerations

3.3.9 It was noted that the Director sympathised with the situation in which the Gard Club found itself and that in the Director's view, this decision by the Venezuelan Courts was wrong since there were no grounds to hold that the shipowner was not entitled to limit his liability.

3.3.10 It was also noted that although the judgement by the Court of First Instance, confirmed by the Court of Appeal and Supreme Court, had stated that it would be for the shipowner and his insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund, the judgement by the Venezuelan Courts was not against the 1971 Fund.

3.3.11 It was further noted that, in the Director's view, it would be very difficult for the 1971 Fund to agree to pay compensation in excess of the shipowner's limitation amount since the judgement was not against the 1971 Fund and that the 1971 Fund could only pay compensation based on a legal obligation to do so, which, in this case, did not exist.

Statement by the International Group of P&I Associations

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

> Mr Chairman
>
> This delegation has observations to make in connection with the *Nissos Amorgos* incident. We should be grateful if these could be recorded in full in the Record of Decisions and we have provided a copy to the Secretariat. Document IOPC/OCT13/3/3 requests the Administrative Council to decide whether the 1971 Fund should reimburse the Gard Club any amount paid as a consequence of a judgement by the Supreme Court of Venezuela. This request is made in the context of the recent judgement of the Supreme Court dismissing the appeals of the Club and the Fund and upholding a decision of the Maracaibo Court of Criminal Appeal.
>
> It is not the intention of this delegation to pre-empt the discussion which will take place tomorrow concerning the winding up of the 1971 Fund but inevitably some of the issues overlap.
>
> The International Group wrote to the Director and the Chairman of this Administrative Council at the end of last week setting out the International Group's position on the winding up of the 1971 Fund, with specific regard to the *Nissos Amorgos* case. It was hoped that this letter would allow this intervention to be as short as possible whilst ensuring those asked to decide on this matter had the detail of the Group's position in a document to which they could refer. Copies of that letter are available here today.
>
> The first consequence of the judgement of the Supreme Court is that steps are being taken to draw down on the limitation fund guarantee. When giving judgement, the Maracaibo Criminal Appeal Court stated that this bank guarantee provided by the Club did not constitute a limitation fund. It stated that it was simple security for the claim by the

Venezuelan State, and that the judgement could therefore be enforced against it. Copies are available in this room today, in Spanish and in English, of the text of the guarantee, the petition by which it was offered to the Cabimas Court, and the order by which that Court accepted the guarantee and petition when releasing the ship, if delegates wish to view them. So far as the Club is concerned, the Court has wrongly appropriated a properly constituted limitation fund in favour of one party alone, to the exclusion of other parties with claims against it. Execution proceedings are now in progress to satisfy the judgement. At present these include steps to draw down from the bank guarantee, and it appears inevitable that this will be done without any account being taken of the Club having already paid claims up to the limitation amount, those claims having been paid by the Club according to the practice agreed between the Club and the Fund and outlined in 5.1 of the Note of the Secretariat. As a result, it is likely the Club will have to bear at least approximately twice the limitation amount and will therefore be faced with having overpaid over the CLC limit through no fault of the Club. This is exactly one of the scenarios that this delegation has been explaining to States in the context of the interim payments debate in the 1992 Fund Working Group that has been considering this delegation's concerns in that regard.

It is the view of this delegation that, irrespective of the lack of merits of the claim (upon which both Club and Fund are agreed), execution of the Supreme Court judgement will result in the Gard Club having paid at least twice the limitation sum. A substantial proportion of that amount is attributable not to the judgement of the Supreme Court, but rather to the Club paying claims against the shipowner, the Club and the Fund which even the Fund considered were admissible and with its agreement.

Delegates are therefore strongly urged against taking a decision, which will undermine the existing practice of the clubs to advance money prior to the distribution of the limitation fund in order to facilitate early payment of claims. It is submitted that the ruling in Venezuela can in any event have no bearing on the accounting position between the Club and the Fund since there never has been any dispute between the Club and the Fund that the owner is entitled to limit liability.

Another possible consequence of the judgement of the Supreme Court is that the Court may look to the owner and the Club to satisfy the remainder of the judgement. If this were to happen the Club would seek reimbursement from the Fund for the sum in excess of the shipowner's limitation amount. The judgement of the Venezuelan Criminal Court in 2010, which was upheld by both the Criminal Court of Appeal and the Supreme Court, stated that the Fund is legally liable to pay. As is noted in the IOPC Funds 2012 Report of the Incident the Venezuelan courts appear to have envisaged that the Fund would reimburse the Club and it is the firm view of this delegation that the Fund does have an obligation to do so. It may be that the Fund disagrees with the existence of that obligation but its existence or otherwise is a matter which should be determined by the competent court should that prove necessary. Should the Administrative Council take the decision now before it, followed by a decision to commence the winding up of the 1971 Fund it will pre-empt that proper resolution and render it academic.

Debate

3.3.13 Most delegations that took the floor expressed sympathy for the shipowner and the Club, acknowledged the historical good relationship between the IOPC Funds and the P&I Clubs, and questioned the Supreme Court's judgement. Nevertheless, the majority of delegations agreed with the Director's view that the 1971 Fund could only pay according to a legal obligation which did not exist in this case since the judgement was not against the 1971 Fund and that therefore no reimbursement should be made to the Gard Club of money paid as a result of the Supreme Court judgement.

3.3.14 One delegation expressed concern that payment in such circumstances could set a very dangerous precedent in situations where the courts ordered the shipowner to pay above the limitation amount, expecting the Fund to pay the balance. Another delegation also stated that it could not see how the 1971 Fund could now raise further contributions. Two delegations stated that in any case, since the claim was for environmental damage and therefore not admissible, the 1971 Fund could not pay.

3.3.15 Some delegations stated, however, that the 1971 Fund could pay joint administrative costs if required.

3.3.16 The Venezuelan delegation requested a clarification in respect of paragraph 4.3 of document IOPC/OCT13/3/3 which mentioned that the civil claim by the Republic of Venezuela was not admissible and that it was time-barred. That delegation stated that the Fund was obliged to comply with final decisions of the courts in Member States. The Director, in reply to the question by the Venezuelan delegation, referred to the detailed information contained in the Annex of document IOPC/OCT13/3/3 and explained that the claim had been submitted in court very soon after the incident and that it was based on an abstract calculation made in a university report. The Director explained that thereafter most of the claimed items included in the original claim submitted by the Republic of Venezuela had been compensated, including the cost of the clean-up operations, and that the claim by the Republic of Venezuela had no real basis. The Director also explained that the claim by the Republic of Venezuela was time barred *vis-à-vis* the 1971 Fund since the claimant had failed to bring a court action against the 1971 Fund within six years of the date of the incident.

3.3.17 A number of delegations were of the view that there should be further discussion before taking a decision. One delegation expressed doubts and concern about the lack of respect of the shipowner's insurer's right to limit its liability and that the Court had wrongly appropriated the limitation fund. That delegation stated that the Club had always acted in good faith and that it understood the arguments raised by the International Group of P&I Associations. Another delegation raised the question of whether it could be argued that the Conventions could give rise to the possibility of the shipowner's insurer obtaining reimbursement from the Fund in cases where the insurer unjustifiably had been obliged to pay over the limitation amount for a claim which had also been raised against the Fund. In reply to the concerns raised by these delegations the Director stated that in his view the shipowner had the right to limit its liability but that the question was whether the Fund had a legal obligation to pay. The Director also explained that, although there was an *obiter dicta* in the judgement mentioning an obligation of the 1971 Fund to pay, the judgement was not against the 1971 Fund and there was therefore no legal obligation of the 1971 Fund to pay.

3.3.18 In reply to a question raised by the International Group of P&I Associations the Director clarified that discussions would continue with the Gard Club within the limits of the decision taken by the Administrative Council. The Director also confirmed that the joint administrative costs needed to be calculated with the result that the corresponding money would be paid to the Club.

1971 Fund Administrative Council Decision

3.3.19 The 1971 Fund Administrative Council, whilst expressing sympathy for the shipowner and the Club in this case, decided that the 1971 Fund should not reimburse the Club of any payments made as a consequence of the Supreme Court judgement (Criminal Section) in respect of the claim by the Bolivarian Republic of Venezuela.

3.4

Incidents involving the IOPC Funds – 1971 Fund: ***Plate Princess*** **Document IOPC/OCT13/3/4**				**71AC**

3.4.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT13/3/4 concerning the *Plate Princess* incident.

Legal proceedings

3.4.2 It was recalled that in 1997 two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union, had presented claims in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess*. It was also recalled that in October 2005, ie eight years after the incident took place, the 1971 Fund had been formally notified, as an interested third party, of both claims. It was further recalled that the 1971 Fund Administrative Council had decided that both claims were time-barred in respect of the 1971 Fund.

Claim by FETRAPESCA

3.4.3 It was recalled that in September 2012 the 1971 Fund had been formally notified of the judgement relating to the claim by FETRAPESCA, which had been rendered by the Maritime Court of First Instance in February 2009. It was also recalled that the quantum of compensation would be assessed by court experts to be appointed at a later date. It was further recalled that in October 2012 the 1971 Fund had filed an appeal against the February 2009 judgement.

Claim by Puerto Miranda Union

3.4.4 It was recalled that in March 2011 the Maritime Court of First Instance had issued a judgement relating to the claim by Puerto Miranda Union in which it ordered the 1971 Fund to pay BsF 400 628 022 plus costs and that successive appeals by the master, shipowner and the 1971 Fund had been rejected by the Courts. It was also recalled that in August 2012 the Constitutional Section of the Supreme Court had confirmed this decision and that this judgement was now final.

Decisions taken by the 1971 Fund Administrative Council at its October 2012 session

3.4.5 It was recalled that at its October 2012 session the 1971 Fund Administrative Council had decided to maintain its previous decisions instructing the Director not to make any payment in respect of this incident and to oppose the enforcement of the judgement.

Enforcement of the judgement

3.4.6 It was recalled that in December 2012 the Banco Venezolano de Credito had filed a cheque at Court for BsF 2 844 983 corresponding to the amount of the guarantee issued to cover the limitation fund.

3.4.7 The Administrative Council recalled that the Puerto Miranda Union lawyers had 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. It was also recalled 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.

3.4.8 It was also recalled that in January 2013 the Maritime Court of First Instance had 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 due from PDVSA.

3.4.9 It was recalled that in February 2013 the Puerto Miranda Union had requested a 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 a member of the 1992 Fund only. It was 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.

3.4.10 It was noted that in February 2013 the Maritime Court of First Instance had accepted the request filed by the Puerto Miranda Union for an embargo over the Fund's assets, and had ordered the embargo of contributions owed by PDVSA to the Fund up to a limit of BsF 412 646 863, which corresponded to the amount awarded against the 1971 Fund, ie BsF 400 628 022 plus execution costs. It was also noted that the Court did not specify whether it referred to the 1971 Fund or the 1992 Fund or both.

3.4.11 It was further noted that in February 2013 the Maritime Court of First Instance had issued an order of embargo of any assets the Fund might have in Venezuela, up to a limit of BsF 921 444 450, ie double the amount awarded against the 1971 Fund plus 30%. It was noted that in the order the Court referred expressly to the ratification by Venezuela not only of the 1971 Fund Convention but also of the 1992 Protocol. It was noted that the 1971 Fund had appealed against this order but that there had been no developments in respect of this appeal.

Statement by the Venezuelan delegation

3.4.12 The delegation of Venezuela made the following statement (original Spanish):

> Thank you Mr Chairman and good morning to you all. We thank the Secretariat for their document. This case is really old and our State has presented the reasons why the Fund should compensate those affected by the incident. The Venezuelan State maintains its position that the Fund must respect the decisions of the competent courts of Member States, in accordance with the letter and spirit of the Convention by the Fund, which relies on its content to say that it is not required to pay compensation. Moreover, a precedent was set when the Fund accepted the decision of a French court which determined the liability of a ship for a spill which occurred outside its jurisdiction. Lastly, we reiterate the obligation that the 1992 Fund has, under the Convention, to compensate our compatriots, given that having been created by the Protocol to the Fund Convention, all outstanding claims against the 1971 Fund now fall to the 1992 Fund. Our State demands respect for its institutions, in this case, its highest court. Thank you, Mr Chairman.

Debate

3.4.13 The majority of delegations that took the floor, whilst recognising that the 1971 Fund Administrative Council was not the right body to discuss questions pertaining to the 1992 Fund, expressed concern about the order of embargo on 1992 Fund assets, and stated that it was improper to associate the 1992 Fund with the *Plate Princess* incident which only involved the 1971 Fund. It was also stressed that the 1971 Fund and 1992 Fund were two different legal persons.

3.4.14 The Administrative Council noted that the Director would inform the 1992 Fund Administrative Council of the embargo issued by the Venezuelan Courts on the 1992 Fund's assets in Venezuela.

3.5	**Incidents involving the IOPC Funds – 1992 Fund: *Erika* Document IOPC/OCT13/3/5**		**92EC**		

3.5.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/5 concerning the *Erika* incident.

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

3.6	**Incidents involving the IOPC Funds – 1992 Fund: *Prestige* Document IOPC/OCT13/3/6**		**92EC**		

3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/6 concerning the *Prestige* incident.

Legal proceedings in Spain

3.6.2 It was recalled that three persons stood trial for criminal liability before the Audiencia Provincial in La Coruña (Criminal Court in La Coruña) as a result of the *Prestige* oil spill, namely, the master, the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. It was noted that the oral hearing, which had commenced in October 2012, had continued until July 2013. It was noted that the Court would decide not only the criminal liabilities arising from this incident but also the distribution of the limitation fund and the compensation due.

3.6.3 It was recalled that 2 531 claims had been lodged in the legal proceedings before the Court. It was noted that the total amount claimed was €2 317 million including pure environmental and moral damage. It was also noted that in their interventions some claimants had argued that, since their claims were not against the 1992 Fund, the criteria for admissibility of claims under the Civil Liability and Fund Conventions should not be applied in these proceedings. It was further noted that some parties had argued that the shipowner should not be entitled to limit his liability.

3.6.4 It was noted that the 1992 Fund had, in its interventions in Court, defended the application of the Conventions in the proceedings. The Executive Committee noted that the Court decision was expected in November 2013.

3.6.5 The Director took the opportunity to thank the Head of the Claims Office in Spain, Juan Carlos Garcia Cuesta, and one of the experts that had been working for the IOPC Funds for a number of years, Alicia Sanmamed, who were present in the room, for their excellent work.

Legal proceedings in France

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

Legal action by France against ABS

3.6.7 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, the classification society that certified the *Prestige* and that the defendants had opposed this action alleging that it was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.

3.6.8 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

3.6.9 It was recalled that following the decision of the 1992 Fund Executive Committee at their October 2012 session, the 1992 Fund had brought a recourse action against ABS in the Court of First Instance in Bordeaux as an interim measure to avoid the action becoming time-barred under French law.

3.6.10 It was noted that ABS had submitted points of defence relying on the defence of sovereign immunity.

3.6.11 It was recalled that the proceedings in the Bordeaux Court had been stayed pending the decision in the criminal proceedings in Spain.

3.7	**Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT13/3/7**		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of document IOPC/OCT13/3/7 which contained information relating to the *Solar 1* incident.

Claims for compensation

3.7.2 It was noted that as at 5 August 2013, some 32 466 claims had been received and that payments totalling PHP 987 million (£14.3 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. The Executive Committee noted that all claims had now been assessed and that the local claims office had been closed.

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

Legal proceedings by the Philippine Coastguard (PCG)

3.7.4 The Executive Committee recalled that the PCG had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations. Defence pleadings were filed by the 1992 Fund. It was recalled that an offer of settlement for PHP 104.8 million for both claims had been accepted by the PCG. It was noted that in April 2012, the Secretariat provided the PCG with a draft compromise agreement, the terms of which were agreed with the PCG. However, since then due to a number of changes in personnel at the PCG and the necessity to gain approval from the Office of the Solicitor General (OSG) of the Philippines, matters had been delayed. It was further noted that despite numerous requests made thereafter, the Solicitor General had not yet signed the compromise agreement.

3.7.5 It was noted that in April 2013 the Director had written to the Ambassador of the Philippines in London with a request for any assistance that he could provide to enable the 1992 Fund to make payment. It was also noted that since drafting document IOPC/OCT13/3/7, the Solicitor General had recently declined to sign the settlement documents pending the provision of further information explaining how the submitted claim of PHP 326 570 853.97 had been calculated and why the assessment by the 1992 Fund of PHP 104 757 389 was reasonable.

3.7.6 It was further noted that this information had again been provided to the OSG and the Secretariat remained hopeful that the settlement monies would be paid shortly.

Legal proceedings by 967 fisherfolk

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

3.7.8 It was further recalled that in April 2012, the Guimaras Court ordered that the case proceed through the Philippine legal system and that a pre-trial hearing had taken place in July 2012 in order to explore the possibility of an amicable settlement. The 1992 Fund's lawyer attended the pre-trial hearing at which the Court ordered that mediation hearings take place in August and September 2012 before a court-accredited Mediator.

3.7.9 It was also recalled that the 1992 Fund had instructed its lawyers to meet with the claimants' lawyers before the first mediation hearing in August took place, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings.

3.7.10 It was noted however that when the Fund's and claimants' lawyers met, the claimants' lawyers had not prepared any formal documentation furthering their case. Furthermore, at the first mediation meeting in August 2012, no progress was made in settling the matter although the claimants' lawyers indicated they would put forth a proposal for an amicable settlement in due course. It was noted however that as at the October 2013 session of the Executive Committee, no such proposal had been received.

3.7.11 It was noted that the case had proceeded to mediation and a pre-trial hearing had taken place in September 2012 at which directions were given for the future conduct of the case, including discovery procedures for the presentation of documents to the opposing party and the Court. It was also noted that in June 2013, the claimants failed to submit Judicial Affidavits as required under Philippine law, as a consequence of which the 1992 Fund's lawyer applied to the Court to declare the claimants as having waived the right to adduce evidence, in effect, requesting a plea for the outright dismissal of the claim. It was also noted that the request was deemed submitted for resolution, but that since drafting document IOPC/OCT13/3/7, the 1992 Fund's application to dismiss the claim had been denied and the matter was therefore set for trial in December 2013.

Legal proceedings by a group of municipal employees

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

3.7.13 It was also recalled that in April 2012, the Guimaras Court had ordered that a pre-trial hearing take place in July 2012, in order to explore the possibility of an amicable settlement. The 1992 Fund's lawyers had attended the pre-trial hearing at which the Court ordered that mediation before a court-accredited Mediator take place in August 2012.

3.7.14 It was further recalled that the 1992 Fund had instructed its lawyers to meet with the claimants' lawyers before the first mediation hearing took place, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings. However, it was noted that the claimants' lawyers had made no further proposals nor had they produced any further evidence to support their case, so no progress had been made in resolving the proceedings. Furthermore, it was noted that the claim had been set for trial in December 2013.

3.8	**Incidents involving the IOPC Funds – 1992 Fund:** ***Volgoneft 139*** **Document IOPC/OCT13/3/8**		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/8 concerning the *Volgoneft 139* incident.

The 'insurance gap'

3.8.2 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 1992 Fund had appealed against the Court's ruling, arguing that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 174.8 million) and that therefore the Court's ruling which had established the shipowner's limitation fund at only 3 million SDR should be amended. 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.

3.8.3 It was also recalled that in June 2012 the Arbitration Court of Saint Petersburg and Leningrad Region had delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million including legal interest.

3.8.4 It was further recalled that the judgement had been confirmed by the Court of Appeal and the Court of Cassation but that the 1992 Fund had requested leave to appeal to the Supreme Court.

3.8.5 It was noted that in a ruling delivered in July 2013, the Supreme Court had decided that the Presidium of the Supreme Court should consider the 1992 Fund's appeal on the 'insurance gap'. It was noted that the Supreme Court had stated that:

- When rendering their judgements the lower courts had not taken into account the amendments to the liability limits under the 1992 Civil Liability and Fund Conventions had been introduced by a resolution adopted by the Legal Committee of the International Maritime Organization (IMO) in October 2000, which had entered into force in November 2003.

- The lower courts had not taken into account that in accordance with the Vienna Convention on the Law of Treaties 1969, a treaty enters into force in the order and on the date provided in the treaty itself. This Convention also provides that a treaty shall be amended by agreement among the participants. In the course of consideration of the present case, a question arose as to whether the amendments to the liability limits had been published in the Russian Federation when the limitation fund was established in 2007. International practice in similar cases established that a company (unlike a physical person) cannot justify performance of actions in violation of any rules of law referring to the fact that these rules had not been officially published in the State.

- The lower courts had not investigated the question of whether the shipowner knew or should have known about the increase of the liability limits. In addition, the lower courts should have questioned whether the insurance company, as a professional participant of the market of international insurance of liability in connection with the transportation of oil, should have been aware of the resolutions of the IMO, increasing the limits of liability of the shipowners.

- The approach by the lower courts, according to which the 1992 Fund should pay the amount of underinsurance because the amendments of the liability limits had not been published prior to the date of the incident in the Russian Federation nor brought to the knowledge of professional participants of the market, was incorrect taking into account the circumstance that the 1992 CLC and the 1992 Fund Convention contained a rule that amendments thereto were introduced on the basis of decisions of the IMO.

- The approach taken by the lower courts violated the rights and lawful interests not only of the 1992 Fund but also of its contributors in Member States.

- A lower liability limit imposed an unjustifiable additional financial burden on the 1992 Fund and its contributors by way of the difference between 4.51 million SDR and 3 million SDR.

3.8.6 The Executive Committee noted that in a judgement rendered in October 2013 the Presidium of the Supreme Court had ordered that the judgements of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in the part that had ordered the Fund to cover the 'insurance gap' of 1 510 000 SDR and ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for a new consideration on that point.

Claims for compensation and amounts awarded by the Court

3.8.7 It was recalled that, at its April 2013 session, the 1992 Fund Executive Committee had decided to authorise the Director to pay private claimants in full according to the Court ruling and make interim payments to the three government claimants, with pro-rated deductions to cover the 'insurance gap'. It was noted that in accordance with the decision by Executive Committee, the 1992 Fund had commenced making payments and that all private claimants had been paid in full. It was noted that

there remained only the three government agencies to be paid and that the 1992 Fund was now awaiting a reply from the three government agencies to be able to pay the amounts owed to them after having discounted the 'insurance gap'.

Debate

3.8.8 One delegation asked the Director whether the Presidium of the Supreme Court had given any examples of the international practices (see paragraph 3.8.5) that according to the Court established that a company (unlike a physical person) could not justify performance of actions in violation of any rules of law referring to the fact that these rules had not been officially published in the State. The Director explained that no further information had been given by the Court so far but that the Secretariat was still waiting for a translation of the written judgement which would be made available to Member States.

3.8.9 Another delegation enquired about the insurance cover and expressed concern that if the cover was only for 3 million SDR there was still an 'insurance gap'. The Director replied that, although the insurance company had argued that cover was US$5 million, ie 3 million SDR, in his opinion there might be more cover available. He noted that, in any case, all the parties would have to wait for the final judgement to see how the 'insurance gap' would be resolved by the Court.

3.8.10 Two delegations expressed satisfaction with the judgement especially with the way the Court had dealt with the issue of the obligations of Member States towards the Conventions. Satisfaction was also expressed that private claimants had been paid.

3.8.11 Another delegation enquired as to the reasons why the government agencies had not yet been paid. The Director replied that the Russian Administration tended to be formalistic and that, since the payment proposed was an interim payment to take into account the 'insurance gap', the government agencies in question had felt uneasy as to the formalities required in order to receive those payments and that for that reason they had decided to wait for a final Court decision.

3.9	**Incidents involving the IOPC Funds – 1992 Fund:** ***Hebei Spirit*** **Document IOPC/OCT13/3/9**		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/9 in respect of the *Hebei Spirit* incident.

Claims situation

3.9.2 The 1992 Fund Executive Committee noted that as at 21 October 2013, 128 403 individual claims totalling KRW 2 578 billion had been registered. It also noted that 128 389 claims had been assessed at a total of KRW 198.7 billion, out of which 87 336 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

3.9.3 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.

3.9.4 The Executive Committee recalled 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.

3.9.5 The Executive Committee recalled 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 70 000 individual claimants had also appealed.

3.9.6 The Executive Committee noted that the Court was considering the appeals.

Time bar

3.9.7 The Executive Committee noted that 7 December 2013 would be the six-year anniversary of the date of the incident. The Executive Committee further noted that four legal actions against the 1992 Fund had been commenced by 53 claimants, one of which had recently been discontinued. The Executive Committee noted that more than 70 000 claimants had filed objections against the Limitation Court judgement. The Executive Committee noted that, under Korean law, any decision of the limitation proceedings would only be directly enforceable upon the shipowner and that, whilst the 1992 Fund would be bound by the facts and findings established in those proceedings, the decision would not be enforceable against the 1992 Fund.

3.9.8 The Executive Committee noted that the Director had held consultations with the Korean Government in order to explore practical ways, compatible with Korean law, to ensure that the claimants did not lose their right to receive compensation from the 1992 Fund due to their claims becoming time-barred. It further noted that, in order to clarify the interpretation of Articles 6 and 7.6 of the 1992 Fund Convention and its application under Korean law, the Director and the Korean Government had agreed to jointly appoint a former Supreme Court Judge to issue an opinion on the matter and to abide by his opinion.

3.9.9 The Executive Committee further noted that the former Supreme Court Judge supported the Director's view that in order for the victims to preserve their right to claim compensation from the 1992 Fund, they should bring a legal action against the 1992 Fund within three years from the date of the damage or six years from the date of the incident.

3.9.10 The Korean delegation, after thanking the Secretariat for its efforts to resolve the issue of the impending time bar, informed the Executive Committee that consultations were being held with the representatives of private claimants and the local authorities in order to inform them that, if no settlement was reached before December 2013, they needed to file an action in court against the 1992 Fund. The Korean delegation further informed the Executive Committee that it expected that all claimants who had not yet settled their claims would commence an action against the 1992 Fund by December 2013 and that the Korean Government had already started actions against the 1992 Fund and that it expected to file all actions in court for all its claims by the end of November 2013.

Level of payments

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

3.9.12 The 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 198.7 billion), it would be possible for the 1992 Fund to raise the level of payments to 100%.

3.9.13 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.

3.9.14 The Executive Committee also noted that some 70 000 claimants had appealed the decision of the Limitation Court and that the amounts of the appeals was still unclear. 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.

3.9.15 The 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 First Instance.

3.9.16 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

3.9.17 The delegations that took the floor supported the Director's proposal to maintain the level of payments at 35%, in view of the large discrepancy between the amount assessed by the Fund and the Club, and the amount determined by the Limitation Court.

