INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT14/**11/1**	
Original: ENGLISH	24 October 2014	
1992 Fund Assembly	**92A19**	●
1992 Fund Executive Committee	**92EC62**	●
Supplementary Fund Assembly	**SA10**	●
1971 Fund Administrative Council	**71AC33**	●

RECORD OF DECISIONS OF THE OCTOBER 2014 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 20 to 24 October 2014)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Assembly **(92A19)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Samuel Roger Minkeng (Cameroon)
	Executive Committee **(92EC62)**	Mrs Welmoed van der Velde (Netherlands)	Mr Ibraheem Olugbade (Nigeria)
Supplementary Fund	Assembly **(SA10)**	Mr Sung-bum Kim (Republic of Korea)	Mrs Birgit Sølling Olsen (Denmark) Mr Mustafa Azman (Turkey)
1971 Fund	Administrative Council **(71AC33)**	Captain David J F Bruce (Marshall Islands)	Ms Susana Garduño Arana (Mexico)

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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 Professor Hisashi Tanikawa who sadly passed away on 28 June 2014.

0.2 The Chairman recalled that Professor Tanikawa was one of the founding fathers of the international compensation regime who, as a member of the Japanese delegation, took part in the diplomatic conferences which developed the 1969 Civil Liability Convention and established the 1971 Fund. The Chairman further recalled that Professor Tanikawa continued to represent Japan at the Fund's meetings for many years and in addition to chairing the 1971 Fund Executive Committee, he further contributed to the development of the Funds by serving on the Audit Body from 2002 to 2008. He also played an active role in the development of many other international Conventions under the auspices of the IMO. The Chairman said that Professor Tanikawa was a valued colleague and friend to the Funds and that he would be missed by all and, on behalf of all the delegates, expressed his sincere condolences to his family. In response, the delegation of Japan expressed its appreciation for the Chairman's words. A number of other delegations took the floor to express their condolences and to share their personal memories of working with Professor Tanikawa.

1992 Fund Assembly

0.3 The Chairman of the 1992 Fund Assembly attempted to open the 19th session of the Assembly at 09:30 but failed to achieve a quorum. At 09:45 however, the following 57 Member States of the 1992 Fund were present and a quorum was therefore achieved:

Algeria	Ghana	Norway
Argentina	Greece	Oman
Australia	India	Panama
Bahamas	Ireland	Papua New Guinea
Bulgaria	Islamic Republic of Iran	Philippines
Cameroon	Italy	Poland
Canada	Japan	Qatar
China[<1>]	Kenya	Republic of Korea
Colombia	Latvia	Russian Federation
Côte d'Ivoire	Liberia	Singapore
Cyprus	Malaysia	South Africa
Denmark	Malta	Spain
Dominican Republic	Marshall Islands	Sri Lanka
Ecuador	Monaco	Sweden
Estonia	Morocco	Turkey
Finland	Namibia	United Arab Emirates
France	Netherlands	United Kingdom
Georgia	New Zealand	Uruguay
Germany	Nigeria	Venezuela (Bolivarian Republic of)

Supplementary Fund Assembly

0.4 The Supplementary Fund Assembly Chairman opened the 10th session of the Assembly.

1971 Fund Administrative Council

0.5 The 1971 Fund Administrative Council Chairman opened the 33rd session of the Administrative Council.

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

1992 Fund Executive Committee

0.6 The 1992 Fund Executive Committee Chairman opened the 62nd session of the Executive Committee.

0.7 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/OCT14/1/1**	**92A**	**92EC**	**SA**	**71AC**

The 1992 Fund Assembly, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/OCT14/1/1.

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

1.2.1 The Director introduced this agenda item and referred to Rule 21 of the Rules of Procedure for each of the governing bodies which states:

> At the opening of each regular session of the Assembly, the representative of the delegation from which the Chairman of the previous session was elected shall preside until the Assembly has elected a Chairman for the session.

1.2.2 He pointed that that in practice, this meant that the Chairmen had been presiding over their own elections. The Director informed the governing bodies that for these and future sessions the Director would preside over this agenda item for all three governing bodies and that a document proposing an amendment to the Rules of Procedure would be submitted to the governing bodies at the next session.

1992 Fund Assembly Decision

1.2.3 The 1992 Fund Assembly 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 Samuel Roger Minkeng (Cameroon)

1.2.4 The Chairman thanked, also on behalf of the two Vice-Chairmen, the 1992 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 Mohammed Said Oualid (Morocco).

Supplementary Fund Assembly Decision

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

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

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

1971 Fund Administrative Council Decision

1.2.7 The 1971 Fund Administrative Council elected the following delegates to hold office:

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

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

1.3

Examination of credentials – Establishment of the Credentials Committee Document IOPC/OCT14/1/2	**92A**	**92EC**	**SA**	
Examination of credentials – Interim report of the Credentials Committee Document IOPC/OCT14/1/2/1	**92A**	**92EC**	**SA**	
Examination of credentials – Report of the Credentials Committee Document IOPC/OCT14/1/2/2	**92A**	**92EC**	**SA**	

1.3.1 The governing bodies took note of the information contained in document IOPC/OCT14/1/2.

1.3.2 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.

1.3.3 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 Assembly Decision

1.3.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Assembly appointed the delegations of Argentina, Belgium, Liberia, New Zealand and Poland as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Debate

1.3.6 In order to facilitate the election of the Audit Body, the Chairman of the Credentials Committee, Mrs Anna Wypych-Namiotko (Poland), presented an interim report of the credentials submitted on Tuesday 21 October 2014 (document IOPC/OCT14/1/2/1) and presented an oral update Wednesday 22 October 2014.

1.3.7 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/OCT14/1/2/2 that the credentials received from 67 Member States of the 1992 Fund, including States members of the Executive Committee and the Supplementary Fund, were in order.

1.3.8 The governing bodies noted that the Credentials Committee had in its Report drawn the attention of Member States to the fact that some States continued to send their credentials to the Secretary-General of the International Maritime Organization instead of to the Director of the IOPC Funds as stipulated in the IOPC Funds' credentials policy (see circular 92FUND/Circ.75). The Credentials Committee had also drawn the attention of Member States to the fact that the credentials should indicate clearly the session or sessions to which they pertained.

1.3.9 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for having dealt with a particularly heavy workload during the October 2014 sessions. They also thanked the Chairman, Mrs Anna Wypych-Namiotko (Poland), for her two interim reports during the week.

1.4	**Request for observer status**	**92A**		**SA**	

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

2 Overview

2.1	**Report of the Director** **Document IOPC/OCT14/2/1**	**92A**		**SA**	**71AC**

2.1.1 The Director presented his report contained in document IOPC/OCT14/2/1, providing details on the activities of the organisation over the past year and some background to the key items on the agenda for the week ahead.

The Director referred specifically to the winding up of the 1971 Fund as the most important decision to be taken by the 1971 Fund Administrative Council during the week. He reminded delegations of the decisions taken and the Resolution adopted by the Administrative Council at previous sessions on the dissolution of the 1971 Fund to be taken at the October 2014 session and referred to the revised draft Resolution on the Dissolution of the 1971 Fund which the Council would be invited to adopt during the week.

2.1.2 He gave a brief overview of the recent developments in respect of the two outstanding incidents, specifically his proposal for a global settlement on the *Iliad* incident and the recent court judgment in respect of the *Nissos Amorgos* incident. The Director was pleased to report that, following the actions taken earlier in the year by Gard Club which had resulted in the freezing of the 1971 Fund's assets, a subsequent hearing from 6 to 9 October 2014 at the High Court in London had resulted in a judgment in favour of the 1971 Fund. That judgment confirmed that the 1971 Fund did not have a binding agreement or contract with Gard Club under which it would be required to reimburse Gard the amount claimed in compensation by the Bolivarian Republic of Venezuela, above the shipowners' limitation amount in respect of the *Nissos Amorgos* incident. The Director also explained that the judgment had confirmed the immunity of the 1971 Fund from the jurisdiction of the English courts.

2.1.3 The Director referred to the financial situation of the 1971 Fund and pointed out the importance of the document submitted by eight States inviting the 1971 Fund Administrative Council to consider postponing the winding up of the 1971 Fund. He also pointed out that the observer organisation of the International Group of P&I Associations had also requested a postponement, as had the observer organisations of the International Chamber of Shipping (ICS), BIMCO, INTERTANKO and the International Union of Marine Insurers (IUMI).

2.1.4 The Director reiterated his belief that the Administrative Council had made the right decisions at its last two meetings and that the 1971 Fund should be wound up by 31 December 2014. He recognised, however, that the Administrative Council would have a difficult decision to make at this session and underlined that he would, of course, follow whatever instructions the Council decided to give him.

2.1.5 The Director referred to the election of a new joint Audit Body which would take place during the week and expressed his sincere appreciation and gratitude to the outgoing members for their invaluable work over the past three years. He thanked Mr Emile Di Sanza (Canada), Mr John Gillies (Australia), Mr Thomas Kaevergaard (Sweden), Mr Michael Knight ('external expert'), Professor Seiichi Ochiai (Japan) and Mr Giancarlo Olimbo (Italy). He stated that their combined knowledge, experience and expertise had been of great assistance to him personally and to the Secretariat. He also referred to the seven nominations which had been received for the six posts nominated by 1992 Fund Member States.

2.1.6 The Director pointed out that the 1992 Fund was currently dealing with 13 incidents, including two new incidents which had been brought to the attention of the IOPC Funds since the October 2013 sessions of the governing bodies, the *MT Pavit* and the *Shoko Maru*. He also referred to the *Hebei Spirit* incident, which he said remained the biggest incident to be handled by the Secretariat and stated that the cooperation between the IOPC Funds and the Government of Republic of Korea continued to be excellent.

2.1.7 On compensation matters in general, the Director referred to the work carried out by the Secretariat on the establishment of a formal process for the selection and appointment of claims experts and the development of a standard set of engagement terms for its experts that incorporates a 'Code of Conduct'. He also referred to the study carried out by the Secretariat since October 2013 in respect of the issue of whether Value Added Tax (VAT) should be excluded from compensation where claims are made by central governments. He informed the governing bodies of the legal opinions he had sought on this topic, including those of lawyers from 23 Member States, all of which were contained in document IOPC/OCT14/4/5. He explained that taking into account the differing legal opinions, he had proposed a possible solution for the consideration of the governing bodies.

2.1.8 The Director referred to the retirement of Ms Miriam Blugh, Human Resources Manager, and the departure of Ms Katrin Park, External Relations Officer and Mrs Christine Galvin, External Relations Administrator in 2014. He also pointed out that Ms Ellen Leishman, Administrative Assistant, External Relations and Conference Department would also be leaving the Secretariat at the end of October. The Director took the opportunity to thank Ms Blugh, Ms Park, Mrs Galvin and Ms Leishman for their contribution to the work of the IOPC Funds.

2.1.9 He also announced the arrival of Ms Liliana Monsalve, the new Head of the Claims Department, Ms Melina Jeannottat, Translation Administrator (French), and Ms Marina Ogonyan, Finance Assistant, to the Secretariat during 2014.

2.1.10 The Director informed the governing bodies of a number of external relations initiatives undertaken since October 2013. Notably he referred to the two weeks of the IOPC Funds' Short Course which had taken place, one in November 2013 and another in July 2014. He thanked organisations of IMO, INTERTANKO, ICS, the International Group of P&I Associations and ITOPF who had continued to support the course. He stated that it had proven very popular with Member States and announced that the fifth Short Course would take place during the week of 15 June 2015 with details to be issued in a circular in due course.

2.1.11 The Director referred to the continued development of the IOPC Funds' website and the eight publications produced by the Secretariat since the October 2013 meetings. In particular he referred to the Guidance for Member States which was published in July and the new edition of the brochure on the 2010 HNS Convention which was published in October.

2.1.12 The Director informed the governing bodies that the Secretariat had travelled to Egypt, India, Malta, Namibia, New Zealand and Sri Lanka since October 2013 to run or participate in national or regional seminars or workshops and conferences relating to the international oil pollution compensation regime. He also referred to Interspill, the European spill conference, which will take place in Amsterdam, Netherlands in March 2015 and explained that the IOPC Funds had been attending meetings of the organising committee as a supporter of that event. He also pointed out that the Secretariat had also been working with the European Commission on the ongoing review of the application of the European Environmental Liability Directive, ten years after its adoption and would be attending an upcoming meeting on the subject in Brussels in November 2014.

2.1.13 The Director reported that, together with IMO, the 1992 Fund had continued to highlight the risks of the maritime transport of hazardous and noxious cargo and the benefits of ratifying the 2010 HNS Convention. In this regard, he referred to the successful HNS workshop hosted by the Italian Government in October 2014 which he had attended.

2.1.14 Concluding his report, the Director reiterated the difficulty of the decision required in relation to the winding up of the 1971 Fund and stated that it was highly regrettable that after 36 successful years of operation and close cooperation with the P&I Clubs, that the IOPC Funds now found itself in such a difficult situation. He stated that the relationship with the P&I Clubs was invaluable and expressed his hope that whatever the outcome of the debates, the IOPC Funds and the P&I Clubs would continue to work together successfully to enable them to compensate victims of oil pollution damage in the years to come.

2.1.15 He referred to the continued growth of the 1992 and Supplementary Funds with 113 and 31 Member States respectively, and looked forward to the entry into force of the 1992 Civil Liability and Fund Conventions for Nicaragua in April 2015.

2.1.16 He expressed gratitude to all who had provided input into the work of the Organisations over the past year, in particular the Member States, P&I Clubs and fellow international organisations with whom the Secretariat work closely. He expressed appreciation to the Secretary-General and staff of IMO for the continued cooperation and support provided to the IOPC Funds and thanked the Chairmen and Vice-Chairmen of the governing bodies. He made specific reference to the considerable time and assistance given to him by the Chairman of the 1971 Fund Administrative Council, the Chairman of the 1992 Fund Assembly, the Chairman of the Supplementary Fund Assembly and the former Chairman of the Consultation Group, in their personal capacity, on the winding up of the 1971 Fund.

2.1.17 He thanked the lawyers and experts who work for the Funds, the members of the Audit Body, the Investment Advisory Body and the representatives of the External Auditor. Finally, the Director thanked all his colleagues in the Secretariat for their dedication to the Funds over the past 12 months.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/OCT14/3/1**		**92EC**	**SA**	**71AC**

The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT14/3/1, which contained information on documents for the October 2014 meetings relating to incidents involving the IOPC Funds.

3.2

Incidents involving the IOPC Funds – 1971 Fund: *Vistabella, Aegean Sea, Iliad* and *Plate Princess* **Document IOPC/OCT14/3/2**				**71AC**

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT14/3/2 concerning the *Vistabella*, *Aegean Sea*, *Iliad* and *Plate Princess* incidents.

Vistabella

3.2.2 The 1971 Fund Administrative Council recalled that the Court of Appeal in Guadeloupe had rendered a judgment in favour of the 1971 Fund for €1 289 483 plus interest and costs, that the 1971 Fund had brought summary legal proceedings against the insurer in Trinidad and Tobago to enforce the judgment and that in July 2012 the Court of Appeal in Trinidad and Tobago had decided in favour of the insurer. It was also recalled that in March 2013, the 1971 Fund had been granted leave to appeal to the Privy Council.

3.2.3 It was noted that, following the instructions given by the 1971 Fund Administrative Council to the Director for the purpose of the winding up of the 1971 Fund, the Director had reached an out-of-court settlement with the insurer, that the appeal before the Privy Council had been withdrawn and that this case was now closed.

Aegean Sea

3.2.4 The 1971 Fund Administrative Council recalled that in October 2013 the Court of Appeal in La Coruña had awarded the only claimant remaining in the civil proceedings a total of €163 440, plus interest and costs, of which the 1971 Fund would only be liable in respect of 50%, ie €81 720. It was also recalled that in February 2014 the Court had issued an enforcement order for €243 377, which included principal, interest and costs.

3.2.5 It was recalled that under the agreement concluded between the Spanish State and the 1971 Fund the State had undertaken to pay any judgment rendered against the Fund in respect of this incident. In May 2014 the Director had been informed that, in compliance with the agreement, the Spanish Government had paid the claimant €163 440, with the outstanding balance to be paid in due course.

3.2.6 The Administrative Council noted that in June 2014 the 1971 Fund had discontinued the defence of this case before the Spanish Courts.

3.2.7 It was noted that this case was now closed in respect of the 1971 Fund.

Iliad

3.2.8 The Administrative Council recalled that 527 claims totalling €11 million had been filed in the limitation proceedings. It was recalled, however, that the Court-appointed liquidator had assessed the claims at €2 217 755. It was also recalled that all claims were time-barred against the 1971 Fund except for a claim from the shipowner and his insurer (the North of England P&I Club) in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention.

3.2.9 It was recalled that, following the instructions given by the Administrative Council in October 2013, the Director had approached the North of England P&I Club to discuss a possible global settlement and had made an offer of €250 000 in exchange for the Club's undertaking to release and hold harmless the 1971 Fund from any future claim in respect of this incident.

3.2.10 It was noted that further discussions with the North of England Club had taken place in August 2014, where the Club had stated that since in their view the total amount awarded by the Courts might well reach the shipowner's limit under the 1969 CLC, the Club would not consider a figure below €1 million, which would be the indemnification amount owed by the 1971 Fund to the shipowner under Article 5.1 of the 1971 Fund Convention if the shipowner's limit under the 1969 CLC was reached.

Debate

3.2.11 A discussion of this incident took place in a closed session to which only delegations of former Member States of the 1971 Fund, members of the Secretariat, experts, lawyers and members of the Audit Body were invited to attend.

1971 Fund Administrative Council Decision

3.2.12 When the full plenary session of the 1971 Fund Administrative Council re-opened, the Chairman of the Administrative Council reported that the Council had authorised the Director to reach a global settlement with the North of England P&I Club for €1 million.

Plate Princess

3.2.13 The 1971 Fund Administrative Council recalled that in 1997 two fishermen's 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 February 2009, the Maritime Court of First Instance had accepted the claim by the Puerto Miranda Union and ordered the shipowner to pay BsF 2 844 983 and the 1971 Fund, although not a defendant, to pay BsF 400 628 022 plus costs. It was also recalled that the judgment had been confirmed by the Maritime Court of Appeal and the Supreme Court.

3.2.14 It was recalled that in early 2013, the Maritime Court of First Instance had accepted a request from the Puerto Miranda Union to order an embargo of contributions due from Petróleos de Venezuela SA, Venezuela's State-owned oil company, to the Fund. It was also recalled that the Court had not specified whether it referred to the 1971 Fund or the 1992 Fund or both. It was further recalled that the Court had also ordered the embargo of any Fund's assets in Venezuela.

3.2.15 It was recalled that, in accordance with the instructions given to the Director by the 1971 Fund Administrative Council at its October 2013 session, the 1971 Fund had discontinued all legal representation and defence in legal proceedings in Venezuela.

3.2.16 It was further recalled that in January 2014, the Puerto Miranda Union had obtained an order for an embargo of the assets belonging to the IOPC Funds and it was not clear whether the order referred to the 1971 Fund, the 1992 Fund or to both.

3.2.17 It was recalled that in February 2014, the Maritime Court of First Instance in Caracas had issued a request to the courts in the United Kingdom for their assistance in serving the judgments rendered by the Venezuelan Courts in respect of the claim by the Puerto Miranda Union on the IOPC Funds (the request does not specify whether it refers to the 1971 Fund or the 1992 Fund or both), including the order of embargo against assets belonging to the IOPC Funds. The Administrative Council noted that the order had not been served upon the 1971 Fund.

3.2.18 It was noted that the Director had informed the UK Government (Foreign and Commonwealth Office (FCO) and the Department for Transport) of the arrest order and was seeking the assistance of the FCO in order to assert the immunity of the 1971 Fund and the 1992 Fund from the jurisdiction of the Court.

3.2.19 It was noted that a pack of documents containing a copy of the Venezuelan court order authorising the seizure of the Fund's assets had been found outside Portland House in London, where the Headquarters of the IOPC Funds are located. It was noted, however, that the Secretariat had been advised by the 1971 Fund's lawyers in the UK that there was no need for the 1971 Fund to take any action in respect of this pack of documents.

Debate

3.2.20 One delegation asked whether the Director needed any instructions on how to react if the enforcement order from the Venezuelan Courts were to be notified to the 1971 Fund in London. The Director recalled that the Administrative Council had, in a previous session, already instructed him to oppose the enforcement of the action by Puerto Miranda Union.

3.3	**Incidents involving the IOPC Funds – 1971 Fund:** ***Nissos Amorgos*** **Documents IOPC/OCT14/3/3 and IOPC/OCT14/3/3/1**				**71AC**

3.3.1 The 1971 Fund Administrative Council took note of document IOPC/OCT14/3/3 which contained information relating to the *Nissos Amorgos* incident and document IOPC/OCT14/3/3/1 which provided details of the judgment rendered by Mr Justice Hamblen in respect of the 1971 Fund's application to challenge the jurisdiction of the High Court in London which was heard between 6 and 9 October 2014.

3.3.2 The Administrative Council recalled that in March 2014, the Gard P&I Club had brought legal actions against the 1971 Fund both at the High Court in London and before the Maritime Court of First Instance in Caracas, Bolivarian Republic of Venezuela.

3.3.3 The Administrative Council also recalled that in May 2014, the High Court in London had decided that the Gard P&I Club was entitled to the freezing order relief it had requested against the 1971 Fund in support of its claim in England, but that the Court had also decided not to grant the freezing injunction in support of the proceedings brought in the Bolivarian Republic of Venezuela.

3.3.4 The Administrative Council further recalled that at its May 2014 session, the 1971 Fund Administrative Council had decided:

(a) that since the 1971 Fund had immunity and because the claim was unfounded and had no legal basis, the 1971 Fund should contest vigorously the action brought by the Gard Club before the High Court in London against the 1971 Fund; and

(b) that the Director should not attend the Maritime Court in Caracas to answer the Gard Club's action.

3.3.5 It was recalled that the Administrative Council had also instructed the Director to approach the Gard Club to try to reach an amicable settlement by the date of the October 2014 session of the Administrative Council, within the limit of the amount presently available to the 1971 Fund, but that the 1971 Fund should not, under any circumstances, take any action that would result in the 1971 Fund waiving its right to immunity from jurisdiction before the UK courts.

Developments since May 2014

3.3.6 It was noted that in June 2014, the 1971 Fund had appealed the decision to grant the freezing injunction before the High Court in London. It was also noted that the 1971 Fund had also continued to pursue its application to challenge the English court's jurisdiction in respect of the substantive proceedings commenced by the Gard Club. It was further noted that the Gard Club had filed a cross-appeal against the Judge's refusal to grant a freezing injunction in support of its claim against the 1971 Fund in Venezuela.

3.3.7 It was recalled that the 1971 Fund, as instructed by the Administrative Council in October 2013, had discontinued its defence before the Venezuelan courts. It was noted that the legal action by the Gard Club in Venezuela had not been served on the 1971 Fund. It was also noted that the Director was not aware of any further developments in respect of this legal action.

Judgment on the 1971 Fund's application to challenge the jurisdiction of the Court

3.3.8 The Administrative Council noted that the hearing of the 1971 Fund's application to challenge the jurisdiction of the Court was heard between 6 and 9 October 2014.

3.3.9 The Administrative Council also noted that the questions which the Court was asked to decide were as follows:

(1) Was there a contract between Gard P&I Club and the 1971 Fund and, if so, what were its terms?

(2) Is that contract one which falls within the exception from immunity from suit in Article 6(1)(c) of the 1979 Order, namely a contract of loan or for the provision of finance?

3.3.10 The Administrative Council further noted that on 17 October 2014, the Judge rendered his judgment as follows:

(1) There was no agreement as alleged, and, even if there was, that there was no intention to create legal relations; accordingly, there was no contract.

Having decided question (1) in the negative, the Court did not need to render judgment on question (2). Nevertheless, the Court provided a detailed answer to that question, concluding that:

(2) The alleged contract was neither a contract of loan nor a transaction for the provision of finance falling within the exception to immunity from suit in Article 6(1)(c) of the 1979 Order.

Consequently the Judge found that the Courts of England and Wales had no jurisdiction over the claim against the 1971 Fund.

Court hearing on 21 October 2014

3.3.11 It was noted that a further hearing would take place on 21 October 2014 to deal with the consequential matters arising from the judgment, including costs and (potentially) leave to appeal. It was also noted that at the hearing, it was possible that in addition to dealing with the consequential matters that arose from the Fund's challenge to jurisdiction, the issue of the freezing injunction would also be discussed, unless the Judge wished to hear full argument at a later date.

The freezing injunction

3.3.12 The Administrative Council noted that, since the 1971 Fund's application was successful, the 1971 Fund's lawyers had advised that the freezing injunction should automatically lapse. The Administrative Council further noted that since the freezing injunction was granted to support Gard's claim in the proceedings which the Court had now determined it had no jurisdiction over, logically it should follow that the freezing injunction should be discharged.

3.3.13 It was noted however that there was a possibility that Gard might appeal the jurisdiction decision and apply to the Court to maintain the freezing injunction in place pending the hearing of that appeal, or its appeal against the refusal to grant a freezing order in respect of the Venezuelan claim.

3.3.14 The Administrative Council noted that, at the date of the October 2014 sessions, it was not possible to state that the recent judgment had brought an end to the proceedings. However any application for leave to appeal would have to be pursued on the basis that the Court could not properly have reached the conclusion that it did on the facts it found, which it should be difficult for Gard to establish.

3.3.15 The Administrative Council also noted that the position regarding the 1971 Fund's own appeal against the freezing injunction would also likely become clearer following the hearing on 21 October 2014.

3.3.16 The Administrative Council further noted, however, that it was expected that the Court of Appeal would hear the Fund's appeal against the freezing injunction after the October 2014 session of the Administrative Council, and it was very likely that the freezing order would remain in force at the time of the October 2014 session of the Administrative Council.

3.3.17 It was noted that the Director had been advised by the 1971 Fund's lawyers that since litigation before the English courts was in progress, it was important that the discussion on the matter by the Administrative Council took place in a closed session.