3.9.18 One delegation complimented the Director for maintaining a cautious stand over the years with regard to the level of payments, which was now fully justified. That delegation asked the Director to clarify why there was such a large disparity between the judgement of the Limitation Court and the 1992 Fund's assessments. The Director explained that the main reasons for the difference were that the Limitation Court had accepted claims for mortality and future losses, both for the private and government claims, as well as accepting longer period of losses for the fisheries and tourism sectors than the Fund considered reasonable.

1992 Fund Executive Committee Decision

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

3.10	**Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina** **Document IOPC/OCT13/3/10**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/10 concerning an incident in Argentina.

Claims situation

3.10.2 It was recalled that 331 claims for compensation for a total of AR$53.3 million and US$391 294 had been submitted. It was also noted that 143 claims had been assessed at a total of AR$4.6 million and US$115 949 and that payments totalling AR$3.6 million and US$115 949 had been made by the Club. It was further noted that among the 143 assessed claims, 33 had been rejected, two claims were being assessed and the remaining claims were time-barred.

Criminal proceedings

3.10.3 It was recalled that in March 2008 the Federal Court of Comodoro Rivadavia (Criminal Section) had completed the investigatory phase of the proceedings by concluding that the oil spill that had affected Caleta Córdova on 25 and 26 December 2007 came from the *Presidente Illia*. It was also recalled that

five persons including the master, officers and crew had been charged with a water pollution offence under Argentine environment law, whilst the shipowner's representative (Superintendente) had been charged under Argentine criminal law with having hidden information and evidence.

3.10.4 It was recalled that taking into consideration that criminal court decisions are not binding on civil judges, the owner of the *Presidente Illia* would be entitled to try and prove, in any of the civil court proceedings, that the spill did not come from the *Presidente Illia*. It was recalled, however, that the findings in the criminal proceedings would have some bearing when the civil judge delivered her decision.

Civil proceedings

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

3.11	**Incidents involving the IOPC Funds – 1992 Fund: *King Darwin* Document IOPC/OCT13/3/11**		**92EC**		

3.11.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/11.

3.11.2 The Executive Committee recalled that the incident, which occurred on 27 September 2008 in the Port of Dalhousie, New Brunswick, Canada, was a small operational spill and that the damage caused was within the 1992 CLC limit. The Executive Committee further recalled that all claims arising out of the incident, apart from one, had been paid by the Steamship Mutual P&I Club and that the 1992 Fund had not been called upon to pay compensation.

3.11.3 The Executive Committee recalled that in September 2009, a dredging company had filed an action in the Federal Court in Halifax, Nova Scotia, against the owner of the *King Darwin*, Steamship Mutual and the 1992 Fund, claiming property damage and consequential losses for Can$143 417.

3.11.4 The Executive Committee noted that in June 2013 the dredging company accepted an offer of settlement from Steamship Mutual and discontinued all legal proceedings against the shipowner, Steamship Mutual and the 1992 Fund.

3.11.5 The 1992 Fund Executive Committee noted with satisfaction that this incident could now be considered closed.

3.12	**Incidents involving the IOPC Funds – 1992 Fund: *Redfferm* Document IOPC/OCT13/3/12**		**92EC**		

3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT13/3/12 which related to the *Redfferm* incident.

3.12.2 It was recalled that in January 2012, the Secretariat was informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank following a transhipment operation from the tanker *MT Concep*. The barge sank spilling an unknown quantity/residue of cargo of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.

3.12.3 It was also recalled that the barge was subsequently raised with the assistance of a crane barge. Clean-up operations were conducted by African Circle who was contracted by the Nigerian Ports Authority. In addition, other government agencies including the Nigerian Maritime Administration

and Safety Agency and the National Oil Spill Detection and Response Agency (NOSDRA) also attended the spill.

3.12.4 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; that in June 2012, the Director and members of the Secretariat visited Nigeria to ascertain further facts of the incident, attempt to meet with the barge owner and visit the affected area; and that in October 2012, preliminary information was provided by the claimants' lawyer detailing the locations of the 102 communities and the numbers of the individuals within the communities allegedly affected by the spill.

3.12.5 It was also recalled that in January 2013, the Secretariat received a valuation of the losses alleged to have been incurred by 63 communities affected by the spill, which amounted to NGN 1.89 billion, and that in late January 2013, a revised valuation was presented which amounted to NGN 2.8 billion.

3.12.6 It was further recalled that in February 2013, a hearing took place at the Federal High Court in Lagos, at which the motion seeking to remove the 1992 Fund as a defendant and to replace the 1992 Fund as an intervenor was heard. It was noted that the Judge ruled that the 1992 Fund could only be a co-defendant in the case, but the 1992 Fund had appealed the ruling.

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

3.12.8 The 1992 Fund Executive Committee further recalled that the report of the Marine Board of Inquiry was provided to the Secretariat at the April 2013 session of the 1992 Fund Executive Committee, at which time the Federal Ministry of Transport presented a claim on behalf of individuals, communities and the Lagos State Government for US$92.62 million.

Claims for compensation

3.12.9 The 1992 Fund Executive Committee noted that the valuations submitted were:

Date	**Type of claim**	**Claim amount**	**Comment**	**Status**
July 2009	Valuation	NGN 150.94 million	Valuation of five communities commissioned by the five communities on Snake Island.	Not filed at court. Time-barred
February 2010	Valuation	NGN 18.96 million	Valuation of five communities on Snake Island by NOSDRA.	Not filed at court. Time-barred
January 2013	Valuation	NGN 1.89 billion	Fund receives valuation on behalf of 63 communities. Survey partly conducted in 2012.	Not filed at court. Time-barred
February 2013	Valuation	NGN 2.8 billion	Above-mentioned valuation amended to include fees.	Not filed at court. Time-barred

3.12.10 Claim filed at court:

Date	**Type of claim**	**Claim amount**	**Comment**	**Status**
March 2012	Claim on behalf of 102 communities	US$26.25 million	Before claim was filed at court, the claimants' lawyer claimed that the claims amounted to US$16.25 million, but when the claim was filed at court, this had increased to US$26.25 million.	Filed at court. Not time-barred

3.12.11 Position statement submitted by the Nigerian Government at the April 2013 session of the 1992 Fund Executive Committee:

Date	Type of claim	Claim amount	Comment	Status
April 2013	Clean up, remediation, health issues and other items	US$92.62 million	Presented by the Nigerian delegation at April 2013 meeting of the 1992 Fund Executive Committee.	Not filed at court. Time-barred

3.12.12 It was noted that of these claims and valuations, only the claim filed at court in March 2012 was within the three-year time bar pursuant to Article VIII of the 1992 CLC.

Analysis of the intervention made by the Nigerian delegation at the April 2013 session of the 1992 Fund Executive Committee

3.12.13 It was recalled that at the April 2013 session of the 1992 Fund Executive Committee, the Nigerian delegation had stated that there were four issues for determination by the IOPC Funds:

(i) Whether the *Redfferm* was a sea-going vessel;
(ii) Whether there was a link of causation between the loss and the incident;
(iii) Whether *Redfferm* had classification; and
(iv) Whether the claimants were entitled to compensation.

Issue (i) Whether the Redfferm was a sea-going vessel

3.12.14 It was noted that the Nigerian delegation had contended that the barge *Redfferm* was a sea-going barge and that reference was made to the previous decision of the IOPC Funds in the case of the *Al Jaziah 1* and to references in the documentation provided at the Marine Board of Inquiry arguing that the barge, although built for inland waters, could and indeed did sail at sea. The Marine Board of Inquiry also stated that after being salvaged the barge went from Lagos to Calabar where she renewed her certificates.

Analysis of whether the barge Redfferm was a sea-going vessel

3.12.15 It was noted that with reference to the *Al Jaziah 1* incident, which was also a vessel built for inland waters, the Director recalled that there was a clear, documented history of the *Al Jaziah 1* undertaking sea-going voyages. Furthermore, the hull insurance policy of the *Al Jaziah 1* covered trading in a fairly wide region where there were no significant inland waterways.

3.12.16 It was further noted however, that the same could not be said for the *Redfferm* barge, which at the time of the incident was used to tranship LPFO from a sea-going tanker, the *MT Concep*, to a shore-based power plant because of its reduced draft and size compared to the *MT Concep*. Moreover, with regard to the *Redfferm* incident, no evidence of any previous sea-going voyages carrying fuel oil had been submitted.

3.12.17 The Executive Committee noted that there was no evidence of the *Redfferm* barge having been built as a sea-going vessel in accordance with relevant classification regulations and that the *Redfferm* was certified for use in the inland waters of Nigeria only.

Issue (ii) Whether there was a link of causation between the loss and the incident

3.12.18 It was noted that the Director acknowledged that there was a spill from the *Redfferm* barge on 30 March 2009. However, what was unknown was the full extent of the spill, contamination and effect upon the communities. It was also noted that there was a large range of numbers of communities alleged to have been affected by the *Redfferm* spill, ranging in numbers from five to 102 communities, but that no evidence of the alleged losses for the nets or engines, such as invoices or repair bills, had been submitted by the claimants or their representatives and it was unlikely that this situation would improve with the passing of further time.

Issue (iii) Whether Redfferm had classification

3.12.19 It was recalled that the Nigerian delegation had stated that the barge *Redfferm* had no classification as this was not mandatory under the relevant laws. That delegation had also stated that the barge *Redfferm* was built in the year 2008 and as such, at the time of the incident, was not due for docking. It was also stated that although she was built for inland waters she could and indeed did sail at sea.

3.12.20 It was noted that the barge *Redfferm* was not built to class specifications and was constructed without plan approval. It was also noted that no evidence had been submitted to prove that the *Redfferm* sailed at sea.

Issue (iv) Whether the claimants were entitled to compensation

3.12.21 The Executive Committee noted that no supporting evidence had been submitted in respect of the claims made and that the 1992 Fund's experts were currently assessing the claims submitted on the basis of the spreadsheets provided by the claimant's representatives. It was further noted that whilst it was too early to provide a definitive view of the claims submitted, a preliminary estimate indicated that the claims substantially exceeded the expected income and losses of fishermen within the Lagos area, based on other publicly available documentation.

Legal proceedings

3.12.22 It was noted that in March 2012, a claim for US$26.25 million was filed by 102 communities allegedly affected by the spill against the owners of the *MT Concep*, the owners of the *Redfferm*, Thame Shipping Agency Ltd (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund but that the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*.

Director's considerations

3.12.23 The Executive Committee recalled that at its October 2012 session, the Director had noted that the claimants affected would likely find it very difficult to prove their losses, and that as time progressed, the likelihood of obtaining accurate information relating to the incident decreased. Similarly the ability of the Fund's experts to accurately calculate the quantum of losses without verified documents in support decreases as time progresses.

3.12.24 The Executive Committee noted that due to the delay between the incident occurring and the 1992 Fund receiving notification of the incident, the claimants would struggle to prove their losses or to establish a link of causation between the damage and the contamination.

3.12.25 The Executive Committee noted that given the aforementioned difficulties in proving and assessing the losses of victims from an incident which occurred almost three years before the 1992 Fund was informed of the incident, the Director regretted that he could not recommend to the 1992 Fund Executive Committee that he be instructed to make payment of compensation to the claimants in respect of this incident.

Additional information submitted by the Nigerian delegation

3.12.26 It was noted that the Nigerian delegation had submitted additional documentation relating to the incident too late to be included in the discussion, but that the Secretariat would examine the information submitted and report back at the next session of the 1992 Fund Executive Committee.

Intervention by the Nigerian delegation

3.12.27 The Nigerian delegation stated that it had showed its commitment by submitting the additional documentation and hoped that it would help to provide assistance to the Secretariat. Recognising the difficulties in attempting to ascertain the facts and assess the losses, the delegation stated that it believed the 1992 Fund could take some positive aspects from the discussions and that it would continue to co-operate fully with the Secretariat.

Debate

3.12.28 A number of delegations stated that with regret, they agreed with the Director that the 1992 Fund Executive Committee could not authorise him to make payment of compensation to the claimants in respect of this incident. Those delegations stated that the claimants did not satisfy the minimum standard of proof required under the Conventions, that the claims were not well-supported by evidence, and that there were doubts whether the barge *Redfferm* was a 'ship' pursuant to Article I.1 of the 1992 CLC.

3.12.29 One delegation stated that, in its opinion, the international compensation regime appeared to be too complex to many claimants. That delegation also stated that, to prevent a recurrence of such a situation, it might be useful if the IOPC Funds Secretariat were to prepare a brief leaflet on claims and the procedures to be followed by claimants to avoid their claims becoming time-barred. This leaflet could be sent to the affected State, which would then be responsible for translating it and sending it to victims of the incident.

3.12.30 In response, the Director stated that a number of publications were available which specified the information required and which gave information on the time-bar provisions under the Conventions, but that there were many difficulties to overcome with this incident, including the fact that the 1992 Fund was informed of the incident several years after the event, and that it was difficult to ascertain who truly was affected by the spill. He stated that this, combined with the difficulty in ascertaining the quantum of losses for the claimants, made it impossible for him to recommend that he be instructed by the 1992 Fund Executive Committee to make payment of compensation to the claimants in respect of this incident.

3.13	**Incidents involving the IOPC Funds – 1992 Fund:** ***JS Amazing*** **Document IOPC/OCT13/3/13**		**92EC**		

3.13.1 The 1992 Fund Executive Committee took note of document IOPC/OCT13/3/13, which contained information relating to the *JS Amazing* incident.

Claims submitted

3.13.2 It was noted that following the incident in June 2009, NOSDRA had conducted a joint investigation visit (JIV) with the Pipelines and Product Marketing Company Limited (PPMC) to assess the impact of the spill on the environment and upon the communities affected.

3.13.3 It was also noted that in July 2009, NOSDRA commissioned a firm of estate surveyors and valuers to conduct a damage assessment report on behalf of 245 communities allegedly affected by the incident. The report concluded that the losses suffered and the damage to the property, interests and rights of the communities as a result of the spill amounted to NGN 2 241 million.

3.13.4 It was further noted that in May 2012 a claim for NGN 30.5 billion was filed against, *inter alia*, the 1992 Fund by fourteen representatives on behalf of 248 unnamed communities allegedly affected by the spill.

3.13.5 The Executive Committee noted that the information submitted was not complete and that, in some instances, the only information provided to the Secretariat consisted of individual photographs of claimants or copies of voter's cards, very few of which provided details of the claimant's occupation. Furthermore, it was noted that no official government data had been provided to support the numbers of claimants alleged to be within the communities, or generally within the Warri River area, and in many other cases the claim simply consisted of a spreadsheet detailing each claimant's claim, again without any supporting evidence.

Analysis of the claims submitted

3.13.6 The Executive Committee noted that the claims submitted by the 189 communities represented some 21 000 individual claimants and totalled NGN 18 015 million (£74 million). It was noted that losses were mainly for damage to fishing gear, loss of earnings from fishing, damage to economic trees and crops, general damage to communities, displacement and ecological damage and damage to ancestral shrines. It was noted that in some claims, damages were only estimated for losses to fishing interests (gear damage or loss of earnings, or both in some cases); in other claims, general losses to the whole community had been claimed.

3.13.7 It was noted that the claimed losses of NGN 850 000 (£3 535) per claimant represented on average a loss of 14 years' earnings on an average wage of NGN 60 000 (£247) per year, as quoted in the post-spill impact assessment (PSIA) report conducted by NOSDRA following the incident.

3.13.8 It was also noted that the number of claimants (more than 21 000) was far in excess of the data from the PSIA report, which suggested a total of approximately 3 200 fishermen across the whole of the 245 communities purportedly affected by the spill from the *JS Amazing*.

3.13.9 The Executive Committee noted that the overall average difference between the numbers of items in the claim and those reported in the NOSDRA JIV reports was at a ratio of 65:1 and that the 1992 Fund's experts considered this to be implausible and suggested that this showed a high degree of overestimation in a number of claims.

3.13.10 The Executive Committee also noted that the 1992 Fund's experts had also stated that the numbers of fishing gear items were not feasible for the area of river under consideration. For example, with reference to gill nets at an assumed length of 65 metres, the total length of nets would be in the region of 3 200 km. Furthermore, it was noted that as the river level was higher than normal at the time of the incident due to flood waters, it was unlikely that many gill nets would have been in use at the time of the incident due to high current speeds.

Legal proceedings

3.13.11 It was noted that five sets of legal proceedings had been commenced:

(i) Legal proceedings by NOSDRA against PPMC;
(ii) Legal proceedings commenced by some communities against the shipowner;
(iii) Legal proceedings commenced by the shipowner for recovery of damage to the ship;
(iv) Legal proceedings commenced by 248 communities for compensation; and
(v) Legal proceedings commenced by claimants to arrest the *JS Amazing*.

Legal proceedings commenced by 248 communities for compensation

3.13.12 The Executive Committee noted that in May 2012 a claim for NGN 30.5 billion was filed against the shipowner, the joint liquidators of the South of England P&I Club and the 1992 Fund by representatives of 248 communities allegedly affected by the spill.

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

3.13.14 The Executive Committee further 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 established in Warri, Delta State, and that as a consequence, the 1992 Fund's motion to strike itself out as a defendant and to be replaced as an intervenor had been adjourned.

3.13.15 It was noted that in June 2013, the shipowner had applied to have the proceedings by the claimants dismissed, arguing the lack of jurisdiction of the court and an improper service of legal proceedings upon the defendants.

Legal proceedings commenced by 248 communities to arrest the JS Amazing

3.13.16 It was also noted that in March 2013, upon the claimants' application, the Court ordered the arrest and detention of the *JS Amazing*, pending the provision of a bank guarantee to cover the claimants' claim, or the deposit of the sum of NGN 30.5 billion into court. As at the October 2013 session of the 1992 Fund Executive Committee, no further information had been provided on the status of those legal proceedings.

Difficulties arising from the incident

3.13.17 The Executive Committee noted that there were many difficulties inherent in investigating an incident which occurred over three years ago but appreciated the cooperation and assistance provided by the Nigerian authorities during the visit to Nigeria in June 2012.

3.13.18 However, the Executive Committee also noted that a number of issues remained outstanding, including:

(a) the fact that no steps had been taken by the shipowner to fully pay the first tier of compensation in accordance with the provisions of Article III (1) of the 1992 CLC;
(b) the fact that the Secretariat had not seen any evidence that the *JS Amazing* was insured in accordance with the provisions of Article VII of the 1992 CLC at the time of the incident;
(c) the fact that very few details had been provided regarding the earlier spill from a vandalised oil pipeline in the same area which occurred some two weeks prior to the spill from the *JS Amazing*;
(d) the fact that there was a large amount of unregulated oil refining occurring in the Niger Delta area and there was a high likelihood that there was a degree of contamination from these operations as well as previous oil spills in the area. This 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; and
(e) the fact that the incident was caused by the hull of the tanker hitting the wreck of a submerged mooring dolphin, the existence and location of which was known to the authorities.

3.13.19 The Executive Committee further noted that, taking into account the background levels of pre-existing contamination in the area, there were great difficulties in ascertaining the level of damages suffered as a result of the *JS Amazing* incident.

3.13.20 The Executive Committee also noted the Director's regret that due to the delay between the incident occurring and the 1992 Fund receiving notification of the incident, the claimants would struggle to prove their losses or to establish a link of causation between the damage and the contamination.

3.13.21 It was noted that due to safety reasons it was not possible for the Secretariat or the 1992 Fund's experts to visit the areas affected by the spill.

3.13.22 It was also noted that given these difficulties the Director regretted that he could not recommend to the Executive Committee that he be instructed to make payment of compensation to the claimants in respect of this incident.

Additional information submitted by the Nigerian delegation

3.13.23 It was noted that the Nigerian delegation had submitted additional documentation relating to the incident too late to be included in the discussion, but that the Secretariat would examine the information submitted and report back at the next session of the 1992 Fund Executive Committee.

Intervention by the Nigerian delegation

3.13.24 The Nigerian delegation stated that it had submitted additional documentation relating to some of the concerns raised by the Director in the present document submitted to the 1992 Fund Executive Committee, and looked forward to further co-operation with the Secretariat in the future.

Debate

3.13.25 A number of delegations stated that they also regretted that the Director was unable to recommend that he be instructed to make payment of compensation to the claimants in respect of this incident. They recognised that because the 1992 Fund's experts and staff had been unable to visit the areas allegedly affected due to security concerns within the Warri area, this highlighted the need for Member States to cooperate with the Secretariat at the initial stages of an incident. One of those delegations noted, however, that the failure to report the incident early on meant that ultimately the losses were borne by the victims.

3.13.26 In response to two delegations which stated that there was a need for greater understanding between the 1992 Fund and Member States affected by an oil spill, another delegation stated that it was very well known that the 1992 Fund tries to establish good relations with Member States following an incident, but that the point had been illustrated with this incident, that if there was a long delay between the incident occurring and the Fund receiving notification of the incident, and the 1992 Fund was not informed of an incident, it was not possible for the 1992 Fund to assist the Member State effectively.

3.13.27 Another delegation stated that the Member States had signed up to the 1992 Civil Liability and Fund Conventions, and could not therefore say that they did not know about the Conventions. Furthermore, that delegation stated that Member States had an obligation to implement the Conventions into their law, and there was therefore an obligation on Member States to report incidents to the 1992 Fund at an early stage.

3.13.28 Agreeing with that delegation, another delegation stated that it recalled the outcome of the Working Group dealing with large numbers of small claims, but that in order for the 1992 Fund to be in a position to pay claims, it needed reliable data. However, based on the claims submitted, that delegation had severe doubts that the claims and data submitted were reliable.

3.13.29 Another delegation highlighted a number of issues which had been highlighted in the Marine Board of Inquiry and stated that these were issues which needed to be addressed by the Member State.

3.13.30 One delegation stated that in its opinion, Member States often had difficulties complying with their obligations under international Conventions and that it therefore encouraged the 1992 Fund to exercise a humanitarian view towards claimants.

3.13.31 The Executive Committee noted that the Secretariat was working in close cooperation with the Nigerian delegation and that it would examine the information submitted by the Nigerian delegation and report to the Executive Committee at its next session.

3.14	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/OCT13/3/14**		**92EC**		

3.14.1 The 1992 Fund Executive Committee took note of document IOPC/OCT13/3/14 which contained information relating to the *Alfa I* incident.

3.14.2 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

3.14.3 The Executive Committee noted that the clean-up contractors had filed a claim against the shipowner and the shipowner's insurer before the Court of First Instance in Piraeus for some €15.8 million.

Investigation into the cause of the incident

3.14.4 It was recalled that at the April 2013 session of the 1992 Fund Executive Committee, the delegation of Greece had submitted document IOPC/APR13/3/9/1 providing information on the response operations, penal and administrative sanctions and recent developments relating to the incident. It was recalled that the document had indicated that the incident had been taken up by the Council of Investigation of Marine Incidents which had completed its investigation from an administrative perspective.

3.14.5 The 1992 Fund Executive Committee noted that the Council of Investigation of Marine Incidents on behalf of the Greek Government had found that the tanker was seaworthy in all respects and had undergone partial reconstruction as a double-hulled tanker. It was also noted that the Council considered that the liability for the incident was attributable to the master, but that it was unclear what had led the master to take the actions he had taken and thus there were a number of questions that remained unanswered and which required further investigation.

3.14.6 The Executive Committee also noted that the Council had found that the master of the *Alfa I* had made efforts to lessen the consequences of the collision with the wreck of the City of Mykonos and to avoid the sinking of his ship. This was evidenced by the position of the engine controls, attempts to manoeuvre by turning the rudder, warning of the crew and nearby vessels by sound signals and his attempts to confirm that all members of his crew had obeyed his order to abandon ship, which may have deprived him of the possibility of saving himself.

3.14.7 The 1992 Executive Committee noted that for the reasons detailed above, the Council had concluded that the sinking of the *Alfa I*, the abandonment of the vessel by her crew, the total loss of the cargo and the death of her master constituted a maritime accident and was due to the fault of the master of the tanker.

The insurance situation

3.14.8 The 1992 Fund Executive Committee noted that the Director was of the view that in the event that the *Alfa I* was not carrying more than 2 000 tonnes of persistent mineral oil at the time of the incident, the primary liability for any pollution damage caused as a result of the incident under the 1992 CLC rested

with the shipowner (Article III(1) of the 1992 CLC) and he would be entitled to limit his liability to 4.51 million SDR (Article V(1)(a) of the 1992 CLC) in the event that he established a limitation fund. The Executive Committee further noted that in accordance with Article 4(1)(b) of the 1992 Fund Convention, the 1992 Fund would pay compensation to any person suffering pollution damage if such person had been unable to obtain full and adequate compensation for the damage from the shipowner, after having taken all reasonable steps to pursue the legal remedies available to him.

3.14.9 It was noted that there was a contradiction in the terms of the insurance policy and the certificate (Blue Card) issued to the Greek State by the shipowner's insurer, Aigaion Insurance Company, because the insurance policy was limited to some €2 million and stated that only non-persistent mineral oils would be covered. However, the certificate (Blue Card) provided to the Central Port Authority of Piraeus, stated that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

3.14.10 The 1992 Fund Executive Committee noted that the Director was of the view that if the shipowner's insurer were to refuse payment of compensation for pollution damage either on the grounds that the policy of insurance contained a warranty ('warranted non-persistent cargoes only') or that the policy was limited to €2 million, the 1992 Fund would have to seek a recovery under the terms of the insurance provided.

Intervention by the delegation of Greece

3.14.11 The delegation of Greece made the following statement:

> Thank you Mr Chairman for the floor.
>
> First of all, I would like to express our appreciation to the Director for document IOPC/OCT13/3/14.
>
> I would be very brief Mr Chairman, hence there is not much to add since the last meeting regarding the information that this delegation has already provided to the 1992 Fund Executive Committee by the document IOPC/APR13/3/9/1.
>
> However, it is worth mentioning that there is no official information regarding the submission of any individual's claims against either the shipowner or the insurer, to the Greek Civil Courts.
>
> Moreover, I would like to inform all the distinguished delegations that the penal procedure concerning the accident of the double hull tanker *Alfa I* is still in progress and the exact date of the trial at the Criminal Court of Athens has not been defined yet.
>
> Last but not least, I would like to underline that the Piraeus Port Authority advised the Penal Attorney of Athens and requested detailed legal investigation into the contradiction between the insurer's policy and the Blue Card which had been submitted by the shipowner to the competent Greek authorities in order for the CLC Certificate to be issued.
>
> If there is further progress, we will provide the Executive Committee with updated information at the forthcoming meetings.

3.15	**Incidents involving the IOPC Funds – 1992 Fund:** ***Haekup Pacific*** **Document IOPC/OCT13/3/15**		**92EC**		

3.15.1 The 1992 Fund Executive Committee took note of document IOPC/OCT13/3/15 which contained information relating to the *Haekup Pacific* incident.

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

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

3.15.4 It was further noted that the *Haekup Pacific* was entered as a 'relevant ship' within the definition of STOPIA 2006 and that STOPIA 2006 would therefore apply.

3.15.5 The 1992 Fund Executive Committee noted that shortly after sinking a small spill of some 200 litres of oil had occurred resulting in some minor pollution. The local coastguard had launched a clean-up operation and ordered the shipowner to monitor the spill at the site for one month but during this time no oil was reportedly found. It was also noted that the *Haekup Pacific*'s P&I Club (the UK P&I Club) had paid some US$136 000 for clean up and preventive measures, and that in early May 2010 the Korean authorities had issued removal orders to the shipowner requesting them to remove the wreck with the cargo and the bunkers remaining on board.

3.15.6 It was noted that the shipowner had obtained the advice of the International Tanker Owners Pollution Federation Ltd (ITOPF) on the likely environmental impact arising from the incident, and that they were of the view that the asphalt cargo would become solidified in the cold, 90-metre deep sea and would not pose a threat to the environment. Furthermore, they were of the opinion that the MDO would evaporate away quickly if it leaked out and that any IFO spilled would reasonably be expected to drift away from the Korean coast in a north-easterly direction under the influence of winds and a strong current.

3.15.7 It was further noted that surveyors retained by the UK P&I Club had undertaken a sonar scan of the vessel, a survey of the prevailing currents and a survey of the wreck using a remotely-operated vessel, which indicated that the vessel was lying at a depth of 90 metres resting on a muddy and sandy seabed on her port side, having sunk into the seabed by approximately 1.6 metres. The air vents were seen to be intact without any trace of oil leakage and solidified asphalt was found to be present on a section of the damaged area of the hull. The surveyors found it difficult to perform the surveys due to the strong and turbulent currents and concluded that it was technically difficult and too dangerous to perform the removal operations and that it would be prudent to leave the wreck in place.

3.15.8 It was further noted that the surveyors had estimated that the cost of the oil removal operation would be in the region of US$5 million, whereas the wreck and cargo removal operation would cost in excess of US$25 million. It was, however, noted that as at the October 2013 sessions of the governing bodies, no action had been taken by the Korean authorities to enforce the removal orders.

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

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

3.15.10 It was also noted that since 2010 no further response had been received from the Korean authorities and no steps had been taken to enforce the removal operations, but the removal orders remained in force as they had not been officially revoked. It was noted that as a consequence, at some stage in the future the shipowner/UK P&I Club could be required to undertake or bear the costs of the removal operations.

Legal proceedings

3.15.11 The 1992 Fund Executive Committee noted that in April 2013, the shipowner/UK P&I Club issued legal proceedings against the 1992 Fund in the Seoul Central District Court before the expiry of the three-year anniversary of the date when the damage occurred, in order to protect their rights in respect of any future liability for costs of the removal operation which they might have to pay. It was also noted that the UK P&I Club had indicated that, if the shipowner/UK P&I Club and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had been paid in respect of the potential claim for removal operations), then only the six-year time limit under the 1992 Fund Convention would be applicable. It was further noted that assuming such agreement could be reached, the shipowner/P&I Club would withdraw the lawsuit they had filed and would await developments regarding the potential claim for the removal operations until the six-year time period expired, and that such an agreement was in the interests of both the shipowner/UK P&I Club and the 1992 Fund as neither party wished to continue with further potentially costly legal proceedings.

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

Intervention by the delegation of the Republic of Korea

3.15.13 It was noted that the delegation of the Republic of Korea stated that it had no further information to add but would keep the Secretariat informed of any new developments as a decision was expected soon from the Korean authorities.

3.16	**Incidents involving the IOPC Funds – 1992 Fund: *Nesa R3* Document IOPC/OCT13/3/16**		**92EC**		

3.16.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT13/3/16.

3.16.2 The Executive Committee noted that on 19 June 2013 the 856 GT tanker *Nesa R3*, carrying 840 tonnes of bitumen, sank off the port of Mina Sultan Qabous, Muscat, Oman. The Executive Committee noted that the master of the *Nesa R3* tragically lost his life while trying to save his vessel.

3.16.3 The Executive Committee noted that the oil had polluted about 40 kilometres of the coast of Oman.

3.16.4 The Executive Committee further noted that two claims for clean-up related activities, totalling OMR 307 254 had been received and that further claims were expected for at sea and onshore clean-up operations as well as for a survey of the wreck and for economic losses in the fisheries and tourism sectors and any other related expenses that arose.

3.16.5 The Executive Committee noted that the *Nesa R3* had been carrying less that 2 000 tonnes of persistent oil as cargo and, as such, was not required to maintain insurance. It also noted that the owners of the *Nesa R3* had nonetheless taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka, however, it was still unclear whether the insurer would cover this incident.

3.16.6 The Executive Committee noted that the shipowner had not yet responded to requests from the Omani Government as to his intentions or confirmed whether he would meet his obligations under the 1992 CLC to pay compensation for the pollution damage caused by the incident.

3.16.7 The Executive Committee noted that the Omani Government had informed the 1992 Fund that it had commenced legal proceedings against the shipowner and that the first hearing was expected in late 2013.

3.16.8 The Executive Committee further noted that in view of the pending legal proceedings and in view of the fact that it was unlikely that the shipowner would be able to cover the full extent of the damages arising out of the incident, the Omani Government had requested the assistance of the 1992 Fund for compensation and intended to submit its claims to the 1992 Fund.

3.16.9 The Executive Committee noted that the Director was of the view that, although the total amount of the admissible claims might fall below the limitation amount applicable to the *Nesa R3*, the 1992 Fund would be liable in accordance with Article 4.1 (b) of the 1992 Fund Convention to pay compensation for this incident. The Executive Committee further noted that the Director had proposed that the 1992 Fund Executive Committee authorise him to make payments of compensation in respect of losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

Intervention by the delegation of the Sultanate of Oman

3.16.10 The delegation of Oman took the floor to extend its gratitude to the 1992 Fund for their continued assistance since the *Nesa R3* incident had occurred. That delegation informed the Executive Committee about the recent developments in the case. In particular, it stated that the majority of the pollution stranded offshore had been recovered with some semi-submerged oil to be recovered.

3.16.11 It further informed the Executive Committee that inshore fisheries had been interrupted whilst bitumen remained mobile on the water surface and in the water column. That delegation also informed the Committee that the Government intended to facilitate a collective claim from 11 fishing communities which had been impacted by the spill. However, that delegation also noted that only minor tourism claims might be submitted since the incident had occurred outside the main tourist season.

3.16.12 That delegation reported on the results of the underwater survey conducted on the wreck, stating that it estimated that about 5 000 litres of diesel oil and 1 500 litres of other lubricants remained on board, in addition to some 500 tonnes of solidified bitumen. That delegation informed the Executive Committee that Oman regarded the remaining bunker fuels and lubricants as potentially hazardous pollutants which would need to be removed from the wreck. It stated, however, that it was not considering removal of the cargo or the wreck.

3.16.13 The Omani delegation further informed the Committee that the Omani Government had commenced legal action against the owner of the *Nesa R3* and that the first hearing was expected in November 2013. It further stated that the insurer of the ship had refused to consider any claims, citing the country of origin of the cargo as the reason and that Oman was seeking legal advice on the matter.

3.16.14 That delegation stated that it was unlikely that the full cost of the incident would be covered by the shipowner or his insurer and requested the 1992 Fund Executive Committee to authorise the Director to pay compensation for this incident.

Debate

3.16.15 The majority of the delegations that took the floor commended the high level of cooperation between the Government of Oman and the 1992 Fund from the beginning of the incident and supported the Director's proposal that the Executive Committee authorise him to make payment of claims arising out if this incident and to seek to recover the costs from the shipowner.

3.16.16 One delegation noted that the incident was too recent to consider it likely that the Government of Oman had already exhausted all legal remedies against the shipowner and therefore urged caution in authorising the Director to make payments in respect of the incident, especially in view of the fact that the government of Oman was still pursuing legal action against the shipowner.

3.16.17 A number of delegations that took the floor, whilst supporting in principle the Director's proposal, asked for clarification as to whether the contents of the insurance contract of the ship were known and whether the allegations of the insurer that the incident was not covered had been confirmed. One delegation asked whether there were precedents for owners or insurers refusing to pay and what the 1992 Fund's policy was in these cases.

3.16.18 The Director explained that the 1992 Fund had not seen the insurance contract and had only reported the information provided by the Government of Oman. He pointed out that there had been several incidents in the past (such as the *Vistabella* and *Al Jaziah 1*) where the IOPC Funds had paid compensation to claimants for their established claims and then sought to recover these costs from the shipowner.

1992 Fund Executive Committee Decision

3.16.19 The 1992 Fund Executive Committee authorised the Director to make payments of compensation in respect of admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

4 Compensation matters

4.1	**Reports of the 1992 Fund Executive Committee on its 57th and 58th sessions**	**92AC**			

The 1992 Fund Administrative Council noted the reports of the 57th and 58th sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT12/11/1/1 and IOPC/APR13/8/1) and expressed its gratitude to the Executive Committee's Chairman, its Vice-Chairman and its members for their work. The Director paid tribute to the outgoing Chairman, Ms Ginette Testa (Panama), and stated that it had been a privilege and a pleasure to work with Ms Testa and looked forward to an opportunity in the future to work with her once again.

4.2	**Election of members of the 1992 Fund Executive Committee Document IOPC/OCT13/4/1**	**92AC**			

4.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/4/1.

1992 Fund Administrative Council Decision

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

Eligible under paragraph (a)	Eligible under paragraph (b)
Italy	Angola
Japan	Australia
Malaysia	Finland
Netherlands	Grenada
Republic of Korea	Liberia
Singapore	Nigeria
United Kingdom	Poland
	Tunisia

4.3	**Report on the fifth meeting of the sixth intersessional Working Group** **Document IOPC/OCT13/4/2**	**92AC**			

4.3.1 The 1992 Fund Administrative Council took note of document IOPC/OCT13/4/2, introduced by the Chairman of the sixth intersessional Working Group, Mr Volker Schöfisch (Germany).

4.3.2 It was noted that the Working Group had held five meetings (June 2010, March and July 2011, April 2012 and April 2013) since it was established by the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, in 2009. In accordance with its mandate, the Working Group had considered the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses and also the question of the funding of interim payments to claimants.

4.3.3 It was recalled that at its October 2012 session, following the recommendations of the Working Group, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had approved the text of a revised Claims Manual covering the issues of the fast track assessment of claims, fraudulent claims, the target time frame for assessing claims and the use of economic models.

4.3.4 It was also recalled that the Working Group had made fourteen proposals relating to the role Member States could play following an incident, which the 1992 Fund Administrative Council had instructed the Secretariat to publish in the form of a guidance note and which was the subject of a separate document for consideration at the October 2013 session (document IOPC/OCT13/4/6).

4.3.5 It was pointed out that the only outstanding issue which remained for the Working Group to report to the Assembly was that of interim payments. The Chairman reported that the Working Group had held lengthy discussions on this subject over the course of its five meetings, had established a Consultation Group which had met twice to focus specifically on that issue and had commissioned a study to address some of the key problems faced by P&I Clubs when making interim payments. However, whilst a number of options had been discussed, including a possible amendment to the 2006 Memorandum of Understanding between the International Group and the Funds, a draft Assembly Resolution and an exchange of letters between the two parties, the Chairman reported that no form of wording suitable to both parties had yet been found. It was noted that in the absence of an agreement, the Working Group supported the proposal that the Director and the International Group should continue to discuss the issues with the aim of finding a solution which was acceptable to both parties. At such point, the Director would submit a recommendation to the 1992 Fund Assembly who could then decide if the recommendation was acceptable.

4.3.6 The Chairman referred to the good progress that the Working Group had made, thanked all parties that had contributed to the Working Group and confirmed to the Administrative Council that the sixth intersessional Working Group was now closed.

Debate

4.3.7 In relation to the outstanding issue of interim payments, the Director stated that this was a difficult issue and that in principle he had reached a form of understanding, pending final agreement with the International Group, that whenever interim payments were made in the future, these interim payments would be made on behalf of both the shipowner/insurer and the 1992 Fund. However, this was also based on the principle that at no time could the 1992 Fund Convention or Supplementary Fund Protocol limits ever be exceeded. This was, the Director explained, in accordance with the legal analysis that had been conducted by Mr Måns Jacobsson and Mr Richard Shaw, which stated that the 1992 Fund Assembly did not have the authority to pay in excess of these limits. The Director stated that he wished to continue discussions with the International Group with a view to finalising an agreement and presenting a document at the next session of the 1992 Fund Assembly in spring 2014.

4.3.8 In response to the Director's comments, the delegation of the International Group stated that whilst it was true that they had almost reached agreement with the Director, that was the situation before the 1971 Fund Administrative Council had decided not to reimburse the Gard P&I Club for the *Nissos Amorgos* incident during the October 2013 session, and that in light of that decision, the International Group would have to give serious consideration to how that decision would affect the discussions taking place with the Director on the funding of interim payments. Explaining further that the scenario now facing the 1971 Fund in relation to the *Nissos Amorgos* incident had been explained previously to the 1971 Fund Administrative Council, the International Group stated that it did not wish to raise Member States' expectations regarding the provision of interim payments by International Group P&I Clubs in the future.

4.3.9 The Administrative Council thanked Mr Schöfisch for chairing the Working Group and expressed great appreciation for the achievements of the Group in finding practical solutions and developing detailed and helpful guidance for claimants and Member States in the event of a spill.

1992 Fund Administrative Council Decision

4.3.10 The 1992 Fund Administrative Council noted that the Director would continue to discuss the issues relating to interim payments with the International Group of P&I Associations and would submit a recommendation to the 1992 Fund Assembly at a future session. The Administrative Council decided that the sixth intersessional Working Group had fulfilled its mandate to the extent possible and was now closed.

4.4	**Report on the second meeting of the seventh intersessional Working Group Documents IOPC/OCT13/4/3, IOPC/OCT13/4/3/1, IOPC/OCT13/4/3/2, IOPC/OCT13/4/3/3, IOPC/OCT13/4/3/4, IOPC/OCT13/4/3/5 and IOPC/OCT13/4/3/6**	**92AC**			

4.4.1 The Chairman of the 1992 Fund seventh intersessional Working Group, Ms Birgit Sølling Olsen, presented the report of the Group's second meeting, which was held in April 2013. The Chairman explained that the discussions had focused on examples of situations where doubt might exist as to the coverage of the 1992 Conventions in respect of the definition of 'ship'. She pointed out that, following lengthy discussions, the Working Group had reached agreement on three of the five questions asked of the Group at its first meeting and drew the 1992 Fund Administrative Council's attention to section 8.2 of document IOPC/OCT13/4/3 which presented the Group's conclusions.

4.4.2 In the continued absence of agreement on the remaining two questions, the Chairman had proposed the establishment of a Consultation Group, which would meet for the first time on 28 October 2013 ahead of the next meeting of the Working Group, with the aim of reaching a convergence of opinions. It had been suggested that the Group would consist of the delegations of Australia, Netherlands, Japan, Norway, the International Group of P&I Associations, the International Chamber of Shipping and any other delegations who wished to contribute. If possible the group would present more concrete proposals to the next meeting of the Working Group, possibly in the form of a guidance document or criteria that the IOPC Funds and Member States could follow.

4.4.3 The Chairman explained that the conclusion of the second meeting of the Working Group had therefore been to recommend that the 1992 Fund Assembly amend the Terms of Reference of the Working Group to continue its work and hold further meetings as required and to request it to approve the establishment of a Consultation Group with the aim of reaching a convergence of opinions in respect of the two unresolved questions asked of the Working Group.

4.4.4 The Chairman pointed out that, in anticipation of the meeting of the Consultation Group going ahead, a number of States keen to find solutions to the issues raised had submitted documents for consideration by the Consultation Group at the proposed meeting on 28 October 2013 (documents IOPC/OCT13/4/3/2 submitted by Spain, IOPC/OCT13/4/3/3 submitted by Japan,

IOPC/OCT13/4/3/4 submitted by the International Group of P&I Associations, IOPC/OCT13/4/3/5 submitted by the Republic of Korea and IOPC/OCT13/4/3/6 submitted by the International Group of P&I Associations and the International Chamber of Shipping). The Chairman had also submitted a document to assist the Consultation Group in its discussions (document IOPC/OCT13/4/3/1). The Chairman stated that, providing the establishment of the Consultation Group was approved by the Administrative Council, interested delegations which could assist with the discussions, were encouraged to attend the Group's meeting.

4.4.5 The Chairman pointed out that the Working Group had suggested that any relevant decisions made as a result of the work of the seventh intersessional Working Group in respect of the definition of 'ship' under the 1992 Conventions should be notified by the 1992 Fund Assembly to the IMO Legal Committee for its information.

Debate

4.4.6 A large number of delegations supported the proposals to establish a Consultation Group and to revise the Terms of Reference of the Working Group as detailed in Annex II, to enable the Group to continue its work and hold further meetings as required.

4.4.7 Several delegations also proposed that the Consultation Group should concentrate on areas where agreement could be achieved amongst Member States, with one delegation stating that it was unlikely to reach agreement on all matters of dispute without amending the Conventions.

4.4.8 One delegation suggested that the approach to adopt would be to attempt to decide three issues, namely:

(i) What was a 'ship'/not a 'ship' under Article I.1 of the 1992 CLC;
(ii) Whether a contribution was payable in respect of oil received by such vessels;
(iii) Whether compensation would be payable if a spill occurred from such a vessel.

4.4.9 Another delegation, supported by two other delegations, stated that in the document it had submitted, it had suggested that a global approach to the issues should be adopted, which recognised that the definition of 'ship' within Article I.1 of the 1992 CLC centred on the capacity to carry oil in the maritime transport chain.

4.4.10 Another delegation stated that the issue could be confusing if a decision was taken which included certain vessels within the compensation regime but excluded those vessels from making contributions, and that questions needed to be asked of Member States as to whether they mandatorily issued Blue Cards for FSOs as the data previously provided by the International Group of P&I Associations had only referred to 11 Member States.

1992 Fund Administrative Council Decision

4.4.11 Recognising that the Consultation Group needed to focus on issues of common ground, the 1992 Fund Administrative Council decided:

(a) to approve the revised Terms of Reference of the Working Group, as set out in Annex II, to enable the Group to continue its work and hold further meetings as required; and

(b) to approve the establishment of a Consultation Group with the aim of reaching a convergence of opinions on the unresolved questions asked of the seventh intersessional Working Group.

4.4.12 The Chairman of the 1992 Fund Administrative Council expressed gratitude to the Chairman of the Working Group and delegates who had submitted documents to the Consultation Group.

4.5	**STOPIA 2006 and TOPIA 2006** **Document IOPC/OCT13/4/4/Rev.1**	**92AC**		**SA**	

4.5.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT13/4/4/Rev.1 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.5.2 It was noted that the International Group had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 465 tankers as of August 2013.

4.5.3 It was noted that the International Group had reported to the Secretariat that as of August 2013 all of the tankers which were insured by one of the members of the International Group and reinsured through its pooling arrangements, were also entered in TOPIA 2006. It was also noted that the number of tankers not entered in TOPIA 2006 at that time, because they were not participating in the pooling arrangements of the International Group, was 459.

4.6	**Information for claimants – Guidelines for presenting claims in the tourism sector** **Document IOPC/OCT13/4/5**	**92AC**			

4.6.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/4/5.

4.6.2 The Administrative Council recalled that at its October 2012 session, it had instructed the Secretariat to develop guidelines for claimants in the tourism sector and to present it to the 1992 Fund Assembly for consideration at its next session.

4.6.3 The Administrative Council noted that the Director had engaged a tourism expert who had worked on several incidents for the IOPC Funds to prepare a set of guidelines as set out in the Annex to document IOPC/OCT13/4/5, which would be easily understood by claimants in this sector.

Debate

4.6.4 All the delegations which took the floor welcomed the document and thanked the Director for submitting the document.

4.6.5 A number of delegations, while commending the work done by the Secretariat, requested that more emphasis was provided in the text to reflect the fact that the guidelines would only be a guidance document for claimants and should not be read as an authoritative interpretation of the 1992 Civil Liability and Fund Conventions.

4.6.6 One delegation, congratulated the Secretariat for the quality of the work undertaken, stating that the document was very educational and would benefit victims of a spill. However, it suggested a number of changes to ensure that the guidelines would not be perceived as trivialising the impact of a spill. That delegation also suggested that additional wording might be desirable to remind claimants that they might need to protect their claim by filing a claim against the limitation fund.

4.6.7 Other delegations commented that it was not appropriate to provide advice on legal proceedings, which varied from Member State to Member State, in a guidance document that was aimed at offering assistance to claimants for the preparation of their claims. They also remarked that it was important to make clear in the text that claimants had a duty to mitigate their losses.

4.6.8 One delegation suggested that the wording of the third bullet point of paragraph 5.1 of the Annex to document IOPC/OCT13/4/5, namely 'projected or estimated profits', be changed to include a reference to the work conducted by the sixth intersessional Working Group on assessing large numbers of small claims. The Director remarked that the text in the guidelines did not refer to the

assessment methods to be adopted by the Fund and its experts, but rather to claims for future losses based on estimates and not on actual losses already occurred. The Director also stated that it was important that claimants act as a prudent uninsured person would act, and should attempt to mitigate their losses.

4.6.9 One delegation asked for clarification with regard to the need for licenses, because in some Member States, licenses were not required for certain small-scale tourism-related activities. That delegation also suggested that the text in the guidelines referring to future losses should be deleted, because, in the opinion of that delegation, it failed to recognise that although a tourism season may be short, the impact of an oil spill could last for several years. In response, the Director stated that whilst the issue of licenses depended on the circumstances of each Member State and its legal system and was always considered by the Secretariat if licenses were required for running businesses in that Member State, when deciding on the admissibility of claims, in the Fund's experience, the impact of a spill on tourism activities rarely exceeded one year. The Director also stated that the Fund would only accept claims for losses which had already occurred and could not accept claims for future losses.

4.6.10 Another delegation pointed out that there were discrepancies in some of the definitions in the drafted guidelines when compared to the Claims Manual. The Director suggested that such changes, being of an editorial nature, could be addressed in the final stage before publication to ensure the consistency of the guidelines with the existing 1992 Fund documents.

4.6.11 The Chairman summarised the discussion by noting that since large parts of the text in the draft guidelines were the same as the text already approved for the fisheries guidelines, and that the admissibility criteria listed in the document were the same as those in the Claims Manual, it was not necessary to approve the document paragraph by paragraph, but that it could be approved in its entirety, bearing in mind that like all other guidance documents, it could be changed if and when circumstances required. He further suggested that those delegations which had editorial comments on the text of the document could contact the Secretariat directly, so that it could make any required editorial amendments before publication.

1992 Fund Administrative Council Decision

4.6.12 The 1992 Fund Administrative Council decided that the 1992 Fund should publish the guidelines for presenting claims in the tourism sector. It also decided that the Secretariat could make the editorial amendments required before publication.

4.7	**The role of Member States** **Document IOPC/OCT13/4/6**	**92AC**			

4.7.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/4/6. The 1992 Fund Administrative Council recalled that at its October 2012 session, it had instructed the Secretariat to publish a guidance document on the role of Member States in the event of an oil spill.

4.7.2 The 1992 Fund Administrative Council recalled that the measures described in the Annex to document IOPC/OCT13/4/6 were those which Member States might wish to consider in the event of an oil spill which affected them. It was also noted that the measures which that Member State chose to use would be determined by the Member State after taking account of the particular circumstances of the incident, the legal issues and other factors unique to that State and incident.

4.7.3 The 1992 Fund Administrative Council noted that the Secretariat would publish a guidance document on the role of Member States in the event of an oil spill and would make the agreed editorial amendments.

Debate

4.7.4 One delegation requested that the reference to the funding of a national experts list/expert mediation panel in section 8 of the Annex to document IOPC/OCT13/4/6 should be revised. The Director proposed that the last sentence of paragraph 8.4 be deleted, which that delegation accepted.

4.7.5 The delegation of France made the following statement (original French):

> The French delegation thanks the Secretariat for this document and wishes to correct certain inaccuracies relating to the *Erika* case. In paragraphs 2.3 and 2.8, it is indicated that the French State received compensation for its entire loss from the IOPC Funds. Bearing in mind the Fund's compensation limits, the French State was ranked last in the list of beneficiaries of the IOPC Funds compensation, and the available funds after compensation of the other French victims were not sufficient to compensate the French State for its loss in full. The French delegation therefore wishes that paragraphs 2.3 and 2.8 of the document should be amended accordingly and that it should be indicated that the Fund only partially compensated the French State following the *Erika* incident.
>
> It should be recalled that the loss to the French State following the *Erika* incident was some 194.7 million euros. The Fund paid 41 million euros to the French State. The remaining 153.8 million euros were reimbursed to the French State by the persons responsible for the incident in the course of criminal proceedings instituted in France.

4.7.6 In response to the French delegation's intervention, the Director suggested amendments to paragraphs 2.3 and 2.8 of the Annex to document IOPC/OCT13/4/6 to reflect its concerns, which the French delegation accepted.

4.7.7 A number of delegations stated that the document provided valuable guidance for Member States. Another delegation stated that the document might be improved by changing the order of the measures and grouping them together under three main headings, namely:

(i) Collecting data and the assessment of claims processes;
(ii) Conflict and dispute resolution processes; and
(iii) Settlement and payment processes.

4.7.8 It was noted that the Director would discuss the proposed three main headings with that delegation.

4.7.9 One delegation indicated that the title of the document did not reflect in full the contents, and after further discussion the Chairman suggested that the document be renamed 'Guidance for Member States'.

1992 Fund Administrative Council Decision

4.7.10 The 1992 Fund Administrative Council authorised the Director to publish the document with minor editorial amendments.

4.8	**Compensation for claims for VAT by central governments Documents IOPC/OCT13/4/7 and IOPC/OCT13/4/7/1**	**92AC**		**SA**	**71AC**

4.8.1 The governing bodies took note of the information contained in documents IOPC/OCT13/4/7 submitted by France and IOPC/OCT13/4/7/1 submitted by the Secretariat.

Document IOPC/OCT13/4/7 submitted by France

4.8.2 It was recalled that in the *Prestige* incident the 1992 Fund had deducted the sum of €6.2 million from the French State's claim in respect of VAT paid by it for the supply of services and goods necessary for clean-up operations since in the view of the 1992 Fund, the payment of VAT was not eligible for compensation, since the State would recover the amount of VAT in the form of tax revenues.

4.8.3 It was noted that France had requested that the governing bodies recognise that an affected State may obtain compensation for the VAT paid by it for the supply of goods and services necessary for clean-up and preventive measures. It was noted that because of the 1992 Fund compensation limits, the French State would not receive any compensation from the 1992 Fund as a result of the *Prestige* incident and that therefore the question of the recoverability of VAT was not specific to the *Prestige* incident.