Intervention by the International Group of P&I Associations

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

> As the Director has reported, on Friday the English High Court did not find that there was a legally binding agreement between the Club and the Fund for the consecutive payments of claims although the Court did acknowledge that there was an arrangement in place and that this was consistent with past practices. The practice had been for the Club to pay claims up to the shipowner's limit, for the Fund to take over payments above this limit and for there to be a reconciliation process at the end of the case. The Gard Club is applying for leave to appeal against the judgment.
>
> The recent decision will undoubtedly have an impact on the handling of future cases and the relationship between the International Group and the Fund to the detriment of the claimants and we will say more in this regard during the discussions on the winding up of the 1971 Fund. What will need to be considered are not only the implications of the recent judgment but the fact that this dispute has arisen at all. Paragraph 152 of the recent judgment, page 36, which the UK delegation has drawn attention to and which is annexed to the Director's note of 17 October states:
>
> > Although there was no contract, there was a mutual expectation that the "consecutive payment arrangement" would be followed in this case and that payments over the CLC limit and up to the Fund limit would rest with the Fund. That expectation has not been met.
>
> The Director has pointed out that it is over 36 years since the 1971 Fund commenced operations in 1978. This is the first time such a situation has arisen. Over the years since then, it has been said on many occasions that the compensation regime has worked remarkably well, and that this has been due in large part to co-operation with insurers. A central feature of that co-operation was the willingness of the Clubs to provide funds for compensation payments which far exceeded the amounts for which they were liable to the parties paid. The mere fact that the total of their payments was equal to the CLC limit did not absolve them of liability for claims established later.
>
> In the case of the *Nissos Amorgos*, this practice of consecutive payments was followed. The Club paid up to its CLC limit and the Fund made some payments in excess of the limit. At the same time the Club had established a limitation fund in the Cabimas Court. There has been no dispute about the existence or nature of interim payment practices or "consecutive payments" as the Judge describes them – they have been described to the governing bodies on a number of occasions including, in particular, in the joint study by Mr Jacobsson and Mr Shaw of 2012. Gard understood a commitment had been given by the Fund to follow these practices, which had been followed in the *Sea Empress* incident a year earlier and, in particular, to take over the payment of claims once it had paid claims up to the CLC limit as the recent judgment has noted.
>
> Disappointing though the decision that the commitment is not legally enforceable may be, it is even more disappointing that the Gard had to resort to the Courts in the first place due to the decision by the Fund not to continue to adhere to the commitment.

> The Clubs never expected it to be suggested that the Fund was under no obligation to follow these procedures once the Club had fulfilled its own part of the arrangements. Nor did they ever expect a *bona fide* claim to be met by a plea of immunity. This judgment finds that the Fund is legally entitled to take the position that the interim funding agreements are unenforceable. As the judge noted "the Fund is entitled to rely on its strict legal rights, if it so chooses". It would seem that as a matter of policy the Fund can and will so choose in the future and as a consequence this is likely to affect interim payment decisions in future which will not be to the advantage of the claimants in an incident.
>
> In the case of the *Nissos Amorgos*, regardless of the legal status of interim funding agreement and regardless of the recent English Court decision, the fact remains that there are outstanding cases against both the Club and the 1971 Fund in the Venezuelan courts and it is the view of the International Group that the 1971 Fund is not honouring its obligations under Article 44 of the 1971 Fund Convention, namely to deal with all outstanding incidents before dissolving itself. In respect of one of the Bolivarian Republic of Venezuela's claims, the Venezuelan court has held the Fund to be liable. It is correct that it has not yet ordered the Fund to pay the existing judgment but it has upheld the claim and, given the apparent difference between Gard and the Fund on the subject of responsibility for the claim, Gard has commenced proceedings to have the position clarified.
>
> Gard remains optimistic that a settlement of the Bolivarian Republic of Venezuela's claim could be achieved. Indeed we understand that the Attorney General is giving consideration to the withdrawal of its duplicate claim. The International Group remains of the view that the outstanding claims have to be addressed before the Fund is wound up. In the view of the International Group this means that the Fund should reappoint lawyers in Venezuela so that clarification of the position could be obtained if the position cannot be agreed. A resolution of the outstanding claims in the *Nissos Amorgos* can only be dealt with in accordance with the treaty obligations of the Fund if this approach is taken and the Fund re-engages in Venezuela, otherwise the Fund is simply walking away from, and ignoring, claims in the court of a Fund Member State.
>
> The International Group believes that with the co-operation of all concerned an orderly resolution of the *Nissos Amorgos* case within a reasonable time period is achievable.

Intervention by the delegation of the United Kingdom

3.3.19 The delegation of the United Kingdom highlighted the conclusions of the Judge at paragraph 152 of the court judgment (document IOPC/OCT14/3/3/1, Annex) which stated:

> I have some sympathy with the Club's position. It has paid claims up to the CLC limit and now finds that there is judgment against it for a substantial sum over and above regardless of that limit. Although there was no contract, there was a mutual expectation that the 'consecutive payment arrangement' would be followed in this case and that payments over the CLC limit and up to the Fund limit would rest with the Fund. That expectation has not been met. Nevertheless, the Fund is entitled to rely on its strict legal rights, if it so chooses.

3.3.20 That delegation also stated that this was important in respect of the discussions to take place concerning the winding up of the 1971 Fund.

Debate

3.3.21 A discussion of this incident took place in a closed session to which only delegations of former Member States of the 1971 Fund, members of the Secretariat, experts, lawyers and members of the Audit Body were invited to attend.

1971 Fund Administrative Council

3.3.22 When the full plenary session of the 1971 Fund Administrative Council re-opened, the Chairman of the Administrative Council reported that the Administrative Council had taken note of the information provided.

3.4

Incidents involving the IOPC Funds – 1992 Fund: *Erika* Document IOPC/OCT14/3/4		**92EC**		

3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT14/3/4.

3.4.2 The Executive Committee noted that the action by a restaurant operator remained pending against the 1992 Fund, with a total amount claimed of €87 467 for losses incurred in the years 2000 and 2001. It was noted that in a judgment in 2005 the Court had agreed with the Fund's assessment of the claim for the year 2000, and that the awarded amount had been paid to the claimant. It was noted, however, that the Fund had found that the claimant had suffered no losses during 2001 due to the spill and had therefore assessed the claim for that period at nil.

3.4.3 The Executive Committee noted that the 1992 Fund's lawyer had advised that this claim could be considered as stale for lack of prosecution and could be closed in 2015 if the matter remained dormant.

3.5

Incidents involving the IOPC Funds – 1992 Fund: *Prestige* Document IOPC/OCT14/3/5		**92EC**		

3.5.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT14/3/5 concerning the *Prestige* incident.

Claims by the French Government

3.5.2 It was noted that the claim by the French Government, totalling €67.5 million, had been reassessed at €42.2 million.

3.5.3 It was recalled that no payment had been made to the French Government as the Government was 'standing last in the queue'.

Criminal proceedings in Spain

3.5.4 It was recalled that in a judgment delivered in November 2013 the Audiencia Provincial in La Coruña had found that 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, were not criminally liable for damages to the environment. It was also recalled that the judgment had not decided on any civil liability arising from the damage and had therefore, not awarded any compensation to claimants.

3.5.5 It was also recalled that the Court had decided that the limitation fund deposited by the London Club, totalling some €22.8 million, was at the Club's disposal for the Club to decide on its distribution, subject to any appeal by the affected parties.

3.5.6 It was noted that some 19 parties had submitted appeals to the Supreme Court, including the Spanish and French Governments, some individual claimants in Spain and local and regional authorities in France.

3.5.7 It was also noted that the French Government's action in the criminal proceedings was not against the 1992 Fund, but against the master, the Chief Engineer and the shipowner, its insurer and the ship management company.

3.5.8 It was noted that the 1992 Fund would participate in the proceedings before the Supreme Court, as a party with strict civil liability under the 1992 Fund Convention.

Civil proceedings in France

3.5.9 It was noted that actions by 120 claimants remained pending in French courts with claims amounting to a total of €79.1 million.

Legal action by France against the American Bureau of Shipping (ABS)

3.5.10 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*. It was also recalled that ABS had opposed this action relying on the defence of sovereign immunity.

3.5.11 It was also recalled that in a judgment rendered in March 2014 the Court had decided that ABS was entitled to sovereign immunity and that therefore the French Government claim should be rejected.

3.5.12 It was noted that the French Government had appealed against the judgment.

Legal action by the 1992 Fund against ABS in France

3.5.13 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. It was also recalled that ABS had submitted points of defence alleging that it was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.

3.5.14 It was recalled that the proceedings in the Bordeaux Court had been stayed pending a final decision in the criminal proceedings in Spain and in the action brought by France against ABS.

Debate

3.5.15 One delegation expressed concern that this was an incident that had occurred in 2002, and there were still ongoing criminal proceedings in Spain, with the possibility of individual civil proceedings commencing once the criminal proceedings had ended. In the view of that delegation, that meant that the incident could still continue for many years, and contributions would have to be levied long after the incident had occurred.

3.5.16 Another delegation, also referring to the length of time taken to solve some incidents, stated that when the 1992 Conventions were envisaged it had not been foreseen that incidents could take so long to resolve, which could make it difficult in some cases for contributions to be levied from small contributors that might no longer exist many years after the incident had occurred. That delegation suggested that perhaps a cut-off date for contributions to be raised in respect of a particular incident could be considered in the future, although such possibility was not contemplated in the current text of the Conventions.

3.5.17 The Director explained that in 2003, 2004, 2011 and 2013 the 1992 Fund had levied all the contributions payable in relation to this incident and had established a Major Claims Fund to pay all the compensation due for this incident. The Director also stated that the 1992 Fund had so far paid some €121 million and that €50.5 million were still available to pay compensation, including the amount deposited by the shipowner's insurer in the criminal proceedings, and that therefore more contributions in relation to this incident would not be needed.

Intervention by the delegation of France

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

> As already stated at the last session, the French delegation wishes to add to the Director's remarks concerning the application of the Conventions in the framework of the Spanish criminal proceedings and to explain the context in which the French State maintained, in the Spanish criminal court, that the IOPC Fund compensation criteria could not be invoked against it.
>
> The French State is a civil party in these proceedings and elected voluntarily not to direct its indictment against the IOPC Fund, as that would be prejudicial to the compensation of the French victims of the *Prestige*. Indeed, bearing in mind the inadequacy of the IOPC Fund compensation limits for this incident, the French State stood last in the queue of French beneficiaries of the IOPC Fund compensation in order to allow better compensation of the other French victims.
>
> Given that the French State's indictment was not directed against the IOPC Funds, the latter can in no circumstances be ordered to compensate the French State in Spanish criminal proceedings. Consequently, the IOPC Fund assessment criteria, which are specific to that organisation, cannot be invoked against the French State in the Spanish criminal court, which must apply the ordinary law in the matter of assessment of the loss. Spanish law, like French law, recognises the principle of reparation in full of the loss. That is the principle that must therefore prevail in the Spanish criminal court.
>
> The French delegation thanks the IOPC Funds Director for the new assessment of the loss to the French State, which was duly received by the legal officer of the French State last September, and which is currently under consideration by the French Administration. A reply should reach the Fund within a timeframe consistent with the consideration of these questions. Our dialogue will be further pursued and continued. Nevertheless, the French delegation recalls that in the event of a breakdown in the negotiations, it will be up to the Spanish or French courts to rule on the amount of loss incurred by the French State as a result of the *Prestige* oil spill.
>
> We wish to express our satisfaction at the Director's announcement in his letter undertaking in the future to ask the IOPC Fund experts to work following the order of submission of claims in the State's claims file. As the Director and the French Administration have observed, the first IOPC Fund experts renumbered the 30 000 pages of the French State's claims file, without cross-referencing with the original file. Consequently, it was not possible to compare the experts' assessments of the claims set out in the State's file. The French delegation therefore welcomes the Director's decision, which will undoubtedly facilitate the processing by the Fund of States' claims.

3.6	**Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT14/3/6**		**92EC**		

3.6.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/6 which contained information relating to the *Solar 1* incident.

Claims for compensation

3.6.2 It was recalled that as at 14 August 2014, 32 466 claims had been received and that payments totalling PHP 987 million had been made in respect of 26 870 claims, mainly in the fisheries sector. It was also recalled that these payments had been reimbursed by the Shipowner's Club to the 1992 Fund in accordance with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

3.6.3 It was further recalled that all claims had been assessed and the local claims office had been closed.

Legal proceedings by the Philippine Coastguard (PCG)

3.6.4 The Executive Committee recalled that the PCG had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations. It was recalled that an offer of settlement for PHP 104.8 million for both claims had been accepted by the PCG. It was noted that in April 2012, the Secretariat had provided the PCG with a draft compromise agreement, the terms of which were agreed with the PCG.

3.6.5 It was recalled 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 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.

3.6.6 It was further recalled that the 1992 Fund had provided the Office of the Solicitor General and the PCG with further copies and explanations of the assessment, and accordingly there was now no reason for the Office of the Solicitor General not to sign the proposed compromise agreement. The Executive Committee noted that the Secretariat remained hopeful that the settlement monies would be paid shortly.

Legal proceedings by 967 fisherfolk

3.6.7 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.

3.6.8 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.

3.6.9 The Executive Committee recalled that 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. The Executive Committee also recalled however that no such proposal had been received.

3.6.10 The Executive Committee further recalled 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 recalled that in June 2013, the claimants had 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.

3.6.11 It was also recalled that in October 2013, the Court had denied the 1992 Fund's application to dismiss the complaints for failure of the claimants to submit their Judicial Affidavits at four pre-trial hearings, accounting for a failure to comply four times with the rule.

3.6.12 The Executive Committee noted that thereafter, on a series of dates from March to July 2014, the claimants had presented their evidence to court. The Executive Committee also noted that the claimants were unable to validate that it was unsafe to fish long after the occurrence of the incident, as claimed in their complaint.

Legal proceedings by a group of municipal employees

3.6.13 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. The Executive Committee 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.

3.6.14 The Executive Committee further 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.

3.6.15 It was recalled that the 1992 Fund had instructed its lawyers to meet with the claimants' lawyers before the first mediation hearing took place, but no progress had been made in resolving the proceedings.

3.6.16 Furthermore, it was also noted that the Court had initially set a similar timetable as for the claim involving 967 fisherfolk, but had later indicated that the trial of the municipal employees would commence after the trial for the 967 fisherfolk had concluded.

Intervention by the delegation of the Republic of the Philippines

3.6.17 The delegation of the Republic of the Philippines stated that it awaited final comments from the Solicitor General but that it had accepted the 1992 Fund's assessment in principle, and would provide feedback to the Secretariat when it had further news to report.

3.7	**Incidents involving the IOPC Funds – 1992 Fund:** ***Volgoneft 139*** **Document IOPC/OCT14/3/7**		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT14/3/7 concerning the *Volgoneft 139* incident.

The 'insurance gap'

3.7.2 The 1992 Fund Executive Committee recalled that in June 2012 the Arbitration Court of Saint Petersburg and Leningrad Region had delivered its judgment on quantum, awarding amounts totalling RUB 503.2 million including legal interest. It was also recalled that the Court had decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. It was further recalled that since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR, there remained an 'insurance gap' of some 1.51 million SDR.

3.7.3 It was also recalled 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' since in its view it was incorrect that the 1992 Fund should have to pay the 'insurance gap' because the amendments to the 1992 CLC had not been published in the Russian Federation prior to the date of the incident nor brought to the attention of the shipowner and insurer.

3.7.4 It was further recalled that in a judgment rendered in October 2013 the Presidium of the Supreme Court had ordered that the judgments of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the 1992 Fund to cover the 'insurance gap' of 1.51 million SDR and ordered that the case be

sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.

3.7.5 It was noted that the next hearing at the Arbitration Court of Saint Petersburg and Leningrad Region, to reconsider the issue of the 'insurance gap' in view of the Presidium of the Supreme Court's judgment, was scheduled to take place in November 2014.

3.7.6 It was also noted that the Arbitration Court had invited all the parties to submit in writing their positions on the 'insurance gap' issue. The Executive Committee took note of the arguments pleaded by Ingosstrakh, Volgotanker and the 1992 Fund, set out in paragraphs 3.2.7 to 3.2.10 of document IOPC/OCT14/3/7.

Claims for compensation and amounts awarded by the Court

3.7.7 It was recalled that in accordance with the decision of the Executive Committee in April 2013, the 1992 Fund had commenced making payments and that all private claimants had been paid in full. It was recalled, however, that there still remained the three government agencies to be paid and that the 1992 Fund had made every effort to pay these claimants. It was now awaiting a reply from the claimants in order to be able to make the payments owed to these claimants minus the amounts discounted to cover the 'insurance gap'.

3.8	**Incidents involving the IOPC Funds – 1992 Fund:** ***Hebei Spirit*** **Documents IOPC/OCT14/3/8, IOPC/OCT14/3/8/1 and IOPC/OCT14/3/8/2**		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/OCT14/3/8 and IOPC/OCT14/3/8/1, submitted by the Secretariat and document IOPC/OCT14/3/8/2 submitted by the Republic of Korea, in respect of the *Hebei Spirit* incident.

DOCUMENT IOPC/OCT14/3/8, SUBMITTED BY THE SECRETARIAT

Claims situation

3.8.2 The Executive Committee noted that as at 20 October 2014, 128 404 individual claims totalling KRW 2 775 billion had been registered. It also noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 185 billion towards 34 813 claims.

Limitation proceedings

3.8.3 The Executive Committee recalled that 127 483 claims totalling KRW 4 227 billion had been submitted to the limitation proceedings. The Executive Committee also recalled that in January 2013 the Limitation Court had rendered a 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 738 billion and rejecting 64 270 claims.

3.8.4 The Executive Committee noted that a total of 122 552 claims have been filed in objection proceedings.

3.8.5 The Executive Committee noted the Seosan Court had been proposing mediation settlement to the parties in cases where matters of principle were not under discussion. The Executive Committee further noted that recommendations for reconciliation on a total of 44 628 cases had been agreed by the parties. The Executive Committee also noted that, as a result of the Court's action, 15 224 objections had been withdrawn.

3.8.6 The Executive Committee further noted that the Court of Seosan had issued 25 judgments in respect of 25 100 claims.

DOCUMENT IOPC/OCT14/3/8/2, SUBMITTED BY THE REPUBLIC OF KOREA

Level of payments

3.8.7 The Executive Committee noted that the Korean Government had submitted document IOPC/OCT14/3/8/2 proposing that the Executive Committee increase the level of payments of the claims arising out of the *Hebei Spirit* incident.

3.8.8 In its intervention, the Korean Government informed the Executive Committee that 45.2% of the claims had been settled by judgment or mediation at about 52% of the amount initially awarded by the Limitation Court. The Korean Government also informed the Executive Committee that it expected that the first instance proceedings would be concluded by the end of the year and that, by that time, over 50% of all the claims would have been finalised, thus reducing the uncertainty with regard to the total amount of the claims.

3.8.9 The Korean Government argued that, since the number of claims had been reduced and the established claims had been assessed by the Court at a lower level than the Limitation Court, the problem of uncertainty as to the final amount of compensation could be considered resolved to some extent.

3.8.10 In view of these considerations, the Korean Government proposed that the level of payment be increased to 70-80% of the established claims.

DOCUMENT IOPC/OCT14/3/8/1, SUBMITTED BY THE SECRETARIAT

Level of payments

3.8.11 The 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 losses.

3.8.12 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.

3.8.13 The Executive Committee noted that the Seosan Court had resolved, through recommendations and judgments, about 51% of the claims, but that some 49% of the claims in the limitation proceedings were still pending. It was noted that, in view of large number of claims still pending in the limitation proceedings and in view of the amounts still disputed in the proceedings, the Director considered that there was still a risk that the Seosan Court might increase the amount awarded by the Limitation Court.

3.8.14 The Executive Committee noted that the Director therefore proposed to maintain the level of payments at 35% since this would continue to provide the 1992 Fund with reasonable protection against a possible overpayment situation, and that the level of payments should be reviewed at its next session.
Debate

3.8.15 The delegations which took the floor expressed their satisfaction at the progress made in the resolution of the claims in court. Those delegations noted, however, that there were still many uncertainties as to the position of the national courts on the remaining claims and that therefore it might be premature to raise the level of payments at this session.

3.8.16 One delegation asked whether the Skuld Club had made payment of compensation based on the 35% level of payments decided by the Executive Committee or whether it was paying compensation on a

different percentage. The Director confirmed that, following the Second Cooperation Agreement signed by the Skuld Club and the Korean Government, the Skuld Club had been making payments for compensation at 100% of the amount approved.

3.8.17 One delegation expressed the hope that the victims of the *Hebei Spirit* incident would be compensated as soon as possible. That delegation also expressed sympathy for the proposal made by the Korean Government to increase the level of payments to 70-80% of the established claims, but noted that it was calculated on an estimated projection based on an insufficient number of settled claims. That delegation recalled that the level of payments should be determined based on facts rather than estimates, and that therefore they reluctantly agreed to maintain the level of payment at 35%.

1992 Fund Executive Committee Decision

3.8.18 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.

3.9	**Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina** **Document IOPC/OCT14/3/9**		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT14/3/9.

Claims for compensation

3.9.2 It was noted 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 all valid claims arising out of this incident had been settled, with payments made by the West of England Club totalling AR$5 million. It was also noted that a number of claims could be considered as time-barred or had been rejected.

Criminal proceedings

3.9.3 It was recalled that an investigation into the cause of the incident by the Federal Court of Comodoro Rivadavia (Criminal Section) had reached a preliminary decision that the spill had originated from the *Presidente Arturo Umberto Illia* (*Presidente Illia*). It was also recalled that the shipowner and the insurer of the *Presidente Illia* contested liability, arguing that the oil which impacted the coast must have come from another source.

Civil proceedings

3.9.4 It was recalled that a legal action had been brought in the Federal Court in Comodoro Rivadavia (Civil Section) by the Chubut Province against the master and the owner of the *Presidente Illia* claiming compensation for the damage caused by the incident, including environmental damage. It was noted that the claim was not quantified, pending an assessment of damage to the environment.

3.9.5 The Executive Committee noted that in June 2014 the owner of the *Presidente Illia* and his insurer had reached an out-of-court settlement with the Chubut Province. It was also noted that, as the claim was not related to pollution damage as defined in the Conventions, this settlement would not be counted towards the shipowner's limitation under the 1992 CLC.

3.10	**Incidents involving the IOPC Funds – 1992 Fund: *Redfferm*** **Document IOPC/OCT14/3/10**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/10 which related to the *Redfferm* incident.

3.10.2 The 1992 Fund Executive Committee 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. The oil remaining on board amounted to approximately 100 tonnes of LPFO and it was this residue that was spilled.

3.10.3 It was also recalled that at the time of the incident, the barge *Redfferm* 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*. It was further recalled that no evidence had been submitted of any sea-going voyages undertaken by the barge *Redfferm*.

3.10.4 The 1992 Fund Executive Committee recalled that in October 2012, preliminary information was provided by the claimants' lawyer detailing the locations of the 102 communities and the numbers of individuals within the communities affected by the spill.

3.10.5 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. The report of the Marine Board of Inquiry was provided to the Secretariat at the April 2013 session of the 1992 Fund Executive Committee.

3.10.6 The 1992 Fund Executive Committee further recalled that during the Marine Board of Inquiry, no definitive answer had been provided as to what had caused the sinking of the barge and that several possibilities had been raised by the witnesses called by the Board, including a collision between the tanker and barge, overloading, lack of structural integrity and poor construction.

Reasons for rejection of claims

3.10.7 It was recalled that in February 2014, the 1992 Fund wrote to the claimants' representative rejecting the claims submitted for the following reasons:

(a) The barge *Redfferm* was not a 'ship' under Article I.1 of the 1992 Civil Liability Convention;
(b) Large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
(c) Lack of information submitted to prove the claimants' identities and occupations.

Legal proceedings

3.10.8 It was recalled that in March 2012 a claim for US$26.25 million was filed by 102 communities against the owners of *MT Concep*, the owners of *Redfferm*, Thame Shipping Agency Ltd (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

3.10.9 It was also recalled that in February 2013, 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*. It was further recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.

3.10.10 It was further recalled that in October 2013, the Judge ruled against Thame Shipping's application to set aside the writ and that in November 2013, Thame Shipping had filed an appeal against the ruling. The 1992 Fund Executive Committee recalled that the Judge had stayed the proceedings pending the determination of the 1992 Fund's appeal against the first instance ruling in which the Judge had refused to remove the 1992 Fund as a defendant and replace it as an intervenor. The 1992 Fund Executive Committee noted that the 1992 Fund's lawyers had advised that due to a heavy caseload at the Court of Appeal, it was unlikely that the 1992 Fund's appeal would be heard before the second half of 2015 at the earliest.

Director's considerations

3.10.11 The 1992 Fund Executive Committee noted that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it had provided to the Secretariat, without which the Secretariat would have faced difficulty in obtaining information about the incident.

3.10.12 The 1992 Fund Executive Committee recalled that since the *Redfferm* was not a 'ship' within the definition of Article I.1 of the 1992 CLC, the 1992 Conventions did not apply to this incident.

3.10.13 It was also recalled that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims submitted had been rejected.

3.10.14 It was noted that the legal proceedings in Nigeria were continuing, and that the 1992 Fund would defend its position that the losses claimed had not been proved.

Intervention by the delegation of Nigeria

3.10.15 The delegation of Nigeria stated that there had been no further developments but that they would report when further information became available.

3.11	**Incidents involving the IOPC Funds – 1992 Fund:** ***JS Amazing*** **Document IOPC/OCT14/3/11**		**92EC**		

3.11.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/11 which contained information relating to the *JS Amazing* incident.

3.11.2 It was recalled that in May 2011 the 1992 Fund was informed of an incident which occurred in June 2009 in which the tanker *JS Amazing* spilled an unknown quantity of low pour fuel oil into the Warri River, Delta State, Nigeria.

3.11.3 It was also recalled that in March 2012 the 1992 Fund was provided with the background facts surrounding the incident by the Nigerian Federal Ministry of Transport who had established a Marine Board of Inquiry to carry out an investigation into the cause of the spill, and that in April 2012, the Marine Board of Inquiry had published its report.

Claims for compensation

3.11.4 The Executive Committee recalled that in May 2012 a claim for NGN 30.5 billion was filed against, *inter alia*, the 1992 Fund by 248 communities. The Executive Committee also recalled that the claims submitted comprised claims 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.

Reasons for rejection of claims

3.11.5 The Executive Committee recalled that the 1992 Fund's experts had analysed the claims submitted by comparing them to the reports produced following the joint investigation visit the Nigerian Oil Spill Detection and Response Agency (NOSDRA) and the Pipelines and Product Marketing Company Limited (PPMC) conducted in 2009, together with other published scientific papers on fishing gear and fishing practices in the Warri Delta region, and had found in many cases that there were very large discrepancies between the claims submitted and the information available on the type and number of items of fishing gear contaminated by oil.

3.11.6 The Executive Committee also recalled that an analysis of the loss of earnings revealed large discrepancies between the claims submitted for lost income and other available data which advised that the typical monthly wage earned was in the region of NGN 5 000, but that the claims submitted were often in many multiples of this figure.