Non-reimbursement of VAT would be an additional loss to the affected State

4.8.4 It was noted that in the opinion of France, the non-reimbursement of VAT paid to private contractors for the supply of services and goods necessary for clean-up operations was an undue burden which caused financial loss to the affected State.

4.8.5 It was noted that if the State decided to leave it for the shipowner to carry out the clean up, that shipowner would engage private contractors which it would pay for the services provided, including VAT and that the VAT would then be paid to the affected State in the form of tax revenues. It was noted, however, that when the French State engaged the contractors directly and paid the VAT itself, it beared an additional loss when compared with the situation described above, if it did not obtain full reimbursement of the expenditures incurred, including VAT.

4.8.6 It was further noted that in the opinion of France, the circumstance in which the affected State recovered VAT in the form of tax revenues was not such as to justify the non-reimbursement of that tax by the IOPC Funds, and that tax law and civil law were separate and subject to different rationales.

VAT was reimbursed by the IOPC Funds in previous oil spills

4.8.7 It was noted that in the case of past oil spills which have affected the French coast, the French State, in accordance with French law, had automatically included in the calculation of its loss the amount of VAT paid to private contractors which had supplied services or goods for oil spill response and that the French State had always been compensated for its loss by the IOPC Funds or by the shipowner's insurer, without the compensation for VAT being disputed.

4.8.8 It was also noted that in the case of the oil spill from the *Sea Empress* the IOPC Funds had also reimbursed the Maritime and Coastguard Agency (MCA) for VAT paid to private contractors involved in the response operations. It was noted that the IOPC Funds considered that the reimbursement of VAT in relation to this incident was justified by the fact that it concerned an agency, independent of the State. It was noted, however, that as the financing of that agency came from public funds, the French State considered that no distinction could be made between reimbursement to a public agency and a State, for that would mean discrimination between States, depending on their administrative organisation.

In French law, compensation of the affected State for damage incurred by it includes VAT paid to contractors

4.8.9 It was noted that in accordance with the request of the Director, France had produced a legal analysis proving that French courts recognised the right of the French State, as the victim of damage, to obtain reimbursement of VAT paid to private contractors.

4.8.10 It was noted that according to French jurisprudence, compensation was only paid net of tax when the victim enjoyed a tax regime which allowed it to deduct all or part of the VAT invoiced to it and that in that case, the VAT was not included in the compensation, since the victim passed it on to a third party. It was also noted that when the VAT paid by the victim could not be deducted, the loss must be compensated including VAT, so that the final tax charge is borne by the person causing the damage and not the victim.

4.8.11 It was noted that only persons subject to VAT who were required to invoice this tax to their customers enjoyed the right to deduct. It was noted, however, that legal persons under public law were not subject to VAT for their administrative service activities and that, to the extent that they were not subject to a legal regime allowing them to deduct all or part of the tax paid with respect to their own operations, public persons had the right, in the exercise of their administrative tasks, to reimbursement of VAT by the person responsible for the damage.

4.8.12 It was also noted that in litigation relating to offences against the public domain, the Conseil d'État (highest administrative jurisdiction in France) had held ineffective the method suggested by the IOPC Funds since the fact that the State, which is responsible for collecting taxes and duties, is the beneficiary of the VAT revenue, "does not have the effect of making it subject, with respect to this tax, to a particular tax regime which allows it to deduct VAT on the costs of restoration measures to the public domain" and the VAT must therefore be included in the compensation granted to the State.

4.8.13 It was further noted that the solutions and criteria adopted by the judge in the ordinary court were similar to those applied by the administrative judge.

4.8.14 It was noted that the French State, which is required to pay VAT to its service providers and suppliers, did not enjoy any right of deduction with regard to the operations carried out following a large oil spill and that for that reason France believed that the compensation granted to the French State in reparation for its loss, must include the total amount of VAT paid.

Document IOPC/OCT13/4/7/1 submitted by the Secretariat

4.8.15 It was recalled that the 1992 Fund had rejected the claims for VAT from both the French and the Spanish Governments in the *Prestige* incident (some €6.2 million and some €43.6 million, respectively) 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.

4.8.16 It was recalled that, although this 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.

Current IOPC Funds' policy in respect of claims for compensation of VAT from central governments

4.8.17 It was noted that the position taken by the IOPC Funds over the years in the matter of VAT was that VAT was compensated to all victims who had been required by national law to pay these sums in respect of the purchase of equipment or the procurement of services and could not recover it as part of their normal business. It was noted that this included private individuals, companies or local and regional authorities as long as they were separate legal entities from the State.

4.8.18 It was noted that although a central government may be made up of several ministries or departments, all of them are branches of a single legal entity. It was also noted that any VAT paid by a government department would be paid to that government's Ministry of Finance and that if the Funds were to pay VAT to the government as part of compensation of their department's claim, the central government would have in effect received the same VAT twice, which would be unjust enrichment.

4.8.19 It was also noted that the issue of VAT had been debated at length during the *Haven* incident (Italy, 1991) when a decision had been taken by the 1971 Fund Executive Committee not to accept the claim for VAT lodged by the Italian Government since any compensation for VAT to the central government would in effect be unjust enrichment.

4.8.20 It was noted, however, that when the 1971 Fund did compensate VAT to a government agency, as for instance in the case of the United Kingdom MCA in the *Sea Empress* incident, it was because it was an agency separate from the central government, with a separate budget, and it would therefore have indeed suffered an economic loss were the VAT not to have been compensated.

4.8.21 It was noted that the Director had not had time to provide a full analysis of document IOPC/OCT13/4/8 for consideration by the governing bodies and that he intended to address the issue of compensation for claims for VAT by central governments at the next regular session of the 1992 Fund Assembly. It was noted, however, that the Director had received a preliminary legal opinion on the French civil law aspects from Professor Alain Bénabent, a lawyer acting in the Conseil d'État and the Cour de Cassation, contained at the Annex of document IOPC/OCT13/4/7/1.

Legal opinion in respect of claims for compensation of VAT from French central government

4.8.22 The governing bodies took note of Professor Bénabent's opinion, where he examined whether, when the French State suffered a loss for which it could claim compensation, the calculation of the corresponding compensation should include VAT or, on the contrary, should exclude VAT.

4.8.23 It was noted that in his opinion, Professor Bénabent stated that the general rule was that compensation awarded would include VAT when the claimant could not recover it and, conversely, compensation would exclude VAT when the claimant was in a position to recover the VAT that he/she had had to pay. It was also noted that the rationale behind this general rule was to guarantee the principle of full compensation for the damage suffered, ie so that the claimant was put in the same position as he/she would have been had the damage not occurred.

4.8.24 It was noted that Professor Bénabent further stated that if VAT was excluded from compensation because the claimant had the possibility to claim it back, and therefore his true loss was limited to the amount excluding VAT, to compensate him for the VAT that he had already recovered, or would recover, would be providing compensation over and above the loss.

4.8.25 It was also noted that Professor Bénabent was of the view that since the State was both the party paying and receiving the tax, the State had already received 'restitution' of the amount paid in VAT and thus had suffered no loss.

4.8.26 The Director recognised that the IOPC Funds had not always been consistent in the way they had dealt with the issue of whether VAT paid by governments as a result of an incident should be included in the compensation paid to them by the IOPC Funds. The Director also stated that this was a very complex issue and that he required more time to study the issue further. He therefore proposed that a decision should be postponed until October 2014 to give time for a careful consideration of the complicated issue of VAT.

Statement by France

4.8.27 The delegation of France made the following statement (original French):

> Following several oil spills which have affected France since the creation of the international compensation system, France has observed that there was no clear policy, defined by the Fund Assembly, on the question of compensation of a State for the VAT paid to private companies involved in the clean-up operations.
>
> After being refused to the Italian State in the Haven case in 1991, reimbursement of VAT was, however, granted to the French State in several incidents, and also to the Maritime and Coastguard Agency following the Sea Empress incident in the United Kingdom in 1996.
>
> This situation gives rise to discrepancies in the compensation paid to the States affected which are not acceptable. France therefore wishes the 1992 Fund Assembly to adopt a

clear and definitive position on compensation for VAT, in order to allow equal treatment of all States affected by pollution.

France notes the request of the Director to defer consideration of this question to the next session of the Assembly in October 2014. France is not opposed to this deferral, as it is a complex subject which requires an in-depth examination by Member States of the rules applicable in their national law.

Debate

4.8.28 The French delegation also stated that the jurisprudence studied in the legal opinion submitted by France was very consistent. The French delegation also pointed out that Professor Bénabent was a lawyer and that he did not work in the Conseil d'État or the Cour de Cassation. That delegation also stated that there was a need for consistency which was lacking in the current practice of the IOPC Funds, because whereas France had been reimbursed for VAT in the past, such reimbursement was at present being denied, and whereas some countries had been reimbursed other countries had seen their claims for reimbursement denied. That delegation added that this lack of consistency highlighted the need for the issue to be discussed, but that given the complexity of the matter, Member States should be given more time to study it. The French delegation also stressed that the current policy of the Funds had the risk of discriminating between different States depending on the administrative organisation of those States.

4.8.29 One delegation expressed the opinion that central governments should not be reimbursed VAT for three reasons. Firstly, it would constitute unjust enrichment because although the State was paying VAT, the same State was also receiving that VAT. Secondly, compensating VAT could be an incentive for Member States to increase VAT for pollution related services. Thirdly, reimbursing VAT to a State would be in detriment of other pollution victims. A number of delegations agreed with this statement. One delegation, however, was of the view that VAT rates were set by law, and therefore there was no room for arbitrary increases.

4.8.30 Many delegations stressed that VAT should not be a means of unjust enrichment and that the application of the principle of full compensation meant that VAT paid by a State and later recovered by it, did not constitute a loss, and that a State should be only reimbursed for the VAT paid by it, if it had suffered a real loss. Concern was expressed that it would be difficult to identify whether an agency could be viewed as part of the State that received VAT.

4.8.31 Many delegations expressed the view that a State that used services of private contractors should be reimbursed for the VAT paid to those contractors since, as stated by the delegation of France, if a government decided not to intervene but to leave it for the shipowner to carry out the clean-up operations, VAT would be paid to the State. A number of delegations also supported the view that there should be full compensation for the loss suffered by a State and agreed with the position submitted by the delegation of France.

4.8.32 One delegation expressed the view that the complex issue of VAT depended on national law, but that the basic considerations to be applied when deciding whether VAT should be reimbursed could be firstly whether there would be enrichment of the State; secondly whether the State would be compensated twice, and thirdly whether the State had been compensated in full. That delegation also asked whether the Director could submit scenarios where VAT should be paid, when VAT should not be paid, and another case where the situation was not clear. That delegation also expressed confusion as to why in certain cases VAT had been paid, but not in others.

4.8.33 Some delegations expressed concern that in certain countries with a complex administrative organisation the issue of whether one branch of the government should be compensated for VAT would not constitute a clear case. These delegations expressed the view that, since the administrative organisation would differ in each State, every case should be decided by taking into account the administrative peculiarities of that State.

4.8.34 Many delegations, however, expressed concern that the policy of the IOPC Funds should be clear and that there should not be different solutions depending on the State but that the same criteria should be applied to all States.

4.8.35 The United Kingdom delegation took the floor and explained that the fact that the MCA was an independent agency was not the reason why the MCA had been compensated for VAT paid in the *Sea Empress* incident. That delegation stated that the opinion of Customs and Excise was that not being reimbursed for VAT, would have constituted a loss for the MCA. That delegation also explained that over the years since the *Sea Empress* incident, the MCA had developed a policy whereby for each activity carried out, a ruling would be obtained from Customs and Excise, based on which, a decision on whether to include VAT in a claim would be made in each particular case.

4.8.36 One delegation requested more information on how past cases had been dealt with.

4.8.37 The Chairman of the 1992 Fund Administrative Council summarised the discussion stating that the delegations which took the floor, had expressed gratitude to the delegation of France for bringing the subject to the attention of the Administrative Council. The Chairman also noted that the problem of VAT was not limited to France and that since the IOPC Funds were international bodies it was important for this matter to dealt with in a consistent manner.

4.8.38 The Director stated that he would welcome the thoughts of Member States.

1992 Fund Administrative Council Decision

4.8.39 The 1992 Fund Administrative Council decided that, given its complexity, the issue of whether VAT paid by governments in the response to an oil pollution incident should be reimbursed to them by the IOPC Funds should be studied further, and instructed the Director to study the matter and report back to the October 2014 session.

Supplementary Fund Assembly and 1971 Fund Administrative Council

4.8.40 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decision of the 1992 Fund Administrative Council.

4.9	**Assessment methods of the IOPC Funds** **Documents IOPC/OCT13/4/8 and IOPC/OCT13/4/8/1**	**92AC**		**SA**	**71AC**

4.9.1 The governing bodies took note of the information contained in documents IOPC/OCT13/4/8 submitted by France and IOPC/OCT13/4/8/1 submitted by the Director.

DOCUMENT IOPC/OCT13/4/8 SUBMITTED BY FRANCE

4.9.2 It was noted that in the light of its experience, France was under the impression that certain assessment practices of the IOPC Funds did not seem to have been validated by the IOPC Funds' Member States nor brought to their attention. It was noted that for this reason, France proposed the adoption of guidelines to improve the functioning of the Funds, and to facilitate dialogue between the IOPC Funds' experts and the States affected by an incident.

<u>Guidelines for assessing the loss to a State in the event of an incident</u>

4.9.3 The governing bodies took note of the proposals by France for the Secretariat to prepare guidelines for assessing the loss to a State in the event of an incident.

4.9.4 Guidelines relating to experts:

- In accordance with the recommendations formulated by the Comptroller and Auditor General of the National Audit Office in October 2012, the IOPC Funds should submit to Member States the list of standards required in terms of qualifications and experience for the recruitment of IOPC Funds' experts; and

- The IOPC Funds should submit to Member States the complete list of experts presently working on current incidents, stating for each of them their qualifications and professional experience.

4.9.5 Guidelines relating to the submission of claims files:

- The IOPC Funds should establish a model format for the claims file of a State, in order to facilitate discussions with the IOPC Funds' experts;

- The IOPC Funds should establish, in this framework, an exhaustive list of supporting documents which may be required from a State in the event of an incident. This list would thus be the same for all States and would ensure that all States are treated equally. This list must be complete to avoid supporting documents being requested by the Funds' experts in the course of examination of the State's compensation claim, which are impossible to obtain several years after the incident; and

- The IOPC Funds should expressly set out in this list, the level of detail required with regard to personnel costs incurred by the State in its oil spill response operations.

4.9.6 Guidelines on references taken into account by the IOPC Funds:

- The IOPC Funds should apply the Claims Manual strictly and take into account the data (currents, weather, availability of equipment, etc) available at the time decisions were made and use the information tools available to the maritime authorities at the time of the events (for example, if certain air and naval resources were the only available means of intervention in an emergency, the use of such means must not be disputed);

- The IOPC Funds should base their assessment of the reasonable cost of resources engaged on the actual cost of air and naval resources applicable in the State affected by the pollution;

- The IOPC Funds should submit evidence to justify the challenging of decisions taken, in order to allow a technical debate between the authorities of the affected State and the IOPC Funds' experts; and

- The IOPC Funds should not reject all compensation if they consider that the cost of oil spill response operations is disproportionate to the results achieved, but should only set the compensation at a reasonable amount.

Findings of France concerning the assessment methods of the 1992 Fund in the context of the *Prestige* incident (Annex to Document IOPC/OCT13/4/8)

4.9.7 It was noted that as the 1992 Fund's limit in the *Prestige* incident was insufficient to compensate all the victims in the three States affected by the pollution, the French State stood last in the queue of French beneficiaries of compensation from the 1992 Fund, in order to allow higher compensation for the French victims, and that therefore France's proposals would not have any financial impact on the 1992 Fund, but that France sought to clarify the process for future decisions.

Cost of air and naval resources engaged in response to a major pollution incident

4.9.8 It was noted that in France, the costs of aircraft, ships, vehicles and military and administrative personnel belonging to the French State were calculated with precision each year by the Ministry of Defence, that for each type of ship and aircraft, additional expenditure (fuel, maintenance) was distinguished from current expenditure (depreciation, personnel) following specific scales of costs and that these highly detailed scales of costs had been applied to the compensation claim relating to the response operations against the pollution caused by the *Prestige* presented by the French State.

4.9.9 It was noted, however, that to assess the reasonable costs of the measures taken by France in response to the pollution at sea, the 1992 Fund's experts, taking the view that the French rates were too high, had not relied on the scales of costs provided by the French State but on those of other States.

Appropriateness of decisions taken by a State to tackle an oil spill

4.9.10 It was noted that the 1992 Fund's experts disputed the need for measures taken by the French State to respond to the pollution. It was noted that they considered that some aircraft, helicopters or ships were too expensive in their opinion and should not have been used even though they were the only resources available to respond in an emergency, making themselves the judge of the appropriateness of the decisions taken, several years after the incident, without having been present at the operations.

4.9.11 It was noted that the French authorities had dealt with many large oil spills and as a result had gained great competence in this field. It was noted that in France's view, in pollution cases it was necessary to act as quickly as possible, taking into account the circumstances of the pollution, the competence of those involved, and the availability and endurance of air and naval resources at the time of the crisis. It was also noted that in their view, if the French maritime authorities had not deployed certain air and naval resources and had they waited until more suitable resources had become available, the impact of the oil spill on the coasts would have been much greater and the clean-up costs would have been much higher.

4.9.12 It was noted that the maps showing the drifting of the oil slicks showed that the pollution continued to arrive on the French coasts up to December 2003, and that in France's view the measures adopted were effective and resulted in a reduction in the quantities of oil reaching the French coasts. It was noted, however, that the 1992 Fund's experts considered that after 10 May 2003, the measures taken to respond to the pollution at sea were ineffective and should no longer be eligible for compensation. It was noted that in France's view, a strict application of the Claims Manual should lead to a reduction in the compensation for the cost of operations at sea after that date, but not to a total refusal to pay compensation.

Supporting documents and submission of the expert assessment report

4.9.13 It was noted that the IOPC Funds' experts also demanded the payslips of every person involved in the clean-up operations at sea and onshore. It was noted however, that in France's view, payslips were personal documents which the State could not provide to third parties, and that the remuneration paid to military personnel, as well as other administrative staff, was calculated according to administrative scales specific to their respective categories and that these scales had been provided along with the details of the involvement of each person.

4.9.14 It was further noted that that the detailed expert assessment report presented by the IOPC Funds' experts to the French State was not organised in the same way as the claims file of the French State and that it was impossible for the French State to know precisely which invoices were accepted or refused and which supporting documents were missing.

DOCUMENT IOPC/OCT13/4/8/1 SUBMITTED BY THE DIRECTOR

4.9.15 It was noted that the second provisional assessment of the French Government claim, carried out by the 1992 Fund in 2009, was still an interim assessment and as such might be revised in the light of further information. It was also noted that even though the French Government had not provided additional information, a further reassessment of the claim was now being undertaken on the basis of general information available, including the observations of the experts who were in the field during the clean-up operations and by comparison with other incidents where claims by the French Government contained detailed information.

Comments by the Director on the proposals submitted by France

4.9.16 The governing bodies took note of the Director's comments on document IOPC/OCT13/4/8 submitted by France.

Guidelines relating to the use of experts

4.9.17 It was noted that the Director was acting upon the External Auditor's recommendations regarding the use of experts (document IOPC/OCT12/5/6/1, Annex I, Attachment II) and would provide this information to the External Auditor and the Audit Body at its December 2013 meeting.

4.9.18 It was noted that the Secretariat was establishing a formal process for the selection and appointment of claims experts, including the need for minimum requirements in terms of qualifications, experience and membership of professional bodies and that this process would be documented to demonstrate clearly that the experts engaged were competent, capable and independent. It was also noted that along with the selection process, the Secretariat was developing a standard set of engagement terms for its experts and that it was the Director's intention to have the contract in place by the end of 2013.

4.9.19 It was noted that the requirements in terms of qualifications and experience for experts engaged by the IOPC Funds would be reviewed by the External Auditor and the Audit Body, and that the Director would present a document detailing those requirements to the governing bodies at their next session.

4.9.20 It was noted that, in the interest of transparency, the Director understood the importance of Member States knowing the identity of the experts engaged by the IOPC Funds to carry out the assessment of claims for compensation. As a consequence, the Director was ready to act on the proposal by the French Government and to provide the governing bodies with the names of the companies engaged by the IOPC Funds, together with their areas of expertise and the incidents in which they had been involved. It was noted however, that in the Director's view it would not be appropriate to publicly identify individuals since this could expose them to unnecessary risk. It was noted however, that this full list of individual experts would be available to the External Auditor. It was noted that the Director would provide details of the names of the companies engaged as experts by the IOPC Funds to the governing bodies at their next regular session in October 2014.

Guidelines relating to the presentation of claims (submission of claims files)

4.9.21 It was recalled that at the October 2012 session of the 1992 Fund Administrative Council the delegation of France had made a request to the Secretariat to draft additional guidelines to assist governments when submitting claims for clean-up operations and an information note to Member States listing the documents that must be provided to the Club and Funds' experts when the government prepared its claim. It was also recalled that at that session, the Director had agreed that this would be beneficial and that the Secretariat would draft the guidelines. It was noted that an example showing how a claim should be presented would form part of these additional guidelines.

4.9.22 It was noted that those guidelines would provide information advising Member States on what supporting documentation they should provide when they submitted claims, including the level of detail required in respect of expenses incurred by personnel employed by the State in the fight against pollution. It was noted, however, that it was unlikely that this list of required documentation would

ever be fully exhaustive since each State's administration had a different way of recording and presenting costs. It was further noted that the specific measures taken to meet the particular circumstances of an incident could not be foreseen and would lead to differing approaches to the formulation of claims to meet those circumstances.

4.9.23 It was also noted that after an initial review of the claim documents, it was usual for further queries to arise and further explanations to be required in order to allow the Club, the IOPC Funds and their experts to complete a detailed assessment.

4.9.24 It was noted that the Director was aware that a problem had arisen in respect of the assessment of the French Government's claim in the *Prestige* incident in that the assessment prepared by the Club and 1992 Fund experts did not follow the same format as the claim submitted. It was noted, however, that whilst the IOPC Funds made every effort to work to the same format as the claim when making a technical assessment for response costs, this was not always possible. It was noted that very often costs were presented in a way that did not coincide with operational activities, which necessitated the experts spending considerable time reformatting the claim and supporting documents in order to understand how costs were aligned to the actions on each site where clean-up activities had taken place. It was also noted that it was essential for the assessment of claims that a brief report describing the response activities and linking these with expenses (invoices) was provided and that invoices, receipts, worksheets and wage records were insufficient in themselves. It was noted that the experts engaged by the Club and the 1992 Fund needed to have information in respect of the events and work carried out at each site (labour costs, equipment and consumable materials per site, etc). It was also noted that these issues were reflected in the Claims Manual.

Guidelines relating to the data (references) taken into account by the IOPC Funds

4.9.25 It was noted that the Director was satisfied that in their assessment of the claim by the French Government, the experts engaged by the Club and 1992 Fund had applied the criteria set out in the Claims Manual. It was noted that in the assessment of a claim, the 1992 Fund took a view of the technical reasonableness of decisions taken by the authorities based on the facts available at the time the decisions were made, that the reasonableness of the decisions taken was considered from a technical point of view and in light of the information available at that time, and that this information was known to the 1992 Fund's experts since they were on site monitoring the response operations.

4.9.26 It was noted that in applying the general principles set out in the Claims Manual, the P&I Clubs, the 1992 Fund and their experts did not rely on an international tariff scheme, but made every effort to take into account the varying circumstances in individual Member States, in particular, personnel rates which varied considerably from Member State to Member State. It was noted that the ideal approach was to deconstruct claimed rates into their component parts in order to determine the actual costs of providing the resource and that for a vessel, a daily rate could be derived from the purchase cost amortised over the vessel's expected lifetime, annual costs such as mortgage, insurance, surveys, maintenance and crewing costs, and dividing these by the number of days the vessel was available in a year, similar to the example provided at the Annex of document IOPC/OCT13/4/8/1.

4.9.27 It was noted that if data was available to allow this approach to be followed, consideration was also given to the elements of fixed costs which made up the calculated daily rate, and that in the case of vessels or aircraft which had a primary role which was substantially different to oil spill response, such as a defence role, there were fixed costs which clearly could not be included in a rate derived for spill response.

4.9.28 It was noted that where full information was not available, an alternative approach was used where the rates claimed were compared to rates for similar resources, or resources capable of performing a similar function and that this was the approach taken when assessing the reasonable costs for the French naval aircraft used in the *Prestige* incident.

4.9.29 It was noted that the IOPC Funds' experts were required to take into account a range of factors including in particular, remote fixed costs, when considering what should be the reasonable rate for a particular government resource and that therefore, in the Director's view, applying the rates published by Member States without submitting them to a test of reasonableness on the basis of technically-objective criteria, would not be in conformity with the Claims Manual.

4.9.30 It was noted that the IOPC Funds did not question the right of a government to deploy the resources of its choosing, but that the cost of those resources should be reasonable and proportionate and include only those elements closely related to the clean-up activity and the response as a whole, to be eligible for compensation.

4.9.31 It was noted that the decisions taken by the authorities of a Member State at the time of a spill were determined by a number of factors including technical considerations and that the IOPC Funds did not question the extensive experience held by the French authorities or governments in other countries in this regard, but that as a consequence of competing pressures, the actions taken might have been different to those which would have been taken on technical criteria alone.

4.9.32 It was also noted that in assessing the reasonableness of actions taken by authorities, the IOPC Funds interpret this to mean that measures taken should be 'proportionate' to the expected outcome and that this had particular relevance to the decision of when to terminate elements of the response. It was noted that in any incident, as the amount of oil available for collection diminished and became fragmented over wide areas, the level of effort and associated costs required to collect a given quantity of oil increased exponentially to the extent that the measures became unreasonable. It was also noted that considerations other than technical, for example for reasons of politics or public relations, might demand that operations be continued beyond this point but that in assessing claims for costs associated with operations which continued beyond a certain point, the IOPC Funds followed the guidance set out in the Claims Manual, as approved by Member States, and were not able to take such costs into account.

4.9.33 It was noted that in many instances an expert appointed by the IOPC Funds, or by the Club and IOPC Funds together under the MoU, would be on site to observe first-hand the circumstances in which such decisions were made, and that if the expert considered the decision to be unreasonable according to the criteria set out in the Claims Manual, the expert could advise the authorities against that decision at the time. It was also noted that the Club and IOPC Funds took into account the expert's opinion in deciding whether to approve the assessment of a subsequent claim for associated costs.

4.9.34 It was noted that challenges by the IOPC Funds' experts to decisions taken by the authorities was not uncommon and that it was viewed as part of the assessment process. It was also noted that where a claimant disagreed with an assessment, the Club and Funds provided justification for the stance taken and that a technical dialogue between the experts and the claimants normally allowed a consensus to be reached and the associated amendments made to the assessment. It was further noted that, since the French Government's claim in respect of the *Prestige* incident was still being assessed, this technical debate was ongoing.

Director's considerations

4.9.35 It was noted that many of the points raised by the delegation of France related to the assessment of its claim in respect of the *Prestige* incident which was still ongoing, and that the Director was of the view that a number of the queries raised by the French Government should be resolved within the ongoing assessment process. He therefore invited the French Government to continue the dialogue with the 1992 Fund's experts.

4.9.36 It was noted that one of the issues that arose from the document presented by the delegation of France was the importance of proceeding with the government's claim assessments as quickly as possible after an incident had occurred, even though the Member State had elected to 'stand last in the queue'. It was noted that it was also essential that the authorities involved in a clean-up response and the IOPC Funds' experts, engaged in a constructive technical dialogue in order to resolve any difficulties encountered in the assessment process.

4.9.37 It was noted that in the Director's view, the assessment of the French Government's claim in respect of the *Prestige* incident was based strictly upon the criteria established in the Claims Manual as agreed by Member States, which ensured consistency amongst assessments and that all claimants were treated equally. It was also noted that deviation from these criteria could only be made with the express agreement of Member States. It was also noted that in the Director's view, the Claims Manual served its purpose well and considered that the proposals made by France did not warrant an amendment to the Claims Manual as proposed. It was further noted that in the Director's view the guidelines now in preparation to assist Member States in the presentation of claims for clean-up operations would answer the concerns raised by France.

Debate

4.9.38 The delegation of France made the following statement (original French):

> France, which has suffered nine oil spills since the entry into force of the Civil Liability Convention and the IOPC Fund Convention, is very attached to the international compensation regime and wishes to contribute to its improvement in a constant concern to achieve equity between victims.
>
> France observes that there are guides published by the IOPC Funds to assist fishing and tourism professionals in submitting their compensation claims, but no precise rule has been adopted by the Member States of the IOPC Funds concerning compensation claims of States affected by incidents.
>
> The establishment of the claims file of a State is a considerable task which has to start from the very first moments of the onset of the pollution and means mobilising a large number of people. This involves collecting thousands of supporting documents and filing them (the claims file of the French State following the *Erika* incident comprised 300 000 pages, and the file following the *Prestige* incident comprised 30 000). In the interests of efficiency, it is thus important that the State's services responsible for establishing the claims file should know in advance the experts' expectations concerning the type of documents to be provided and have a model file format which facilitates examination of the claims file by the experts.
>
> France therefore proposes, in this document, the adoption of a certain number of guidelines which will facilitate the establishment of a State's claims file and standardise the assessment rules applied by the experts, in order to guarantee equal treatment for each Member State affected by a pollution incident, when assessing their loss.
>
> <u>Guidelines relating to experts</u>
>
> - In accordance with the recommendations formulated by the Comptroller and Auditor General of the National Audit Office in October 2012, the IOPC Funds should submit to Member States the list of standards required in terms of qualifications and experience for the recruitment of IOPC Funds' experts.
>
> - The IOPC Funds should submit to Member States the complete list of experts presently working on current incidents, stating for each of them their qualifications and professional experience.

Guidelines relating to the submission of claims files

- The IOPC Funds should establish a model format for the claims file of a State, in order to facilitate discussions with the IOPC Funds' experts.

- The IOPC Funds should establish, in this framework, an exhaustive list of supporting documents which may be required from a State in the event of an incident. This list will thus be the same for all States and will ensure that all States are treated equally. This list must be complete to avoid supporting documents which are impossible to obtain several years after the incident being requested by the Funds' experts in the course of examination of the State's compensation claim.

- The IOPC Funds must expressly set out in this list the level of detail required with regard to personnel costs incurred by the State in its oil spill response.

Guidelines on references taken into account by the IOPC Funds

- The IOPC Funds should apply the Claims Manual strictly and take into account the data (currents, weather, availability of equipment, etc) available at the time decisions were made and use the information tools available to the maritime authorities at the time of the events (for example, if certain air and naval resources were the only available means of intervention in an emergency, the use of such means must not be disputed).

- The IOPC Funds should base their assessment of the reasonable cost of resources engaged on the actual cost of air and naval resources applicable in the State affected by the pollution.

- The IOPC Funds should submit evidence to justify the challenging of decisions taken, in order to allow a technical debate between the authorities of the affected State and the IOPC Funds' experts.

- The IOPC Funds should not reject all compensation if they consider that the cost of oil spill response operations is disproportionate to the results achieved, but should only set the compensation at a reasonable amount.

France requests the Secretariat to submit, at the next session of the IOPC Funds, the information relating to experts which is also requested by the Auditor in the document relating to the 2012 Financial Statements of the 1992 Fund.

France also requests the Secretariat to amend the Claims Manual in accordance with the guidelines to be adopted by the Assembly. France proposes, in this regard, that the guidelines relating to the submission of claims files and references taken into account by the IOPC Funds should be incorporated in paragraph 3 of the Claims Manual concerning claims for costs of clean-up and pollution prevention measures.

4.9.39 The majority of delegations that took the floor thanked France for sharing its experience in dealing with oil spills and agreed with the need for transparency. However, most delegations were of the view that the Claims Manual did not need to be revised at this stage, considering that guidelines to assist Member States in the presentation of claims for clean-up operations would be available for the consideration of Member States at the spring 2014 session of the governing bodies.

4.9.40 Concerning the proposal by France for the Secretariat to make available an exhaustive list of documents needed in the assessment of claims, most delegations expressed the view that while a detailed list would be very useful for Member States, it would be unlikely that the list could ever be exhaustive taking into account the particularities of different spills and Member States.

4.9.41 One delegation, whilst thanking France for sharing its experience, disagreed on the need for a list of experts, which in its view was not necessary for the majority of Member States who would only need it in case of an oil pollution incident. In that delegation's view, it would suffice for a general list of experts' requirements to be made available on the IOPC Funds website. Most delegations that took the floor, whilst expressing the view that the Secretariat should make available a list of requirements and experience of the experts engaged by the IOPC Funds, noted it was important to protect the individual identity of the experts for security reasons.

4.9.42 The Director confirmed that the guidelines were being drafted and would be available for the spring 2014 meetings. He also reiterated that in his view, the Claims Manual did not need to be amended and confirmed that the experts engaged by the IOPC Funds applied the Claims Manual correctly.

4.9.43 A number of delegations stated that one important lesson that could be learnt from the experience of France, was the importance of assessing a claim as soon as possible, even if a Member State was standing last in the queue, so that the information necessary for the assessment would not be lost with the passing of time.

4.9.44 One delegation also stated that it was important that at the outset of an incident, the Secretariat communicated with the Member State involved and informed it when a particular action would not be considered reasonable, even if it remained the responsibility of the Member State to decide on the actions to take to combat an oil spill. That delegation also stated that with regard to vessel rates, it had never been able to find vessels that offered hourly rates. That delegation also suggested that when working on the guidelines for Member States, the Secretariat might wish to take into consideration the European Maritime Safety Agency (EMSA) guidelines which had been approved by all European Union Member States recently. That delegation also suggested that the IOPC Funds should consider how to record in the claim assessment, a claimed item which was subsequently withdrawn by the Member State.

4.9.45 One delegation stated that, in accordance with the Claims Manual, the Secretariat should not apply hindsight in the assessment of claims and that according to the Claims Manual, the technical reasonableness of a claim should be assessed "on the basis of the facts available at the time of the decision to take the measures". A number of delegations supported this statement.

4.9.46 One delegation stated that it would be dangerous for the IOPC Funds to become overly prescriptive when dealing with claims and that, on the basis of their experience with several incidents, a degree of flexibility should be maintained.

4.9.47 The delegation of France made the following statement (original French):

> The French delegation notes that the presentation by the Director focuses, from the introduction, on a particular case, albeit an important one for France, the case of the *Prestige*. In fact, the French document IOPC/OCT13/4/8 does not seek to discuss this incident, which is a specific case, but to present a methodological approach.
>
> For the reason I have just explained, the French delegation will not reply to the points provided by the Director relating to the *Prestige*. Indeed, it is not the task of the 1992 Fund Assembly to play host to a dialogue between the Fund and the French State.
>
> The French delegation wishes to return to the questions of substance raised in its document and that of the Director.
>
> 1. Recommendations relating to experts
>
> France wishes to give an example to explain its objective better. Currently, for the *Hebei Spirit*, it would be interesting for Member States to know the exact number of experts, their qualifications, experience and specialist field, without necessarily knowing

the identity of each. We understand perfectly the concerns of the Director, who wishes to guarantee the security of the experts.

France does not wish to go further than the recommendations of the External Auditor, recommendations already expressed in 2012 and reiterated in 2013 on the question of expertise generally.

France notes with satisfaction that the Director has undertaken to submit a document on experts to the spring session.

2. Submission of claims files

The Director proposes in paragraph 5.3.2 of his document to draft an information note to Member States listing the documents that must be provided to the experts when the claim is prepared. France emphasises that this note must be based on specific examples.

For each type of expense incurred for oil spill response, the IOPC Funds and the affected State must, from the start of the response operations, engage in discussions covering, in particular, the nature of the information required for the purpose of subsequent checks on the validity of the expenses.

3. Format of claims files

Up to now, France has always formatted its claims files in the same way, by geographical area, then by type of expense. Other formats could be legitimate to enable a comparison of expenses. It is important that this format should be known to everyone from the outset, in order to avoid problems at a later stage.

4. Question of costs

The Director has presented as an annex to his document an example of how hire rates for oil spill response vessels are determined. However, France draws the attention of the Director to the question of manning costs which vary according to the State concerned, and which must be taken into account in the experts' assessment.

In a constructive spirit, France would wish to participate in the drafting of the information note to be submitted to the Member States at the next session.

4.9.48 The observer delegation of the International Group of P&I Associations took the floor and stated that the experts' recruitment was conducted jointly by the IOPC Funds and the P&I Clubs, in accordance with the MoU approved by the IOPC Funds' Member States, and for that reason, the International Group was discussing the draft experts contract with the Secretariat. It also stated that in its view, transparency was essential in order to guarantee the element of trust in the relationship between all parties involved in an oil spill. The delegation of the International Group further stated that it had also been working with the Secretariat on the production of a claim form which contained a list of documents required in the submission of claims. That delegation also clarified that the decision on whether to approve an assessment was with the P&I Club and the IOPC Funds, not with the experts. That delegation also explained that it was an important part of the assessment process to establish a dialogue with the claimant from the beginning. In the view of that delegation it was not necessary to revise the Claims Manual.

4.9.49 A number of delegations stated that in their countries it was the government who conducted the clean-up operations, using whatever government resources they had available, including the Navy. It was stressed that it was very important that government claimants should be treated equally. Some delegations also explained that when they put together a claim, the structure of the claim would usually follow that indicated by the Ministry of Finance and that it might be difficult to follow the format requested in the Claims Manual.

4.9.50 One delegation stated that regarding the assets used in the response to oil spills, there were already agreed rates in the context of salvage operations, namely, the SCOPIC clause under Lloyds Open Form Salvage Agreement. That delegation suggested that it would be very useful to try to establish internationally agreed rates.

4.9.51 The observer delegation of the International Tanker Owners Pollution Federation (ITOPF) took the floor and recalled that they had been working with the IOPC Funds from their conception, 35 years ago. It was explained that their role was not only to assess claims but also to give technical advice from the beginning of an incident and, in that context, the experts were used to an unwillingness to cooperate on the part of claimants and had even experienced instances of harassment. It was stressed that ITOPF's involvement at an early stage was important, since it facilitated the understanding of the claims and the information collected would be used when assessing the claim, thereby avoiding the need to use data from other sources. The delegation of ITOPF also stated that they were always willing to help claimants in the preparation of claims as part of the assessment process. It was also stressed that the assessment of claims was done by experts but that it was ultimately for the P&I Club and the Fund to take a decision. Concern was also expressed that safety problems might arise if the names of all experts were published.

4.9.52 One delegation proposed that a small Working Group formed of States with experience in oil spills be established to consider the guidelines before the spring 2014 session. A number of delegations, however, took the floor expressing disagreement with the idea of a small working group, since that would not be transparent. It was also stated that the need for a Consultation Group could be reviewed once Member States had had time to discuss the guidelines in spring 2014.

4.9.53 One delegation noted that the positions of the French delegation and the Director were very close and that Member States should be provided with the same level of guidance as other claimants.

4.9.54 The Director agreed that the position of France and that of the Secretariat were close. The main difference which concerned the protection of experts' safety had been resolved since France had confirmed that it only required a list of expert companies and skills and that proposal was acceptable for the Secretariat. The Director also stated that the guidelines would be very useful since although the Claims Manual was useful, more detail was needed.

4.9.55 The French delegation confirmed that concerning the issue of experts, it was only interested in the general ambit of experience of the experts.

4.9.56 The Chairman, when summarising, noted that the subject was not as controversial as it might seem. He noted that the majority view was that at present no change was required to the Claims Manual. He also noted that the list of experts would not be sent to Member States but that the Director would follow the External Auditor's recommendations concerning the list of qualifications and company names, without making public the individual names of experts. The Chairman also noted that the guidelines to help Member States submit claims for clean-up operations would be available by the spring 2014 session. He also noted that the proposal for a small Working Group had not received sufficient support from the Administrative Council, but that when making the guidelines the Secretariat should seek the input of States with experience of oil spills. He also noted the need to assess claims early even if the government was standing last in the queue, and that it was very important that a dialogue between the State and the IOPC Funds was established from the early stages of an incident.

1992 Fund Administrative Council

4.9.57 The 1992 Fund Administrative Council decided that it was not necessary, at this stage, to amend the Claims Manual since a set of guidelines to assist Member States with the submission of claims for clean-up operations, were currently being prepared. It was also decided that the Director should provide Member States with a list of expert companies engaged by the IOPC Funds with a list of their skills, as well as with a formal process for the selection of experts, including the need for minimum

requirements in terms of qualifications, experience and membership of professional bodies, to demonstrate that they were competent, capable and independent, as recommended by the External Auditor.

Supplementary Fund Assembly and 1971 Fund Administrative Council

4.9.58 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decision of the 1992 Fund Administrative Council.

5 Financial reporting

5.1	**Submission of oil reports** **Document IOPC/OCT13/5/1**	**92AC**		**SA**	**71AC**

5.1.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT13/5/1.

5.1.2 The governing bodies noted that the submission rate of oil reports in 2013 had kept up with that of the previous year despite the enlargement of Fund membership, with 94 out of 111 Member States having reported their tonnage information by the October 2013 sessions of the governing bodies.

5.1.3 It was noted that the financial consequences of the missing oil reports were limited, as the 94 States that had submitted reports for 2012 with respect to the 1992 Fund were estimated to account for more than 97% of the total contributing oil.

5.1.4 It was noted that out of the 17 Member States that had yet to submit oil reports, four had only one year of outstanding reports. Five Member States had not submitted oil reports for two or three years and eight had more than four years of outstanding oil reports. This included six Member States that have never submitted oil reports since joining the 1992 Fund. The Secretariat expressed serious concerns about those Member States and emphasised the importance of submitting timely and accurate oil reports.

5.1.5 It was noted in particular that Guyana had submitted all of their outstanding reports (nil declarations) for the years 1997-2001 with respect to the 1971 Fund. The governing bodies noted that the 1971 Fund no longer had any outstanding oil reports.

5.1.6 It was also noted that Maldives had submitted its eight outstanding oil reports (nil declarations) for the years 2005-2012. It was reported that Tanzania's submission of all of their outstanding oil reports for the years 2002-2012 were being examined by the Secretariat, as they had given much more detailed data than required. It was also noted that Fiji had submitted three outstanding oil reports for 2010-2012. The Secretariat thanked Member States for their efforts to meet this treaty obligation.

5.1.7 It was reported that the Netherlands had instituted new oil reporting procedures for the Dutch Caribbean Islands. Bonaire, Saba and Sint Eustatius would submit their oil reports through the authority in the Hague. It was reported that already two reports had been received from them. Aruba, Sint Maarten and Curacao would report on their own.

Debate

5.1.8 The delegation of Netherlands confirmed the new reporting mechanisms for the Dutch Caribbean Islands and said it was committed to working closely with the Secretariat to ensure all oil reports were submitted on time.

5.1.9 Another delegation praised the positive developments demonstrated by a number of Member States, in particular by Tanzania.

5.1.10 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted the information and urged the Member States concerned to submit their outstanding oil reports. They noted that the submission of oil reports was an important matter and continued to be of crucial importance for the functioning of the IOPC Funds.

5.1.11 The 1971 Fund Administrative Council expressed great satisfaction that there were no outstanding oil reports with respect to the 1971 Fund.

5.2	**Report on contributions** **Document IOPC/OCT13/5/2**	**92AC**		**SA**	**71AC**

5.2.1 The governing bodies took note of the information on contributions to the IOPC Funds contained in document IOPC/OCT13/5/2.

5.2.2 The 1992 Fund Administrative Council noted that South Africa's outstanding contributions, which made up a large percentage of the total outstanding contributions to the 1992 Fund, were the result of the 1992 Fund Convention not being implemented into the national legislation. It also noted that the relevant authority in South Africa, through its representative in London, had informed the Secretariat that the process to fully implement the 1992 Fund Convention into the national legislation of South Africa was in progress.

5.2.3 The 1992 Fund Administrative Council and the 1971 Fund Administrative Council noted the outcome of the legal actions commenced by the 1992 Fund and the 1971 Fund against contributors in the Russian Federation to recover the outstanding contributions due to the 1992 Fund and the 1971 Fund. It was noted that in judgements rendered by the Highest Arbitration Court (HAC), the 1971 Fund's request had been rejected since the obligation of the contributors, which were governed by Russian civil law, had become time-barred.

5.2.4 The 1992 Fund Administrative Council noted that with respect to the contributions to the 1992 Fund in the Russian Federation, only part of the contributions due from one contributor were considered by the HAC to be payable with the balance being considered time-barred under Russian civil law. It was noted that the amount payable had been received from that contributor. With respect to the second contributor in the Russian Federation, it was noted that the Fund had appealed against the decision of the Second Appeal (Cassation) Court which had upheld the contributor's defence of not being the 'first receiver' since it only rendered transhipment services. It was noted that the Russian Courts in all the cases had applied a three-year limitation of action period provided under the Russian civil law.

5.2.5 The Director informed the 1992 Fund Administrative Council of the discussions which had taken place within the 1971 Fund Administrative Council in respect of the *Plate Princess* incident. It was noted that the Maritime Court of First Instance in Venezuela had issued an embargo over the contributions due to the 'IOPC Funds' (without specifying whether it was the 1971 Fund, the 1992 Fund or both) from Petróleos de Venezuela SA (PDVSA). The 1992 Fund Administrative Council noted that these contributions were due to the 1992 Fund and not to the 1971 Fund and that, in addition, oil reports for the years 2007-2012 were outstanding from Venezuela. The Administrative Council also noted that the 1992 Fund Administrative Council would have to decide whether the 1992 Fund should take legal action in Venezuela to oppose the embargo. The Administrative Council noted the Director's view that it would serve no useful purpose for the 1992 Fund to bring an action to oppose the embargo on the contributions due to the 1992 Fund in Venezuela.

Debate

5.2.6 Many delegations took the floor to emphasise that the 1992 Fund and 1971 Fund were two distinct legal persona and that the basis for an embargo on the assets of the 1992 Fund was unacceptable and in breach of international law. Reference was made to Dr Thomas Mensah's legal opinion, presented at the October 2012 session of the 1971 Fund Administrative Council (document IOPC/OCT12/3/4/1, Annex II), where he concluded that there was no basis in law or fact to conclude that the 1992 Fund had any liability in respect of incidents involving the 1971 Fund. Delegations were unanimous in their

view that it would serve no useful purpose for the 1992 Fund to take legal action to oppose the embargo on its contributions in Venezuela.

1992 Fund Administrative Council Decision

5.2.7 The 1992 Fund Administrative Council decided that taking legal action to oppose the embargo on the contributions due to the 1992 Fund in Venezuela would serve no useful purpose.

5.3	**Report on investments** **Document IOPC/OCT13/5/3**	**92AC**		**SA**	**71AC**

5.3.1 The governing bodies took note of the Director's report on the IOPC Funds' investments during the period 1 July 2012 to 30 June 2013 contained in document IOPC/OCT13/5/3. The governing bodies noted the number of institutions used by the Funds for investment purposes and the amounts invested by each Fund.

5.3.2 The governing bodies recognised that the London Clearing Bank base rate had continued to remain low while the European Central Bank Refi rate and the Bank of Korea base rate had been lowered impacting the yields achieved by the Funds on their investments. It was noted that investment yields on Korean Won deposits were much higher compared to Pounds sterling or Euro deposits.

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

5.3.4 It was noted that a Russian Rouble account had also been set up with HSBC in London to facilitate the payment of compensation in respect of the *Volgoneft 139* incident.

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

5.4	**Report of the joint Investment Advisory Body** **Document IOPC/OCT13/5/4**	**92AC**		**SA**	**71AC**

5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the Supplementary Fund and the 1971 Fund, contained at the Annex to document IOPC/OCT13/5/4.

5.4.2 The governing bodies noted that following the global settlement, all surplus Euros in respect of the *Erika* incident had been sold at favourable exchange rates. It was also noted that hedging for Euro liabilities in respect of the *Prestige* incident was some 77%, and that the Korean Won liability in respect of the *Hebei Spirit* incident was some 61% on the basis that the Fund's liability was KRW 179.4 billion (82% assuming that the Fund's liability was some KRW 134.8 billion).

5.4.3 The governing bodies noted that based on the IAB's recommendation, the Director had designated Barclays Bank and HSBC Bank as house banks and BNP Paribas, Standard Chartered Bank and ING Bank as temporary house banks in respect of the *Hebei Spirit* incident to utilise the higher lending limit of £20 million under the Funds' Financial Regulations.

5.4.4 The governing bodies welcomed the presentation on the new investment criteria made by the IAB. It also noted that the Director, based on the IAB's recommendation and following a comprehensive review of the Investment Policy to strengthen the credit risk assessment taking into account institutional strength and market sentiment, had decided to include Tier One capital ratio and five year Credit Default Swap in combination with short term credit ratings as criteria for investment. The governing bodies took note of the revised Internal Investment Guidelines attached to document IOPC/OCT13/5/4.

5.4.5 It was also noted that Dual Currency Investments had been used during the reporting period between Pounds sterling and Korean Won in respect of the *Hebei Spirit* incident and between Pounds sterling and Euros in respect of the purchase and sale of Euros for the *Prestige* and *Erika* incidents, respectively, with the added benefit of higher yields.

5.4.6 The governing bodies noted that the IAB, in discharging its mandate, monitored the credit worthiness of financial institutions to ensure that the IOPC Funds' investments were placed in the safest institutions.

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

5.4.8 The Chairmen of the 1992 Fund Administrative Council expressed gratitude to the Investment Advisory Body for their hard work.

5.5	**Report of the joint Audit Body** **Document IOPC/OCT13/5/5**	**92AC**		**SA**	**71AC**

5.5.1 The Chairman of the Audit Body, Mr Emile Di Sanza, introduced the joint Audit Body's report to the governing bodies which dealt with how the Audit Body discharged its responsibilities under its mandate. Mr Di Sanza noted that the programme of activities of the Audit Body focussed on five main areas as outlined in section 2.2 of the Report which can be found at the Annex to document IOPC/OCT13/5/5.

5.5.2 The governing bodies noted that the first of these areas was that of ascertaining the effectiveness of the IOPC Funds' management and financial systems and that the Audit Body performed this function largely through its consideration of the work of the External Auditor, supplemented by periodic briefings by the Secretariat. They noted that the Audit Body had been fully satisfied with the risk-based approach and scope of the audit plan put forward by the External Auditor to the Audit Body's December 2012 meeting and that the Audit Body had reviewed the interim and final results of the external audit. It was further noted that one of the issues that the Audit Body had dealt with under this area of its programme of activities was the Funds' relationship with outside experts, which had been the subject of a draft framework agreement developed by the Secretariat with input from the External Auditor and the Audit Body's external expert. It was also noted that the Audit Body fully supported clear selection procedures and contract conditions for experts used by the Funds.

5.5.3 With respect to the Audit Body's work relating to the oversight of the risk management function, Mr Di Sanza reported that the Audit Body recognised that it was the Secretariat's role to identify and manage risks and that it was the Audit Body's role to ensure that the risk management framework was adequate. He reported that the Audit Body had noted continued improvements in risk recognition and implementation of mitigation measures. Mr Di Sanza also reported that the Audit Body had been briefed by the Secretariat on changes and improvements to the Web-based Claims Management System, particularly with regard to the allocation of time and costs by claims experts.

5.5.4 Mr Di Sanza noted that the Audit Body had monitored improvements in the accuracy of oil reports as a result of the use by the Secretariat of the Lloyds' List Intelligence data which the Audit Body believed was proving to be a valuable tool to the Secretariat. He further noted that, in conjunction with the work of the Secretariat on the Lloyds' List Intelligence data, the Audit Body would be reporting in October 2014 on the findings of its evaluation of the policy measures in place regarding

the non-submission of oil reports as well as of Resolution No11 in respect of contributions. In this regard, he noted that the Audit Body wished to draw the attention of all concerned parties (Contracting States, receivers of contributing oil and associations representing receivers of contributing oil) to the importance of complying with the actions as called for in the Resolution.

5.5.5 With respect to the third area of the Audit Body's work on the review of the Organisations' Financial Statements and Reports, Mr Di Sanza reported that, following its review of the Funds' Financial Statements, the Audit Body was recommending that the relevant governing bodies approve the accounts of the 1992 Fund, the Supplementary Fund and the 1971 Fund, for the financial year ending 31 December 2012.

5.5.6 Mr Di Sanza also reported on how the Audit Body addressed its role to promote the understanding and effectiveness of the audit function within the Funds. He explained that the Audit Body met with the Director, Deputy Director and representatives of the External Auditor three times a year and that the periodic attendance of one or more of the Chairmen of the governing bodies at meetings further promoted good communications. He also reported that the Audit Body had met twice with the Investment Advisory Body (IAB) since October 2012 in order to enable the Audit Body to have a good understanding of the views of the IAB on investment and financial risks, particularly in the light of the instability and volatility in global markets and economies in recent years.

5.5.7 Mr Di Sanza noted that the term of office of three of the current members of the Audit Body would expire in October 2014 and that the Audit Body considered it important for Member States to take a strong interest in the nomination and election process of candidates to the Audit Body. In this regard, he reported that the Audit Body was supporting the nomination process of new candidates by profiling the skills requirements for effective membership and that a separate document on this subject had been prepared by the Audit Body for the October 2013 sessions of the governing bodies.