3.11.7 The 1992 Fund Executive Committee further recalled that for these reasons, the 1992 Fund had rejected the claims in January and February 2014.

Legal proceedings

3.11.8 It was recalled that in May 2012, the claim by 248 communities had been filed against the 1992 Fund, the shipowner and the joint liquidators of the South of England P&I Club.

3.11.9 It was also recalled that in July 2012, the 1992 Fund had applied to strike itself out as a defendant, but had also 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.

3.11.10 It was further recalled that in March 2013, upon the claimants' application, the Court had ordered the arrest and detention of the *JS Amazing*, pending the provision of a bank guarantee to cover the claim or the deposit of the sum of NGN 30.5 billion into court. The 1992 Fund Executive Committee recalled that the vessel was located at Kirikiri jetty and, pending further information, was believed to still be under arrest.

3.11.11 The 1992 Fund Executive Committee also recalled that in March 2014, the Judge granted the 1992 Fund's application to strike itself out as a defendant and to be replaced as an intervenor, and noted that in April 2014 the claimants had filed a Notice of Discontinuance against the joint liquidators of the Club.

Director's considerations

3.11.12 The Executive Committee noted that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent co-operation it had provided to the Secretariat, without which the Secretariat would have faced difficulty obtaining information, given the location of the incident.

3.11.13 The Executive Committee also noted that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims submitted had been rejected.

3.11.14 The Executive Committee further noted that the legal proceedings in Nigeria were still continuing and that the 1992 Fund would defend its position that the losses claimed had not been proved.

Intervention by the delegation of Nigeria

3.11.15 The delegation of Nigeria stated that there had been no further developments but that they would report when further information became available.

3.12	**Incidents involving the IOPC Funds – 1992 Fund:** ***Haekup Pacific*** **Document IOPC/OCT14/3/12**		**92EC**		

3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/12 which contained information relating to the *Haekup Pacific* incident.

3.12.2 It was recalled 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.

3.12.3 It was also recalled 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).

3.12.4 It was further recalled that the *Haekup Pacific* was entered with the UK P&I Club and that it was a 'relevant ship' within the definition of STOPIA 2006, and therefore STOPIA 2006 would apply.

3.12.5 The 1992 Fund Executive Committee recalled that shortly after sinking a small spill of some 200 litres of oil had occurred resulting in some minor pollution.

3.12.6 The 1992 Fund Executive Committee also recalled that on the likely environmental impact arising from the incident, the shipowner had obtained the advice of the International Tanker Owners Pollution Federation Ltd (ITOPF) who was 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. The 1992 Fund Executive Committee further recalled that ITOPF 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.

3.12.7 It was recalled that surveyors retained by the UK P&I Club 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.

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

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

3.12.9 It was further recalled that in September 2013, the Yeosu City Council, Republic of Korea, had requested the shipowner to provide a plan for the removal of the wreck and that in April 2014 a further request was made.

3.12.10 It was noted that a number of further meetings had taken place with the Yeosu City Council at which the shipowner, following ITOPF's advice had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

3.12.11 It was also noted that further meetings with the Korean Ministry of Ocean and Fisheries had taken place in August 2014.

Legal proceedings

3.12.12 The 1992 Fund Executive Committee recalled that in April 2013, the shipowner/UK P&I Club had 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 recalled 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 recalled 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.

3.12.13 The 1992 Fund Executive Committee recalled 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.

Intervention by the delegation of the Republic of Korea

3.12.14 The delegation of the Republic of Korea stated that a meeting had taken place on 7 October 2014 between the Ministry of Ocean and Fisheries, Yeosu City Council and the coastguard, but that there were no further developments regarding the oil removal from the ship. That delegation stated that the Yeosu City Council had reviewed the need for further research on the potential environmental impact of the oil remaining on board the wreck.

3.13	**Incidents involving the IOPC Funds – 1992 Fund: *MT Pavit* Document IOPC/OCT14/3/13**		**92EC**		

3.13.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/13, which contained information relating to the *MT Pavit* incident.

Incident

3.13.2 The 1992 Fund Executive Committee noted that in April 2014, the Secretariat was informed of an incident which took place in July 2011. The *MT Pavit*, a product tanker of 999 GRT built in 1990, ran aground off Juhu beach, Mumbai, India on 31 July 2011.

3.13.3 The Executive Committee noted that the vessel was owned by M/s Pavit Shipping Lines Inc and managed by Prime Tankers LLC, both based in Dubai, but that details of the insurance arrangements including the periods of coverage were awaited.

3.13.4 The Executive Committee also noted that on 29 June 2011, the *MT Pavit*, en route to Dubai from Berbera, Somalia, had been abandoned by its 13-man crew off the coast of Oman, reportedly due to water entering the engine room rendering the engine inoperable. According to newspaper reports, the first alarm was raised by the Marine Rescue Coordination Centre (MRCC) in Falmouth, UK who passed the details on to the Mumbai Coast Guard Western Command to coordinate the rescue. The Captain informed MRCC that the distress alarm had been conveyed to the vessel's managers, the UK Maritime Trade Operations in Dubai and the Omani Coast Guard.

3.13.5 It was noted that later that day, the MRCC had requested the Chief Hydrographer of the Government of India to issue a naval area warning for the last reported position of the tanker where the crew were rescued, but that the owners of the tanker had reportedly forwarded to the Indian Coast Guard a copy of a UK-based newspaper article which stated that the vessel had sunk, as a consequence of which the naval area warning was removed on 2 July 2011.

3.13.6 It was also noted that the tanker did not sink, but subsequently drifted some 675 miles across the Arabian Sea until on 31 July 2011, it grounded on the Juhu-Versova beach, some 18 kilometres north of Mumbai, India. Upon further investigation, it was reported that at some stage the Automatic Identification System (AIS) had failed due to no battery power and hence was not working when the tanker entered Indian waters. Indian Coast Guard officials were later reported as stating that in the absence of an AIS signal, and with the naval warning removed, there was no means to track the vessel in the large expanse of ocean.

Impact

3.13.7 The 1992 Fund Executive Committee noted that there was conflicting evidence available regarding the impact of the incident upon the environment. The 1992 Fund Executive Committee also noted that the documents submitted in support of the claims indicated that a very small amount of oil/oily water had leaked from the *MT Pavit*'s stern gland surrounding the propeller shaft at low tides causing tar balls. The 1992 Fund Executive Committee further noted, however, that other news reports indicated that after the salvors took over the operations, there was no oil sighted or leaking from the tanker. It was

noted that this view was supported by the report from the marine consultants who saw no pollution from the tanker during the time they were onboard on 5 August 2011 prior to the arrival of the salvage team.

3.13.8 It was also noted that at about the same time as the *MT Pavit* incident, another casualty occurred in the vicinity of Mumbai. On 4 August 2011, the bulk carrier *Rak Carrier* sank some 20 nautical miles off the coast of Mumbai laden with up to 60 054 tonnes of coal, 290 tonnes of fuel oil, 49 tonnes of diesel and four tonnes of lubricant oil, and that although details were sparse, it was reported that there were oil spills on various beaches in the Mumbai metropolitan area from this casualty.

3.13.9 It was further noted that the Juhu beach area was said to be a major tourist destination and the Juhu area was home to high profile, affluent residents. The 1992 Fund Executive Committee noted that the Juhu beach was a popular destination for the annual ten-day long 'Ganpati Visarjan' celebration (immersion of large idols of deities in the sea), scheduled in August each year, and that from the evidence provided, the incident had not impacted upon this celebration.

Response operations

3.13.10 The 1992 Fund Executive Committee noted that although details were sparse, it was understood that the Indian authorities had helped to coordinate the rescue operation of the tanker's crew. Thereafter, when the tanker was discovered offshore close to the Mumbai coastline, a coastguard tug was dispatched to stand-by the vessel. A coastguard helicopter was used to lower an investigator/diver onto the tanker prior to grounding to investigate the condition of the vessel.

3.13.11 The Executive Committee noted that initially, the owners and managers of the tanker had entered into negotiations with salvors to re-float the vessel, and that a 'Letter of Award' for US$324 000 for the safe re-floating of the tanker was issued by the managers to the salvors on 9 August 2011. The Executive Committee further noted that before any formal contract could be signed, it was understood that the owners had fled the country, leaving no other representatives of the owners/managers in India.

3.13.12 It was also noted that on 5 August 2011, a team of marine consultants had been authorised to enter the vessel, and their inspection revealed the engine room to be flooded to the lower platform levels at port side and a little above on the starboard side partially submerging the pumps and machinery on the starboard side due to the starboard list of the vessel. It was also noted that during the period of high tide, there was an ingress of water from one of the small sounding pipes into the engine room, but that otherwise no breach of the shell plating was apparent.

3.13.13 It was further noted that the report recommended that the vessel be debunkered immediately due to the presence of oil in the tanker and due to the slamming loads imposed on the vessel at high tide. The 1992 Fund Executive Committee noted that the report stated that during their attendance on board the casualty, from 08:45 to 19:30 (low tide to low tide), the consultants saw no pollution from the vessel.

3.13.14 The 1992 Fund Executive Committee also noted that thereafter, the Indian Director General of Shipping (DGS) mobilised the salvage team with the instruction to re-float the tanker at the earliest opportunity and to prevent any oil pollution. The salvors' response team comprising 40 riggers and ten experts, together with salvage equipment, was mobilised to the grounding site and two anchor-handling/salvage tugs were placed on stand-by.

3.13.15 The 1992 Fund Executive Committee further noted that the salvors commenced oil removal operations from the engine room and ballast tanks on 12 August 2011 and disposed of the oil/oily water. After undertaking damage and risk assessments and performing stability calculations, work commenced on shifting the bank of sand which had built up along the vessel's starboard side in order to create additional re-floating depth.

3.13.16 It was noted that an attempt was made to re-float the vessel on 14 August 2011 which succeeded in turning the vessel 35° towards the sea, and that on 15 August 2011, with the assistance of the two salvage tugs, the tanker was re-floated.

3.13.17 It was further noted that the tanker was towed to the nearby Dighi Port, arriving on 16 August 2011, before being towed to Dabhol Port, arriving on 28 August 2011, where she was subsequently tendered for auction. The 1992 Fund Executive Committee noted that no buyer was found at the auction price, and that a further auction had taken place but no buyer was found so the vessel remained unsold. The 1992 Fund Executive Committee further noted that details of the salvage operation had been requested from the Indian authorities.

Claims for compensation

3.13.18 It was also noted that as at 1 August 2014, three claims against the 1992 Fund had been presented for assessment. The claims submitted were as follows:

Claimant	Category of claim	Claim presented to 1992 Fund	Claim amount filed at court
Shipping Corporation of India	Towage services	US$118 471 and INR 2 078 725	US$123 253 and INR 10 079 301
Salvor (GOL Offshore)	Oil removal, re-flotation and salvage operation	US$1 479 870	US$1 479 870
Indian Coastguard	Provision of coastguard helicopter	INR 381 150	Not filed at court
Total		**US$1 598 341 and INR 2 459 875**	**US$1 603 123 and INR 10 079 301**

3.13.19 It was further noted that the 1992 Fund had been informed that the first two claims (by the Shipping Corporation of India and the salvor) were filed at court within three years of the date of the damage, pursuant to Article 6 of the 1992 Fund Convention.

3.13.20 The 1992 Fund Executive Committee noted that in addition, the 1992 Fund had received information regarding a further claim from the Maharashtra Maritime Board against the owners of the *MT Pavit* for port and security charges of approximately INR 1 250 000 increasing at INR 25 000 / month.

Limitation proceedings

3.13.21 The 1992 Fund Executive Committee noted that no limitation proceedings had been commenced.

Civil proceedings

3.13.22 The 1992 Fund Executive Committee also noted that in July 2014, two of the claimants had commenced legal proceedings against the 1992 Fund in the Bombay High Court, within three years from the date when the damage occurred.

Proceedings against the shipowner

3.13.23 The 1992 Fund Executive Committee noted that as at 9 September 2014, no information had been provided regarding the legal remedies taken by the claimants to pursue the shipowner who had strict liability to pay compensation under the 1992 CLC.

Details of the insurance

3.13.24 It was noted that according to the particulars of claim filed by the Shipping Corporation of India against the 1992 Fund, on 15 August 2011 the managers of the *MT Pavit* had written to the office of the DGS informing them that the hull underwriters, Al Buhaira National Insurance Company of United Arab Emirates, had abandoned the *MT Pavit* to its owners and had terminated the management/agency contract. It was also noted that the 1992 Fund had also been informed that the West of England P&I Club had formerly insured the vessel at the start of the voyage, but that insurance cover had ceased in early July 2011.

3.13.25 It was further noted that the insurance cover at the time of the incident was still being investigated.

Director's considerations

3.13.26 The 1992 Fund Executive Committee noted that the Director was very grateful for the assistance provided by the Indian authorities in reporting this incident, the first to occur in Indian territorial waters.

3.13.27 The Executive Committee also noted from the limited information available that the tanker had floated for some 30 days across the Arabian Gulf before grounding on the coast at Mumbai and that there was negligible apparent damage to the vessel. The Executive Committee further noted that the tanker was unladen apart from some 10-20 tonnes of oil/oily water/sludge found in the tanker's cargo/ballast tanks and engine room.

3.13.28 It was noted that although the tanker had grounded on 31 July 2011, the oil/oily water/sludge was not removed until 12 August 2011, some 12 days after grounding. It was also noted that there were conflicting reports regarding the extent of pollution (if any) from the tanker.

3.13.29 It was further noted that following the grounding, the tanker had sunk down into a sandy beach and that the tanker's hull appeared to be fully supported along its length, which had the effect of helping to minimise the stresses upon the hull as it lay ashore pending the re-flotation attempt.

3.13.30 The 1992 Fund Executive Committee noted that the Secretariat had engaged experts to advise on whether the *MT Pavit* created a 'grave and imminent threat' of pollution damage, and that the report was awaited.

3.13.31 The 1992 Fund Executive Committee also noted that claims had been submitted for the entire salvage/re-flotation operation and the subsequent tow of the tanker to Dabhol Port and the storage thereafter, and that elements of the cargo removal operations might fall within the definition of 'preventive measures', pursuant to Article I.7 of the 1992 CLC.

3.13.32 The Executive Committee further noted that the 1992 Fund was investigating the incident including the abandonment of the vessel and the corresponding insurance arrangements and would report its findings to the 1992 Fund Executive Committee at its next session.

Intervention by the delegation of India

3.13.33 The delegation of India stated that the incident had occurred during the peak of the monsoon season and had caused a lot of concern in India. They further stated that they would submit further documentation to the Secretariat.

Debate

3.13.34 One delegation stated that in its view, it was unlikely that the incident had created a grave and imminent threat of pollution damage and that the salvage and towage costs were not covered by the Conventions. That delegation also stated that the 1992 Fund should investigate whether the pollution arose from the *Rak Carrier* incident.

3.13.35 Another delegation stated that they required further information regarding the reasonable steps taken by the claimants to pursue legal remedies against the shipowner, in accordance with Article 4(1)(b) of the 1992 Fund Convention.

3.13.36 A further delegation stated that the incident highlighted the difficulty of establishing claims if an incident was not reported in a timely manner. In response to questions by that delegation, the Secretariat confirmed that the claim of the Indian Coastguard was time-barred, the claim by the Maharashtra Maritime Board had not been filed in court against the 1992 Fund, and that careful consideration would be given to the claims submitted regarding admissibility.

3.13.37 One delegation stated that the Secretariat should be critical of incidents reported late, and in particular that the 1992 Fund should not be a victim of claims for old incidents where little information was available.

3.13.38 The 1992 Fund Executive Committee took note of the information provided by the Secretariat, and that further information was to be submitted by the delegation of India. It was also noted that further investigation was required to establish whether the claimants had taken all reasonable steps to pursue the legal remedies against the shipowner, and whether a grave and imminent threat of pollution damage had existed.

3.14	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/OCT14/3/14**		**92EC**		

3.14.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/14 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 recalled that in October 2013, 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.

3.14.4 The Executive Committee also recalled that in February 2014, the 1992 Fund had filed an intervention before the Court to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractors. It was recalled that a date was set for October 2014 to hear the clean-up contractor's claim and the 1992 Fund's intervention.

3.14.5 It was noted that in July 2014 the 1992 Fund had met with the insurer's lawyers and surveyors in preparation for a subsequent meeting with the clean-up contractors to discuss the claim. It was noted that the proposed meeting with the clean-up contractors had not yet taken place.

3.14.6 It was also noted that at the meeting with the insurer's lawyers, they informed the 1992 Fund that the Blue Card presented by the insurance company to the Greek authorities had been presented by mistake, and that no other Blue Cards had been presented erroneously by the insurance company. It was further noted that the insurer's lawyers had advised the insurer that it was liable for the full limit of liability under the 1992 CLC, namely 4.51 million SDR, notwithstanding that the Blue Card might have been presented erroneously.

The insurance situation

3.14.7 It was recalled that the Director was of the view that, although 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 Civil Liability Convention rested with the shipowner (Article III.1 of the 1992 CLC). It was also recalled that the shipowner would be entitled to limit its liability to 4.51 million SDR (Article V.1(a) of the 1992 CLC), if it established a limitation fund.

3.14.8 It was further recalled that there was a contradiction between the terms of the insurance policy and the Blue Card presented to the Greek State by the shipowner's insurer, Aigaion Insurance Company, because the insurance policy was limited to some €2 million with an express warranty that only non-persistent mineral oils would be covered, whereas the Blue Card stated that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

3.14.9 The Executive Committee noted that at the 101st session of the IMO Legal Committee in May 2014, it had been decided that the guidelines relating to insurance providers which had been issued to Member States regarding the adoption of Bunker Certificates were to be extended to the presentation of Blue Cards by insurers for certificates for the 1992 CLC, 2010 HNS Convention and Wreck Removal Convention.

3.14.10 The Executive Committee recalled that in view of the contradiction between the insurance policy and the Blue Card, and because the insurance policy was subject to English law and jurisdiction, the 1992 Fund had requested legal advice on the legal implications under English law of the warranty contained within the insurance policy.

The conclusions of the 1992 Fund's legal advisor

3.14.11 The Executive Committee also recalled that the Fund's legal advisor had advised that:

(a) the insurer, Aigaion Insurance Company SA, was liable for the full limit of liability under the 1992 CLC, namely 4.51 million SDR;

(b) the insurer's liability arose regardless of the apparent contradiction between the certificate and the insurance policy; and

(c) the insurer would not be able to defeat claims by asserting that there had been a breach of warranty.

3.14.12 The Executive Committee further recalled that as at 1 September 2014, it had not been necessary to raise those issues at the court hearing in Greece but the 1992 Fund's legal advisor 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 could seek a recovery under the terms of the insurance provided.

Intervention by the delegation of Greece

3.14.13 The delegation of Greece made the following statement:

> We would like to reiterate our position that unquestionably the *Alfa I* was fully covered under the provisions of the Convention and therefore the insurer, Aigaion Insurance Company SA, is liable for the full limit of liability under the 1992 CLC. Moreover, we strongly believe that the implementation of the Convention by the Piraeus Central Port Authority is undoubtedly correct.
>
> The shipowner presented Blue Cards to the Central Port Authority of Piraeus in respect of liability under the Bunkers Convention and liability under the 1992 CLC. On that basis the Greek authorities, as the flag State, issued the certificate of insurance in the form of the draft in the Annex to the text of the 1992 CLC specifying, *inter alia*, Aigaion Insurance Company as the insurer. The Greek competent authorities did not have the information, and it was not possible to have it, since as mentioned in the Secretariat's document, the insurance policy contract was actually agreed and signed between the shipowner and the insurer days after the submission of the Blue Cards. Consequently, the Greek Authorities could not be aware of the terms of the insurance policy and their contradiction with the submitted Blue Card. When this fact became known to the Greek Authorities, the latter, without any delay, presented the information to the Penal Prosecutor of Athens to investigate the case.
>
> Please allow me to make another comment and to remind all the distinguished delegates that this delegation, consecutively with our interventions during the discussions for this incident, has provided the Executive Committee with detailed information, based on

evidence given by the Hellenic Customs, ELPE Refineries and the shipowner, regarding the quantity and the quality of the oil, which the tanker *Alfa I* was carrying at the time of her sinking. Apart from our interventions during the previous meetings of the Executive Committee, please underline that the accurate number of the carried cargo and bunker fuel is extensively reported in the document IOPC/APR13/3/9/1, submitted by Greece. Therefore, this delegation feels very surprised with the Secretariat's insistent references to 'unknown quantity of persistent oil that *Alfa I* was carrying at the time of the incident' and we urge the Director and the Secretariat if they have any evidence regarding any difference between the quantities of the carried oil and the one declared, to provide them to the Greek Authorities in order to be presented immediately to the Penal Prosecutor of Athens who investigates the case. Otherwise, we would appreciate it if these references could be deleted from the Secretariats' future documents regarding the incident of *Alfa I*.

This delegation is fully committed to keep the Executive Committee informed about any further developments regarding this incident at our future meetings.

Debate

3.14.14 One delegation stated that it appreciated the efforts to negotiate an early settlement with the claimants although it appreciated that the court proceedings were ongoing.

3.15	**Incidents involving the IOPC Funds – 1992 Fund: *Nesa R3* Document IOPC/OCT14/3/15**		**92EC**		

3.15.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT14/3/15.

3.15.2 The Executive Committee recalled that on 19 June 2013 the 856 GT tanker *Nesa R3*, carrying 840 tonnes of bitumen, sank off the Port Sultan Qaboos, Muscat, Oman. The pollution affected 40 kilometres of the coast of Oman. Tragically the master of the *Nesa R3* lost his life while trying to save his vessel.

3.15.3 The Executive Committee recalled 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. Notwithstanding this, the owners of the *Nesa R3* had taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka. However, the insurer had declared that the insurance policy would not cover this incident.

3.15.4 The 1992 Fund Executive Committee recalled that at its October 2013 session they had 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.

3.15.5 The Executive Committee noted that the shipowner had not yet responded to requests from the Omani Government to pay compensation for the pollution damage caused by the incident.

3.15.6 The Executive Committee further noted that the Omani Government had informed the 1992 Fund that it had commenced legal proceedings against the shipowner in the Court of Muscat.

3.15.7 The Executive Committee noted that four claims had been received for clean-up related activities and the survey of the wreck, totalling OMR 4 314 613, and that further claims were expected for the initial survey of the wreck and from businesses in the fisheries and related sectors. The Executive Committee further noted that two clean-up claims had been assessed at OMR 457 524 and that this amount had been offered to the claimant.

Intervention by the delegation of Oman

3.15.8 The Omani delegation expressed its satisfaction at the way in which clean-up operations had been conducted following the incident. That delegation also thanked the Secretariat of the 1992 Fund for its immediate support to the Omani authorities in the aftermath of the incident and for its ongoing cooperation. The Omani delegation further confirmed that most of the claims had been submitted to the 1992 Fund and only one claim remained to be submitted. That delegation expressed the wish that all outstanding claims would be paid promptly.

3.16	**Incidents involving the IOPC Funds – 1992 Fund:** ***Shoko Maru*** **Document IOPC/OCT14/3/16/Rev.1**		**92EC**		

3.16.1 The 1992 Fund Executive Committee took note of document IOPC/OCT14/3/16/Rev.1 which contained information relating to a new incident involving the *Shoko Maru*.

3.16.2 The Executive Committee noted that in May 2014 the 1992 Fund was informed of a new incident involving the *Shoko Maru*, a Japanese-flagged oil tanker which exploded and sank off the port of Himeji, Japan. There were eight crew members on board at the time of the casualty and the incident resulted, tragically, in the loss of the master's life.

3.16.3 It was noted that only approximately 50 tonnes of oil were on board the vessel as she had discharged her cargo the previous day. A slick of oil was located six kilometres from the area. It was also noted that on the Tanga-Shima Island evidence of minor sludge on the beach was detected but no claims were expected.

3.16.4 The Executive Committee further noted that the port of Himeji was never closed as a result of the incident but given that the explosion took place in a busy area, the removal of the wreck was important. It was noted that pursuant to a request from the Japanese Coast Guard, the wreck had been removed by the salvage company on behalf of the shipowner. It was also noted that the bunkers had been removed by the salvors prior to the wreck removal.

Claims for compensation

3.16.5 The Executive Committee noted that as there was no substantial oil pollution, no large claims from the fisheries sector were expected.

3.16.6 It was noted that it was unlikely that the limitation amount would be reached and that therefore the 1992 Fund would not be financially involved in this incident.

Intervention by the delegation of Japan

3.16.7 The delegation of Japan confirmed that no significant pollution damage had resulted from the *Shoko Maru* incident and that therefore it was unlikely that the 1992 Fund would be called upon to pay compensation.

4 Compensation matters

4.1	**Reports of the 1992 Fund Executive Committee on its 60th and 61st sessions**	**92A**			

4.1.1 The 1992 Fund Assembly noted the reports of the 60th and 61st sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT13/11/1/1 and IOPC/MAY14/10/1) and expressed its gratitude to the Executive Committee's Chairman, its Vice-Chairman and its members for their work.

4.2	**Election of members of the 1992 Fund Executive Committee** **Document IOPC/OCT14/4/1**	**92A**			

4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT14/4/1.

1992 Fund Assembly Decision

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

Eligible under paragraph (a):	Eligible under paragraph (b):
Canada	Algeria
India	Bahamas
Italy	Cameroon
Netherlands	Marshall Islands
Malaysia	Mexico
Republic of Korea	Nigeria
Spain	Sweden
	Turkey

4.3	**Report on the third meeting of the seventh intersessional Working Group** **Document IOPC/OCT14/4/2/Rev.1**	**92A**			

4.3.1 The Chairman of the 1992 Fund seventh intersessional Working Group, Ms Birgit Sølling Olsen, presented the report of the Group's third meeting, which was held in May 2014. The Chairman explained that there had been two documents submitted to the third meeting for consideration by the Working Group. The first document was submitted by the Chairman and summarised the discussions of the Consultation Group which had met on 28 October 2013. She highlighted that in relation to the issue of the definition of 'ship', the Working Group had considered the two approaches that had been debated within the Consultation Group, namely:

(i) Any situation where a vessel carries or stores oil on board and which can be considered as being part of the maritime transport chain should be included in the scope of the Convention, subject to the clarification of what constituted maritime carriage of oil and its limits; and

(ii) To develop a list of vessel types or scenarios which are clearly within or outside the Convention's definition in order to have a set of interpretive criteria aimed at assisting the governing bodies of the 1992 Fund to decide on a case-by-case basis, whether the vessel in question was a 'ship' under Article I.1 of the 1992 CLC.