5.5.8 He noted, furthermore, that the Audit Body considered that it was important to study the evolving practices of audit committees relevant to its work and that it would therefore be conducting an evaluation of its own functioning according to best practices and principles of oversight committees and that this would be reflected in the Audit Body's report in October 2014.

5.5.9 Finally, Mr Di Sanza reported on how the Audit Body discharged its responsibility to manage the process for the selection of the External Auditor. He recalled that in October 2010 the governing bodies had decided that the annual review and monitoring of the Audit Body would be the primary basis for determining if the external audit relationship with the Funds was effective. He noted that, starting in 2012, the Audit Body had identified six elements by which it considered this relationship and, on the basis of these elements, had provided a statement regarding the effectiveness of the relationship between the Funds and the External Auditor. In the view of the Audit Body, the work of the current External Auditor continued to be effective and of tangible value to the operations of the Funds.

5.5.10 Mr Di Sanza also reported that the term of office of the External Auditor would expire after the presentation of the audit of the 2014 Financial Statements in October 2015 and that, in order to allow for a smooth transition of responsibilities, it would be necessary to appoint an External Auditor at the October 2014 sessions of the governing bodies. He further reported that, in consultation with the Director, the Audit Body had prepared a separate document for the October 2013 sessions of the governing bodies which outlined the Audit Body's considerations and a proposed framework for the selection and appointment of the External Auditor.

5.5.11 In closing, Mr Di Sanza expressed his appreciation to the other members of the Audit Body for their contribution to the work of the Audit Body. He also extended the gratitude of the Audit Body to the Director and Secretariat for their support and engagement, to the representatives of the External Auditor for the productive relationship that existed with the Audit Body and to the Investment Advisory Body for the frank exchange of information and expertise.

Debate

5.5.12 One delegation expressed its appreciation to the Audit Body for its report and for its work during the year. That delegation noted that, while it recognised that the work of self-evaluation and encouraging the consideration of the skill set of future Audit Bodies was important, it wished to emphasise its appreciation of the Audit Body's contribution in other areas, especially in regard to managing the selection process for the External Auditor, addressing the timeliness and accuracy of oil reporting, keeping under review the risk management framework and developing selection procedures and contract conditions for external experts. That delegation felt that these were the areas of the Audit Body's work that should be emphasised because the Audit Body was in a unique position with access to the Organisations and had a mandate that allowed it to develop its recommendations on an objective basis, with a thorough technical understanding of the issues.

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

5.6	**2012 Financial Statements and Auditor's Reports and Opinions** **Documents IOPC/OCT13/5/6, IOPC/OCT13/5/6/1, IOPC/OCT13/5/6/2 and IOPC/OCT13/5/6/3**	**92AC**		**SA**	**71AC**

5.6.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT13/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2012. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT13/5/6/1, IOPC/OCT13/5/6/2 and IOPC/OCT13/5/6/3.

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

5.6.3 The governing bodies noted with appreciation the Financial Statements of their respective Organisation, as well as the External Auditor's Reports and Opinions contained in Annexes III and IV of document IOPC/OCT13/5/6/1 (1992 Fund), Annex III of document IOPC/OCT13/5/6/2 (Supplementary Fund) and Annexes III and IV of document IOPC/OCT13/5/6/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2012 Financial Statements for each Organisation which had been prepared under the International Public Sector Accounting Standards (IPSAS), following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The governing bodies noted that the unqualified audit opinions on the Financial Statements were confirmation that the Organisations' internal financial controls had operated effectively.

5.6.4 The 1992 Fund Administrative Council noted the External Auditor's statement that, of the four recommendations relating to the 2011 Financial Statements of the 1992 Fund, the one relating to periodic review of the investment guidelines by the Investment Advisory Body was being satisfactorily acted upon by the Secretariat as part of normal operations. With respect to the other three recommendations relating to the selection and management of experts, the Administrative Council noted that the External Auditor was encouraged by the work undertaken by the Secretariat to improve and formalise the recruitment procedures and that the External Auditor would continue to monitor developments as part of the 2013 audit.

5.6.5 The governing bodies also took note of the recommendations set out in the External Auditor's report on the 2012 Financial Statements and the Director's responses.

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

Intervention by the delegation of France

5.6.7 With respect to the recommendations in the External Auditor's report on the 2012 Financial Statements of the 1992 Fund relating to the process of selection and management of claims experts, the French delegation made the following statement (original French):

> The French delegation thanks the External Auditor for his report. France observes that the External Auditor reiterates the recommendations made last year concerning the procedure for recruitment of experts, the terms of their contract and the monitoring of their work by the IOPC Funds' Secretariat. He also adds new recommendations concerning their remuneration and asks the Funds' Secretariat to establish an official scale of their fees.
>
> France, which is the 7th largest contributor to the 1992 Fund, considers that the improvement in the conditions of use of experts, in accordance with the External Auditor's recommendations, should be a priority for the Secretariat in the coming year. The sums at stake in terms of expertise are extremely high: £22 million were paid to experts for the *Erika* incident, while £77 million were paid to the victims. Thus the expert costs represented 28.4% of those sums, and the expert costs for the *Hebei Spirit* already stand at £25.5 million. It is important for the methods of recruitment and remuneration of the Funds' experts to be transparent, bearing in mind the sums involved. France therefore requests that detailed information on these points should be provided to the Member States at the next session, as also requested in the document submitted by France concerning the Funds' assessment methods.
>
> In addition, the French delegation wishes to correct an error on page 27 of Annex V of the 2012 Financial Statements. In the part concerning the *Prestige*, it is indicated that the 1992 Fund paid 5.5 million euros to the French State following that incident. France recalls that the French State did not receive any compensation from the IOPC Funds for that incident. That sum was paid to the French victims in the fishing and tourism sectors.

Response by the Director

5.6.8 In response to this intervention the Director stated that, based on the External Auditor's recommendations relating to the 2011 Financial Statements of the 1992 Fund, the Secretariat was establishing a formal process for the selection and appointment of claims experts, including the need for minimum requirements in terms of qualifications, experience and membership of professional bodies and noted that this process was being documented. He also reported that, along with the selection process, the Secretariat was developing a standard set of engagement terms for its experts which would incorporate a "Code of Conduct" which all experts would be required to sign up to in order to provide assurance over their independence and objectivity. He further reported that a draft "expert's contract" had been reviewed by the External Auditor and the Audit Body at the Audit Body's December 2012 meeting and that it was also being reviewed by the 1992 Fund's lawyer and the International Group of P&I Associations as experts were, in most cases, engaged jointly by the P&I Club and the 1992 Fund under the MoU between the Clubs and the Fund. He noted that it was his intention to have the contract in place by the end of 2013.

Debate

5.6.9 The delegations which took the floor stated that priority should be given to implementing the recommendations made by the External Auditor in relation to the selection and management of experts. With respect to the recommendation in relation to the Online Reporting System (ORS), one delegation was of the view that the Secretariat should invite wider use of the ORS and explore the possible use of electronic signatures.

5.6.10 In relation to the winding up of the 1971 Fund, the delegations which took the floor encouraged the Secretariat to develop appropriate procedures to ensure that the affairs of the Fund were closed in an orderly and transparent manner in line with the External Auditor's recommendation.

5.6.11 The governing bodies noted the recommendation by the Audit Body that they approve the Financial Statements of the 1992 Fund, the Supplementary Fund and the 1971 Fund (document IOPC/OCT13/5/5, Annex, paragraph 3.3.5).

1992 Fund Administrative Council Decision

5.6.12 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2012.

Supplementary Fund Assembly Decision

5.6.13 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2012.

1971 Fund Administrative Council Decision

5.6.14 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2012.

6 Financial policies and procedures

6.1	**Measures encouraging the submission of oil reports** **Document IOPC/OCT13/6/1**	**92AC**		**SA**	**71AC**

6.1.1 The governing bodies took note of the information provided in document IOPC/OCT13/6/1 on measures to encourage timely and accurate submission of oil reports by Member States.

6.1.2 It was recalled that since the October 2010 sessions of the governing bodies, the Secretariat had worked to develop an online reporting system to assist Member States to submit oil data more efficiently. It was reported that the Secretariat had improved the system based on participating States' feedback and that the site was now "live" and required broad participation from Member States to proceed further. The Secretariat assured the governing bodies that for the time being, the online reporting system was running in parallel with the paper-based system, as all oil reports required physical signatures from both the contributor and the State, as per the Internal Regulations of the 1992 Fund and Supplementary Fund.

6.1.3 The Secretariat thanked four Member States (Australia, Bahamas, Denmark and Germany) for consistently testing the online system and providing useful feedback. The Secretariat encouraged more States to participate in the online reporting system, citing the External Auditor's recommendation in 2012 that increased State participation was crucial to demonstrate that the system could be officially adopted in the future. It was suggested that States should contact the Secretariat if they wished to participate in the online reporting system from 2014.

6.1.4 With regard to other measures encouraging the submission of oil reports, the governing bodies noted that the initial findings of the analysis of Lloyd's data had been extremely useful. It was also noted that the use of Lloyd's data had substantially improved the Secretariat's ability to monitor the accuracy of oil reports and served as a useful tool to engage Member States when investigating discrepancies in tonnage or identifying new contributors. As a result, a number of States had managed to submit all of their outstanding reports or identify new contributors. It was also noted that the Secretariat would continue its engagement with Member States that required assistance with oil reports, but that since the data had served its purpose, it was not going to purchase more data for the time being. It was noted that a cost-benefit analysis of the Lloyd's data would be conducted and

discussed with the Audit Body before it was presented to the 1992 Fund Assembly at its next regular session.

Debate

6.1.5 The 1992 Fund Administrative Council and the Supplementary Fund Assembly expressed their gratitude to the Member States who had participated in the trial of the online reporting system as well as their support for the system. They thanked the Secretariat for its efforts. The delegation of Norway stated that it would sign up to test the online system and encouraged other Member States to do the same.

6.1.6 Another delegation expressed full support for further development of the online oil reporting system. That delegation also stated that it would support the adoption of electronic signatures to validate oil reports, explaining that their national archives would stop accepting paper records in the next few years. That delegation added that IMO had a similar initiative to explore the use of electronic signatures and the 1992 Fund could consider doing the same.

6.2	**Audit Body members' skills requirements for the fifth Audit Body** **Document IOPC/OCT13/6/2**	**92AC**		**SA**	**71AC**

6.2.1 The governing bodies took note of document IOPC/OCT13/6/2 by the Audit Body on the skills requirements for the fifth Audit Body, which was introduced by Mr John Gillies on behalf of the Audit Body.

6.2.2 The governing bodies noted that the term of office for three members of the Audit Body would expire at the October 2014 sessions of the governing bodies and that an election of members for appointment to the Audit Body would take place at those sessions. They recalled that in October 2011, one delegation had expressed its view that there was a need for the Audit Body to identify the specific skills required at the time of the call for nominations rather than the overall skills needed in an Audit Body.

6.2.3 The governing bodies also noted that at the time of the election in October 2014, the Chairman of the Audit Body, Mr Emile Di Sanza (Canada), Professor Seiichi Ochiai (Japan) and Mr Thomas Kaevergaard (Sweden) would be ineligible for re-election, having served two three-year terms. They further noted that the other two members of the Audit Body, Mr John Gillies (Australia) and Mr Giancarlo Olimbo (Italy) would be eligible for re-election for a second and final term, if re-nominated. They recalled that the appointment of the external expert on the Audit Body did not follow the same procedure as the other members of the Audit Body inasmuch as the appointment and re-appointment of the external expert was subject to the consideration and nomination by the Chairman of the 1992 Fund Assembly at the Funds' October 2014 sessions.

6.2.4 The governing bodies noted that the mandate of the Audit Body had been amended on several occasions since its inception and that, in the Audit Body's view, it now covered a broad range of areas for which a suitable cross-section of skills was required.

6.2.5 The governing bodies noted that the departure of Mr Di Sanza, Professor Ochiai and Mr Kaevergaard would lead to a significant loss of skills and expertise in the areas of the activities and running of the IOPC Funds, legal competence, knowledge and judicial oversight, management and administration of a governing agency of a Member State and policy and programme development and implementation at both the national and international level.

6.2.6 The 1992 Fund Administrative Council noted the skills, experience and attributes that the Audit Body considered should be present within the Audit Body as well as the desirable personal attributes of candidates nominated for appointment to the Audit Body. The Administrative Council also noted that this guidance would be used in the call for nominations for appointment of members to the Audit Body with a view to Member States taking more interest in the nomination and election process.

6.2.7 It was also noted that, in the Audit Body's view, in general terms, the Audit Body should consist of members who had an appropriate mix of skills, experience and attributes which would enable the Audit Body to perform all of its functions efficiently and effectively.

Debate

6.2.8 One delegation thanked the Audit Body for its document which it felt provided useful background for Member States considering nominations of candidates for membership of the Audit Body as to the skills required. That delegation also recalled that nominations should be submitted by Governments of 1992 Fund Member States and that it would be up to the governing bodies to decide on the appointment of members of the Audit Body.

1992 Fund Administrative Council Decision

6.2.9 The 1992 Fund Administrative Council noted that the information provided by the Audit Body was very useful for Member States when considering the skills required when nominating members of the Audit Body.

Supplementary Fund Assembly and 1971 Fund Administrative Council

6.2.10 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decisions taken by the 1992 Fund Administrative Council.

6.3	**Appointment of the External Auditor** **Document IOPC/OCT13/6/3**	**92AC**		**SA**	**71AC**

6.3.1 The governing bodies took note of document IOPC/OCT13/6/3, prepared by the Audit Body on the appointment of the External Auditor which was presented by Mr Michael Knight, external expert on the joint Audit Body.

6.3.2 The governing bodies noted that the term of office of the current External Auditor, the Comptroller and Auditor General of the United Kingdom, would expire following the presentation in October 2015 of the audit of the IOPC Funds' Financial Statements for the year ending 31 December 2014. They further noted that, to effect a smooth transition of responsibilities, it would be necessary to appoint an External Auditor at the October 2014 sessions of the governing bodies to audit the Financial Statements for the years 2015 to 2018 inclusive or for any such other period as might be decided by the governing bodies.

6.3.3 The governing bodies noted that, under the terms of its mandate, the Audit Body had the responsibility for managing the process for the selection of the External Auditor on behalf of the governing bodies, with the assistance of the Secretariat.

6.3.4 Mr Knight recalled that, following the tender and selection process carried out by the Audit Body in 2010, the governing bodies had decided that there would not be a process for automatic re-appointment of the External Auditor but that the external audit relationship with the Funds would be kept under review. Mr Knight also noted that, in the light of this decision, the Audit Body had sought to ensure selection process preparedness by way of a competitive tender.

6.3.5 Mr Knight reported that the Audit Body had learned earlier in the year that the current External Auditor would not be seeking re-appointment for a further term. He said that it should be emphasised that this decision did not arise from a professional disagreement but from recognition that there was a growing trend towards rotation of appointments and that the incumbent External Auditor had served in this capacity since the Funds' inception.

6.3.6 The governing bodies noted that, under these circumstances, there would be a vacancy to be filled and that the Audit Body was recommending that it be filled by way of competitive tender for the selection of the External Auditor to conduct the audit of the Financial Statements for 2015-2018 (or any such other period as might be decided by the governing bodies).

6.3.7 The governing bodies noted the Audit Body's proposed arrangements for the tender, which would take into account past practice and decisions taken by the Funds' governing bodies, and the detailed timetable as set out in section 3 of document IOPC/OCT13/6/3. Mr Knight drew the attention of the governing bodies to the fact that the Audit Body was mindful of the need to stimulate interest and obtain nominations from as many Member States as possible regarding this important appointment and so the proposed arrangements had been set out in some detail. Mr Knight also noted that, in order to assist possible candidates, the document included two annexes, the first setting out the factors that would be used to evaluate candidates and the second summarising the proposed timetable for the tender process.

6.3.8 The governing bodies noted that a tender brief to assist interested candidates in understanding the external audit tender process would be available to Member States upon request, as well as on the IOPC Funds' website.

6.3.9 The governing bodies noted that, were the arrangements proposed by the Audit Body to be accepted, a circular letter would be sent by the Director after the October 2013 sessions of the governing bodies to all 1992 Fund Member States inviting candidates for the position of External Auditor. They also noted that, after consideration of the candidatures at its April 2014 meeting, the Audit Body was proposing to draw up a short list of candidates for interview in London in June 2014 and that, as a result of these interviews, the Audit Body would make a recommendation as to the selection of the External Auditor to the October 2014 sessions of the governing bodies, including a proposal as to the length of the term of office.

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

6.3.10 The 1992 Fund Administrative Council, Supplementary Fund Assembly and 1971 Fund Administrative Council decided to approve the Audit Body's recommendations and proposed framework and timetable for the conduct of a competitive tender for the appointment of the External Auditor.

7 Secretariat and administrative matters

7.1	**Secretariat matters** **Document IOPC/OCT13/7/1**	**92AC**		**SA**	**71AC**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT13/7/1 regarding the operation of the Secretariat.

7.1.2 It was noted that the Head, Claims Department/Technical Adviser, had recently resigned from the Secretariat and that three other staff members had left the organisation since the October 2012 sessions of the governing bodies.

7.1.3 It was noted that the Director had started the recruitment process for a new Head of the Claims Department and that he had taken the view that it was better for a number of reasons to separate the functions of Head of the Claims Department and Technical Adviser. The Director reported that he would be appointing a Head of the Claims Department in the near future who would bring excellent managerial skills and claims handling/claims management experience to the position. In the Director's view it would be very difficult to find someone who, in addition to bringing excellent managerial skills, would be able to adequately provide the technical expertise (eg oil, environmental issues, biology, chemistry, clean up, fisheries and tourism claims) at the level required by the 1992 Fund.

Provision of technical advice

7.1.4 The Director noted that the use of the term 'Technical Advisory Body' in his report (document IOPC/OCT13/7/1) had been unfortunate as it had led some delegations to question the need for such a body and its composition and mandate. It was noted that it had not been the Director's intention to create a technical body with a formal mandate but that a rather more informal and pragmatic approach was required by the Secretariat. It was noted that the Director on a regular basis already relied on external technical expertise to address specific technical issues as and when required and that he had concluded that this would provide a more effective approach to the provision of technical expertise moving forward. It was noted that the Director would review the arrangement on a regular basis and would report back to the governing bodies.

7.1.5 The Chairman of the 1992 Fund Administrative Council noted that as the Director had withdrawn the idea of setting up a Technical Advisory Body in the light of comments received earlier in the week, there was no need for further discussion of this issue. He noted that the Director would use external experts as and when required on a trial basis and would report back to the governing bodies in due course.

Conscious Rewarding Scheme

7.1.6 The governing bodies noted that the Director had continued to apply a Conscious Rewarding Scheme, first introduced in 2011, to reward staff members who had performed over and above what was set out in their job descriptions. It was noted that the scheme had been designed to be as simple as possible. It was noted that in 2013 four staff members, three in the Professional category and one in the General Service category, had received the award and the total amount spent had been £10 023.42.

1992 Fund Administrative Council

7.1.7 The 1992 Fund Administrative Council noted the amendments to:

(a) the new General Service salary scale;
(b) the new scale of pensionable remuneration for staff in the Professional and higher categories;
(c) Staff Rule IV.9 with regard to the Education Grant and Special Education Grant for disabled children;
(d) Staff Rule IV.6 with regard to overtime and compensatory time off for General Service staff members; and
(e) Staff Rule VIII.3 with regard to compensation for death, injury or other disability attributable to service.

7.2	**Appointment of members and substitute members of the Appeals Board** **Document IOPC/OCT13/7/2**	**92AC**			

7.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/7/2. It noted that since the October 2011 sessions of the governing bodies, two members of the Appeals Board, Mme Odile Roussel (France), Mr Tetsuto Igarashi (Japan) and three substitute members, Mr Adonis Pavlides (Cyprus), Ms Anne-Marie Sciberras (Malta) and Dr Young-sun Park (Republic of Korea) had notified the Director that they would not be able to stand for a further two year term.

1992 Fund Administrative Council Decision

7.2.2 The 1992 Fund Administrative Council appointed the following members and substitute members of the Appeals Board to hold office until the 20th session of the Assembly.

Members		Substitute Members	
Mme Elisabeth Barsacq	(France)	Dr Christos Atalianis	(Cyprus)
Mr Noriyoshi Yamagami	(Japan)	Ms Susana Garduño Arana	(Mexico)
Sir Michael Wood	(United Kingdom)	Mr Cho Seung Hwan	(Republic of Korea)

7.3	**Relocation of the IOPC Funds' offices** **Document IOPC/OCT13/7/3**	**92AC**			

7.3.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/OCT13/7/3 on the relocation of the IOPC Funds' offices. The Administrative Council recalled that the lease on the current premises at Portland House, Bressenden Place, London, expires in March 2015 and that under the Headquarters Agreement between the United Kingdom of Great Britain and Northern Ireland and the 1992 Fund, the United Kingdom (UK) Government undertakes to assist the 1992 Fund in the acquisition of premises by gift, purchase or lease or in the hire of premises at such time as they may be needed (Article 4.2 of the Headquarters Agreement).

7.3.2 The 1992 Fund Administrative Council noted the latest developments in the search for new premises set out in section 2 of document IOPC/OCT13/7/3, in particular the selection criteria set by the Director, and the Director's proposal to engage consultants to assist with finding premises, project management and office planning to be paid for by the 1992 Fund. The Administrative Council also noted the information provided on costs relating to the current office accommodation (section 3) and to the relocation costs involved in the moving of the Funds' offices from IMO to Portland House in 2000 (section 4).

7.3.3 The Administrative Council noted that any new lease would be entered into on behalf of the 1992 Fund only. It also noted that whilst the preference of the UK Government would be to relocate the IOPC Funds' offices to IMO or within the Government-held estate, given that any lease would be taken out by the 1992 Fund, a private landlord option could also be explored. In which case, it was noted that the UK Government would continue to pay a percentage of the rent of privately-rented accommodation. The Administrative Council also noted the UK Government's expectation that the floor space of any new premises would be substantially smaller than that at Portland House in order to mediate between the present UK Government standard (space per person) and the international dimension of the IOPC Funds. Other factors noted by the Administrative Council were, *inter alia*, that:

- The Director had been informed by the Secretary-General that IMO could not accommodate the IOPC Funds' Secretariat;
- the UK Government would not provide a contribution towards relocation expenses as it did in 2000;
- in order to secure a suitable property, the 1992 Fund might have to consider leasing space earlier than summer/autumn 2014; and
- the costs which would arise from the relocation of the Secretariat would depend on the requirement for any refurbishment of the new premises and additional furniture and office equipment.

7.3.4 The Administrative Council noted the Director's intention to move from individual offices for all staff members to a mix of cellular offices and open plan. It was noted that this would ensure that less office space would be required. It was also noted that the Director intended to engage consultants to assist with finding premises, project management and office planning, who would be paid for by the 1992 Fund.

7.3.5 The Director thanked the UK Government for the support it had provided to the 1992 Fund over the years by paying a substantial part of the rent of the IOPC Funds' premises and for all its assistance in recent months with the initial discussions on the relocation of the Funds' offices.

7.3.6 The Director invited the Administrative Council to authorise him to pay expenses in connection with the relocation of up to £250 000 and pointed out that he had included in the draft 1992 Fund General Fund administrative budget for 2014 an appropriation under Chapter VIII (Relocation cost) (see document IOPC/OCT13/9/1/1).

Debate

7.3.7 The UK delegation stated that it was honoured to act as host Government to the IOPC Funds and reaffirmed its commitment to the Organisation. It referred to the Headquarters Agreement between the 1992 Fund and the UK Government and the responsibilities set out in that agreement. That delegation pointed out that in addition to those responsibilities, which it took very seriously, the UK Government also contributed some £380 000 per annum to the rent of the IOPC Funds' current premises. It confirmed the UK Government's intention to continue to work closely with the Director to ensure suitable new premises were found and that the UK Government would continue to contribute towards the rent of the IOPC Funds new premises. The UK delegation added that they were confident that premises could be found within the current costs and that it was likely that savings could be found for contributors.

7.3.8 All delegations which spoke on this matter thanked the UK Government for its continued support and generosity in hosting the IOPC Funds in London. Appreciation was also expressed for the efforts of the UK Government to find suitable accommodation for the Funds' new Headquarters.

7.3.9 One delegation noted with appreciation the proposal that the amount of office space required by the Secretariat could be reduced to some 8 000/8 500 square feet, but considered that further examination should take place to establish whether that amount could be reduced even further, particularly given the number of members of staff. That delegation, whilst noting that the possibility of the IOPC Funds returning to the IMO building had already been discussed and rejected by the Secretary-General of IMO, suggested that a further reduction in the space required could lead to a reopening of that debate. That delegation encouraged the Secretariat to look again into relocating the Funds' offices to IMO or alternatively to a building within the close vicinity of IMO. Some delegations supported this proposal, making particular reference to the economic benefits of doing so.

7.3.10 In response, the Director confirmed that he had sent a formal letter inviting the Secretary-General to consider whether the 1992 Fund could be accommodated within the IMO building and that he had received a formal reply from the Secretary-General stating that, for a number of reasons, this was not possible. The Director suggested that, whilst Member States might wish to contact the Secretary-General directly to ask him to reconsider, the Director did not consider it appropriate for him to pursue the matter further. The Director reiterated that the relocation process was at a very early stage, and that currently, he was requesting only authorisation to pay expenses of up to £250 000 in connection with the relocation to enable him to find suitable premises. He pointed out that his intention was to continue to work with UK Government to identify suitable premises and to present a further document on the matter for the consideration of the 1992 Fund Assembly in spring 2014.

7.3.11 A large number of delegations confirmed their support for the Director's proposal to pay expenses of up to £250 000 in connection with the relocation of the IOPC Funds' offices.

1992 Fund Administrative Council Decision

7.3.12 The Administrative Council authorised the Director to pay expenses in connection with the relocation of the IOPC Funds' offices up to £250 000.

8 Treaty matters

8.1					
	Status of the 1992 Fund Convention and the Supplementary Fund Protocol **Document IOPC/OCT13/8/1/Rev.1**	**92AC**		**SA**	

8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information in document IOPC/OCT13/8/1/Rev.1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.

8.1.2 It was noted that as at the October 2013 sessions of the governing bodies there were 111 Member States of the 1992 Fund and that by 8 July 2014 two further States (Côte d'Ivoire, a former 1971 Fund Member State, and the Slovak Republic) would have become Members, bringing the number of 1992 Fund Member States to 113.

8.1.3 It was also noted that the Slovak Republic had ratified the Supplementary Fund Protocol at the same time as the 1992 Fund Convention and that therefore the Protocol would also enter into force for the Slovak Republic on 8 July 2014, bringing the number of Supplementary Fund Members to 30 on that date.