4.3.2 The Chairman noted that the first approach was based on a document submitted by the Government of Spain to the meeting of the consultation group held in October 2013 and this approach had been well supported.

4.3.3 The second document was submitted by Australia and had focused in particular on further development of the concept of the maritime transport chain. The Chairman also stated that the Group had had a detailed discussion on the question of whether oil discharged into 'permanently or semi-permanently' anchored vessels engaged in ship-to-ship oil transfer operations should qualify as contributing oil for the purposes of Article 10.1 of the 1992 Fund Convention.

4.3.4 The Chairman pointed out that there were a number of areas which had been discussed where there was clear agreement amongst the Working Group. She suggested that the Group could aim to finalise its work at its next meeting and said that the next step would be for her to produce a document, in

cooperation with the Secretariat, for presentation at that meeting making sure it contained the hybrid approach which had been supported by a number of delegations.

4.3.5 The Chairman proposed that the terms of reference of the Working Group be revised to enable it to complete its work in spring 2015 and present a final report to the October 2015 session of the 1992 Fund Assembly.

Debate

4.3.6 One delegation, while expressing its support for a further meeting of the Working Group, asked the Chairman of the Working Group whether she would be able to give direction to the Group's discussion for its final meeting.

4.3.7 The Chairman clarified that the document she intended to issue for the next meeting of the Working Group would summarise those areas where consensus had previously been reached and would focus on those issues which had not yet been resolved. The Chairman also took the opportunity to ask delegations to submit documents to the next meeting of the Working Group, provided that the Assembly revised the Terms of Reference.

4.3.8 One delegation stated that it supported the hybrid approach put forward at the last meeting of the Working Group and suggested that the Group could consider including illustrative examples in its proposal to the Assembly in October 2015 to help the governing bodies make decisions.

4.3.9 All delegations who took the floor supported the proposal by the Chairman to revise the Group's Terms of Reference to enable one further meeting of the Working Group. Several delegations expressed the view that the next meeting should be the final one and that the goal should be to present a proposal on the way forward to the 1992 Fund Assembly based as much as possible on consensus reached by the Working Group.

1992 Fund Assembly Decision

4.3.10 The 1992 Fund Assembly decided to approve the revised Terms of Reference of the Working Group, as set out at Annex II, to enable the Group to continue its work and hold further meetings as required.

4.4	**STOPIA 2006 and TOPIA 2006** **Document IOPC/OCT14/4/3**	**92A**		**SA**	

4.4.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT14/4/3 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.4.2 It was noted that the International Group had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 362 tankers as of August 2014.

4.4.3 It was noted that the International Group had reported to the Secretariat that as of August 2014 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 436.

4.5	**Selection and appointment of experts** **Document IOPC/OCT14/4/4**	**92A**			

4.5.1 The 1992 Fund Assembly took note of document IOPC/OCT14/4/4 which related to the issue of the selection and appointment of experts.

4.5.2 The 1992 Fund Assembly recalled that at the October 2013 session of the 1992 Fund Assembly, the Director had reported 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 establishment of minimum requirements in terms of qualifications, experience and membership of professional bodies. The 1992 Fund Assembly also recalled that along with the selection process, the Secretariat was developing a standard set of engagement terms for its experts that would incorporate a 'Code of Conduct' which all experts would be required to sign up to in order to provide assurance of their independence and objectivity.

4.5.3 The 1992 Fund Assembly noted that the Fund engaged experts to carry out a variety of functions and that experts broadly fell into five categories. The 1992 Fund Assembly also noted that claims office managers were appointed when and where the Fund deemed it appropriate to operate a claims management office in an area affected by a pollution incident. The 1992 Fund Assembly further noted that on environmental matters, the Director sometimes found it necessary to appoint experts with a high level of professional standing and expertise, and that such an expert would normally be asked to provide an opinion and, if necessary, give evidence in court on one or more specific technical aspects of an environmental claim.

4.5.4 It was noted that the Director sought to recruit experts who complied with the criteria for appointments, and who possessed the qualifications and experience detailed in document IOPC/OCT14/4/4.

4.5.5 It was also noted that following discussions with the International Group of P&I Associations (International Group), the International Tanker Owners Pollution Federation Limited (ITOPF) and others, the Director had concluded that there was a requirement for four separate contracts, namely:

- Contract between the 1992 Fund and expert exclusively;
- Contract between the 1992 Fund and ITOPF exclusively;
- Joint contract between the 1992 Fund, P&I Club and the expert (jointly engaged); and
- Joint contract between the 1992 Fund, P&I Club and ITOPF (jointly engaged).

4.5.6 It was further noted that the requirement for separate contracts for ITOPF and other experts had been necessitated by issues relating to intellectual property, image rights (photographs/video) and retention of information/data.

4.5.7 The 1992 Fund Assembly noted that contracts between the 1992 Fund and experts, and between the 1992 Fund and ITOPF, were to be in the form of 'call-out' contracts valid for a period of five years. This allowed the Fund to request the services of the expert at any time on the basis of the contract terms in the call-out contract, subject to an Annex providing details of the particular services (nature and duration) to be provided on that occasion. This would also allow the Fund to appoint experts with the minimum of delay.

4.5.8 The 1992 Fund Assembly noted that meetings had been held separately with ITOPF and with representatives of the International Group to consider the terms of the proposed contracts, and that the revised draft contracts had been amended on the basis of agreements reached between the parties.

4.5.9 The 1992 Fund Assembly also noted that the Director intended to hold a further meeting in the near future with both ITOPF and the International Group to finalise the terms of the contracts, and it was the Director's intention that all contracts with experts appointed jointly with a P&I Club would employ the same clauses, save that the contracts would be single-appointment, not call-out, contracts.

4.5.10 The 1992 Fund Assembly further noted that pending finalisation of discussions between the International Group, ITOPF and the 1992 Fund, an interim contract had been signed by ITOPF and the 1992 Fund, and that based on discussions held to date with the International Group, the Director was of the view that the terms of the final version of the contracts with experts, when agreed, would not be materially different to that presently agreed with ITOPF.

Experts' fee structure

4.5.11 It was noted that the Director recognised that fee rates for technical experts and claims office managers were, with limited exception, determined by market forces in the country of origin of the person concerned and that fees for comparable experts and managers could vary considerably from country to country. It was also noted that a document setting out the framework for fee rates for experts appointed by the 1992 Fund had been prepared and that these guidelines included consideration of the types of fee rates, factors affecting fee rates, charging of expenses incurred, currency of invoicing, charging of VAT and monitoring of fee rates.

Experts most used by the 1992 Fund in recent years

4.5.12 The 1992 Fund Assembly noted the details of the experts most used by the 1992 Fund in recent years, and also noted that it was important that the experts used by the Fund had, or acquired, a thorough knowledge of the Fund's policy in respect of the admissibility of claims.

4.5.13 The 1992 Fund Assembly also noted that the 1992 Fund had in many cases engaged ITOPF and other experts to work together with local surveyors in the assessment of claims and to co-ordinate the work of various experts.

Intervention by the delegation of France

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

> The French delegation thanks the IOPC Funds Secretariat for this document and wishes to make a number of observations.
>
> The French delegation is pleased that the IOPC Fund has agreed to follow the External Auditor's recommendations by setting out procedures for the selection and appointment of experts. As the French delegation has already pointed out, this subject is a real problem given that the sums involved in relation to experts can be extremely high (it may be recalled that the consultant costs for the *Erika* accounted for £22 million out of the £77 million paid to the victims, in other words, 28.4% of the latter amount). It is therefore important to ensure that the procedures for the recruitment and remuneration of the IOPC Fund experts should be transparent.
>
> The French delegation urges the Secretariat to intensify its efforts at transparency and also to respond to the External Auditor's recommendations on the question of remuneration of experts in 2013, with a view to establishing an official scale of fees.
>
> Lastly, the French delegation regrets that this document does not contain the precise list of experts who are working or have worked in France on the *Prestige* incident, showing for each of them their professional experience and qualifications, as it has legitimately requested in the past as the 7th largest contributor to the Fund and the principal victim of large oil spills. France well understands the argument already put forward to it concerning the experts' safety. It recalls, however, that there is no reason to think that their safety would be compromised, the more so if they are not identified and only their qualifications or professional experience are disclosed. Indeed, the French delegation undertakes not to make this information public, and only the Government would have it in its possession.

Debate

4.5.15 In response to the intervention by the French delegation the Director stated that the fee framework and criteria used for experts was explained in Annex III of document IOPC/OCT14/4/4 and that in his view it was not appropriate to provide the fees charged by each expert. The Director also clarified that, when engaging experts, the Fund did not operate on official tariffs, but applied market prices.

4.5.16 Concerning the experts that worked on the *Prestige* incident, the Director clarified that it was thought appropriate to provide a list of firms of experts, but not to give out individual names. The Director also pointed out that the firms of experts engaged in the *Prestige* incident were provided in Annex IV of document IOPC/OCT14/4/4.

4.6	**Compensation for claims for VAT by central governments** **Document IOPC/OCT14/4/5**	**92A**			

4.6.1 The 1992 Fund Assembly took note of document IOPC/OCT14/4/5 which related to the issue of compensation for claims for VAT by central governments.

4.6.2 The 1992 Fund Assembly recalled that at the October 2013 session of the 1992 Fund Administrative Council, the French Government had submitted a document on the issue of whether Value Added Tax (VAT) should be excluded from compensation where claims are made by central governments. The 1992 Fund Assembly also recalled that the Secretariat had also submitted a document, containing a preliminary legal opinion by Professor Alain Bénabent on the French civil law position, specifically whether when the French State suffered a loss for which it could claim compensation, the calculation of the corresponding compensation should include VAT or, to the contrary, should exclude VAT.

4.6.3 The 1992 Fund Assembly further recalled that following a debate on the issue, the 1992 Fund Administrative Council had decided that, given its complexity, the recoverability of VAT by central governments claiming from the IOPC Funds should be studied further, and had instructed the Director to study the matter and to report back during the October 2014 sessions.

4.6.4 It was noted that the Director had requested Professor Alain Bénabent to comment on the document submitted by the French Government and had also sought a legal opinion from a practising barrister, Mr Harry Wright of 7 King's Bench Walk Chambers, London, with a request to answer the primary question of whether, as a matter of English law, VAT paid by governments in response to an oil pollution incident should be reimbursed by the IOPC Funds. It was also noted that Mr Wright's legal opinion, in addition to the English law position, considered the position under Australian, Canadian, Indian, New Zealand, Singaporean and South African law.

4.6.5 It was further noted that the Director had sought legal opinions from a wide geographical cross-section of Member States, including Argentina, Denmark, France, Germany, Greece, Islamic Republic of Iran, Italy, Japan, Mexico, Morocco, the Netherlands, Nigeria, Norway, Republic of Korea, Russian Federation, Spain and the United Arab Emirates.

Conclusions of the legal opinion of Professor Bénabent

4.6.6 The 1992 Fund Assembly noted that in February 2014, the Director had received a legal opinion from Professor Bénabent, which examined whether the French State, when it called on private companies to repair damage to its assets by a liable third party, had the right to seek compensation inclusive of VAT. The 1992 Fund Assembly also noted that Professor Bénabent had provided an opinion on the history of the case law, as mentioned by the French Government in its document IOPC/OCT13/4/7.

4.6.7 The 1992 Fund Assembly further noted that Professor Bénabent's legal opinion stated that while the principles for the inclusion or otherwise of VAT in assessment of damages in general were well established in case law, their application to the State, which raised particular difficulties, had given rise to very little case law. 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 has had to pay.

4.6.8 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.

4.6.9 It was further noted that in summary, Professor Bénabent was of the view that:

(a) Only three judgments of the Conseil d'État, (ie the Supreme Court in the order of jurisdictions of administrative law) rendered on 30 December 1996, 18 June 1997 and 6 March 2002 suggested that when the State called on private enterprises to remedy damage to its assets caused by a third party, it was entitled to claim compensation inclusive of VAT;

(b) These three decisions were eminently open to criticism because they ignored the meaning and scope of the principle of reparation in full which governed the French law of liability, and were not based on any persuasive argument;

(c) Consequently, it could reasonably be considered that if the civil courts were seized of the issue, they would be inclined towards a calculation of the compensation net of VAT, respecting the principle that required the victim to be compensated without loss or profit.

Conclusions of Mr Harry Wright's legal opinion

4.6.10 The 1992 Fund Assembly noted that the Director had also sought a legal opinion from a practising barrister, Mr Harry Wright, with a request to answer the primary question of whether VAT paid by governments in the response to an oil pollution incident should be reimbursed to them by the IOPC Funds. Mr Wright's legal opinion covered the jurisdictions of England and Wales, Australia, Canada, India, New Zealand, Singapore and South Africa.

4.6.11 The 1992 Fund Assembly noted that after proposing a modified test from which a policy for the IOPC Funds could be drawn for its question of whether a payment of VAT by a given body qualified as a loss, Mr Wright's legal opinion concluded as follows:

(a) The principles of the law of damages were applicable to the Fund's questions. Two fundamental rules of damages were (1) that a party may not recover damages where it had suffered no loss and (2) that a party may not enjoy a double recovery of damages. It appeared that these principles were applied in the jurisdictions of England and Wales, Australia, Canada, India, New Zealand, Singapore and South Africa in much the same way.

(b) If the State, or an organ of the State whose legal personality was the same as the State, claimed VAT from the IOPC Funds, it should not recover such VAT. This is because it had suffered no loss, and were it to recover VAT, it would amount to a double recovery.

(c) If an organ of the State whose legal personality was distinct from that of the State, were to claim VAT from the IOPC Funds, it should recover such VAT, since it would in fact have suffered a loss.

(d) In order to distinguish between the two distinct categories for the purpose of assessing whether VAT was recoverable, the IOPC Funds could look to the domestic law of Member States, or alternatively could adopt a modified test based on the European law test (the Foster Test) for what amounted to 'an emanation of the State'. There were potential advantages and disadvantages of both tests.

Summary of the legal opinions covering the jurisdictions of Argentina, Denmark, France, Germany, Greece, Italy, Japan, Mexico, Netherlands, Nigeria, Norway, Republic of Korea, Russian Federation, Spain and the United Arab Emirates

4.6.12 The 1992 Fund Assembly noted that the Director had sought further legal opinions from lawyers from a wide geographical cross-section of Member States, including Argentina, Denmark, France, Germany, Greece, Islamic Republic of Iran, Italy, Japan, Mexico, Morocco, the Netherlands, Nigeria, Norway, Republic of Korea, Russian Federation, Spain and the United Arab Emirates, but that the legal opinions from the Islamic Republic of Iran and Morocco were awaited.

4.6.13 It was noted that the lawyers instructed by the 1992 Fund were requested to respond to a series of questions regarding the recoverability of VAT from the IOPC Funds under their respective domestic laws. The questions posed to the lawyers and a summary of the answers received were as follows:

Does your national law recognise the rule that a party should not be able to recover damages where it has suffered no loss?

4.6.14 It was noted that all of the lawyers who responded confirmed that under their respective domestic laws, parties were not permitted to recover damages where that party had not suffered a loss.

Does your national law recognise the rule against 'double recovery'?

4.6.15 It was also noted that all of the lawyers from whom legal opinions were sought stated that their respective Member States recognised the rule against double recovery, or an equivalent rule, known as the rule against 'unjust enrichment', with just one proviso relating to government entities under Mexican law.

Does your national law impose VAT or equivalent?

4.6.16 It was further noted that with the exception of the United Arab Emirates, all of the Member States for which legal opinions were provided, imposed a form of VAT.

If so, does your national law permit a body or agency, which by virtue of provisions of national law has a legal personality which is the same as that of the State, to recover VAT which it has incurred acting in mitigation of a breach of contract or some other breach of civil law?

4.6.17 The 1992 Fund Assembly noted that in response to this question, a wide variety of responses were received. In some Member States, where the body or agency had the same legal personality as the State, no loss would be judged to have occurred, and thus the body or agency would not be entitled to recover VAT.

4.6.18 The 1992 Fund Assembly also noted that in other Member States, the answer was clearly opposite, as either the local laws made it mandatory for bodies or agencies to charge and collect VAT (the government agency would not otherwise be able to recover VAT) or the courts had declined to apply the double recovery principle.

4.6.19 The 1992 Fund Assembly further noted that there was no uniformity on the answer due to a variety of complex legal issues.

Under your national law, if the State paid a contractor to prevent oil pollution and thereby incurred VAT on those costs, would the State be entitled to recover that VAT from the 1992 Fund?

4.6.20 It was noted that the answers to this question generally mirrored the answers to the previous question, with a wide range of responses received.

Does your national law recognise that certain bodies or agencies which may be associated with the State are accorded the same legal status as the State?

4.6.21 It was also noted that in response to this specific question, there were also a wide variety of replies ranging from confirmation that certain bodies associated with the State were accorded the same legal status as the State, to recognition that some public bodies had separate legal personalities.

4.6.22 It was further noted that in some cases, special rules applied to the government agency or body so that they were not subject to the payment of VAT, due to their public nature, even if they collected fees contributions or other payments through transactions. In other cases, the matter had not been resolved and was before the courts awaiting an answer.

Director's recommendations

4.6.23 The 1992 Fund Assembly noted that the Director recognised that the recoverability of VAT for government claims had not always been treated consistently in previous incidents, and that although the policy followed by the IOPC Funds over the years had precluded the payment of compensation for VAT in respect of government claims, in a number of cases VAT had been paid in respect of government claims due to diverse circumstances.

4.6.24 The 1992 Fund Assembly also noted that in view of the foregoing and in order to provide some form of consistency in future incidents, given the wide range of responses provided in the legal opinions submitted to date, the Director recommended that delegations be given further opportunity to consider the legal opinions provided, and to consider whether to give further thought to adopting a test, such as the modified 'Foster Test' as proposed by Mr Harry Wright, in order to determine an answer to the question of whether a payment of VAT qualified as a loss for which the IOPC Funds should pay compensation.

4.6.25 The 1992 Fund Assembly further noted that the proposed modified 'Foster Test' read as follows:

(1) A private individual or body which had incurred VAT in connection with the prevention of oil pollution may (subject to satisfying the criteria laid down by the 1992 Fund) recover that VAT from the 1992 Fund.

(2) A State, or any emanation of the State, which had incurred VAT in connection with the prevention of oil pollution should not recover VAT, but would be deemed by the 1992 Fund to have suffered no loss, since the State should recover such VAT in revenue.

(3) For the purposes of subsection (2) above, a party would qualify as an 'emanation of the State' if it was:

(a) Responsible for the provision of a public service pursuant to a measure adopted by the State; and

(b) Was controlled by the State; and

(c) Had been given special powers beyond those which resulted from the normal rules applicable in relations between individuals for the purpose of carrying out its role in subsection (a); and

(d) Was entitled to receive funding from the State for the purpose of carrying out its role in subsection (a).

Debate

4.6.26 One delegation stated that since it was a Federal Republic with 16 separate States, with separate taxes and income, it doubted that the modified 'Foster Test' took into account its position. Whilst it understood that there should be a common approach adopted by the 1992 Fund Assembly, in its view such an approach was difficult to apply to a Federal State. That delegation further stated that even if a common approach could be found amongst Member States, in its view, the Member States' courts would still apply their own domestic legislation, which might cause a problem if different to any common approach adopted by the 1992 Fund Assembly.

4.6.27 Another delegation stated that it agreed with the basic principles discussed in document IOPC/OCT14/4/5, namely that a claimant should be fully compensated and should not be unjustly enriched, although it was now verifying this matter including the examination of the legal opinion. This delegation also stated that due to the different accounting system of States' budget, it considered it inappropriate and unrealistic to consider a test or model which was too formulistic or simplistic.

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

> The French delegation would like to thank the IOPC Funds' Secretariat for the significant work undertaken and set out in this document. It takes note of the Director's intention to allow delegations further time to consider the question of whether VAT should be included or not, whilst at the same time inviting us to adopt a decision on this question at the next sessions of the governing bodies of the IOPC Funds (paragraphs 6.13 and 6.14 of the document). The French delegation nevertheless has some comments at this stage.
>
> First of all, the French delegation would like to avoid any ambiguity: Obviously, French Law, like other legal systems, does not allow for a person to obtain damages and interest if they have not suffered a loss. The French delegation does not therefore intend to challenge this principle. This delegation has often stated that what it considers important is the principle of full compensation for the damage suffered.
>
> With regard to the document produced on VAT, this delegation intends at this stage to simply pose a number of questions:
>
> - The first: Is it certain that the State recovers in full and under any circumstances the VAT that it has actually paid when it has suffered a loss?
>
> - The legal opinion of Mr Harry Wright in annex II provides the legal situation in Commonwealth countries, the different opinions in annex III complete the picture for the civil law countries.
>
> - The legal opinion of professor Benabent in annex I, as respectable as it may be, is it enough by itself to challenge French Law? As a reminder, French jurisprudence of the highest French administrative court, the Conseil d'Etat, clearly states that VAT should be included. This jurisprudence has never been questioned until now.
>
> - With regard to Annex III, several comments. First of all, the French delegation must thank the Secretariat for this detailed study.
>
> Then, with regard to the response to the questionnaire on French law in respect of VAT by the law firm *Villeneau, Rohart and Simon*, I note that the firm only makes reference to the opinion of Professor Benabent. It does not mention the jurisprudence of the Conseil d'Etat.
>
> - The French delegation, shares the view of the Director that further time should be given to delegations to study the various legal opinions provided and to further consider the question, which is complex and has received a variety of responses from the States. In fact, this delegation will produce a new document to explain its position.
>
> Once more the French delegation states that, on the question of VAT, it is about considering the principle of the matter. The position that France is defending is therefore not specific to the Prestige incident and will not have any financial impact on the IOPC Fund in that regard, given that the French State is last in the queue.

4.6.29 Another delegation stated that the document and legal opinions submitted in document IOPC/OCT14/4/5 demonstrated the complexity of the issue and that in its opinion, the issue of compensation for claims for VAT by central governments should be dealt with on a case-by-case basis, and that if a major incident were to occur in its territorial waters, it would seek to recover the VAT.

4.6.30 One delegation stated that although it was too early to adopt a final position, in its view consideration should be given to adopting a policy based on the modified 'Foster Test', although it also foresaw that a hybrid approach could be used, such that priority be given to the national legislation of the Member State affected by the incident, but that where a discrepancy existed, the modified 'Foster Test' could be used to resolve any ambiguity.

4.6.31 Another delegation stated that under its legislation, payments of compensation in principle should not include VAT, so no issue arose, but payments for legal services, which could form a significant percentage of losses claimed, would have to be reimbursed.

4.6.32 A further delegation stated that delegations required further time and opportunity to consider the issue.

1992 Fund Assembly

4.6.33 The 1992 Fund Assembly took note of the document submitted and the delegations' views that obtaining a common approach might be difficult. It also noted that further time was required to discuss this difficult issue.

Supplementary Fund and the 1971 Fund Administrative Council

4.6.34 The Supplementary Fund and the 1971 Fund Administrative Council noted the document submitted and the views of the delegations.

4.7	**Compensation for casualty-response** **Document IOPC/OCT14/4/6**	**92A**			

4.7.1 The observer delegation of the International Spill Control Organization (ISCO) presented document IOPC/OCT14/4/6 relating to compensation for casualty-response and made the following statement:

> Following discussion of claim submission guidelines at the May 2014 session of the 1992 Fund Administrative Council, ISCO was reported as stating that staff changes had been mentioned in relation to the difficulty in presenting claims; that the terms 'reasonable' and 'proportionate' were undefined in the Convention; that the new ISCO approach to incident response would rectify both of these deficiencies; and that this approach comprises a repository of knowledge supportive of a knowledge-only contingency plan based on the physicochemical parameters which control the fate and effects of releases, which determine prevention and response, and which by their incident-specific values predict incident specific fates and effects, thus enabling incident- specific prevention and response to be cost-effective (see IOPC/MAY14/10/1, paragraph 4.1.19).
>
> Again, ISCO was reported as stating that on completion of this approach, coastal States will have access to a repository of knowledge secure against staff changes and a contingency plan from which even fresh staff will be able to prepare and execute incident-specific plans which will enable predictions made, decisions taken, accredited contractors employed, results obtained, and costs incurred to be reported to the IOPC Funds in fully documented form and to IMO for enhancement of the thus shared repository of knowledge.
>
> Yet again ISCO was reported as indicating that a document justifying this approach would be available at MEPC 67 with a shorter version on claims settlement being available for the October 2014 session of the IOPC Funds. The former is now available as MEPC/67/INF.13, though pressure of other business has postponed it to MEPC 68.
>
> As to the deficiencies of current guidelines for submission of claims and for the selection of experts for their assessment, paragraphs 1.1-1.5 of this document show that debate of opinion/counter-opinion is merely debate of belief/counter-belief, respectively supported by partially-selected facts/counter-facts, neither of which is debate-terminating knowledge;

that the only possible outcome is a transient belief-consensus; that there are as many opinions as there are self-styled experts; that no consensual majority ever eliminates minority dissent though t may temporarily suppress it; that the dissent over the terms 'reasonable' and 'proportionate' is resolvable only by the knowledge which would define them; and that this knowledge-only approach to casualty response raised no dissent when serially presented to meetings 10-16 of the OPRC-HNS Technical Group, dissent from knowledge and assent to its counter-belief being truly irrational as re-emphasised in MEPC/67/INF.13.

However, paragraph 2.1-2.2 recall that the definitive differentiation of knowledge from belief was first established in 2010 by observing that our senses stimulate our imaginations to beliefs transformable to positive or negative knowledge by evaluation of their compatibility or incompatibility with reality, or to beliefs unacceptable as knowledge by being beyond this co-defined reality-evaluation in principle or in pro tem practice. Thus paragraphs 3.1-3.3, show how the presence of this reality-evaluation identifies the knowledge to be included in the repository while its absence identifies the beliefs to be omitted from it. Again, paragraphs 4.1-4.3 show how the knowledge-only contingency plan will be derived from the repository, while paragraphs 5.1-5.3 show how this contingency plan will produce all future incident-specific plans, and how their enumerated steps will satisfy the needs of claim-submission, claim settlement and further knowledge acquisition identified in paragraph 1.2.

This knowledge-only approach will be fully available to all interested parties prior to the next meeting.

4.7.2 The 1992 Fund Assembly thanked ISCO for the information provided.

4.8	**Funding of interim payments** **Document IOPC/OCT14/4/7**	**92A**			

4.8.1 The 1992 Fund Assembly took note of document IOPC/OCT14/4/7, relating to the funding of interim payments submitted by the International Group of P&I Associations (International Group).

4.8.2 The 1992 Fund Assembly recalled that at its October 2013 meeting, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had noted that the only outstanding issue which remained for the sixth Intersessional Working Group was that of interim payments, and that the issue had initially been tabled by the International Group at the October 2009 meeting of the 1992 Fund Assembly in order for a common understanding to be reached on the intended policy and legal effects of interim payments made by the Clubs.

4.8.3 The 1992 Fund Assembly also recalled that possible solutions had been presented to the sixth Intersessional Working Group for consideration but that no agreement had been reached by the October 2013 meeting of the 1992 Fund Administrative Council, when the sixth Intersessional Working Group was ultimately closed.

Discussions at the October 2013 meetings

4.8.4 The 1992 Fund Assembly recalled that the 1992 Fund Administrative Council had been informed by the Director at the October 2013 meeting that a form of understanding had been reached in principle with the International Group, pending final agreement.

4.8.5 It was recalled that in response, the International Group had informed the meeting 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".

4.8.6 It was also recalled that the International Group had stated that it did not wish to raise Member State's expectations regarding the provision of interim payments by International Group P&I Clubs in the future.

The current position

4.8.7 The International Group stated that it had now considered the importance of the decision taken by the 1971 Fund Administrative Council not to reimburse the Gard P&I Club in the *Nissos Amorgos* incident, which was relevant since the Gard P&I Club had made interim payments up to approximately the 1969 CLC limitation amount, and had also established a limitation fund in court by means of a bank guarantee.

4.8.8 It was also noted that the International Group claimed that the scenario now faced by Gard P&I Club in terms of possible overpayment in the *Nissos Amorgos* incident was exactly the sort of scenario of concern that the International Group had described to the sixth intersessional Working Group on the funding of interim payments.

4.8.9 It was further noted that the Director had reported to the October 2013 meeting of the 1992 Fund Administrative Council, *inter alia*, that the form of understanding that he had reached in principle with the International Group on the matter entailed that whenever interim payments were made in the future, these interim payments would be made on behalf of both the owner/insurer and the 1992 Fund.

4.8.10 The 1992 Fund Assembly noted that the International Group were concerned that despite this fact and the fact that Gard had made interim payments up to the 1969 CLC limitation amount, the 1971 Fund Administrative Council had decided not to reimburse the Gard P&I Club in the *Nissos Amorgos* case.

4.8.11 The International Group stated that as a consequence, the International Group had informed the Director that discussions on the issue of the funding of interim payments should be put on hold while the *Nissos Amorgos* case was ongoing, and that given subsequent developments it was not clear if, or when, the discussions would be restarted.

4.8.12 The International Group also stated that it had been left with no alternative but to take the approach it had, due to the decision taken by the 1971 Fund Administrative Council, and that it would take a long time to regain the trust which had been broken.

4.8.13 The International Group stated that this was regrettable given that the objective of the International Group when first tabling this matter for consideration had been to ensure the continued prompt and efficient use of available funds for the benefit of claimants.

4.8.14 The International Group also stated that there was a greater probability that International Group Clubs would follow the approach set down in the 1992 CLC and establish a limitation fund for distribution as the court saw fit, which could result in the funds that the Club provided being unavailable to claimants until a considerable time after the incident.

4.8.15 The International Group further stated that since the HNS Convention was intended to follow the same approach in terms of payment of claims as had been the practice in previous CLC/Fund cases, any approach taken by the International Group Clubs in CLC/Fund cases in the future with regard to the funding of interim payments was also likely to be taken in HNS Convention cases when it entered into force.

4.8.16 The International Group also referred to the relationship between the Group and the Fund and noted that historically the relationship had been excellent. However since the discussions on interim payments had restarted, that relationship had deteriorated which was probably clear for all to see.

Debate

4.8.17 In response to the International Group, the Director stated that whilst he understood that the International Group wished to stop discussions at the present time on the issue of interim payments, he was available for discussions at any time and was certain that both the International Group and the Fund could find some form of agreement in the future.

4.8.18 One delegation stated that the international regime was greatly assisted by the provision of interim payments and these were greatly valued. It also appreciated the efforts made to find common ground and hoped that the relationship between the Club and Fund could continue. That delegation requested clarification from the Director regarding the consequences for the Fund of making interim payments in the event that the P&I Club chose not to make such payments, since interim payments were not governed by the Conventions but were made at the choice of the P&I Club and the Fund.

4.8.19 In response to that delegation, the Director stated that the decision for the Fund to make interim payments was up to the Member States and that in the past they had taken such decisions, for example when responding to the *Prestige* incident. The Director also stated that delegations should consider whether they had sufficient levels of protection under the 1992 Fund Convention or whether they should become Party to the Supplementary Fund Protocol. Using the example of a large tanker spill with a CLC limit of 90 million SDR, and noting that the cover under the Supplementary Fund Convention was 750 million SDR, the Director stated that even if the shipowner's liability of 90 million SDR was deposited in the limitation court and no interim payments were made by the P&I Club, there would still be some 660 million SDR of compensation available to claimants from the Supplementary Fund.

4.8.20 The Director explained that there were currently constraints on the amount of money he was authorised to pay to claimants under the Internal Regulations of the IOPC Funds. The Director stated that in the future, it might be necessary to increase the amount he was authorised to pay. The Director also stated that it had been a practice in previous years to hold more Executive Committee meetings and that if a major spill occurred in the future, it might be necessary to call an emergency meeting of the Executive Committee, in order to request authority to pay. The Director proposed that he be instructed to submit a document to the spring 2015 sessions of the governing bodies to explain the consequences of making interim payments, and to request an amendment to the Internal Regulations.

4.8.21 One delegation stated that in its view, difficulties could arise for the Fund, if an oil spill occurred which gave rise to claims totalling close to the CLC limit, and it was therefore unclear whether the 1992 Fund should make any payment at all. In response, the Director stated that it was often difficult to know at the start of an incident whether the Fund would be called upon to pay compensation, or whether the claims would fall within the CLC limit. However, if a limitation fund was established, claimants could either file claims against the limitation fund, or, if the IOPC Funds had made interim payments, it would acquire by subrogation the rights of those claimants and would file those rights against the limitation fund.

4.8.22 Noting that the observer delegation of the International Group had informed the Director that discussions on the issue of the funding of interim payments had been put on hold while the *Nissos Amorgos* case was ongoing, and that subsequent developments had made it unclear if, or when, the discussions would be restarted, one delegation requested the International Group to clarify whether the practise of establishing a joint claims office for the approval of claims would continue.

4.8.23 In response, the International Group stated that it would, for the time being, continue to adhere to the terms of the Memorandum of Understanding (MoU) agreed between the International Group and the 1992 Fund, but that it would also need to consider if any changes were required as a result of the recent decision taken by the 1971 Fund Administrative Council regarding the winding up of the 1971 Fund.

1992 Fund Assembly

4.8.24 The 1992 Fund Assembly instructed the Director to submit a document to the spring 2015 sessions of the governing bodies to explain the consequences of making interim payments.

4.9	**Impact of the winding up of the 1971 Fund on the 1992 Fund** **Document IOPC/OCT14/4/8**	**92A**			

4.9.1 The 1992 Fund Assembly noted that the observer delegation of IUMI had presented document IOPC/OCT14/4/8, relating to the impact of the winding up of the 1971 Fund on the 1992 Fund, before the 1971 Fund Administrative Council under agenda item 8 (see paragraph 8.2.43).

1992 Fund Assembly

4.9.2 The 1992 Fund Assembly noted the strong reservations of IUMI regarding the intention to wind up the 1971 Fund by the end of 2014 and its support for a postponement of the winding up in order to allow discussions to take place with all interested parties to resolve the outstanding issues.

5 Financial reporting

5.1	**Report on submission of oil reports** **Document IOPC/OCT14/5/1**	**92A**		**SA**	**71AC**

5.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT14/5/1.

5.1.2 The governing bodies noted with satisfaction that since its last sessions, Kiribati, Tanzania and Tuvalu had fulfilled their obligations under the Conventions and had submitted their long outstanding oil reports.

5.1.3 It was noted that at the time of its October 2014 sessions, 20 out of the 113 Member States of the 1992 Fund still had outstanding oil reports, including two for which oil data for 2013 had been provided but required further clarification from those States.

5.1.4 It was noted that out of the 20 States with outstanding reports for the 1992 Fund, 12 States, including a new Member State, recorded outstanding reports for a year only, that one State had three years of outstanding oil reports and that seven States had not submitted oil reports for four years or more. In particular, it was noted that four of them had been members of the 1992 Fund for a number of years and had never submitted any reports: Dominican Republic (15 years), Comoros (14 years), Republic of Guinea (12 years), Saint Lucia (ten years).

5.1.5 With regards to the Supplementary Fund, it was noted that two out of the 31 Member States of the Supplementary Fund still had outstanding oil reports including one State (Montenegro) who had three years of outstanding reports and had yet to submit its first oil report.

5.1.6 It was further noted that despite the number of States with outstanding reports, particularly for the 1992 Fund, the financial consequences of the missing reports were limited as the 93 States that had submitted their reports for 2013 represented about 99% of the expected total contributing oil while for the Supplementary Fund they represented over 99.5% of the expected total.

5.1.7 The governing bodies also took note of the Director's considerations that despite the continuous improvement regarding the number of Member States with long outstanding oil reports, he considered it to be a matter of on-going serious concern that a number of 1992 Fund Member States and one Supplementary Fund Member State had outstanding oil reports for more than one year. It was noted in particular that there were five States for which no reports had ever been submitted, in spite of the Secretariat's repeated efforts to remind them of this important treaty obligation. The Director also indicated that he would continue his efforts to obtain the remaining outstanding reports. He further

informed the governing bodies that meetings with the ambassadors of the Dominican Republic and the Republic of Guinea had recently taken place and he was hopeful that they would help to resolve the matter.

Debate

5.1.8 One delegation expressed its satisfaction in seeing the reduced number of outstanding oil reports but expressed serious concerns over the situation of Supplementary Fund Member States with outstanding reports. That delegation suggested that this document should, in the future, make reference to Article 15, paragraphs 2 and 3 of the Supplementary Fund Protocol regarding the denial of compensation rights in case of outstanding oil reports.

5.1.9 One delegation raised the question whether the Secretariat was verifying the accuracy of the reports provided, in particular in cases of nil declarations. The Director indicated that all reports were verified to the extent possible and any questions were raised with the government authorities. He referred to document IOPC/OCT14/6/1 for information about recent initiatives taken in that regard.

5.1.10 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information and urged the Member States concerned to submit their outstanding oil reports. They also endorsed the suggestion to indicate the potential consequences of not complying with the Supplementary Fund obligations in future documents. Furthermore, 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.

5.2

Report on contributions **Document IOPC/OCT14/5/2**	**92A**		**SA**	**71AC**

5.2.1 The governing bodies took note of the information on contributions to the IOPC Funds contained in document IOPC/OCT14/5/2.

5.2.2 The 1992 Fund Assembly also noted that contributions were due from two contributors based in the United Kingdom and Switzerland (oil received in Belgium), who had gone into liquidation and that claims had been filed with the respective liquidators.

5.2.3 The 1992 Fund Assembly noted that with effect 1 May 2014, the 1992 Fund Convention had been implemented into the national legislation in South Africa and the Government of the Republic of South Africa had assumed responsibility to pay contributions under Article 14 of the 1992 Fund Convention. The 1992 Fund Assembly further noted the intention of the South African Government to resolve the matter of past outstanding contributions and interest due from contributors in South Africa since the legislation was not applicable retrospectively.

5.2.4 The 1971 Fund Administrative Council noted that the oil reports submitted by the Ministry of Transport of the Russian Federation provided the names of the companies but the Ministry's address and contact persons for invoicing. It was also noted that the Ministry had provided the details of the companies' addresses and contact persons to the Secretariat only in 2010 and that the 1971 Fund had commenced legal action in 2011 against the contributors in the Russian Federation. It was further noted that the Highest Arbitration Court ruled that the obligation of the contributors, most recently due in 2004, were governed by Russian civil law and had become time-barred. The 1971 Fund Administrative Council noted that contributions due to the 1971 Fund from two contributors in the Russian Federation totalled **£43 038.75** and that this would be discussed under agenda item 8, winding up of the 1971 Fund.

5.2.5 The 1992 Fund Assembly noted that contributions due to the 1992 Fund from four contributors in the Russian Federation totalled **£746 582.81** and four separate actions had been commenced against three contributors in the Russian Federation by the 1992 Fund. In all the cases, the courts in the Russian Federation had applied a three-year limitation of action period provided under the Russian Civil Code, calculated from the moment when the contributions would have been due even when the oil reports had been submitted late.

5.2.6 It was also noted that in two cases, the Courts had ruled that the contributors should not be held liable for contributions since they were engaged in trans-shipment services and were not a 'first receiver of oil' under Russian law although the authorities of the Russian Federation had identified them as receivers.

5.2.7 It was further noted that the Russian Courts had not considered the time bar as being interrupted by the periodic reminders which had been sent, nor that delivery by a private courier service was valid proof that the invoice had been delivered to contributors.

5.2.8 The 1992 Fund Assembly noted that the Russian Federation, as a party to the legal action, had been kept informed of the developments and that the Director had met with the Ministry of Transport to seek their assistance to resolve this matter.

5.2.9 The 1992 Fund Assembly noted that the Director would continue his dialogue with the relevant authorities in the Russian Federation and would continue the legal actions in respect of the outstanding contributions due from the contributors in the Russian Federation.

5.2.10 The 1992 Fund Assembly further noted that due economic sanctions, the 1992 Fund was not in a position to receive contributions due from one contributor in the Islamic Republic of Iran.

Debate

5.2.11 One delegation requested that in future cases more detailed information on how the Secretariat participates in cases where contributors go into liquidation would be helpful to the governing bodies in making decisions. That delegation further stated that the matter of the outstanding contributions due from contributors in the Russian Federation should be pursued unless strong commitment of the Russian authorities was made.

5.2.12 In the opinion of another delegation the Member State concerned should take responsibility for the outstanding contributions if it resulted from the Member State submitting incorrect information on oil reports.

5.2.13 Many delegations were of the view that when all other efforts failed, legal action should be considered to recover contributions. However, it was felt that the Director should have the authority to decide, on a case by case basis, whether to pursue/continue legal action by weighing the cost of legal action against the amounts receivable and possible outcome.

5.2.14 In the view of the delegations that intervened, the matter of the outstanding contributions due from contributors in the Russian Federation should be resolved through dialogue between the Director and the authorities in the Russian Federation.

5.2.15 The governing bodies instructed the Director to work closely with governments of the States concerned to resolve issues of outstanding contributions, including jointly examining the effectiveness of the legal proceedings.

5.2.16 The governing bodies decided to give the Director the authority to make a judgement on whether to enter into legal action to recover outstanding contributions taking into account the cost of such action *vis-à-vis* the achievable outcome.

1992 Fund Assembly Decisions

5.2.17 The 1992 Fund Assembly instructed the Director to write off any balances due from two contributors based in the UK and Switzerland in liquidation after final settlement from liquidators.

5.2.18 The 1992 Fund Assembly instructed the Director to continue his dialogue with the government of the Russian Federation to recover the outstanding contributions due from the contributors in the Russian Federation.

5.2.19 The 1992 Fund Assembly decided to authorise the Director to continue or not legal action to recover outstanding contributions from contributors in the Russian Federation if in his view the cost of such action would justify the possible outcome and contributions receivable.

5.3	**Report on investments** **Document IOPC/OCT14/5/3**	**92A**		**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 2013 to 30 June 2014 contained in document IOPC/OCT14/5/3. 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 the Bank of Russia base rate had been substantially increased during the period. Therefore investment yields on Korean Won and Russian Rouble 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 on a few occasions. This was as a result of retaining funds to effect the reimbursement to contributors to the *Erika* Major Claims Fund in March 2014 and 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.

5.3.4 It was noted that Barclays Bank and HSBC have been designated as the Funds' main operational house banks and BNP Paribas, International Nederlanden Bank (ING Bank NV) and Standard Chartered Bank Korea Ltd are designated as temporary house banks since they are used to hold Korean Won for the *Hebei Spirit* 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/OCT14/5/4**	**92A**		**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/OCT14/5/4.

5.4.2 The governing bodies 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 67% on the basis that the Fund's liability was KRW 179.4 billion (89% assuming that the Fund's liability was some KRW 134.8 billion). It was also noted that some RUB 250 million was held by the 1992 Fund following the decision of the Executive Committee at its April 2013 session to make payment in respect of the *Volgoneft 139* incident.

5.4.3 It was also noted that the revised investment criteria reported to the governing bodies at its October 2013 session (document IOPC/OCT13/5/4) came in to effect on 1 November 2013. These policy changes are considered to have improved and strengthened the credit risk assessment method.

5.4.4 It was also noted that the 1992 Fund continued to use Dual Currency Investments during the reporting period where there was a requirement for currency other than Pounds sterling, with the added benefit of higher yields.

5.4.5 It was further noted that the IAB had followed the discussions held by the 1971 Fund Administrative Council in respect of the winding up of the Fund.

5.4.6 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.

5.4.7 The Chairman of the 1992 Fund Assembly expressed gratitude to the IAB for their hard work.

5.5	**Report of the joint Audit Body** **Document IOPC/OCT14/5/5**	**92A**		**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. He noted that, as this was the final report of the fourth Audit Body (which had been elected in 2011), it dealt with how the Audit Body had discharged its responsibilities over its three-year tenure with particular reference to the period since October 2013 and that it focused on the five main areas which were germane to the Audit Body's mandate.

5.5.2 The governing bodies noted that these five areas were: ascertaining the effectiveness of the IOPC Funds' management and financial systems; reviewing the effectiveness of the Funds' risk management; reviewing the Funds' Financial Statements and Reports; promoting the understanding and effectiveness of the audit function within the IOPC Funds; and managing the relationship between the IOPC Funds and the External Auditor.

5.5.3 In his oral report, Mr Di Sanza highlighted in particular that the subscription by the Secretariat to the Lloyd's List Intelligence database which had been recommended by the Audit Body in 2011 had, over the past three years, led to improvements in the accuracy of oil reports. He also noted that the Audit Body had carried out an evaluation of the policy measures on the non-submission of oil reports as well as Resolution N°11 in respect of contributions which was the subject of document IOPC/OCT14/6/2 which would be presented by the Audit Body under agenda item 6.

5.5.4 With respect to the third area of its activities, he drew the attention of the governing bodies to the fact that in 2014 the Audit Body had taken particular note of the accounting implications of the proposed winding up of the 1971 Fund.

5.5.5 Mr Di Sanza noted that he had reported the previous day 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 2013.

5.5.6 He also noted that the Audit Body had felt that it was important to study best practices of audit committees relevant to its work and, led by the external expert on the Audit Body, it had done so on a regular basis while recognising the need to adapt these practices to the specific circumstances of the Funds.

5.5.7 Mr Di Sanza also noted that the term of office of three of the current members of the Audit Body expired at the current sessions of the governing bodies and that in 2013 the Audit Body had undertaken to support the nomination process of new candidates by profiling the skills, experience and attributes for effective membership. He recalled that a document to this effect had been presented to the governing bodies at their October 2013 sessions.

5.5.8 Another issue highlighted by Mr Di Sanza was, as called for under point 7 of its Composition and Mandate, the requirement for the Audit Body to carry out a review of its functioning. He noted that the review, presented in Appendix II to the Audit Body's Report, centred on how the Audit Body had contributed to the governance and the effectiveness of the Funds and that it focussed on four key elements: the expertise of its members and the external expert; the structure and execution of its programme of activities; the importance of focusing on the right issues; and the value of effective relationships. The governing bodies noted that, on this last point, the Audit Body had worked effectively with the Director and Secretariat staff and had maintained a constructive relationship with the External Auditor. In addition, discussions with the Investment Advisory Body had ensured a good understanding of investment issues and financial risk. The Audit Body had also sought to ensure

effective communications with the governing bodies and Member States by means of its annual reports and by inviting the Chairmen of the governing bodies to its meetings.

5.5.9 The governing bodies further noted that it was the Audit Body's view that its terms of reference provided sufficient scope for the Audit Body to discharge its responsibilities under the mandate but queried whether, in light of the regular reporting of its activities in its annual reports and related documents, there remained a need for a separate review of the functioning of the Audit Body at the end of each three year term as stipulated in its mandate. In the Audit Body's view, the role and contributions of the Audit Body over past 12 years were now well documented. The governing bodies noted the Audit Body's recommendation at paragraph 3.4.20 of the Annex to document IOPC/OCT14/5/5 that, in light of (i) the regular reporting of the activities of the Audit Body and (ii) the recognised role and contribution of the Audit Body to the work of the Funds over the last 12 years, they might wish to consider whether a separate and distinct exercise of evaluating the functioning of the Audit Body at the end of each three-year tenure remained necessary to determine the continued value of the Audit Body.

5.5.10 Mr Di Sanza also recalled that in October 2010, the governing bodies had decided that the annual review and monitoring of the Audit Body would be the basis for determining if the external audit relationship with the Funds was effective and that, beginning with its 2012 report, the Audit Body had identified a series of elements by which it considered that relationship and, on the basis of these elements, the Audit Body provided an annual statement regarding the effectiveness of the External Auditor. He reported that, in summary, the Audit Body maintained its view that the work of the current External Auditor was effective and of tangible value to the operations of the Funds. With respect to the expiry of the term of the External Auditor in October 2014, the Audit Body had reported to the governing bodies at their May 2014 meeting that a call for nominations earlier in 2014 had been unsuccessful and had presented a number of proposals for expanding the scope of the tender. To this end, the Audit Body, in consultation with the Director, had prepared document IOPC/OCT14/6/3 which contained a series of recommendations and which would be presented to the governing bodies under agenda item 6.

Debate

5.5.11 The delegation of Canada expressed its gratitude to the Audit Body which it felt was an essential component of the IOPC Funds' governance. In particular, that delegation expressed its appreciation to Mr Emile Di Sanza, the outgoing Chairman, for his practical and pragmatic approach and for the critical role he had played in dealing with difficult issues and wished him well in his future endeavours.

5.5.12 The Director expressed the view that the Audit Body was very useful as it provided a valuable forum for open and frank discussions, often on difficult issues. He too thanked the outgoing Audit Body and wished the members well.

5.5.13 The governing bodies considered the Audit Body's recommendation regarding the requirement for it to continue to conduct a three-year review of its functioning. Several delegations were of the view that the annual reports submitted by the Audit Body were evidence of the work that the Audit Body had carried out at the request of the governing bodies and that there was no need for it to review its own functioning. Another delegation, however, expressed the view that not only should the evaluation be retained on a three-yearly basis but that there was the need to appoint an external assessor to evaluate the work of the Audit Body as transparently as possible. Retaining the evaluation was supported by the majority of delegations who took the floor, but not the need for an external assessor.

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

5.5.14 The governing bodies decided, therefore, not to remove the requirement for the Audit Body to review its own functioning at the end of each three year term as set out in the Audit Body's Composition and Mandate.

5.5.15 The governing bodies expressed their sincere appreciation to the members of the outgoing Audit Body and to its Chairman, Mr Emile Di Sanza, in particular, for their work over the last three years.

5.6	**2013 Financial Statements and Auditor's Reports and Opinions Documents IOPC/OCT14/5/6, IOPC/OCT14/5/6/1, IOPC/OCT14/5/6/2 and IOPC/OCT14/5/6/3**	**92A**		**SA**	**71AC**

5.6.1 The 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT14/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2013. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT14/5/6/1, IOPC/OCT14/5/6/2 and IOPC/OCT14/5/6/3. The Chairman of the Audit Body reported on the Audit Body's review of the Financial Statements and External Auditor's report and pursuant to its review the Audit Body was recommending that the relevant governing bodies approve their respective Financial Statements for 2013.

5.6.2 After the Director's introduction of each document, a representative of the External Auditor, Mr Damien Brewitt, 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 Organisations, as well as the External Auditor's Reports and Opinions contained in Annexes III and IV of document IOPC/OCT14/5/6/1 (1992 Fund), Annex III of document IOPC/OCT14/5/6/2 (Supplementary Fund) and Annexes III and IV of document IOPC/OCT14/5/6/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2013 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 Assembly noted the External Auditor's statement that, of the ten recommendations relating to the 2012 Financial Statements of the 1992 Fund, four had been fully implemented, five were under implementation and one recommendation had been closed since it had been overtaken by events. The Assembly noted that the External Auditor was encouraged by the positive response and the good progress made by the Secretariat to implement the recommendations and that the External Auditor would continue to monitor developments as part of the 2014 audit.

5.6.5 The governing bodies also took note of the recommendations set out in the External Auditor's report on the 2013 Financial Statements and the Director's responses.

5.6.6 The 1971 Fund Administrative Council noted that the Financial Statements of the 1971 Fund had been prepared on a basis other than going concern. It was noted that the External Auditor, in his Opinion and Report, had drawn attention to Notes 1 and 2 to the Financial Statements concerning the planned winding up of the 1971 Fund.

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

Debate

5.6.8 One delegation commended the Secretariat on receiving, as in previous years, unqualified reports from the External Auditor which provided assurance to the Member States that the finances of the Funds were in good order. That delegation was pleased to note that all the recommendations made by the External Auditor have been or were being addressed by the Director. Commenting on a specific recommendation made by the External Auditor in the 2013 Financial Statements, that delegation was

of the opinion that there should be some flexibility with respect to documenting the recruitment to vacant posts keeping in mind the size of the Secretariat and the time and effort involved in using standard forms/procedures.

5.6.9 In response to one delegation's request for information on the cost of experts used in the various incidents, the Director referred to document IOPC/OCT14/5/6/1, Annex I, Attachment II, Director's comments on the Financial Statements, which provided the required information.

1992 Fund Assembly Decision

5.6.10 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2013.

Supplementary Fund Assembly Decision

5.6.11 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2013.

1971 Fund Administrative Council Decision

5.6.12 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2013.

6 Financial policies and procedures

6.1	**Measures encouraging the submission of oil reports** **Document IOPC/OCT14/6/1**	**92A**		**SA**	**71AC**

6.1.1 The governing bodies took note of the information provided in document IOPC/OCT14/6/1 on measures to encourage timely and accurate submission of oil reports by Member States.

Online reporting system

6.1.2 It was recalled that since 2010 the Secretariat had been developing an online reporting system (ORS) to assist Member States to more efficiently submit oil data to the Secretariat. The governing bodies were informed of the latest developments in the implementation of that system and of the contact made by the Secretariat with a number of States considering registering for the system. It was noted with particular satisfaction that a significant number of States had registered and used the system for the submission of 2013 oil reports.