8.2					
	Review of international non-governmental organisations having observer status **Document IOPC/OCT13/8/2**	**92AC**		**SA**	

8.2.1 The governing bodies recalled that the last review of international non-governmental organisations having observer status with the IOPC Funds took place in October 2012. It was also recalled that at the time of the 2012 review it was decided that consideration of the observer status of the International Group of Liquefied Natural Gas Importers (GIIGNL) would be postponed until the next sessions of the governing bodies, pending clarification by the Secretariat of some issues with that organisation.

8.2.2 The governing bodies noted the results of the Secretariat's contact with GIIGNL since the October 2012 sessions set out in document IOPC/OCT13/8/2, including a letter from GIIGNL confirming its intention to participate more actively in the work of the IOPC Funds. It was noted that the Director's view, and that of the members of the 2012 review group, was that GIIGNL should maintain its observer status.

1992 Fund Administrative Council Decision

8.2.3 The 1992 Fund Administrative Council decided that GIIGNL should maintain its observer status.

Supplementary Fund Assembly Decision

8.2.4 The Supplementary Fund Assembly noted the decision of the 1992 Fund Administrative Council confirming the continuance of GIIGNL's observer status and decided that the organisation should also maintain its observer status with the Supplementary Fund.

8.3					
	Winding up of the 1971 Fund **Documents IOPC/OCT13/8/3, IOPC/OCT13/8/3/1 and IOPC/OCT13/8/3/2**				**71AC**

8.3.1 The 1971 Fund Administrative Council noted that three documents had been put forward under this agenda item: document IOPC/OCT13/8/3 submitted by the Secretariat, document IOPC/OCT13/8/3/1 submitted by the Chairman of the Consultation Group on the winding up of the 1971 Fund and document IOPC/OCT13/8/3/2 submitted by the International Group of P&I Associations. The Chairman of the Administrative Council proposed that the presentation of the documents and the debate be handled in two steps as there was first the need to take a decision as to whether former 1971 Fund Member States wished to wind up the 1971 Fund as soon as possible and, then, if that

decision were to be taken, to consider the legal and procedural arrangements that would need to be made and how to resolve any outstanding issues.

Whether to wind up the 1971 Fund as soon as possible

DOCUMENT IOPC/OCT13/8/3 SUBMITTED BY THE SECRETARIAT

8.3.2 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund as at 20 September 2013, as set out in sections 1-11 of document IOPC/OCT13/8/3. 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 Convention, the 1971 Fund still continued to meet its obligations in respect of the incidents which occurred before the Convention had ceased to be in force and that the 1971 Fund Administrative Council was required to take appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among contributors.

8.3.3 The 1971 Fund Administrative Council also recalled that, at its October 2012 session, it had decided to set up a Consultation Group composed of a small number of delegates from the former Member States who could examine the outstanding issues with the Director and make recommendations to facilitate the process of winding up the 1971 Fund to the 1971 Fund Administrative Council at its next session. The Administrative Council noted that, in accordance with its mandate and composition, the Chairman of the Consultation Group had submitted recommendations to the Administrative Council at its April 2013 session. It also noted that, at that session, the mandate and composition of the Consultation Group had been amended so that it could continue its work. It further noted that the Consultation Group had met on two further occasions, in April and September 2013, and that the Chairman of the Consultation Group had submitted a separate report to the Administrative Council in which he had reported the outcome of the discussions of the Consultation Group and their recommendations on the winding up of the 1971 Fund.

8.3.4 The Administrative Council also recalled that, at its April 2013 session, it had instructed the Director to try to resolve as many of the outstanding issues as possible and to put forward proposals for the winding up of the 1971 Fund so that the Administrative Council, at its October 2013 session, could take the decisions required to wind up the 1971 Fund.

8.3.5 With respect to the financial situation of the 1971 Fund, the Administrative Council noted that the total balance available in the 1971 Fund General Fund as at 2 September 2013 was £2 867 324.

8.3.6 The Administrative Council also 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 Funds. 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)).

8.3.7 With respect to pending incidents, the Administrative Council recalled that the five outstanding incidents involving the 1971 Fund (*Vistabella*, *Aegean Sea*, *Iliad*, *Nissos Amorgos* and *Plate Princess*) had been discussed earlier. The outcome of these discussions and any decisions taken have been reported under the agenda item 'Incidents involving the IOPC Funds'.

8.3.8 With regard to the non-submission of oil reports, the Administrative Council was pleased to note that all former 1971 Fund Member States had now submitted oil reports in fulfilment of their obligations under the 1971 Fund Convention.

8.3.9 With respect to contributors in arrears, the Administrative Council noted that, in accordance with its decision taken in April 2013, contributions plus interest due from contributors in successor States of the former USSR (excluding the Russian Federation) and the former Socialist Federal Republic of Yugoslavia had been written off.

8.3.10 The Administrative Council noted that the only outstanding contributions in arrears were in respect of two contributors in the Russian Federation for an amount of approximately £43 000 plus interest and that the 1971 Fund had taken legal actions against them in the national courts of the Russian Federation. The Administrative Council 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 also recalled that the 1971 Fund had appealed to the Highest Arbitration Court which is the final court in the Russian Federation, but in both cases the Highest Arbitration Court had found in favour of the contributors.

8.3.11 The Administrative Council recalled that it had instructed the Director to raise the matter again with the Government of the Russian Federation and noted that the Director had visited the Russian Federation in August 2013 and had held a meeting with the Deputy Minister of Transport and the Deputy Director of the Department of State Policy for Maritime and River Transport, who had encouraged the 1971 Fund to continue with its legal actions against contributors. The Administrative Council also noted that the Ministry of Transport had agreed to help the 1971 Fund and that a senior civil servant would be visiting the companies concerned in September 2013 and would raise the issue with them.

8.3.12 With respect to contributions to be refunded to contributors to the 1971 Fund, the Administrative Council noted that an amount of £175 255 was due to contributors and that it was held in the 'contributors account' for 11 contributors. It further noted that these funds would need to be reimbursed to the respective contributors from the General Fund before any assets were distributed to those who contributed to the 1971 Fund.

8.3.13 The 1971 Fund Administrative Council noted that a final judgement had been issued by the Supreme Court on 8 May 2013 and that the appeal filed by the Agenzia delle Entrate against the 1971 Fund's claim for reimbursement of VAT in respect of the *Haven*, *Patmos* and *Agip Abruzo* incidents had been upheld. The Administrative Council noted that this meant that the 1971 Fund had therefore no right to a refund of VAT. It also noted that since the refund of the VAT was not reflected in the 1971 Fund accounts receivable, the Director considered that no further action was required.

DOCUMENT IOPC/OCT13/8/3/1 SUBMITTED BY THE CHAIRMAN OF THE CONSULTATION GROUP

8.3.14 Before introducing section 3 of document IOPC/OCT13/8/3/1, the Chairman of the Consultation Group, Mr Alfred Popp (Canada), recalled the composition and mandate of the Consultation Group which had been adopted by the 1971 Fund Administrative Council in October 2012 and revised in April 2013. He took the opportunity to express the gratitude of the Consultation Group to Colonel Khalil Loudiyi (Morocco) for his contribution to the work of the Consultation Group before his return to Morocco.

8.3.15 In accordance with the proposal of the Chairman of the 1971 Fund Administrative Council for the structuring of the debate, Mr Popp presented section 3 of the report of the Consultation Group relating to the considerations of the Consultation Group.

8.3.16 Mr Popp reported that the Consultation Group believed 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. He also reported that the Consultation Group was aware that there was a risk that the monies available (some £2.9 million) might not be enough unless the 1971 Fund Administrative Council took a decision to wind up the 1971 Fund as soon as possible.

8.3.17 He also reported that, although great progress had been made to resolve the outstanding issues, the Consultation Group was aware that it would be very unlikely that all outstanding incidents would be resolved within a short period of time. He stated that the Consultation Group was of the view that the 1971 Fund Administrative Council would therefore have to decide whether to keep the 1971 Fund open until all the pending incidents had been resolved, which was likely to take many years and

require the levy of contributions, or to agree to wind up the 1971 Fund, accepting that the 1971 Fund would not wait for final decisions by national courts.

8.3.18 Mr Popp further reported that the Consultation Group was aware that an additional levy of contributions was likely to be very difficult from a practical point of view as the 1971 Fund Convention had ceased to be in force more than ten years ago. Since a further levy of additional contributions was likely to be very difficult, the Consultation Group took the view that to wind up the 1971 Fund as soon as possible, accepting that the 1971 Fund could not wait for final decisions by national courts, was the only option available.

8.3.19 He also reported that the Consultation Group believed that postponing the decision to proceed with the dissolution of the 1971 Fund would not improve the situation and was therefore recommending that the 1971 Fund Administrative Council decide, at its October 2014 session, to dissolve the 1971 Fund and instruct the Director to make further efforts to resolve as many of the outstanding issues as possible before such a decision is made.

8.3.20 He noted, in addition, that should the Administrative Council decide at its October 2014 session to dissolve the 1971 Fund, the Consultation Group was recommending that the Administrative Council consider the procedural requirements that needed to be decided before any dissolution of the 1971 Fund could take place, including the adoption of one or more Resolutions.

8.3.21 Mr Popp further noted that, since the Consultation Group had already carried out its work, the Group was recommending that there was no need for its mandate to be extended and that it be dissolved.

8.3.22 Mr Popp took the opportunity to thank his colleagues on the Consultation Group, the Director and the Secretariat for the successful conclusion of the work of the Consultation Group.

DOCUMENT IOPC/OCT13/8/3/2 SUBMITTED BY THE INTERNATIONAL GROUP OF P&I ASSOCIATIONS

8.3.23 The observer delegation of the International Group of P&I Associations made the following statement:

> Document IOPC/OCT13/8/3/2 reflects and explains the position of the International Group on the winding up of the 1971 Fund, which remains as it was presented to the April meeting of the Administrative Council earlier this year.
>
> As already mentioned by the Director, the International Group, with the individual Clubs concerned, met with the Director and the Chairman of the Consultation Group in the intersessional period since April and these meetings have been useful to provide clarity on why the Fund continues to work towards the winding up of the 1971 Fund.
>
> In this regard, the International Group wrote to the Director and the Chairman of this Administrative Council at the end of last week setting out the International Group's position on the winding up of the 1971 Fund, with specific regard to the *Nissos Amorgos* case, in light of the recommendation of the Consultation Group that the 1971 Fund Administrative Council should decide, at its October 2014 session, to dissolve the 1971 Fund. Copies of that letter are available.
>
> The Administrative Council should note that this correspondence concludes by stating that, if the Administrative Council decides to proceed to dissolve the Fund, or accept any of the proposals made with respect to the *Nissos Amorgos* incident in paragraphs 12.5 and 12.6 of document IOPC/OCT13/8/3 as tabled by the Director on that particular case, the International Group and the Gard Club reserve the right to give consideration to any means by which they can protect their interests.
>
> The International Group paper submitted for this meeting makes reference to the financial accounting/auditing, that normally takes place at the end of a CLC/Fund case to ensure that

that the various financial outgoings, both with regard to compensation and costs, are correctly distributed between the Club and the Fund. The Gard Club does have a prospective claim against the Fund at the end of the *Nissos Amorgos* case for a balancing payment to ensure that the total amounts of compensation payments and joint costs are correctly apportioned between the Club and the Fund. An audit of compensation payments and expenditure was actually drawn up in 2006 between the Gard Club and the Fund, on a provisional basis, as a means of reflecting this practice in this case.

The consultation discussions that have taken place with the Director and the Chairman of the Consultation Group have clarified that there are two grounds on which it is questioned by the Fund whether the Club is entitled to reimbursement in accordance with these arrangements. One is the Fund's understanding that the Club/owners have lost the right to limit liability under CLC and the other is that the audit can take account only of established claims, and that this refers to claims which the Fund accepts as being admissible.

The Group has addressed both of these grounds in the correspondence sent last week to the Director and Chairman of the Administrative Council, and explained why the Group disagrees with both of the positions taken in this regard. The Court ruling depriving the Club/owners of the benefit of limitation in respect of one of the duplicate claims maintained by the Venezuelan State on the grounds that the decision of the Court was not a final ruling can have no bearing on the accounting position between the Club and the Fund. There is no dispute between the Club and the Fund that the owner is entitled to limit liability. The prospect of the courts failing to deal correctly with the limitation fund was foreseen before any interim payments were made by the Club, and an important object of the funding arrangements was to correct any imbalance which this might cause.

In terms of the second issue raised by the Fund that the audit can take account only of established claims and that these can consist only of claims which the Fund accepts as admissible, this view cannot be accepted by the International Group. It is, after all, perfectly clear that the competent courts are the final judges of whether a claim is established or not. The prospective reason identified by the Gard Club for the financial adjustment, and specified by the Club in correspondence in recent years with the Fund, was a possible decision by the courts to uphold a claim which the Fund considered inadmissible. No issue has ever been taken by the Director with that point with regard to this correspondence from the Gard Club.

In short, the ultimate outcome of the *Nissos Amorgos* case remains unclear. Quite apart from the position as far as a balancing payment is concerned there remain unresolved claims and questions in and about the Venezuelan proceedings. The Venezuelan courts have stated that the Fund is legally liable to pay the current judgement, have dismissed its arguments that the case against it is time-barred and have ordered that it be notified of the judgement. Steps will need to be taken to clarify the effect of the judgement given the apparent inconsistency between these statements and the failure to render judgement against the Fund.

It should also be noted that there is a potential liability of the Fund to the North of England club on the *Iliad* case. It is understood that the Director does not dispute this potential liability. The Fund has previously agreed that the Director should seek to reach a settlement with North of England in respect of this potential liability but no significant progress has been made in this regard.

Hopefully this provides some additional background to the position of the International Group as stated in document IOPC/OCT13/8/3/2. Clearly this is a matter that requires very careful consideration and we would, of course, prefer that this issue does not become a contentious one. However, as already mentioned, the International Group does not agree with the recommendation that a decision should be taken in October 2014 to dissolve the

Fund and, if this decision is taken, the Gard Club and the International Group reserve the right to give consideration to any means by which they can protect their interests.

Debate

8.3.24 All delegations that took the floor expressed their gratitude to the Chairman and members of the Consultation Group for their excellent report. They also expressed their appreciation to the Director and the Secretariat for their work in trying to resolve the outstanding issues.

8.3.25 All delegations that spoke supported the recommendation of the Consultation Group that the 1971 Fund Administrative Council should decide to wind up the 1971 Fund as soon as possible and most delegations supported deciding its dissolution at the October 2014 session of the Administrative Council. They also agreed that the Consultation Group should be dissolved as it had completed its work.

8.3.26 One delegation stated that the decision that the 1971 Fund had no legal obligation to reimburse to the P&I Club had been taken earlier during the meeting in respect of the *Nissos Amorgos* incident and that the decision had also been taken not to make any payment in respect of the *Plate Princess* incident. Therefore, in its view, there was no reason for the 1971 Fund to remain open whilst the remaining assets would be decreasing day by day. This delegation supported the proposal by the Consultation Group that the 1971 Fund should be wound up as soon as possible.

8.3.27 Several delegations, in supporting the observations made by this delegation, expressed the view that there should be no obstacles to winding up the 1971 Fund. Another delegation stated that only reasonable claims should constitute the obligations of the 1971 Fund.

8.3.28 Several delegations, whilst agreeing that the 1971 Fund should be dissolved, expressed their concern with respect to the issues raised by the International Group of P&I Associations in their intervention and urged the Director to continue his discussions with the International Group and individual P&I Clubs to try to resolve these issues.

8.3.29 Several delegations requested the Director to continue his efforts to collect the outstanding contributions owed by contributors in the Russian Federation.

1971 Fund Administrative Council Decision

8.3.30 The 1971 Fund Administrative Council decided that the 1971 Fund should be wound up as soon as possible. The Administrative Council noted that decisions now needed to be taken in respect of the legal and procedural arrangements that would have to be put in place.

<u>Legal and procedural issues in respect of the winding up of the 1971 Fund</u>

8.3.31 The Chairman of the Consultation Group reported that the Consultation Group had, in consultation with the Director, identified the issues where decisions needed to be taken, as required, with respect to the procedural requirements relating to the winding up of the 1971 Fund and were proposing recommendations. He noted that these issues were set out in section 2 of document IOPC/OCT13/8/3/1.

Who decides to dissolve the 1971 Fund?

8.3.32 As the 1971 Fund Administrative Council had been granted authority to take all appropriate measures to complete the winding up of the 1971 Fund by Article 44.2 of the 1971 Fund Convention and Resolution N°13, as amended by Resolution N°15, which created the Administrative Council and authorised it to perform functions allocated to the Assembly under the 1971 Fund Convention, the Consultation Group took the view that the 1971 Fund Administrative Council was empowered under the 1971 Fund Convention to decide to dissolve the 1971 Fund as a legal person.

Are there any procedures in place to dissolve the 1971 Fund?

8.3.33 The Consultation Group noted that there were no provisions in the 1971 Fund Convention setting out the procedures to terminate their operations and, since the Convention had already ceased to be in force, it was not possible to amend it now. The Consultation Group took the view that the 1971 Fund Administrative Council would have to establish its own appropriate procedures and desirably adopt them in the form of a Resolution.

Quorum

8.3.34 The Consultation Group noted that Resolution N°13 provided that there was no quorum requirement for participation in the sessions of the 1971 Fund Administrative Council. However, the Consultation Group took the view that former 1971 Fund Member States should be strongly encouraged to attend the session when the decision to wind up the 1971 Fund was adopted so that as many former Member States as possible were present at the time the decision was taken. In order to give maximum publicity to this session, the Consultation Group proposed that the Director should be instructed to contact as many former Member States as possible.

Credentials/notifications

8.3.35 The Consultation Group noted that Resolution N°13 provided that there were no credentials requirements but that "States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend" (notification). It also noted that this notification could be provided by a Government, Embassy or High Commission official. The Consultation Group took the view that since Resolution N°13 already provided that no credentials were required, the 1971 Fund Administrative Council should maintain the rule that notifications were sufficient.

Voting procedures

8.3.36 The Consultation Group noted that, in accordance with Resolution N°13 as amended by Resolution N°15, decisions by the 1971 Fund Administrative Council shall be taken by a majority of former 1971 Fund Member States present and voting. The Consultation Group took the view that the same voting procedure should apply to decisions taken with respect to the dissolution of the 1971 Fund.

Formalising the decision

8.3.37 The Consultation Group was of the view that the decision to dissolve the 1971 Fund should be formalised in a written document and that the best way to do this would be for the Administrative Council to adopt a Resolution to dissolve the 1971 Fund. The Resolution should provide the effective date of the termination of its legal personality, the tasks required before such a date, including the distribution of assets, the closing of the accounts and the preparation of the final Financial Statements. The Administrative Council noted that the matters that the Consultation Group felt needed to be decided before any dissolution of the 1971 Fund were attached at Annex II of document IOPC/OCT13/8/3/1.

Appointment of an eminent person to oversee the winding up of the 1971 Fund

8.3.38 The Consultation Group noted that, in October 2000, the 1971 Fund Administrative Council had decided that the 1971 Fund should appoint an eminent person from outside the 1971 Fund to oversee the winding up of the Fund but had postponed its consideration of the person to be appointed. The Consultation Group was of the view that there was no need for the 1971 Fund Administrative Council to appoint an eminent person, the rationale being that the 1971 Administrative Council and the Director would be supervising the dissolution of the 1971 Fund.

Debate

8.3.39 The Chairman of the 1971 Fund Administrative Council expressed the Administrative Council's gratitude to the Consultation Group for its recommendations in respect of the procedural aspects in relation to the winding up of the 1971 Fund.

8.3.40 The Director noted that, in the light of the decision taken to wind up the 1971 Fund, he was seeking instructions from the Administrative Council to study the legal and procedural issues relating to the winding up of the 1971 Fund further, in consultation with the Legal Affairs and External Relations Division of IMO.

8.3.41 The Director of the Legal Affairs and External Relations Division of IMO, Dr Rosalie Balkin, expressed the view that, in the absence of any provisions for the winding up of the 1971 Fund in the 1971 Fund Convention, the recommendations put forward by the Consultation Group were a good way forward. Dr Balkin also agreed that, as recommended by the Consultation Group, it would be important that all former 1971 Fund Member States should be strongly encouraged to attend the session of the 1971 Fund Administrative Council when the decision was taken to dissolve the 1971 Fund so that hopefully consensus would give legitimacy to the decision. Dr Balkin further agreed that a Resolution should be used to formalise the decision to dissolve the Fund. She also expressed the willingness of the Legal Affairs and External Relations Division to continue to assist the Director in a further study of the legal issues and procedures.

8.3.42 The Chairman of the 1971 Fund Administrative Council expressed the gratitude of the Administrative Council to IMO for its offer to continue to provide assistance.

Gratitude to Dr Rosalie Balkin

8.3.43 The Director took the opportunity to express the sincere appreciation of the governing bodies and the IOPC Funds' Secretariat to Dr Balkin who would be leaving IMO at the end of year and who was attending her last sessions of the Funds' governing bodies. He noted that she had provided invaluable assistance to the IOPC Funds over many years in dealing with difficult legal and technical issues and wished her all the best for the future. The Chairmen of the Funds' governing bodies also associated their respective body with the Director's appreciation to Dr Balkin for her help over the years.

1971 Fund Administrative Council Decision

8.3.44 The 1971 Fund Administrative Council decided to instruct the Director to study the legal and procedural issues relating to the winding up of the 1971 Fund further in consultation with the Legal Affairs and External Relations Division of IMO.

Resolution of outstanding issues

8.3.45 The Administrative Council noted that, should they decide to wind up the 1971 Fund as soon as possible, the Director had proposed that he be instructed, in consultation with the Chairman of the 1971 Fund Administrative Council, to carry out various tasks as outlined in paragraphs 12.5-12.9 of document IOPC/OCT13/8/3.

8.3.46 With respect to outstanding incidents, the observer delegation of the International Group of P&I Associations expressed its view that there was a link between the *Iliad* and *Nissos Amorgos* incidents and that the outcome of one incident could impact on the other, ie what impact would there be on the *Iliad* incident if the Administrative Council decided not to reimburse the Gard Club in respect of the *Nissos Amorgos* incident.

8.3.47 The Director responded that in the unlikely event that the established losses, as adjudicated by the Greek Courts, were to exceed the amount of the limitation fund of €4.4 million established by the North of England P&I Club, the 1971 Fund would also have to pay some €1.1 million to the shipowner as indemnification under Article 5 of the 1971 Fund Convention. In the Director's view, the two incidents might be linked in respect of the P&I Clubs' pooling agreement but not for the 1971 Fund.

8.3.48 In response to a request for clarification, the Director explained his intention to report on procedural matters to the spring 2014 session of the Administrative Council and that he expected that the decision to dissolve the 1971 Fund would be made at the October 2014 session. He further stated that he expected that the final session of the 1971 Fund Administrative Council would be held in spring 2015 to approve the 1971 Fund Financial Statements for 2014.

8.3.49 The 1971 Fund Administrative Council expressed its gratitude to the members and the Chairman of the Consultation Group for their hard work, forward thinking and the great help that they had provided to the 1971 Fund, without which it would have been impossible for the Administrative Council to decide on the winding up of the 1971 Fund as soon as possible.

1971 Fund Administrative Council Decisions

8.3.50 In respect of the outstanding issues, the 1971 Fund Administrative Council decided:

(a) to instruct the Director, with a view to deciding to dissolve the 1971 Fund at its October 2014 session, in consultation with the Chairman of the 1971 Fund Administrative Council, to resolve as many of the outstanding incidents as follows:

(i) with respect to the *Vistabella* incident, to resolve this outstanding case and to report to the Administrative Council at its next session;

(ii) with respect to the *Aegean Sea* incident, to continue his discussions with the Spanish Government in order to resolve this outstanding case and to report to the Administrative Council at its next session;

(iii) with respect to the *Iliad* incident, to continue his discussions with the North of England P&I Club, with the assistance of the International Group of P&I Associations, and to resolve this outstanding case and to report to the Administrative Council at its next session; and

(iv) with respect to the *Nissos Amorgos* incident, to continue his discussions with the Gard Club relating to the accounting position in respect of joint costs and to report to the Administrative Council at its next session.

(b) that the 1971 Fund had no legal obligation to reimburse the Gard Club any amounts paid as a consequence of the judgement by the Supreme Court of Venezuela, as already decided by the 1971 Fund Administrative Council in respect of the *Nissos Amorgos* incident;

(c) that the claim submitted by the Bolivarian Republic of Venezuela before the Supreme Court (Political Administrative Section) in respect of the *Nissos Amorgos* incident was time-barred *vis-à-vis* the 1971 Fund and not admissible for compensation, and instructed the Director not to pay any compensation or reimbursement in respect of this claim and to discontinue the defence of the 1971 Fund before the courts;

(d) that the claim submitted by three fish processors before the Supreme Court (Political Administrative Section) for loss of income in respect of the *Nissos Amorgos* incident had not been proven, and instructed the Director not to pay any compensation in respect of this claim and to discontinue the defence of the 1971 Fund before the courts;

(e) that, in respect of the *Plate Princess* incident, no loss had been proven with regard to the claim submitted by FETRAPESCA and instructed the Director to discontinue the defence of the 1971 Fund before the courts;

(f) that the Director had already received instructions from the 1971 Fund Administrative Council not to make any payment in respect of the *Plate Princess* incident and to oppose the enforcement of the judgement;

(g) that the Director should contact the Russian authorities to request their assistance to collect outstanding contributions from two contributors in the Russian Federation for an amount of approximately £43 000; and

(h) that the Consultation Group had already carried out its work and that there was no need for its mandate to be further extended and that it could be dissolved.

8.4	**Preparation for the entry into force of the 2010 HNS Protocol** **Document IOPC/OCT13/8/4**	**92AC**			

8.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/8/4 on the update of the work carried out by the Secretariat to set up the Hazardous and Noxious Substances (HNS) Fund.

8.4.2 It was noted that a workshop organised by the IMO jointly with the 1992 Fund Secretariat had taken place in November 2012 to facilitate States' preparation for the ratification of the 2010 HNS Protocol. Under the chairmanship of Canada, the 29 Member States that attended the workshop adopted the HNS contributing cargo reporting guidelines for States, which the IMO Legal Committee subsequently endorsed during its 100th session in March 2013. It was noted that the reporting guidelines, along with the consolidated text of the 2010 HNS Convention and the 2010 HNS Protocol, were published by the IMO and were available for purchase.

8.4.3 It was reported that the HNS Finder had been updated twice since it was made available to the public in 2011 to reflect the updates made in the list of hazardous and noxious substances. The Administrative Council noted that the Secretariat had followed up on the suggestion from the Belgian delegation from last year's workshop by making available the option to download the HNS lists in electronic formats. This would enable potential receivers to quickly cross-check substances. It was noted that these were available on the HNS Finder page of the HNS Convention website.