6.1.3 It was also noted that out of the 30 States that had opened an ORS account, the following 22 had submitted their reports online, representing 52.7% of the total volume of contributing oil reported for 2013.

Australia
Bahamas
Bulgaria
Canada
China[<2>]
Denmark
Estonia
Finland
France
Germany
India
Italy
Latvia
New Zealand
Norway
Palau
Republic of Korea
Spain
Sweden
Poland
Turkey
Vanuatu

[<2>] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

6.1.4 The governing bodies noted that, whilst some developmental issues earlier in 2014 had led to delays at times, these issues had since been resolved and the feedback from States having used the online system had been positive. It was confirmed that users were now able to experience a fully functional system, which provided access to contributors' historical tonnage and contact details and also offered the ability to make modifications when necessary, thus facilitating verification of the accuracy of oil reports.

6.1.5 The governing bodies noted that, given the number of States using the system and the fact that those States represented a significant percentage of the total tonnage submitted to the 1992 Fund, it was the intention of the Secretariat to continue the development of the ORS. It was noted that additional functionality would be introduced for States users and planning for the progressive replacement of the Secretariat's existing database with the online system would begin.

6.1.6 All Member States not yet registered with the online reporting system were urged to do so in preparation for the submission of the 2014 oil reports. It was noted that, depending on the number of States reporting through the ORS in 2015, the Director would consider the possibility of moving to a single submission system and would present a proposal to the governing bodies at a future session.

6.1.7 It was noted, however, that at this stage, the Internal Regulations on oil reporting for the 1992 Fund and Supplementary Fund remained applicable to all States, including those using the online reporting system. In that respect it was noted that all States were obliged to continue to submit to the Secretariat oil reports signed by the contributors and relevant government authority as official proof of reported volumes.

6.1.8 The Secretariat expressed its deepest appreciation to States that were involved in this project from the beginning, stating that the support and feedback provided by them had been invaluable.

Other measures encouraging the submission of oil reports: Lloyds List Intelligence

6.1.9 The Secretariat reported on the cost-benefit analysis conducted following the subscription to and use of the Lloyds List Intelligence database. It was recalled that, as recommended by the Audit Body in 2011, the Secretariat had purchased the data as part of a series of initiatives aimed at improving the accuracy and timeliness of submission of oil reports by Member States. Having purchased the data for the period 2010-2012 at a total cost of £160 000, paid over three years, the Secretariat had been comparing the data with submissions made by Member States to the Funds and had investigated discrepancies, with a particular focus on States that had outstanding oil reports.

6.1.10 It was reported that the Secretariat had identified 21 States which had appeared to show disparities between the volumes reported to the Secretariat and the volumes recorded by Lloyds. It was noted that having compared the Fund's and Lloyds' data, carried out additional research when possible and having provided the Audit Body with the results of that work, the Secretariat had contacted the relevant Government authorities in order to assist the identified States in improving the accuracy and timeliness of their submission of oil reports. It was noted that the information had been offered as a form of assistance to help States fulfil their obligations and had always been received positively by those States.

6.1.11 The governing bodies noted the results of the work described above, as set out in paragraph 4.10 of document IOPC/OCT14/6/1. In particular, the governing bodies noted that five of the States contacted had since provided all of their outstanding oil reports, that one State had provided reports for a contributor not previously identified and that the total combined volume of reported oil from those States, for all the relevant years, was more than 36 million tonnes. It was noted that the invoiced amount (up to 2012) for that combined volume was some £300 000, representing about twice as much as the cost incurred (£160 000), and that approximately £100 000 had already been paid by contributors.

6.1.12 The governing bodies noted that in the view of the Secretariat, the use of the Lloyds' data had been very positive and had substantially improved the Secretariat's ability to monitor the accuracy of oil reports and their timely submission. It was noted, however, that, having completed this exercise, both the Secretariat and the Audit Body considered that it was not necessary to continue purchasing data from Lloyds for the time being, since States facing the most difficulties in submitting accurate and timely oil reports had been engaged with, mostly with positive results. It was noted that other States that still had pending issues would be contacted in due course and offered assistance as required, but that the purchase of Lloyds data for subsequent years was unlikely to provide any further benefit. Instead, the Secretariat suggested that consideration be given to purchasing further data in a few years' time in order to carry out spot checks of the oil reporting accuracy, in particular if the membership of the 1992 Fund were to grow significantly in the coming years.

Debate

6.1.13 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their gratitude to the Member States who had participated in the trial of the oil reporting system and to those who had submitted their 2013 oil reports online. They also congratulated the Secretariat for doing an excellent work in facilitating the timely and accurate submission of oil reports.

6.1.14 One delegation welcomed the positive results from the acquisition of the Lloyds data and emphasised that the accurate and timely submission of oil reports was the most essential cornerstone of the compensation regime and the primary obligation of States and that, as such, it had to be enforced in all Member States in order to guarantee fairness among all contributors.

6.1.15 Some delegations expressed the view that the Secretariat should plan to purchase further data from Lloyds in order to carry out spot checks in the future, which would maintain its capability to regularly check the accuracy of oil reports from any Member State.

6.1.16 One delegation expressed its satisfaction with the online reporting system and was keen to see further development, including the introduction of a paperless process and the possibility for contributors to submit their reports online.

6.2	**Evaluation of the effectiveness of policy initiatives on outstanding oil reports and outstanding contributions Document IOPC/OCT14/6/2**	**92A**		**SA**	

6.2.1 The Chairman of the Audit Body, Mr Emile Di Sanza, introduced document IOPC/OCT14/6/2, submitted by the Audit Body, which presented an evaluation by the Audit Body of two policy measures taken by the IOPC Funds' governing bodies, namely the Policy on Outstanding Oil Reports and Deferment of Compensation Payments (adopted by the governing bodies in October 2008) and Resolution N°11 – Measures in Respect of Contributions (adopted in October 2009). Mr Di Sanza recalled that, as Member States would be aware, this document constituted the Audit Body's second evaluation of the policy measures, the first having been presented to the governing bodies at their October 2011 sessions.

6.2.2 Mr Di Sanza reported that two noteworthy developments had occurred since the 2011 evaluation which had influenced the Audit Body's deliberations. He noted that the first development was the substantial work of the Secretariat involving the use of the Lloyds' List Intelligence database to improve the submission and accuracy of oil reports. The second development was the legal opinion commissioned by the Director and prepared by Professor Dan Sarooshi in 2013 dealing with the implementation of the Conventions into national law. As a consequence, the Audit Body's document examined the effectiveness of the policy measures as well as the measures in light of the principles of State responsibility.

6.2.3 Mr Di Sanza noted that section 3 of the document presented an analysis with regard to the non-submission of oil reports and outstanding contributions. Mr Di Sanza also noted that the Audit Body concluded in section 3.4 that both measures remained important expressions of the obligations of

Member States and oil receivers and that there appeared to be no compelling reasons for repealing the measures although possible amendments might be warranted. He noted that, essentially, the question which the Audit Body sought to address in the remainder of the document (sections 4 and 5) was whether any other considerations warranted amendments to the measures.

6.2.4 Mr Di Sanza drew the attention of the governing bodies to section 4.2 of the document which examined the policy decision on outstanding oil reports and outlined why the IOPC Funds might wish to consider supplementary measures, which might include seeking compensation for damages caused by non-compliance with reporting obligations.

6.2.5 He also drew the attention of the governing bodies to section 4.3 which examined two key elements in respect of non-payment of contributions, namely the failure or unwillingness of contributors to pay amounts levied and the failure of a Contracting State to comply with its treaty obligations. In the Audit Body's view, these distinct elements required different considerations as to possible actions as elaborated on in the document.

6.2.6 Mr Di Sanza also noted section 5.1 which examined the issues underlying the possibility of charging interest from the date the levy was due for payment as a sanction for contributions in arrears and section 5.2 where the case was made that, while punitive measures, as discussed in the document, might be justified in cases of non-compliance, proactive or preventive measures such as those undertaken by the Secretariat might also be effective.

6.2.7 On the basis of the policy options and considerations raised in the document, the governing bodies noted that the Audit Body had submitted a series of recommendations which were presented in detail in section 6. They noted that, in essence, the Audit Body had recommended merging the two measures into a single instrument and expanding the Policy on Outstanding Oil Reports and Deferment of Compensation to cover outstanding contributions.

Debate

6.2.8 A number of delegations expressed their support for the recommendations of the Audit Body to maintain the Policy on Outstanding Oil Reports and Deferment of Compensation Payments and to develop a similar policy to be applied for cases of outstanding contributions.

6.2.9 A number of delegations also agreed that the draft of a new resolution, incorporating the existing Resolution N°11, the issue of outstanding contributions and the application of the principles of State responsibility for internationally wrongful acts, be prepared for consideration by the governing bodies.

6.2.10 One delegation, while expressing its support in principle for a new resolution, indicated that the policy on outstanding oil reports could be improved to include references to the issue of accuracy of oil reports and that there would be a need to look into the range of countermeasures that could be developed to reinforce the impact of that policy.

6.2.11 One delegation highlighted that special consideration should be given to the issue of deferment of compensation in case of outstanding contributions since the primary obligation to pay contributions lies with the contributor and not the State. Therefore it was suggested that this issue should be further studied before such a measure is taken.

6.2.12 One delegation indicated that since the Audit Body document was making reference to the potential breach of treaty obligations in certain situations, the wording of a new draft policy should be carefully looked into.

6.2.13 One delegation added that in addition to a stronger policy on outstanding oil reports and contributions, the possibility to develop further the capability of the Secretariat to deliver capacity-building activities in the areas of implementation, contributions and reporting could be options to consider as well.

1992 Fund Assembly and Supplementary Fund Assembly Decisions

6.2.14 The 1992 Fund Assembly and Supplementary Fund Assembly decided:

(a) that the Policy on Outstanding Oil Reports and Deferment of Compensation Payments be maintained in principle;

(b) that a similar policy should apply in cases of outstanding contributions; and

(c) that Resolution N°11 be recast into a new Resolution such that it:

(i) noted the legal opinion on obligations of Member States under the principles of State responsibility for internationally wrongful acts;
(ii) incorporated the Policy on Outstanding Oil Reports and Deferment of Compensation Payments;
(iii) expressed the Member States' intention to seek compensation, if the situation so required, under the principles of State responsibility for internationally wrongful acts, in cases of outstanding oil reports and failure by the Funds to obtain contributions due to improper implementation of Article 13.2 of the 1992 Fund Convention and Article 12.1 of the Supplementary Fund Protocol;
(iv) took into account any expansion of the policy decision to cover outstanding contributions (item b above);
(v) retained/reiterated the current provisions of Resolution N°11 in respect of the obligations of receivers of contributing oil;
(vi) retained/reiterated obligations of Member States under the Fund Conventions;
(vii) reiterated/expanded the request to Member States to report on the means by which they have implemented their obligations under the Fund Conventions; and
(viii) directed the Audit Body to monitor the effectiveness of new measures once implemented.

6.3	**Appointment of the External Auditor** **Documents IOPC/OCT14/6/3 and IOPC/OCT14/6/3/1**	**92A**		**SA**	**71AC**

6.3.1 DOCUMENT IOPC/OCT14/6/3, SUBMITTED BY THE AUDIT BODY

6.3.2 The governing bodies took note of document IOPC/OCT14/6/3, submitted 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.

6.3.3 Mr Knight explained that this document dealt with the process to be adopted for the appointment of the IOPC Funds' External Auditor and contained a number of recommendations in the light of the discussions of the governing bodies during their May 2014 sessions.

6.3.4 He recalled that during those sessions, the Audit Body had reported in document IOPC/MAY14/5/1 that no valid tenders had been received in response to the invitation from the Director for 1992 Fund Member States to submit nominations for the position of External Auditor, commencing with the 2015 financial year. Mr Knight noted that, as a result, the Audit Body had made a number of recommendations as to the way forward.

6.3.5 The governing bodies noted that, with respect to the timescales involved in a tender process, the Audit Body was recommending that the tenure of the current External Auditor (the Comptroller and Auditor General of the United Kingdom, National Audit Office (NAO)) be extended by one year to cover the audit of the IOPC Funds' Financial Statements for 2015.

6.3.6 They noted the other proposals put forward by the Audit Body concerning the conduct of the tender process to cover the four financial years 2016-2019 (or other such period to be decided by the governing bodies).

6.3.7 The governing bodies noted that the Audit Body was recommending that nominations of Auditors-General (or equivalent public body) be again sought from 1992 Fund Member States but that, in addition and having regard to the lack of response from the previous two tender processes, commercial firms with the requisite capabilities could also be nominated by 1992 Fund Member States. Furthermore, in order to ensure that adequate choice was possible, the Audit Body was recommending that commercial firms with appropriate international representation and with the requisite capabilities be invited by the Director on the recommendation of the Audit Body. It was noted that these firms were listed in paragraph 3.6 of the Audit Body's document. It was also noted that the inclusion of commercial firms in the tender process would necessitate a change to Financial Regulation 14.1 and that a proposal for an amended text was set out in document IOPC/OCT14/6/3/1, submitted by the Secretariat.

6.3.8 Mr Knight noted that, during discussion of the appointment of the External Auditor at the May 2014 sessions, concern had been expressed by some Member States as to the possible cost implications of appointing a commercial firm as External Auditor. Mr Knight said that the Audit Body had amended the selection criteria accordingly to ensure that value for money was given full consideration and the selection criteria were set out in Annex I of the Audit Body's document.

6.3.9 Mr Knight also drew the attention of the governing bodies to the fact that, were the 1971 Fund to be dissolved and its legal personality cease to exist with effect from the expiry of the last day of the financial year 2014 (31 December 2014), the External Auditor to be elected in October 2015 would not have to audit the Financial Statements of the 1971 Fund as this Fund would no longer exist. The audit of the final Financial Statements for the 1971 Fund, ie those relating to 2014, would have been undertaken by the current External Auditor.

DOCUMENT IOPC/OCT14/6/3/1, SUBMITTED BY THE SECRETARIAT

6.3.10 The governing bodies considered an amendment to Financial Regulation 14.1 of the 1992 Fund, the Supplementary Fund and the 1971 Fund to allow commercial firms to act as External Auditor to the IOPC Funds as contained in the Annex to document IOPC/OCT14/6/3/1.

Debate

6.3.11 One delegation expressed its concern with respect to the Audit Body's proposal to allow commercial firms with the requisite capabilities to tender as, in its view, these firms might not have the impartiality and openness that a State Auditor-General would have. That delegation also expressed its concern that commercial firms might not provide value for money. In that delegation's view, it was unlikely that no nominations would be received from Auditors-General of 1992 Fund Member States in response to a future invitation to tender. Some of these concerns were shared by another delegation, particularly with respect to costs if the commercial firm did not have offices in London.

6.3.12 The Chairman reminded Member States that the two previous tenders had not succeeded in generating any interest from the Auditors-General of 1992 Fund Member States which was why it had been proposed at the May 2014 session of the 1992 Fund Assembly that Financial Regulation 14.1 should be amended to allow for the appointment of a commercial audit firm. He also reminded Member States that the recommendation was that the Audit Body be instructed to conduct the tender process and that cost implications would be part of the tender evaluation.

6.3.13 At the request of the Chairman, Mr Knight intervened to provide reassurance to the governing bodies that major international commercial firms were used to audit international organisations. He also noted that the Audit Body had indicated in its document the six commercial firms that it had identified from the top ten largest commercial firms who would be invited by the Director to submit tenders for the position of External Auditor. All six of them had representation in at least 100 countries and particularly in London which would alleviate concerns as to cost implications.

6.3.14 The majority of the delegations that spoke supported the Audit Body's recommendations and the Director's proposal to adopt an amendment to Financial Regulation 14.1 of the 1992 Fund, the Supplementary Fund and the 1971 Fund to allow commercial firms to act as External Auditor to the IOPC Funds.

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

6.3.15 The 1992 Fund Assembly, Supplementary Fund Assembly and 1971 Fund Administrative Council decided:

(i) that the Comptroller and Auditor-General of the United Kingdom (National Audit Office) should be appointed to serve as External Auditor of the IOPC Funds for an additional year, ie to audit the Financial Statements for the year 2015 and present the Report on the Financial Statements to the governing bodies in October 2016;

(ii) that the Auditor-General (or officer holding the equivalent title) of 1992 Fund Member States could be nominated by 1992 Fund Member States to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(iii) that, in addition, commercial firms with the requisite capabilities could also be nominated by 1992 Fund Member States to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(iv) that the commercial firms with international representation and the requisite capabilities identified by the Audit Body could also be invited by the Director to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(v) in accordance with its Composition and Mandate, to instruct the Audit Body to conduct a competitive tender process for the selection of the External Auditor to conduct the audits of the Financial Statements for 2016-2019 (or for any such other period as may be decided by the governing bodies); and

(vi) to approve the proposed amendment to Financial Regulation 14.1 of the 1992 Fund, the Supplementary Fund and the 1971 Fund to allow for the appointment of commercial firms as set out at Annex III to this Record of Decisions.

6.4	**Election of members of the joint Audit Body** **Document IOPC/OCT14/6/4/Rev.1**	**92A**		**SA**	**71AC**

6.4.1 The governing bodies took note of the information contained in document IOPC/OCT14/6/4/Rev.1. It was noted that the term of office of the present members of the joint Audit Body of the three Funds would expire at the October 2014 sessions of the governing bodies and that a new joint Audit Body would be elected. It was further noted that, in accordance with the Composition and Mandate of the joint Audit Body which was adopted in October 2008, the Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: six named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, nominated by the Chairman of the 1992 Fund Assembly.

6.4.2 The 1992 Fund Assembly noted that, in response to a circular from the Director calling for nominations, seven nominations had been received from 1992 Fund Member States by the deadline of 14 March 2014:

Mr John Gillies	Nominated by Australia (for a second term)
Mr Eugène Ngango Ebandjo	Nominated by Cameroon
Mr Jerry Rysanek	Nominated by Canada
Vice-Admiral (Rt) Giancarlo Olimbo	Nominated by Italy (for a second term)
Mr Makoto Harunari	Nominated by Japan
Mr José Luis Herrera Vaca	Nominated by Mexico
Mr Håkan Rustand	Nominated by Sweden

6.4.3 The Assembly also noted that the Chairman of the 1992 Fund Assembly had recommended that Mr Michael Knight, the one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, be re-appointed for a second term of three years.

6.4.4 The Assembly noted that the Chairman of the Audit Body would be elected on the proposal of the Chairman of the 1992 Fund Assembly, in consultation with the Chairmen of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, from among the six members elected.

6.4.5 The Assembly also noted the ballot procedures proposed by the Director:

(a) Under Rule 38 of the 1992 Fund Assembly's Rules of Procedure, the Assembly shall, on the proposal of the Chairman, appoint two scrutineers from 1992 Fund Member States present at the meeting, who shall scrutinise the votes cast;

(b) Election of members of the Audit Body will be by secret ballot;

(c) Only 1992 Fund Member States whose credentials are in order at the time of the vote will be entitled to participate in the vote;

(d) Before holding the ballot, each Member State present whose credentials are in order shall receive a list of the names of all candidates standing in that ballot in alphabetical order;

(e) In each ballot Member States whose credentials are in order shall indicate the candidate(s) it supports by ticking the relevant box. If a list indicates support for six or less candidates, the vote is valid. If a list indicates support for more than six candidates, the vote is invalid;

(f) The six candidates who obtain the most votes shall be declared appointed as members of the Audit Body. If two or more candidates obtain the same number of votes for the last seat or seats to be filled, there shall be a further ballot among these candidates only. Should the votes again be divided equally, the Chairman shall draw by lot the name of the candidate to be eliminated in the subsequent ballot.

1992 Fund Assembly Decisions

6.4.6 The Assembly adopted the proposed ballot procedure as set out in paragraph 6.4.5 above.

6.4.7 The Assembly elected Ms Stacey Fraser (New Zealand) and Captain Gabriel González (Argentina) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.

6.4.8 After a secret ballot held in accordance with the Rules of Procedure of the Assembly (see Rules 32, 38 and 40), the Assembly elected the following members of the Audit Body for a period of three years:

Mr John Gillies (Australia) (for a second three-year term)
Mr Makoto Harunari (Japan)
Mr José Luis Herrera Vaca (Mexico)
Mr Eugène Ngango Ebandjo (Cameroon)
Vice-Admiral (Rt) Giancarlo Olimbo (Italy) (for a second three-year term)
Mr Jerry Rysanek (Canada)

6.4.9 The Assembly re-appointed Mr Michael Knight as the member of the Audit Body not related to the Organisations ('external expert') for a second three-year term.

6.4.10 On the proposal of the Chairman of the 1992 Fund Assembly, in consultation with the Chairmen of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, the Assembly elected Mr Jerry Rysanek as Chairman of the Audit Body for the three-year term.

Supplementary Fund Assembly and 1971 Fund Administrative Council

6.4.11 The Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the decisions taken by the 1992 Fund Assembly.

6.4.12 Mr Rysanek took the floor to express his gratitude to the Government of Canada for having put forward his nomination as a member of the Audit Body and to the governing bodies and their Chairmen for the confidence they had placed in him in electing him first to the Audit Body and then as its Chairman.

6.4.13 The Assembly expressed its gratitude to the 1992 Fund Member States who had nominated candidates as well as to the persons nominated for their willingness to serve on the Audit Body and to the scrutineers for their assistance in the voting process.

6.4.14 The governing bodies expressed their gratitude to Mr Emile Di Sanza (Canada), Mr Thomas Kaevergaard (Sweden) and Professor Seiichi Ochiai (Japan), the out-going members, for their valuable contribution to the work of the Audit Body.

6.5	**Appointment of members of the joint Investment Advisory Body** **Document IOPC/OCT14/6/5**	**92A**		**SA**	**71AC**

6.5.1 The governing bodies took note of the information contained in document IOPC/OCT14/6/5.

1992 Fund Assembly Decision

6.5.2 The 1992 Fund Assembly reappointed Mr Alan Moore, Mr Brian Turner and Mr Simon Whitney-Long as members of the joint Investment Advisory Body for a term of three years.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

7 Secretariat and administrative matters

7.1	**Secretariat matters** **Document IOPC/OCT14/7/1**	**92A**		**SA**	**71AC**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT14/7/1 regarding the operation of the Secretariat.

7.1.2 The governing bodies noted that Mrs Liliana Monsalve had been appointed to the post of Head of the Claims Department in March 2014, Ms Melina Jeannottat had been appointed to the position of Translation Administrator (French) in February 2014 and Mrs Marina Ogonyan had been appointed to the position of Finance Assistant in July 2014.

7.1.3 It was noted that the posts of Human Resources Manager, External Relations Officer and External Relations Administrator had become vacant since the October 2013 sessions and that the post of Administrative Assistant would become vacant effective 29 October 2014.

Separation – Staff Regulation 20

7.1.4 The governing bodies noted that IMO had amended its Staff Rules in 2013 to raise the mandatory age of separation to age 65 only for new staff members if appointed on or after 1 January 2014. The governing bodies noted the Director's recommendation that the corresponding change be made to the age of separation for new staff members of the 1992 Fund if appointed on or after 1 January 2014, which would require a change to Staff Regulation 20 (Separation).

Investment of the Provident Fund

7.1.5 The governing bodies recalled that, in accordance with Staff Regulation 26 (b), the 1992 Fund operates a Staff Provident Fund in lieu of a pension scheme. The governing bodies noted that, given the current and foreseeable climate of low interest rates and following a review by the joint Investment Advisory Body (IAB), the Director is in favour of introducing an additional scheme that would not rely on cash alone. Such a scheme would be totally voluntary for staff members to participate in and any fees payable for managing the additional scheme would be paid by those participating in the scheme. It was noted that an Administrative Instruction would be issued to ensure the smooth operation of this scheme but there would be no requirement to amend Staff Rule VIII.5 to include the additional scheme. The governing bodies noted that, in accordance with the 1992 Fund's Financial Regulations, the Staff Provident Fund is audited by the External Auditor.

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 for outstanding performance in their current role. It was noted that in 2014 two staff members, one in the Professional category and one in the General Service category, had received the award and the total amount spent had been £5 151.

Job Description Review

7.1.7 The governing bodies noted that the Director had undertaken a cross-organisational review to align job descriptions with current principles applied within the UN system, consistent across the organisation and written in a standard format for all staff members. It was noted that the Director had engaged a UN experienced consultant to carry out the review and that a report containing the consultant's findings and recommendations would be considered by the Director and the other members of the Management Team before the end of 2014.

1992 Fund Assembly Decisions

7.1.8 The 1992 Fund Assembly decided to amend Staff Regulation 20 (Separation) in respect of the retirement age and noted:

(a) an amendment to Annex C to the 1992 Fund's Staff Rules;
(b) an amendment to Staff Rule V.2 (Special Leave) relating to adoption leave; and
(c) the Director's proposal to introduce an additional Provident Fund scheme that would not rely on cash alone.

7.2	**Relocation of the IOPC Funds' offices** **Document IOPC/OCT14/7/2**	**92A**			

7.2.1 The 1992 Fund Assembly recalled that the Director had been informed by the landlord of Portland House in January 2014 that the proposed redevelopment of Portland House had been pushed back to 2016.

7.2.2 The Assembly noted that, following successful negotiations, a short-term extension to the occupancy of the 23rd floor of Portland House had been agreed on the terms set out in document IOPC/OCT14/7/2. It noted in particular that the new lease would commence in March 2015 and expire in March 2018 and was subject to a lease break clause whereby the landlord and tenant would be entitled to terminate the lease from June 2016.

7.2.3 The Assembly noted the Director's intention to avail himself of the break clause in the new lease to relocate the IOPC Funds' Secretariat by June 2016 rather than wait on the six month notice break that might be invoked by the landlord. The Assembly also noted that the informed estimate of the costs that would arise from a relocation of the IOPC Funds' Secretariat provided by the Fund's consultants was some £850 000.

7.2.4 The Assembly noted the Director's proposal to spread the cost of relocation by making a provision for 2014-2015. It recalled that it had approved the budget appropriation for relocation costs of £250 000 for 2014 at its October 2013 session and noted that a further budget appropriation of £250 0000 for 2015 had been proposed (see document IOPC/OCT14/9/2/1). It also noted that the costs incurred as at the October 2014 sessions of the governing bodies in respect of relocation totalled some £10 000 with a further £40 000 estimated to be spent in 2014 on consultancy and legal fees (for the negotiation of a new lease extension).

7.2.5 It was noted that by the October 2015 sessions of the governing bodies possible potential office spaces were likely to have been identified, thereby providing a more definitive costing for relocation.

7.2.6 One delegation reminded the Assembly that it had requested detailed information on the costs in respect of relocation at a previous session and expressed its appreciation to the Secretariat for the information provided. That delegation stated, however, that it still had some outstanding questions which it would raise at a future session.

7.3	**Changes to Internal and Financial Regulations** **Document IOPC/OCT14/7/3**	**92A**		**SA**	**71AC**

7.3.1 The governing bodies took note of document IOPC/OCT14/7/3 regarding amendments to their respective Financial Regulations and Internal Regulations. It was noted that the proposed amendments were required in order to take into account changes to the delegation of authority in the absence of the Director as a result of the appointment of a new Head of the Claims Department since the October 2013 sessions of the governing bodies.

1992 Fund Assembly Decision

7.3.2 The 1992 Fund Assembly decided to amend Internal Regulations 7.13, 7.14 and 12 and Financial Regulation 9.2 of the 1992 Fund. The amended Regulations are set out at Annex IV, pages 1 and 2.

Supplementary Fund Assembly Decision

7.3.3 The Supplementary Fund Assembly decided to amend Internal Regulations 7.10, 7.11 and 12 and Financial Regulation 9.2 of the Supplementary Fund. The amended Regulations are set out at Annex IV, pages 3 and 4.

1971 Fund Administrative Council Decision

7.3.4 The 1971 Fund Administrative Council decided to amend Internal Regulations 7.13, 7.14 and 12*bis* and Financial Regulation 9.2 of the 1971 Fund. The amended Regulations are set out at Annex IV, pages 5 and 6.

7.4	**Information services** **Document IOPC/OCT14/7/4**	**92A**		**SA**	**71AC**

7.4.1 The governing bodies noted the information contained in document IOPC/OCT14/7/4 in respect of the IOPC Funds website and publications, including the latest statistics relating to the usage of the website, which were considered very positive. The governing bodies were informed that a timeline of key events and the detailed country profiles, which had been presented at the May 2014 sessions, had both been added to the site in October 2014.

7.4.2 States were invited to submit copies of relevant national legislation to the Secretariat for inclusion in the country profiles in the form of a link to the relevant pages of a government website or in the form of a PDF. States were urged to check the information contained in their profile and to inform the Secretariat of any required update or amendment.

7.4.3 The governing bodies noted the seven publications which had been issued since their October 2013 sessions and also noted that three further publications were expected to be submitted in draft form for consideration at their spring 2015 sessions, two of which would complete the Claims Information Pack published in March 2014. Furthermore, it was noted that whilst the Secretariat would continue to publish a report of the activities of the IOPC Funds during the previous calendar year in the form of the main Annual Report, the Director was examining the need for an annual Incident Report in its current format from 2014.

Debate

7.4.4 A number of delegations congratulated the Secretariat on the comprehensive and user-friendly nature of the website. One delegation suggested that, whilst the separate HNS website was appreciated, consideration should be given to making further reference to the 1992 Fund's work on HNS on the main IOPC Funds' website. Other delegations spoke in support of that suggestion.

7.4.5 Two delegations supported the suggestion by the Director that the publication relating to the incidents involving the IOPC Funds might no longer be required in printed format, given that the information was already available on the website. One of those delegations, stated, however, that should the Incident Report no longer be printed, the Secretariat should ensure that the website provided the same level of information as contained in the current report, in particular the summary tables of past incidents, and that 'update record' should be included so that any revision be easily identifiable.

8 Treaty matters

8.1	**Status of the 1992 Fund Convention and the Supplementary Fund Protocol** **Document IOPC/OCT14/8/1**	**92A**		**SA**	

8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information in document IOPC/OCT14/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.

8.1.2 The governing bodies noted that as at the October 2014 sessions of the governing bodies there were 113 Member States of the 1992 Fund and that on 4 April 2015 one further State (Nicaragua) would become a Member, bringing the number of 1992 Fund Member States to 114. It was also noted that there were 31 Member States of the Supplementary Fund. The Republic of Congo was the 31st State to join the Supplementary Fund on 19 August 2014.

8.2	**Winding up of the 1971 Fund** **Documents IOPC/OCT14/8/2, IOPC/OCT14/8/2/1, IOPC/OCT14/8/2/2, IOPC/OCT14/8/2/3 and IOPC/OCT14/8/2/4**				**71AC**

8.2.1 The 1971 Fund Administrative Council noted that five documents had been submitted under this agenda item: documents IOPC/OCT14/8/2 and IOPC/OCT14/8/2/1 submitted by the Secretariat, document IOPC/OCT14/8/2/2 submitted by the International Chamber of Shipping (ICS), BIMCO and INTERTANKO, document IOPC/OCT14/8/2/3 submitted by the International Group of P&I Associations and document IOPC/OCT14/8/2/4 submitted by Côte d'Ivoire, Greece, Liberia, the Marshall Islands, Nigeria, Panama, the United Kingdom and Vanuatu.

DOCUMENT IOPC/OCT14/8/2, SUBMITTED BY THE SECRETARIAT

8.2.2 The 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 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.

8.2.3 The Administrative Council recalled that, at its 32nd session held in May 2014, the Administrative Council had confirmed the decision which it had taken in October 2013 to dissolve the 1971 Fund at its October 2014 session. At that session, the 1971 Fund Administrative Council had adopted Resolution N°17 on the Preparation for the Dissolution of the 1971 Fund and had also considered the draft October 2014 Resolution on the Dissolution of the 1971 Fund and had instructed the Director to submit the new draft to the October 2014 session of the 1971 Fund Administrative Council.

8.2.4 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund, as set out in sections 2-5 of document IOPC/OCT14/8/2.

8.2.5 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 and that the outcome of these discussions and any decisions taken had been reported under the agenda item 'Incidents involving the IOPC Funds'.

8.2.6 With respect to outstanding contributions to the 1971 Fund, the Administrative Council recalled that at a meeting in February 2014 with the Permanent Delegation of the Russian Federation to IMO, the Director had raised the concern expressed by the 1971 Fund Administrative Council in respect of the contributions of £43 000 due from contributors in the Russian Federation and which the 1971 Fund

had been trying to recover from the contributors through legal proceedings before the courts in the Russian Federation but without success. It also recalled that in March 2014, the Director had met with the Deputy Director of the Ministry of Transport of the Russian Federation and requested his help in resolving this issue. At the meeting, the Deputy Director stated that he would do his utmost to resolve this issue and would revert before the May 2014 sessions of the governing bodies. However, the Administrative Council had noted at its May 2014 session that unfortunately no communication had been received from the Ministry of Transport of the Russian Federation. The Administrative Council noted that subsequent efforts by the Director to enlist the help of the Russian authorities to recover these contributions had failed.

8.2.7 The Administrative Council recalled that at its May 2014 session the Administrative Council had noted that if the draft October 2014 Resolution were adopted by the 1971 Fund Administrative Council at its October 2014 session, with effect from the expiry of the last day of the financial year 2014 (31 December 2014) the 1971 Fund would be dissolved and its legal personality would cease to exist. It had also noted that the 1971 Fund Administrative Council, which in the past had approved the Financial Statements, would no longer exist as of 1 January 2015. The Administrative Council had taken the view that the Secretary-General of IMO, in his capacity as depositary of the 1971 Fund Convention, should be requested to convene a meeting of all former Member States of the 1971 Fund to approve the Financial Statements for the 2014 financial year. The Administrative Council noted that the Director had written to the Secretary-General of IMO in June 2014 and had received his confirmation that he was prepared, in his capacity as depositary of the 1971 Fund Convention, to convene a meeting in 2015 of all former Member States of the 1971 Fund to approve the Financial Statements for 2014, if the 1971 Fund Administrative Council so decided, on the understanding that this would entail no financial implications for IMO. The Director had subsequently informed the Secretary-General that an appropriate budget allocation would be put forward for approval by the 1971 Fund Administrative Council at its October 2014 session. The Administrative Council noted that the Director had been informed by IMO that time would be found after the April 2015 session of the IMO Legal Committee for such a meeting.

8.2.8 The Administrative Council noted that, as instructed by the Administrative Council at its May 2014 session, the Director had had meetings with the Foreign and Commonwealth Office (FCO) and Department for Transport to discuss the implications on the 1992 Fund and the Supplementary Fund of the judgment on the freezing order. It noted that the FCO had reiterated its understanding that the Order in Council had fully given effect to the Headquarters Agreements and had indicated its intention to intervene in the 1971 Fund's appeal against the freezing order on the question of the interpretation of statutory provisions regarding the UK's implementation of the Headquarters Agreement. The Administrative Council also noted that in early September 2014 the FCO had intervened in the 1971 Fund's appeal against the freezing order.

8.2.9 The Administrative Council also noted that the Director had requested legal advice from the legal team advising the 1971 Fund on the *Nissos Amorgos* litigation on two important issues, namely whether English courts could prevent the dissolution of the 1971 Fund and whether they could order the Administrative Council to levy contributions.

8.2.10 The Administrative Council noted that, in summary, it was the Director's understanding that:

(i) The 1971 Fund is an international organisation that possesses international legal personality. The 1971 Fund continued to possess a limited degree of international legal personality by operation of Article 44 even after the 1971 Fund Convention ceased to be in force from 24 May 2002.

(ii) The decision to dissolve the remaining international legal personality of the 1971 Fund is a decision that is to be made solely by the Administrative Council, the plenary organ of the 1971 Fund, in accordance with the procedures adopted by itself, ie by majority vote of all States, present and voting, having at any time been Members of the 1971 Fund.

(iii) An English court cannot seek to prevent the Administrative Council from taking the decision to dissolve the 1971 Fund at its meeting in October 2014 since the question of dissolution of an international organisation is a non-justiciable issue under English law.

(iv) An English court cannot require the Administrative Council to seek financial contributions from former contributors pursuant to Article 44(1)(b) in order to satisfy any potential liability the 1971 Fund may have.

8.2.11 The Administrative Council noted that it was the Director's understanding that although there were legal proceedings pending in the High Court in London, English courts could not prevent the 1971 Fund from dissolving itself if the 1971 Fund Administrative Council decided to do so and that, from the legal advice he had received, the decision to dissolve the 1971 Fund was a decision to be made solely by the 1971 Fund Administrative Council.

8.2.12 The Administrative Council also noted that the Director was also of the view that the Administrative Council had taken clear decisions at its October 2013 and May 2014 sessions on the pending incidents and that it had decided that there were no longer any incidents in respect of which the 1971 Fund should pay compensation. The legal action brought by the Gard Club against the 1971 Fund was in respect of a claim that the 1971 Fund Administrative Council had repeatedly decided to be inadmissible and in respect of which it had instructed the Director not to pay compensation. He was also of the view that there was no agreement as alleged by the Gard Club to pay any amount in excess of the 1969 CLC limit, except for the reconciliation of joint costs provided in the Memorandum of Understanding between the International Group of P&I Clubs and the 1971 Fund.

8.2.13 The Administrative Council further noted that the Director was of the view that postponing the dissolution of the 1971 Fund would not improve the situation of the 1971 Fund and that he was therefore recommending the 1971 Fund Administrative Council to decide to dissolve the 1971 Fund with effect from 31 December 2014 by adopting a Resolution to that effect.

DOCUMENT IOPC/OCT14/8/2/1, SUBMITTED BY THE SECRETARIAT

8.2.14 The Administrative Council took note of the financial situation of the 1971 Fund as at 5 September 2014 as set out in document IOPC/OCT14/8/2/1. It noted that the estimated balance that would be available to the 1971 Fund at 31 December 2014 was some £1.87 million of which some £900 000 was in the General Fund and the remaining £970 000 was in the *Nissos Amorgos* Major Claims Fund.

8.2.15 With respect to the expenses to be incurred under the General Fund, the Administrative Council recalled that, at its October 2013 session, the governing bodies had decided on the management fee of £240 000 for the calendar year 2014. It noted that, in document IOPC/OCT14/9/1 (Supplementary Budget for 2014), the Director had proposed an additional fee of £240 000 in recognition of the substantial additional time spent by the Director and Secretariat staff in matters dealing with the winding up of the 1971 Fund and in respect of defending the 1971 Fund against legal action brought by the Gard P&I Club.

8.2.16 The Administrative Council also noted that the other payments payable from the General Fund included the external audit fees for both the 2013 and 2014 Financial Statements; costs of transferring the 1971 Fund archives into electronic form; the cost payable to IMO for holding a one-day meeting of former 1971 Fund Member States to approve the final Financial Statements of the 1971 Fund; and other costs such as legal and travel costs associated with the winding up of the 1971 Fund.

8.2.17 With respect to contributors in arrears, the Administrative Council noted that, as mentioned in paragraph 8.2.6 above, two Russian contributors were in arrears for some £43 000 and that as at the October 2014 sessions of the governing bodies, attempts to resolve this issue either in the national courts or with the Russian authorities had failed.

8.2.18 With respect to contributors with credit balances, the Administrative Council noted that an amount of some £33 700 was due to contributors and was held in the "contributors' account" for ten contributors. It noted that these funds would need to be reimbursed to the contributors from the General Fund. However, should the freezing order remain in force by the time of the October 2014 session of the Administrative Council, the Administrative Council would have to decide in October 2014 how the remaining assets of the 1971 Fund should be dealt with.

8.2.19 The Administrative Council noted that it was the Director's view that, in light of pending litigation in respect of the *Nissos Amorgos* incident and the risk that the 1971 Fund might have to defend legal proceedings against it in the United Kingdom in respect of the *Plate Princess* incident, the Director had estimated that the amount available in the 1971 Fund would last until the spring of 2015.

8.2.20 It further noted that the Director was of the view that the 1971 Fund had met its obligations under the 1971 Fund Convention and that the pending litigation was in respect of claims which were inadmissible for compensation.

8.2.21 It also noted that the Director was therefore recommending that the 1971 Fund Administrative Council decide to dissolve the 1971 Fund with effect from 31 December 2014 since, were the 1971 Fund to remain in existence after the spring of 2015, the Administrative Council would have to levy contributions to fund the legal proceedings in respect of claims which were inadmissible or allow the 1971 Fund to become insolvent which would not be desirable.

8.2.22 Furthermore, the Director also stated that contrary to the recommendation in document IOPC/OCT14/8/2 that the 1971 Fund pay the Gard Club the amount of US$344 090 in settlement of the 1971 Fund's contribution to the joint costs incurred in respect of the *Nissos Amorgos* incident, in light of the positive court judgment rendered on 17 October 2014 by Justice Hamblen, the 1971 Fund could expect to recover a proportion of its legal costs, and consequently the Director proposed that the sum of US$344 090 be off set against the sums owed by Gard Club by way of legal costs.

8.2.23 The Administrative Council also noted that the Director was further recommending that, since the freezing order imposed by the English Court on the 1971 Fund was likely to remain in force until the end of 2014, the Administrative Council decide that any remaining balances belonging to the 1971 Fund were not returned to contributors but any balance, if this was appropriate, be deposited in Court, stating that it was the express will of the 1971 Fund Administrative Council that it be distributed equally amongst the World Maritime University, the International Maritime Law Institute and the International Maritime Safety, Security and Environment Academy.

8.2.24 Following the Director's submissions, at the invitation of the Chairman of the Administrative Council, Dr Balkin, the former Assistant Secretary General and Director of Legal Affairs and External Relations Division of the IMO, in her capacity as one of the Fund's legal advisers, stated that, although this was a difficult and delicate issue, it was very important that the relationship between the IOPC Funds and Clubs continue.

8.2.25 Dr Balkin further highlighted that the Administrative Council had taken the decision not to make payment in respect of the *Nissos Amorgos* incident. She also made reference to the decision taken by the Administrative Council in July 2003 that the claim was time-barred, not admissible and not within the scope of pollution damage.

8.2.26 In relation to the possibility that contributions might have to be levied, Dr Balkin stated that it would be difficult to know how this could be done, and pointed out that under Article 43(2) of the 1971 Fund Convention, any such contributions would have to be made by contributors in States party to the Convention on the day before it ceased to be in force. Furthermore, she stated that even if no decision was taken to reverse the previous decisions, it was difficult to see how the proposed postponement could assist unless contributions were levied.

8.2.27 Noting further that a lot of effort had been made to reach settlement, Dr Balkin stated that it appeared that there was little new information on the table apart from a wish that the Director be instructed to contact Member States to seek clarification with respect to the levying of contributions.

8.2.28 Dr Balkin also stated that any proposed levy could only be made against the Member States which were parties to the 1971 Fund Convention on the date before the day the Convention ceased to be in force.

8.2.29 In response to a question from one delegation regarding the possible continuation of litigation in 2015, Professor Dan Sarooshi, one of the Fund's legal advisers, stated that the 1971 Fund possessed international legal personality, and also had domestic legal personality, but that if the 1971 Fund was dissolved, it no longer existed as a legal personality and therefore the legal proceedings before the English courts would end.

8.2.30 At the request of the Chairman of the Administrative Council, Professor Sarooshi summarised the results of the hearing held on 21 October 2014 which dealt with the consequences of the 17 October 2014, as follows:

(i) Gard Club's request for leave to appeal had been refused on the grounds that there was no reasonable prospect of success;

(ii) The Gard Club was ordered to pay the 1971 Fund's costs on an assessed basis;

(iii) Gard was ordered to pay to the 1971 Fund £400 000 on account of costs;

(iv) The freezing order was to continue in force pending the results of Gard's application to appeal to the Court of Appeal; and

(v) Gard should expedite its application for leave to appeal to the Court of Appeal (within 21 days).

DOCUMENT IOPC/OCT14/8/2/2, SUBMITTED BY ICS, BIMCO AND INTERTANKO

8.2.31 The observer delegation of ICS made the following statement:

> This paper has been submitted on behalf of the International Chamber of Shipping, BIMCO and Intertanko, to inform Member States of the shipping industry's concerns with the decision of this Council to wind up the 1971 Fund by the end of this year despite the fact that there remain outstanding claims.
>
> The organisations representing the shipping industry are warm supporters of the international oil pollution compensation regime for a number of reasons which I do not think is necessary to mention. However one of corner stones and qualities with the regime which we feel it is important to remind Governments about in relation to the ongoing process, is the *principle of sharing of liability* between the shipping industry and the oil industry which are the only contributing parties.
>
> This system has proven to be one of the most successful regimes in the large number of IMO Conventions – both with respect to the large number of members and with respect to effective compensation on a very high level to victims of oil spills.
>
> Let me underline that the organisations sponsoring this paper do not have a position regarding the material question of the legal proceedings in the *Nissos Amorgos* case. However to us it seems like some governments are mixing the material question and the procedural question – and the issue we are dealing with is the latter.
>
> In our view the 1971 Fund has an obligation under Article 44 of the 1971 Fund Convention to meet its obligations in respect of any incident occurring before the Convention ceased to

be in force. Winding up at this stage will also undermine the spirit of cooperation between the shipping industry and governments which the international system relies upon to function effectively. In other words: it is not only the Fund – as stated by the Judge in the conclusion of the judgment last week – but also the Clubs on behalf of the shipping industry that are entitled to rely on the strict legal rights.

The shipping industry would respectfully remind governments that the present system of swift compensation through interim payments relies on the goodwill of the P&I Clubs. If the text of the Civil Liability and Funds Conventions was strictly followed, the shipowners through the clubs would pay the limitation amount into court and the court would decide the claims and then pay the amount to the claimant. In a major incident with multiple claims, it can take years for the claimants to get his money from the court. Interim payments however mean that this delay in compensation is avoided and that the victims of oil pollution obtain their compensation early.

If the Administrative Council continues with its current approach there is greater likelihood that in future incidents insurers will simply follow the treaty obligations and pay compensation into court for distribution as the court sees fit. If this leads to a long delay in payment of compensation then the international regime and any State that experiences oil pollution damage from a future tanker spill will come under considerable pressure and criticism from claimants and the media. This would be an *extremely regrettable* direct consequence of an incident which is extraordinary in all respect.

Against this background the shipping industry strongly urges the 1971 Fund to postpone the procedure of winding up the fund until all outstanding claims against the Fund are finally dealt with. This means that we are also supporting the document submitted by UK and others.

DOCUMENT IOPC/OCT14/8/2/3, SUBMITTED BY THE INTERNATIONAL GROUP OF P&I ASSOCIATIONS

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

The International Group position on the issue of the winding up of the 1971 Fund should come as no surprise to delegates since we have been informing the Administrative Council for at least the last 18 months that it is premature and improper to wind up the 1971 Fund whilst there remain outstanding treaty obligations under Article 44 of the Convention and outstanding cases.

As stated in paragraph 2.2 of our document, the winding up process should be postponed to allow for an orderly resolution of the outstanding cases, which would allow for the parties concerned – Gard, the Fund and the Bolivarian Republic of Venezuela – to sit down to discuss how this can be achieved.

Naturally, the International Group is concerned that the High Court has held that the commitment on the part of the Fund to reimburse the Gard Club up to the Fund limit for payments above the CLC amount is not legally enforceable.

That said, we are also concerned that the stance has been adopted by the Fund in the first place since the court has made it clear that, although there was no contract in place, there was a mutual expectation that payments over the CLC limit and up to the Fund limit would rest with the Fund. It is unfortunate that this is not mentioned in the Director's document IOPC/OCT14/3/3/1 on the judgement but, given that this point is central to the debate, we were pleased to hear the UK refer to this in their intervention today and we of course also referred to this mutual expectation on the part of both Gard and the Fund in our own intervention yesterday on the *Nissos Amorgos* and delegates have been referred to paragraph 152 of the court judgement in that regard.

The Court has held that the Fund is entitled to rely on its strict legal rights in this regard, if it so chooses. By implication, it is also within its rights to decide as a matter of policy to follow the mutual expectation which the court found to exist on the part of both Gard and the Fund, and take over payments above the CLC limit up to the Fund limit.

The court accepts that both parties understood this and it is for this meeting to decide whether to dismiss that expectation that existed on the part of Gard and the Fund, and therefore the States who were a party at the time, and to go ahead and wind up the 1971 Fund by the end of the year, or whether to honour that expectation and postpone the winding up given that this was the case.

While the International Group Clubs had hoped, and would prefer, to see a continuation of the existing practice of making interim payments to ensure that claimants receive prompt compensation, they cannot without certainty of recovery of overpayment up to Fund limits put themselves, or the worldwide commercial reinsurance markets on which they rely, in an overpayment situation in the future.

Regrettably, and considering the position taken by the Fund in the court proceedings on this point, if the Fund winds up the 1971 Fund by the end of the year then the International Group Clubs are more likely to simply follow the prescribed approach in the 1992 CLC and only establish a limitation fund in court in future cases. Only by doing so can they now avoid the overpayment situation that faces Gard in the *Nissos Amorgos*.

This would inevitably and fundamentally change the dynamics that exist in the relationship between the International Group and the IOPC Funds that have been built up over a number of years, to the detriment of the system and claimants. We have said this a number of times over the last year or so, but States have to be aware of the consequences of their decisions.

To be clear, even if the Fund is acting to the strict letter of the Convention in winding up by the end of this year, which we disagree with anyway, the Fund is certainly not acting in the spirit of the Convention which will only work on a co-operative basis.

Since the International Group Clubs are the other, key, paying party in the system, it is essential that there is co-operation between both parties in the handling of claims and it is of serious concern to the International Group that there has been a lack of co-operation on this issue in recent years, which is particularly concerning given the International Group Clubs' involvement in the other outstanding 1971 Fund cases.

There is a clear need therefore to address this, whatever decision is taken this week on the winding up of the 1971 Fund, since it is extremely unsatisfactory and regrettable that the discussions on the *Nissos Amorgos* reached the stage where Gard had no choice but to bring legal action against the 1971 Fund.

The Director's considerations of the case in the Secretariat's paper of 8 September note that the Fund has decided that the Republic of Venezuela's claim is inadmissible and time-barred since it was not brought against the Fund. Whatever is thought about the merits of the judgements rendered by the Venezuelan courts in the *Nissos Amorgos* case, the courts have dismissed these arguments after they were raised by the Fund in the proceedings. These are the findings of the competent court by which the Fund is bound pursuant to Articles 6 and 7 of the Fund Convention and it is not actually open to the Fund to decide otherwise. Regardless of the position between the Gard Club and the Fund the Venezuelan court has expressly found that the Fund is liable for the Republic's claim.

If the Administrative Council feels that it is the appropriate solution to ignore its treaty obligations and to walk away from judgements handed down by the courts of a Fund Member State, the natural concern of the International Group is whether the Fund may also decide to do so in future cases where it does not approve of a judgement from a court of a Fund Member State for whatever reason. This would bring into question the integrity and the reliability of the CLC/Fund system as a whole. These concerns are amplified by the fact that the Fund pleaded immunity in response to Gard's *bona fide* claim. The precedent that this sets will mean that serious consideration will have to be given by the International Group as to whether agreements can be reached on any claims-related matter with the Fund going ahead if, in the event of a disagreement, the Fund can and will simply plead immunity.

For purposes of the permitting an orderly run-off of outstanding cases so that the 1971 Fund can be wound up in accordance with the provisions of its own Article 44, and while the International Group is strongly of the view that the 1971 Fund should not be wound up by the end of the year, the International Group recognises that any such a postponement should not be on an indefinite basis. States may well feel that it is appropriate to postpone the winding up for a fixed period of time, for example 12 months, whilst the Fund, Venezuela and the Gard Club enter into discussions to seek an orderly resolution to the outstanding cases to the satisfaction of all parties and review the position after 12 months.

Such an approach can only occur however if there is a postponement in the first place and if the Fund Director has clear and unlimited instructions to enter into such discussions with a view to seeking such an orderly resolution, subject of course to any sign off by the Administrative Council.

The International Group wholeheartedly believes that with the co-operation of all concerned an orderly resolution of the *Nissos Amorgos* case within that time period is achievable. If this approach is not followed though then there will be unfortunate ramifications for the system going ahead and we have set these out in our paper for this meeting.

DOCUMENT IOPC/OCT14/8/2/4, SUBMITTED BY CÔTE D'IVOIRE, GREECE, LIBERIA, THE MARSHALL ISLANDS, NIGERIA, PANAMA, THE UNITED KINGDOM AND VANUATU

8.2.33 The document presented by the delegation of the United Kingdom highlighted the concerns of the co-sponsors regarding the decision of the 1971 Fund Administrative Council to wind up the 1971 Fund in light of the outstanding incidents, which in the view of the co-sponsors highlighted that it was not appropriate to wind up the 1971 Fund at this stage.