8.4.4 The 1992 Fund Administrative Council noted that, as part of an ongoing engagement and awareness-raising effort, the Secretariat had delivered training courses on the HNS Convention at the Regional Marine Pollution Emergency Response for the Mediterranean Sea in Malta and at the European Maritime Safety Agency in Lisbon in December 2012 and May 2013, respectively. It was also noted that IMO and the 1992 Fund Secretariat would jointly run similar training in Malaysia in November 2013.

8.4.5 It was reported that the number of States that have signed the 2010 HNS Protocol remained the same (eight States).

Debate

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

8.4.7 The delegation of Canada thanked the Member States that attended the November 2012 workshop and IMO and the 1992 Fund Secretariat for organising it. That delegation announced a meeting on HNS, which was due to take place that day, to review the ratification progress made by States, and encouraged attendance.

8.4.8 The Malaysian delegation expressed gratitude for the November 2012 workshop and stated that a three-day training would take place in Malaysia between 4 and 7 November with the assistance of IMO and the 1992 Fund Secretariat. That delegation estimated that 70 participants would attend the workshop and hoped that it would contribute towards Malaysia's ratification of the Convention.

8.4.9 The delegation of Denmark stated that, as one of the eight signatories of the 2010 HNS Protocol, it had adopted a legislation requiring HNS receivers in the country to report contributing cargoes starting in January 2014. That delegation emphasised that it was essential for States to continue to make efforts to ensure the entry into force of the 2010 HNS Convention.

8.5	**Implementation of the Conventions into national law** **Document IOPC/OCT13/8/5**	**92AC**		**SA**	

8.5.1 The governing bodies recalled that at their October 2012 sessions, the Director had confirmed his intention to examine the problems relating to the lack of implementation of the 1992 Civil Liability and Fund Conventions into national law and to study the possibility of the IOPC Funds recovering from Member States any loss suffered as a result of their failure to correctly implement the Conventions.

8.5.2 It was noted that since the October 2012 sessions the Director had obtained a legal opinion from Professor Dan Sarooshi, a practising barrister and Professor of Public International Law at the University of Oxford, who had extensive experience in litigation involving governments and international organisations.

8.5.3 The Legal Counsel, Ms Akiko Yoshida, introduced document IOPC/OCT13/8/5 and in particular the Director's considerations in section 4 of that document.

8.5.4 Professor Sarooshi presented his legal opinion, as contained in Annex I to that document and, in particular, emphasised that;

- The 1992 Fund has the capacity to bring claims against its Contracting States on both the international and national planes for breaches of the 1992 Fund Convention and possibly also the 1992 CLC. The capacity of the 1992 Fund to bring an international claim against Contracting States flows from its international legal personality, but its capacity to bring claims in domestic courts will in practice depend on Contracting States having correctly implemented Article 2(2) of the 1992 Fund Convention;

- The 1992 Fund has a strong legal basis to make a claim to recover losses caused by a Contracting State's breach of its obligations under the 1992 Fund Convention. The 1992 Fund may also recover losses caused by a Contracting State's breach of its obligations under the 1992 CLC due to the fundamental role played by the CLC in relation to both the 1992 Fund and the compensation regime established under the 1992 Fund Convention;

- The failure by a Contracting State to ensure that its shipowners maintain the requisite level of insurance or other financial guarantee pursuant to Article VII(1) of the 1992 CLC would appear to represent a breach of its treaty obligation for which it bears responsibility under international law and for which it must provide compensation to the 1992 Fund;

- The plain and ordinary meaning of Article VII(2) would appear to be that a certificate attesting that a ship has adequate insurance or other financial security can only be issued by the Contracting State once the State has itself "determined" that the insurance or other financial security has "complied with" the "requirements" of Article VII(1). It is not sufficient for the Contracting State simply to issue a certificate on the basis of having received a Blue Card without the State first checking that the insurance or other financial security fulfils both of the requirements prescribed by Article VII(1) of the 1992 CLC;

- As for the obligations related to contributions, if Member States are in breach of their obligations to provide timely and accurate reports so that as a consequence the 1992 Fund is unable to decide which "persons" must contribute to the 1992 Fund and what is their level of contribution (Article 15(1)-(2)), then the State is responsible under international law for this breach of the 1992 Fund Convention and it bears a responsibility to compensate the 1992 Fund for the missing contributions;

- If Member States have failed to implement Article 13(2) correctly such that there are no such measures which the State can take under its domestic law against a non-paying person to ensure that he has contributed the amount of his annual contribution as levied upon him by the Director (Article 13(2)) or even where action or inaction by an organ of the State has the consequence that the 1992 Fund does not receive the contribution due, then again the State is arguably responsible for its breach and it bears a responsibility to compensate the 1992 Fund for the missing contributions. For example, the failure by the Government of a Contracting State to implement its specific obligation in Article 13(2) into domestic law and its failure to provide oil reports, both provide the 1992 Fund with separate causes of action (bases of claims) that it may use to bring a claim against the Contracting State. For the same reasons, the 1992 Fund possesses a viable claim against a Contracting State that has failed to submit oil reports;

- There are two main potential fora where the 1992 Fund may seek to pursue a claim either directly or indirectly against a Member State for breach of either the 1992 Fund Convention or the 1992 CLC: litigation in the domestic courts of Member States and ad hoc international arbitration by mutual consent. There is no international fora – other than an arbitral tribunal established on an ad hoc consensual basis – that has jurisdiction to hear such claims. In terms of domestic litigation, the probability of success will likely depend on the extent to which the Conventions are correctly implemented as part of national law and in the event that they are not then this would involve issues of "justiciability". In relation to both fora, a potential obstacle to recovery is that of State or sovereign immunity.

8.5.5 The governing bodies noted that, taking into account the main conclusions drawn from Professor Sarooshi's legal opinion, the Director was of the view that it would be appropriate when an issue of potential liability arises in respect of a Contracting State, that the State concerned should be given the opportunity to resolve the issue before considering any legal action against it. Then, if such issue has not been resolved, the Director should seek instructions from the governing bodies as to whether the 1992 Fund should commence a legal action against the Contracting State in a national court, or seek to establish an *ad hoc* arbitral tribunal.

8.5.6 The governing bodies also noted the Director's proposal that if, after having been informed by the State concerned how the Conventions had been implemented and how it intended to resolve the issue, the situation is, in the view of the governing bodies, not satisfactory, they might wish to instruct the Director to seek an external legal remedy to recover the loss resulting from the incorrect implementation of the Conventions.

8.5.7 It was pointed out that if appropriate legislation had not been in place to implement the Conventions into national law, the 1992 Fund might not, under the national law of that State, be under a legal obligation to pay compensation to claimants in that State. In such a case, despite the fact that the State had ratified the Conventions, claimants in that State might not be entitled to compensation from the 1992 Fund.

8.5.8 It was also emphasised that the correct implementation of the Conventions into national law was very important to ensure that compensation was available to victims of pollution damage and also to prevent the 1992 Fund from suffering a loss.

Debate

8.5.9 In response to a question from one delegation, Professor Sarooshi referred to paragraph 98 of his legal opinion and clarified the difference between non-justiciability and sovereign immunity, explaining that the former referred to a court refraining from exercising jurisdiction due to the nature of the issue concerned, whereas the latter referred to cases where the law set out parameters establishing the immunity of a State.

8.5.10 In response to a question from another delegation regarding his interpretation of the responsibility of a State in respect of CLC certificates, Professor Sarooshi referred to Article VII.2 of the 1992 CLC and expressed the view that the wording of that paragraph: 'a certificate shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with', meant that the State was under an obligation to investigate the insurance terms with regard to Blue Cards.

8.5.11 One delegation commented that it was difficult to decide if States had correctly implemented the international Conventions with regard to CLC certificate issuing procedures, since no common criteria or clear guidelines on the practices were available.

8.5.12 The observer delegation of the International Group of P&I Associations pointed out that guidelines for authorities on criteria of acceptability of Blue Cards were available. That delegation pointed out that whilst those guidelines had been adopted in connection with the Bunkers Convention, they could also apply in respect of the 1992 CLC (see IMO Circular 3145). That delegation suggested that the guidelines could be presented in the form of a document at the next session, to help Member States to establish their own criteria.

8.5.13 One delegation made reference to discussions within the 100th session of the IMO Legal Committee, which had arisen as a result of 1992 Fund Executive Committee discussions on the *Alfa I* incident, specifically the issues surrounding the incorrect insurance coverage of that vessel and more broadly the purpose of the CLC regime. Professor Sarooshi, explained that he was aware that at the debate at the Legal Committee there had been differing views over the interpretation of the Article VII.2 and that, whilst a number of delegations had interpreted Article VII.2 of the 1992 CLC, as he had, taking the view that the State was under an obligation to check on the requirements for Blue Cards, a number of other delegations had taken the view that States should be able to trust the providers of Blue Cards. Professor Sarooshi expressed his view that any perceived lack of clarity as to how to investigate did not affect the State's obligation to do so.

8.5.14 A number of delegations endorsed the Director's proposal that the States concerned should be given the opportunity to resolve their issues before considering any legal action against it.

8.5.15 Many delegations emphasised that the 1992 Fund should always first engage in dialogue with the State concerned and that legal action should always be a last resort.

8.5.16 One delegation stated that this legal opinion would serve as a good reference in future.

8.5.17 One delegation made reference to the policy adopted by the 1992 Fund Assembly in October 2008 in respect of the non-submission of oil reports, whereby in the event that a State had not provided oil reports for two or more years, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State would be assessed for admissibility but payment would be deferred until the reporting deficiency was rectified (circular 92FUND/Circ.63). That delegation proposed that the Administrative Council should invite the Director to study the possibility of broadening that policy so that it would apply in other cases affected by incorrect or lack of implementation of the Conventions. A number of delegations supported that proposal. One delegation suggested that the policy could even be extended in some circumstances to some private claimants.

8.5.18 Another delegation expressed reservations, stating that whilst supporting, in principle, the proposal of broadening the policy measures, the aspects resulting from incorrect implementation were significantly more complex than the non-submission of oil reports. That delegation encouraged the Administrative Council to focus on areas where the 1992 Fund was exposed to financial risks.

8.5.19 One delegation stated that the various discussions on a number of incidents earlier in the meeting week had highlighted the need to take the matter of correct implementation of the 1992 Conventions seriously. That delegation emphasised that correct implementation was essential to ensure that compensation was available to victims and that the 1992 Fund did not suffer a loss. That delegation further suggested that, whilst it recognised that, due to their complexity, the 1992 Conventions were not suited for inclusion within the IMO Audit Scheme, it suggested that inspiration could be taken from that scheme, although it must be understood that the CLC and Fund regime could not be easily incorporated into the Audit Scheme as the required expertise was much more complex than for technical standards. To ascertain whether Conventions had been correctly implemented into national law, a deep understanding of the legal system, including contract law, tort law and civil procedural law of a particular State would be required. That delegation regretted that it did not have a concrete proposal at that time, but expressed its hope that ideas would be put forward on the matter at a future session.

8.5.20 In response to a question form one delegation, Professor Sarooshi confirmed that by ratifying an international Convention a State was under a legal obligation to comply with the terms of the Convention. He further explained that implementation of the CLC and Fund Convention must be carried out in such a way as to ensure that the 1992 Fund was prevented from suffering a loss.

8.5.21 The Director expressed his gratitude to Professor Sarooshi for his opinion and for his clarifications provided during the debate. He reiterated that dealing with incorrect implementation of the Conventions could prove very difficult and could lead to issues with contributions, insurance gaps and other matters. He stated that some time would be required to study the matter in more detail and that he intended to do so, in the light of Professor Sarooshi's opinion and the debate within the Administrative Council in consultation with the Audit Body.

8.5.22 The governing bodies thanked Professor Sarooshi for carrying out the study and, whilst noting the differing views that had been expressed in relation to CLC certificates, endorsed the views expressed by him.

1992 Fund Administrative Council Decision

8.5.23 The 1992 Fund Administrative Council:

(a) Whilst noting the differing views that had been expressed in relation to CLC certificates, endorsed the legal opinion provided by Professor Sarooshi;

(b) Noted that the Director, in consultation with the Audit Body, intended to examine the possibility of developing a new policy, similar to that adopted by the 1992 Fund Assembly in respect of outstanding oil reports, to address the failure by Contracting States to correctly implement the Conventions;

(c) Decided that, in the event that the 1992 Fund had suffered a loss as a result of the incorrect implementation of the Conventions into national law, the 1992 Fund should always first engage in dialogue with the Contracting State concerned;

(d) In addition, also decided that the Contracting State concerned should have the opportunity of informing the 1992 Fund Assembly of the manner in which the Conventions were implemented into domestic law, and how it intended to rectify the situation; and

(e) Further decided that if, in the view of the 1992 Fund Assembly, the Contracting State's proposals to rectify the situation were not satisfactory, the Assembly could consider whether it wished to instruct the Director to bring a legal action against a Contracting State to recover the loss resulting from the incorrect implementation of the Conventions.

Supplementary Fund Assembly

8.5.24 The Supplementary Fund Assembly noted the decisions taken by the 1992 Fund Administrative Council.

9 Budgetary matters

9.1	**Budgets for 2014 and assessments of contributions to the General Fund Documents IOPC/OCT13/9/1, IOPC/OCT13/9/1/1, IOPC/OCT13/9/1/2 and IOPC/OCT13/9/1/3**	**92AC**		**SA**	**71AC**

9.1.1 The governing bodies took note of the information contained in document IOPC/OCT13/9/1.

9.1.2 The 1992 Fund Administrative Council considered the draft 2014 budget for the administrative expenses of the IOPC Funds' joint Secretariat and the apportionment of joint administrative costs between the three Organisations as proposed by the Director in document IOPC/OCT13/9/1/1. The 1992 Fund Administrative Council also considered the revised assessment of contributions to the 1992 Fund General Fund in document IOPC/OCT13/9/WP.1 in light of the decisions of the 1992 Fund Executive Committee at its 59th session earlier in the week not to make payments in respect of the *Redfferm, JS Amazing* and *Alfa I* incidents.

9.1.3 The Supplementary Fund Assembly considered the draft 2014 budget and assessment of contributions to the Supplementary Fund General Fund in document IOPC/OCT13/9/1/2 and the 1971 Fund Administrative Council took note of document IOPC/OCT13/9/1/3 in respect of the 1971 Fund General Fund.

9.1.4 The 1992 Fund Administrative Council noted that in view of the expiry of the lease for the current premises in Portland House in March 2015, an appropriation had been included in the draft budget for costs relating to the relocation of the IOPC Funds' offices to be borne only by the 1992 Fund.

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

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

9.1.7 It was noted that there was an overall decrease of 4% in the draft joint Secretariat budget compared to the 2013 budget, excluding the additional appropriation for relocation costs mentioned above. The decrease was mainly due to a reduction in personnel costs, IT hardware requirements, public information costs in respect of the website and the saving under consultants' and other fees.

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

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

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

9.1.11 The 1971 Fund Administrative Council noted the Director's view that the surplus on the 1971 Fund's General Fund as at 31 December 2014 should be sufficient to cover any expenses payable by the General Fund, to be made after 31 December 2014, as well as the 1971 Fund's share of the administrative expenditure until the 1971 Fund was wound up.

1992 Fund Administrative Council Decisions

9.1.12 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create additional posts in the General Service category provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (ie up to £206 000, based on the 2014 budget).

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

9.1.14 The 1992 Fund Administrative Council adopted the budget for 2014 for the administrative expenses of the 1992 Fund for a total of £4 464 460 (including the cost of the external audit for the 1992 Fund and relocation costs), as set out in Annex III, page 1.

9.1.15 The 1992 Fund Administrative Council also approved the Director's estimate of the expenses to be incurred in 2014 in respect of the preparation for the entry into force of the HNS Convention.

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

9.1.17 The 1992 Fund Administrative Council decided to levy contributions of £3.3 million to the General Fund payable by 1 March 2014.

9.1.18 The 1992 Fund Administrative Council decided not to make a deferred levy.

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2014	
			Levy (£)	Estimated levy per tonne (£)
General Fund	2012	1 567 351 356	3 300 000	0.0021055

Supplementary Fund Assembly Decisions

9.1.19 The Supplementary Fund Assembly adopted the budget for 2014 for the administrative expenses of the Supplementary Fund for a total of £45 600 (including the cost of the external audit), as set out in Annex III, page 2.

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

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

1971 Fund Administrative Council Decisions

9.1.22 The 1971 Fund Administrative Council adopted the budget for 2014 in respect of the administrative expenses of the 1971 Fund for a total of £505 300 (including the cost of the external audit), as set out in Annex III, page 3.

9.1.23 The 1971 Fund Administrative Council authorised the Director to use the balance on the General Fund to pay for the administrative expenditure and minor claims expenses.

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

9.1.24 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council approved the Director's proposal that the Supplementary Fund and the 1971 Fund should pay flat management fees of £32 000 and £240 000 respectively to the 1992 Fund for the financial year 2014.

9.2	**Assessment of contributions to Major Claims Funds and Claims Funds** **Documents IOPC/OCT13/9/2, IOPC/OCT13/9/2/1, IOPC/OCT13/9/2/2 and IOPC/OCT13/9/2/3**	**92AC**		**SA**	**71AC**

9.2.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the Director's proposal for contributions to Major Claims Funds and Claims Funds for the three Organisations as outlined in documents IOPC/OCT13/9/2, IOPC/OCT13/9/2/1, IOPC/OCT13/9/2/2 and IOPC/OCT13/9/2/3.

9.2.2 With regard to the matter of the closure of the *Erika* Major Claims Fund, the French delegation asked the Secretariat about the methods of reimbursement of the balance of that fund to the contributors, as the companies concerned were the contributors in the year 1998, but some of them might no longer exist. France also wished to have an overview of how the amounts would be distributed between the various States. The Director confirmed that a breakdown of the reimbursements from the *Erika* Major Claims Fund would be included in the Report on Contributions submitted to the 1992 Fund Assembly at their October 2014 session.

1992 Fund Administrative Council Decisions

9.2.3 The 1992 Fund Administrative Council decided to close the *Erika* Major Claims Fund and reimburse £26.2 million to contributors to the *Erika* Major Claims Fund repayable on 1 March 2014.

9.2.4 The 1992 Fund Administrative Council decided to levy 2013 contributions to the *Prestige* Major Claims Fund of £2.5 million payable by 1 March 2014.

9.2.5 The 1992 Fund Administrative Council decided to levy 2013 contributions to the *Volgoneft 139* Major Claims Fund of £7.5 million payable by 1 March 2014.

9.2.6 The 1992 Fund Administrative Council decided not to levy 2013 contributions in respect of the *Hebei Spirit* Major Claims Fund.

9.2.7 It was noted that the 1992 Fund Administrative Council's decisions in respect of levies for 2013 contributions and reimbursement to contributors to the *Erika* Major Claims Fund would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Total levy (£)	Payment/(reimbursement) by 1 March 2014	
				Levy (£)	Estimated levy per tonne (£)
Prestige	2001	1 356 552 943	2 500 000	2 500 000	0.0018429
Volgoneft 139	2006	1 533 982 187	7 500 000	7 500 000	0.0048892
Erika	1998	1 115 864 606	(26 200 000)	(26 200 000)	(0.0234796)

Supplementary Fund Assembly

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

1971 Fund Administrative Council Decision

9.2.9 The 1971 Fund Administrative Council decided that there should be no levies of contributions to the *Vistabella* and the *Nissos Amorgos* Major Claims Funds.

9.3	**Transfer within the 2013 budget** **Document IOPC/OCT13/9/3**	**92AC**			

9.3.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT13/9/3.

9.3.2 It was noted that the budget appropriation to cover costs relating to the meetings (Chapter III – Meetings) in the 2013 budget might not be sufficient due to an increase in new fee structures governing interpreters and translators.

1992 Fund Administrative Council Decision

9.3.3 The 1992 Fund Administrative Council decided to authorise the Director to make the necessary transfer between chapters within the 2013 budget to cover these costs.

10 Other matters

10.1	**Future sessions**	**92AC**	**92EC**	**SA**	**71AC**

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

10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly, and the autumn session of the 1971 Fund Administrative Council during the week of 20 October 2014.

10.1.2 The governing bodies agreed that their next sessions would take place during the week of 5 May 2014. It was also agreed that the third meeting of the seventh intersessional Working Group and any other sessions as required would take place during that week.

1992 Fund Executive Committee Decision

10.1.3 The 1992 Fund Executive Committee decided to hold its 60th session on 25 October 2013, during which it would consider the date for its 61st session.

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

No items were raised under this agenda item.

11 Adoption of the Record of Decisions

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

The draft Record of Decisions of the October 2013 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT13/11/WP.1 and IOPC/OCT13/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

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

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

40	Netherlands	●		●	●
41	New Zealand	●			●
42	Nigeria	●			●
43	Norway	●		●	●
44	Oman	●			●
45	Panama	●	●		●
46	Philippines	●			
47	Poland	●	●	●	●
48	Portugal	●		●	●
49	Qatar	●			●
50	Republic of Korea	●		●	●
51	Russian Federation	●			●
52	Singapore	●	●		
53	Spain	●	●	●	●
54	Sri Lanka	●			●
55	Sweden	●		●	●
56	Turkey	●		●	
57	United Arab Emirates	●			●
58	United Kingdom	●	●	●	●
59	Uruguay	●			
60	Vanuatu	●			●
61	Venezuela (Bolivarian Republic of)	●			●

1.2 States represented as observers

		1992 Fund	Supplementary Fund	1971 Fund
1	Brazil	●	●	●
2	Côte d'Ivoire	●	●	
3	Guatemala	●	●	
4	Indonesia	●	●	
5	Slovak Republic	●	●	
6	Saudi Arabia	●	●	●
7	Ukraine	●	●	

1.3 Intergovernmental organisations

		1992 Fund	Supplementary Fund	1971 Fund
1	European Commission	●	●	●
2	International Maritime Organization (IMO)	●	●	●
3	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)	●	●	●

1.4 International non-governmental organisations

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

* * *

ANNEX II

Working Group on issues related to the definition of 'ship'

REVISED TERMS OF REFERENCE

Adopted by the 1992 Fund Administrative Council at its 11th session,
acting on behalf of the 1992 Fund Assembly, October 2013

Recognising the importance the definition of 'ship' has for the payment of compensation and for the contribution system,

Taking note of the discussions at sessions of the 1992 Fund Assembly on this issue,

Stressing the need for transparency in the application of the definition of 'ship' and the consequences a decision will have on the scope of the 1992 Civil Liability Convention and 1992 Fund Convention,

Stressing the need to find solutions without changing the current Conventions,

Noting the legal analysis provided in document IOPC/OCT11/4/4 and other related documents,

The Assembly decides to set up the 7th intersessional Working Group of the 1992 Fund with the following mandate:

1. To analyse the consequences that different interpretations outlined in document IOPC/OCT11/4/4 and other related documents may or could have on the coverage and contributions of the international compensation regimes;

2. To recommend to the Assembly a uniform approach to the interpretation of the definition of 'ship' under Article I.1. of the 1992 CLC and to Article 10 of the 1992 Fund Convention;

3. To establish a Consultation Group consisting of the delegations of Australia, Netherlands, Japan, Norway, the International Group of P&I Associations, the International Chamber of Shipping and any other delegations that wished to contribute; and

4. To report its findings and/or recommendations to each session of the 1992 Fund Assembly, with a view to terminating its work and presenting a final report to the October 2014 session of the 1992 Fund Assembly.

5. The Working Group shall have as its Chairman Mrs Birgit Sølling Olsen (Denmark).

* * *

ANNEX III

2014 Administrative Budget for 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2012 expenditure for 1992 Fund		2012 budget appropriations for 1992 Fund		2013 budget appropriations for 1992 Fund	2014 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 851 975*		*2 061 860*		2 060 260	2 061 920
(b)	Separation and recruitment	*28 297*		*75 000*		40 000	40 000
(c)	Staff benefits, allowances and training	*537 849*		*721 425*		670 650	645 775
	Sub-total		***2 418 121***		***2 858 285***	**2 770 910**	**2 747 695**
II	**General services**						
(a)	Rent of office accommodation (including service charges and rates)	*314 080*		*347 000*		340 800	332 800
(b)	IT (hardware, software, maintenance and connectivity)	*240 505*		*318 075*		278 450	221 615
(c)	Furniture and other office equipment	*10 581*		*26 000*		19 000	13 000
(d)	Office stationery and supplies	*15 435*		*22 000*		20 000	15 000
(e)	Communications (courier, telephone, postage)	*37 124*		*45 000*		45 000	45 000
(f)	Other supplies and services	*27 178*		*35 000*		35 000	35 000
(g)	Representation (hospitality)	*13 939*		*25 000*		25 000	20 000
(h)	Public information	*171 593*		*175 000*		160 000	110 000
	Sub-total		***830 435***		***993 075***	**923 250**	**792 415**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' governing bodies and intersessional Working Groups		***117 058***		***150 000***	**100 000**	**130 000**
IV	**Travel**						
	Conferences, seminars and missions		***48 280***		***150 000***	**100 000**	**100 000**
V	**Other expenditure (previously Miscellaneous expenditure)**						
(a)	Consultants' fees	*141 461*		*150 000*		150 000	100 000
(b)	Audit Body	*146 527*		*180 000*		167 000	165 000
(c)	Investment Advisory Body	*66 460*		*66 150*		68 500	70 850
	Sub-total		***354 448***		***396 150***	**385 500**	**335 850**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		-		***60 000***	**60 000**	**60 000**
Total joint Secretariat expenditure I-VI (excluding External Audit fees)			***3 768 342***		***4 607 510***	**4 339 660**	**4 165 960**
VII	**External Audit fees 1992 Fund only**		*48 500*		*49 000*	49 000	48 500
VIII	**Relocation costs 1992 Fund only**		-		-	-	250 000
Total Expenditure I-VIII			***3 816 842***		***4 656 510***	**4 388 660**	**4 464 460**

2014 Administrative Budget for the Supplementary Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2012 EXPENDITURE	2012 BUDGET APPROPRIATIONS	2013 BUDGET APPROPRIATIONS	2014 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	59 500	59 500	33 000	32 000
II	Administrative expenses (including external audit fees)	3 600	13 600	13 600	13 600
Supplementary Fund Budget Appropriation		**63 100**	**73 100**	**46 600**	**45 600**

2014 Administrative Budget for 1971 Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2012 EXPENDITURE	2012 BUDGET APPROPRIATIONS	2013 BUDGET APPROPRIATIONS	2014 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	255 000	255 000	247 500	240 000
II	Costs for winding up of the 1971 Fund	17 526	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 300	15 400	15 300	15 300
1971 Fund Budget Appropriation		**282 826**	**520 400**	**512 800**	**505 300**