8.2.34 The co-sponsors were of the view that it was appropriate to postpone the winding up of the 1971 Fund in order to allow further discussions between interested parties with the aim of reaching a meaningful resolution of the outstanding cases to the satisfaction of all interested parties in accordance with the terms of the Convention.

8.2.35 In the view of the co-sponsors, the whole system of compensation relied on the goodwill of the P&I Clubs making interim payments and it was essential that the goodwill be maintained through a relationship based on mutual respect and expectation between the P&I Clubs and Fund.

8.2.36 The co-sponsors highlighted their concern that there was a realistic possibility of winding up the 1971 Fund prior to such time as all outstanding matters relating to the 1971 Fund were concluded in accordance with the Convention, and that this would lead to irreparable damage to the essential relationship between the Fund and P&I Clubs, as a consequence of which the P&I Clubs would withdraw the provision of interim payments in future claims.

8.2.37 The co-sponsors were of the view that if the relationship between the P&I Clubs and Fund broke down as a result of outstanding incidents, the position taken by the 1971 Fund Administrative Council and an inability to demonstrate clearly that obligations had been fulfilled in accordance with the Convention, and as a consequence interim payments were withdrawn, then the system of compensation and liability regimes currently in place would likely change. The co-sponsors were of the view that citizens of a country who rely on the sea to earn a living and who were unable to work due to a pollution incident, might not receive interim payments to subsidise their loss of earnings, and would suffer many years of hardship whilst the relevant courts decided who was liable.

8.2.38 The co-sponsors were of the view that such a scenario would severely undermine the purpose and reputation of the IOPC Funds and that it was in the interests of Member States and future claimants that this scenario be avoided.

8.2.39 Noting the Director's view as submitted in document IOPC/OCT14/8/2 that the 1971 Fund take appropriate measures at its October 2014 meeting to complete the winding up of the 1971 Fund including the equitable distribution of any remaining assets among contributors, the co-sponsors were of the view that despite the intention previously expressed by the 1971 Fund Administrative Council to dissolve the 1971 Fund by the end of 2014, the Administrative Council was not required to take any such measures at the meeting in October 2014.

8.2.40 The co-sponsors were of the view that the Administrative Council still had the opportunity to consider other measures to resolve the unfortunate situation it found itself in. Noting that the Director had on numerous occasions advised that the levying of contributions from former contributors pursuant to Article 44(1)(b) of the 1971 Fund Convention would be very difficult after such a long time, and acknowledging that seeking contributions would be difficult but not impossible, it was the view of the co-sponsors that a legal duty existed and it was for the 1971 Fund to demonstrate that it had met its current obligations.

8.2.41 Furthermore, whilst recognising that the Member States would not under any circumstances be liable to take responsibility for the financial responsibilities of the contributors, and also taking into account Article 13(3) of the 1971 Fund Convention which states, "…where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor", the co-sponsors suggested that in the first instance the Director be instructed to formally write to all members of the 1971 Fund to ask whether or not they still had national legislation in place to levy contributions to the 1971 Fund, and if they did not, to indicate when any such legislative changes had been made. The co-sponsors further suggested that the Director could report his findings in writing with supporting evidence to the Member States of the 1971 Fund.

8.2.42 In conclusion, the co-sponsors explained that they were of the view that the 1971 Fund was not, at this moment in time, in a position to be wound up by the end of 2014, and therefore, it was prudent for the Administrative Council to postpone the winding up of the 1971 Fund until such time that the Administrative Council was satisfied that its outstanding treaty obligations in accordance with the terms of the Convention had been fulfilled in a manner that would not have repercussions for the Fund regime going forward and would not disadvantage claimants, in particular those whose livelihood and communities were destroyed by a pollution incident.

DOCUMENT IOPC/OCT14/4/8, SUBMITTED BY IUMI

8.2.43 The 1992 Fund observer delegation of the International Union of Marine Insurers (IUMI) presented document IOPC/OCT14/4/8 relating to the impact of the winding up of the 1971 Fund on the 1992 Fund. As a representative of insurers' interests in the marine and transport insurance sector, IUMI expressed its concern with regard to the current discussions on the winding up of the 1971 Fund.

8.2.44 In particular, the delegation of IUMI considered that there were clear implications for the future of the system if the 1971 Fund were to be wound up by the end of 2014 and stated that all efforts should be made to avoid a situation that would generate uncertainty over the handling of 1992 CLC/Fund cases in the future.

Debate

8.2.45 In total, thirty-three Member States party to the 1971 Fund Convention, and three observer delegations, took the floor in the debate which followed the submission of the documents.

Delegations that supported the winding-up process

8.2.46 Of the thirty-six delegations that took the floor, eighteen were in favour of continuing with the winding up process, and fifteen were in favour of postponing the winding up. Of those delegations in favour of continuing with the winding up process, several stated that the dissolution of an international Fund was not a procedure that could be undertaken overnight as many interests were involved, but that postponement risked the Fund running out of money. That would be a chaotic and unsuitable end for the organisation, and would reflect badly on the 1992 Fund, the Supplementary Fund, and the HNS Convention, when that came into force.

8.2.47 One delegation stated that the dissolution of the 1971 Fund was uncharted territory but that the previous decision taken to wind up the 1971 Fund was correct when it was taken and was still correct now. That delegation also stated that whilst it recognised that the Gard Club had been stuck with a raw deal, any decision to indemnify the Club went to the core principles of the regime, which if ignored, set a dangerous precedent.

8.2.48 A large number of delegations that were in favour of continuing with the winding up process also pointed out that the claims under discussion from the *Nissos Amorgos* incident were time-barred and inadmissible, and that the Administrative Council had already decided on a number of previous occasions not to pay any of the outstanding claims. One delegation stated that any postponement to the winding up of the 1971 Fund, would not convert invalid claims to valid claims, nor would it change the status of time-barred claims.

8.2.49 Some delegations stated that they would not agree to levying contributions for claims which fell outside the scope of the Conventions, due to the difficulties that would arise with the contributors, whose willingness to continue to contribute to the compensation regimes might be questioned. Other delegations stated that any levy of contributions would damage the credibility and viability of the compensation regime, and that some contributors might claim that requests for further contributions were time-barred under the statute of limitations. One delegation stated that if a levy was requested, it could not discount the possibility that the Director would need to be instructed to commence legal proceedings against non-paying contributors.

8.2.50 A number of delegations stated that they valued the strength and viability of the ongoing relationship with the International Group of P&I Associations, but that this could not be maintained if the 1971 Fund was forced to pay inadmissible claims, as this amounted to a circumvention of the Conventions.

8.2.51 One delegation stated that it understood that the reason that the Gard Club wanted payment was to ensure that tanker movements to and from Venezuela continued smoothly, but stated that this was not a valid reason under the Conventions to pay inadmissible claims, and questioned why contributors should be asked to pay contributions to fulfil a commercial purpose. That delegation also stated that the consequences of the cases in Venezuela would have to be discussed including reactions to the decisions of the highest constitutional court in Venezuela, which had not recognised the doctrine of time bar, nor had it recognised that environmental claims were inadmissible under the 1971 Fund Convention. That delegation also stated that other Member States should not be forced to accept the decisions of the courts of Member States which failed to properly implement the Conventions.

8.2.52 Some delegations stated that it appeared as if the Administrative Council was being requested to reverse its previous decision to wind up the 1971 Fund, and also to reverse its decision not to make payment. Those delegations stated that reversing previous decisions taken by governing bodies was very rarely done, and generally only done after the presentation of new facts. Noting that no new facts had been presented, those delegations stated that any postponement would simply incur further legal expenses in order to defend inadmissible claims, and would offer no advantage to the 1971 Fund.

8.2.53 Another delegation stated that any proposal to levy contributions simply to defend the 1971 Fund's interests was simply throwing good money after bad, and that it would prefer to have some form of settlement with the Gard Club, since it was essential to try to preserve an element of good faith.

8.2.54 One delegation stated that the proposal to postpone the winding up process appeared to have been submitted on the grounds of the court decisions in Venezuela, taken largely in disregard of the Conventions and as a result of the desire of the Clubs to put to an end a relationship that had lasted decades, on the basis of one single incident. Other delegations stated that whilst interim payments were important, they had not always been provided in the past and were not essential for the international compensation regime to work effectively. Some delegations stated that the issue of interim payments would still need to be resolved following the dissolution of the 1971 Fund.

8.2.55 A number of delegations were of the view that the 1971 Fund had met its obligations as required under Article 44 of the 1971 Fund Convention, and that paragraph 152 in the court judgement of 17 October 2014, in which the Judge expressed sympathy with the Gard Club, did not impose any obligation to pay the outstanding claims in the *Nissos Amorgos* incident; rather, the decision to wind up the 1971 Fund was now easier as a result of that judgment, which had removed any legal barriers.

8.2.56 One delegation stated that in its opinion the decisions of competent courts should be recognised except in exceptional circumstances and in the rarest of cases. Noting that 12 years was a long time to resolve outstanding cases, that delegation supported the proposal to wind up the 1971 Fund by the end of the year.

8.2.57 Some delegations also requested further information in order to answer the questions of how long a postponement was envisaged, and what amount of money was proposed to be levied in order to resolve the deadlock.

8.2.58 Several delegations stated that it was important to preserve the relationship with the P&I Clubs as, even though the court judgment of 17 October 2014 had found that there was no legal obligation on the 1971 Fund to compensate Gard, paragraph 152 of the judgment recognised that there was a 'mutual expectation' of payment. While accepting that the Gard Club had acted in good faith, some delegations stated that they would prefer to see some form of compromise, using the remaining £1.8 million left available to the 1971 Fund, together with the costs that the 1971 Fund would recover from its litigation with the Gard Club. A number of delegations stated that they wished to instruct the Director to continue discussions with the Gard Club. Some other delegations were of the view that the remaining funds should be returned to the contributors.

8.2.59 The delegation of Malaysia made the following statement:

> First and foremost, we wish to express our appreciation to the Director and all submitters for the documents. We also thank Dr Balkin for her illuminating account of the situation which we are in today, and reminding us of the decisions that we had made in the past sessions.
>
> I must say that we have studied this matter carefully in all aspects and for considerable length of time.
>
> We have come to the same decision and conclusion as before and there is no two ways about it. The reasons and logic are clear and the only right and sensible choice for us is to

firmly support the Director's recommendation to adopt the draft resolution for dissolution of the 1971 Fund and we reject any calls for the postponement of the winding up.

Malaysia was a party to the 1971 Fund at the time of the *Nissos Amorgos* incident. Malaysian contributors at the time of the *Nissos Amorgos* incident will have to make supplementary contribution if it is so required. However, contrary to the notion that 1971 Fund ex-member States still have legal framework to levy contributions from 1971 Fund contributors, for Malaysia there is no longer any legal basis to require the 1971 Fund contributors to make the supplementary contribution.

The legal basis for the levying of supplementary contributions is domestic legislation implementing the 1971 Fund Convention, which has been superseded in 2005. There is no provision in domestic legislation to provide for the event of contribution to the 1971 Fund AND the 1992 Fund, post migration to the 1992 Fund. The two Funds are separate entities and are interpreted as such. It will be very difficult for Malaysia to seek supplementary contribution from 1971 Fund contributors under such circumstances.

Malaysia considers that the 1971 Fund also has an obligation towards the contributors to complete the winding up of the Fund. As it is uncertain how long the legal proceedings against the 1971 Fund will take to resolve, it is certain that postponing will entail levy of supplementary contributions on 1971 Fund contributors to pay for operational and administrative costs, legal costs, and possibly settlement costs for an inadmissible claim. Postponement of the winding up would mean that the 1971 Fund has failed to discharge its obligation towards its contributors.

The relationship with its contributors to the Funds is important to Malaysia. Malaysia finds it almost impossible to justify levying supplementary contributions for claims that have been deemed conclusively as inadmissible. There is serious concern that should the winding up be postponed, regardless of the outcome of the legal proceedings, Malaysia will eventually bear the cost since it cannot levy supplementary contributions on 1971 Fund contributors, but remains potentially responsible for them under principles of state responsibility.

In addition to this, Malaysia intends to ratify the HNS Convention and is concerned that prospective HNS contributors would reject the ratification of the HNS Convention if there is a precedent that Fund contributors are potentially liable to pay supplementary contributions 10-12 years later and for an incident which the Fund has determined to be inadmissible.

Malaysia considers that allowing postponement would set a dangerous precedent and question the credibility of the IOPC Funds, especially to the contributors who fund the compensation regime.

As a responsible member state, Malaysia has assured itself that the 1971 Fund has acted responsibly in accordance with the 1971 Fund Convention. Malaysia considers that the 1971 Fund has discharged its obligations the best it can in relation to the *Nissos Amorgos*. However, to shift the burden of unexpected loss due to improper implementation of the 1969 CLC and 1971 Fund Convention to the contributor would not be equitable, since the contributor's obligation is to report oil receipts and pay contributions to a properly and correctly implemented Fund Convention.

Considering the above circumstances, the only tenable position for Malaysia is to support the speedy dissolution of the 1971 Fund.

Delegations that supported the proposal to postpone the winding up process

8.2.60 Of the fifteen delegations that supported the proposal for a postponement to the winding up of the 1971 Fund, a large number stated that in their opinion, although it might be difficult to do so, it was not impossible to levy contributions. Those delegations also stated that it was important to consider the future implications of any decision to wind up the 1971 Fund.

8.2.61 Several delegations in making reference to paragraph 152 of the court judgment of 17 October 2014, stated that it was important to maintain the relationship with the P&I Clubs, that 'mutual expectations' had not been met, and that it was also necessary to instruct the Director to contact Member States to seek clarification with respect to the levying of contributors should the need arise. As a consequence and for those purposes, in their view, the winding up should be postponed.

8.2.62 A number of delegations also made reference to the terms of Article 44 of the 1971 Fund Convention and questioned whether a decision to wind up the 1971 Fund would permit the 1971 Fund to meet all of its obligations. Other delegations, in referring to the concerns raised by the shipping industries, stated that they shared those concerns.

8.2.63 One delegation stated that no actions should be taken which risked the current compensation regime. Another delegation stated that its real concern was the relationship between the P&I Clubs and the IOPC Funds, and that there was a possibility that claimants would become the victims of oil pollution twice, if the provision of interim payments was not continued. That delegation stated that it was irrelevant which litigating party held the upper hand, and that a postponement would provide a window of opportunity with the aim of reaching a mutually agreeable solution.

8.2.64 Another delegation stated that the winding up process should be delayed until all obligations under Article 44 of the 1971 Fund Convention had been unequivocally met. That delegation stated that the threat to interim payments was not the greatest danger, but that of damage to the prestige of the compensation regime. That delegation further stated that the *Nissos Amorgos* incident highlighted weaknesses in the system and that ways of resisting claims which were inadmissible, time-barred or which were marred by fraud should be explored. That delegation stated that in its view, no contributions should be levied, but that time should be made to allow the 1971 Fund to exercise its functions and oppose enforcement.

8.2.65 A number of delegations stated that it was important that the Director meet with Gard to attempt to find a solution and thus the winding up process should be postponed.

8.2.66 One delegation stated that all Member States were vulnerable to oil pollution incidents, and that Article 7 of the 1971 Fund Convention stated that national courts should have exclusive jurisdictional competence over any action against the Fund. In its opinion, the relationship between the Gard Club and 1971 Fund had been damaged by the 1971 Fund avoiding its responsibilities, and that this had impacted upon the trust and the ongoing relationship with the 1992 Fund. In its view, neither the winding up nor the proposal to postpone, were easy decisions. Furthermore, it believed that delegations were not being asked to reverse their previous decisions, but only to postpone the winding up of the 1971 Fund.

8.2.67 Another delegation stated that in order to show good faith, a period of time of no longer than six months should be given to try to resolve the situation. Another delegation proposed a postponement of one year. A further delegation stated that the winding up was not in the best interests of all the stakeholders and that maintaining the goodwill of the Clubs was very important.

8.2.68 Another delegation stated that the views of delegates had changed since the previous decision taken by the Administrative Council to wind itself up, and that opinion was split 50:50. For this reason the delegation supported the proposal to postpone winding up to enable the parties to meet to discuss how to proceed.

8.2.69 The delegation of the Bolivarian Republic of Venezuela made the following statement (original Spanish):

> With respect to Germany's question on the time-bar issue, this matter is currently being considered by the Attorney-General's Office of the Republic, as it is considered to be a subject which could affect our country's interests and which can be discussed in another session.
>
> With regard to Item 8 of the agenda (Winding up of the 1971 Fund), the Bolivarian Republic of Venezuela, as an oil-producing country, considers that if the 1971 Fund is liquidated, relations with insurers could be affected in the event that a scenario should arise involving incidents similar to those which occurred in Venezuela's territorial waters, in which regard, it can justifiably be added that the compensation for the outstanding cases has still not been paid.
>
> This delegation, as it stated in the closed sessions of the IOPC Funds with the members of the 1971 Fund in May this year, does not agree with the winding up of the 1971 Fund. However, should this winding up occur, the Venezuelan delegation considers it pertinent and necessary to assume an undertaking to honour the outstanding compensation claims.
>
> Furthermore, the Venezuelan delegation shares the views expressed by the International Chamber of Shipping, BIMCO and INTERTANKO in document IOPC OCT14/8/2/2, pointing out that the 1971 Fund has a clear obligation under the Convention to fulfil its commitments with respect to any incident that occurred before the Convention ceased to remain in force.
>
> Likewise, the Venezuelan delegation supports the authors of document IOPC/OCT14/8/2/4 in which they express the view that the three unresolved cases and the outstanding contributions serve to underline that it is not appropriate to liquidate the 1971 Fund at this time.
>
> In this respect, the Venezuelan delegation considers it necessary and opportune to emphasize some matters of great importance to the Bolivarian Republic of Venezuela, namely:
>
> (a) The compensation of fellow citizens affected by the *Plate Princess* incident is still outstanding.
>
> (b) There is an action for executory attachment order against the IOPC Funds, which was filed by the victims' lawyers in the Supreme Court of the United Kingdom in May and the decision of that Court is still pending.
>
> Bearing this in mind and taking into account the existence of pending litigation in the United Kingdom courts in relation to the *Nissos Amorgos* incident (between Club Gard and the 1971 Fund (now under appeal) and the action filed with respect to the *Plate Princess*, the delegation of the Bolivarian Republic of Venezuela considers it pertinent to postpone the winding up of the 1971 Fund for a reasonable time, during which the outstanding cases can be decided, in order to ensure that the compensation commitments for which the Fund was created are honoured.
>
> It is for this reason that this delegation shares the position of the countries which consider it appropriate to defer the winding up of the 1971 Fund, in order to allow further discussion and reach a final solution of the outstanding cases which satisfies all the interested parties and complies with the terms of the Convention

8.2.70 Following the initial debate, the delegation of the United Kingdom stated that it was mindful of the discussions that had taken place, and that for the sake of moving forward, it proposed a compromise consisting of three policy decisions and several administrative actions. The three policy decisions it proposed were that:

(i) The 1971 Fund Administrative Council acknowledges that, taking into account that Article 7 and Article 8 of the 1971 Fund Convention, which referred to the national court of a Member State of the 1971 Fund, it therefore accepted the decision of the Venezuelan Court in the case of the *Nissos Amorgos*;

(ii) The 1971 Fund Administrative Council acknowledges that in the case of the *Nissos Amorgos* incident, there was a responsibility to the Gard Club that needs to be met by the 1971 Fund;

(iii) The Administrative Council agrees to ring-fence contributions from contributors still in existence and liable at the time of the *Nissos Amorgos* incident to the extent that they cannot be made liable for the outstanding contributions from contributors who no longer exist, are insolvent or circumstances warrant otherwise as per Article 13(3) of the 1971 Convention which states:

However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

8.2.71 One delegation proposed that a small Working Group of interested parties be established to ascertain whether a way forward could be agreed.

8.2.72 In response to one delegation which had requested the Director to provide estimates of the future costs for the legal proceedings and administrative costs, the Director stated that in respect of the *Plate Princess* incident, and in view of the fact that the delegation of the Bolivarian Republic of Venezuela had disclosed that an application had been made to the Supreme Court of England and Wales in May, the possibility existed that the 1971 Fund would have to fight an enforcement action in the courts of England and Wales, at any time. Accordingly, such legal action would likely cost approximately £500 000 over a six-month period.

8.2.73 In respect of the *Nissos Amorgos* incident, the Director stated that in the United Kingdom there were two sets of legal proceedings ongoing: the freezing injunction and the challenge to the jurisdiction of the English courts. In respect of the freezing injunction, a court hearing had been set for March 2015, and in respect of the challenge to jurisdiction, assuming that the Gard Club would appeal to the Court of Appeal, the Director estimated that approximately £400 000 would be incurred over six months.

8.2.74 In addition, in respect of the *Nissos Amorgos* incident, the Director stated that any postponement to the winding up of the 1971 Fund would leave the 1971 Fund in a difficult situation, as the Director had previously been instructed not to defend the proceedings in Venezuela. The Director further explained that it would be unwise to continue to not defend the legal proceedings, if the winding up was postponed, as this might result in the courts rendering a judgment by default against the 1971 Fund, which could be enforced in England with little prospects of defending successfully. Accordingly, the Director estimated that approximately £200 000 could be incurred over a six-month period.

8.2.75 Additionally, in referring to the ongoing management fees of the 1971 Fund, the Director estimated that it would be necessary to make an allowance for double the amount of the management fee previously estimated at £240 000, to account for the extra work incurred by the legal proceedings in respect of the winding up of the 1971 Fund and the *Nissos Amorgos* litigation.

8.2.76 Finally, there were also administrative costs, for example Auditor's fees, which the Director estimated might amount to £100 000 over a six-month period.

8.2.77 As to the question of who would pay, the Director noted that ordinarily the rule was that those contributors who received oil in 1996 would pay for the costs of the *Nissos Amorgos* spill, which occurred in 1997. However, since the 1971 Fund Convention ceased to be in force on 24 May 2002, Article 41(5) of the 1971 Fund Convention did not apply; instead Article 43(2) applied.

8.2.78 Accordingly, seven of the twenty four Member States which were the last members of the 1971 Fund on the day before it ceased to exist would have to pay, since only they had received oil in the applicable year. On this basis, their respective proportions would be:

Malaysia	46%
Portugal	35%
Côte d'Ivoire	6.8%
Ghana	3.7%
Cameroon	3.5%
Colombia	2.2%
Qatar	2.0%

8.2.79 Consequently, the Director stated that the Administrative Council might have a difficult decision to make.

8.2.80 Some delegations stated that in their view this seemed to be unfair, and therefore upon further requests for clarification, the Director and Professor Sarooshi confirmed that whilst the decisions such as the winding up and the management of the 1971 Fund were decisions taken by the entire 1971 Fund Administrative Council, since the 1971 Fund ceased to be in force in 2002, only the contributors in the Member States which were members of the 1971 Fund on the day before it ceased to exist would have to pay, since only they had received oil in the applicable year.

8.2.81 The observer delegation of the International Group of P&I Associations advised that it had received contrary legal advice to that provided by the Director, and that all contributors in former Member States at the time of the incident would have to contribute, in accordance with Article 41.5 of the 1971 Fund Convention.

8.2.82 One delegation stated that whilst it acknowledged the efforts made in the compromise proposed by the delegation of the United Kingdom, if the decisions of the courts of Venezuela were accepted, this could result in judgments of US$120 million. That delegation stated that it recalled the delegation of the Bolivarian Republic of Venezuela confirming some years ago that the duplicated claim in Venezuela would be withdrawn, but this had not yet occurred. That delegation stated that as a compromise it was still in favour of paying the balance of the funds held by the 1971 Fund to the Gard Club.

8.2.83 Several delegations stated that they were not comfortable with the compromise proposed by the delegation of the United Kingdom, as it was not clear what accepting the decisions of the Venezuelan courts meant, or what was meant by accepting that there was a responsibility to the Gard Club that had to be met by the 1971 Fund. Another delegation stated that the principles outlined by the proposal were precisely those that had divided the 1971 Fund Administrative Council previously.

8.2.84 One delegation stated that since it was one of the last seven Member States to be a member of the 1971 Fund before it ceased to exist, it was frightened by the proposal that its contributors might have to pay such a large amount of money and that, in its view, the decision to postpone was similar to a sentence penalising the remaining members of the 1971 Fund.

8.2.85 A number of delegations stated that it was important to recognise that any action taken by the 1971 Fund should be fair not only to the Gard Club, but also to the contributors of the Member States, as they formed an important part of the compensation regime.

8.2.86 Another delegation stated that it was in favour of the Director holding without prejudice meetings with the Gard Club, with a view to reaching a settlement using the existing funds available to the 1971 Fund before 31 December 2014.

8.2.87 The observer delegation of OCIMF stated that it had previously kept a discrete position although it represented the majority of the oil contributors. It further stated that in its view, any reversal of the decisions previously taken by the Administrative Council would not have been founded on the Conventions but on a desire to compromise. It also stated that OCIMF trusted the 1971 Fund Administrative Council and trusted that the Council was complying with its obligations. It further stated that it would be very difficult to explain to contributors that they would be invited to make further contributions for a claim outside the scope of the 1971 Fund Convention.

8.2.88 The observer delegation of the International Group of P&I Associations stated that it was not able to say what exposure there would be for the 1971 Fund if the winding up was postponed. As at the October 2014 sessions of the governing bodies, the Venezuelan courts were going through an indexation process to ascertain the value of the limitation fund established, so it was not clear either for the Fund or for the Gard Club itself.

8.2.89 In response to the requests from delegations for further clarification, the delegation of the United Kingdom stated that its proposal was open for discussion and that delegations did not have to accept all of the proposals. It stated that it was not calling for a reversal of previous decisions, but a postponement of the winding up for six months, so that the facts and figures could be established. It stated that the £1.8 million presently held by the 1971 Fund was sufficient to last until the spring sessions, and that it was not proposing that a levy be made, at this time.

8.2.90 The Chairman of the 1971 Fund Administrative Council agreed with the proposal that a small informal Working Group consisting of interested parties, meet to try to reach some form of consensus, failing which a vote would be taken the following morning, 23 October 2014.

8.2.91 Following the advice by the facilitator of the informal meeting of interested delegations, the Chairman of the 1971 Fund Administrative Council announced that as no consensus had been reached, a vote of the Administrative Council would be required on the following question:

> 'Do you agree that, with effect from the expiry of the last day of the financial year 2014 (31 December 2014), the 1971 Fund should be dissolved and its legal personality should cease to exist?'

8.2.92 The delegation of the United Kingdom stated that it wished to invoke Rule 34 and 35 of the Rules of Procedure and requested that the vote be taken by roll-call, and that the record of the vote be inserted into the Record of Decisions.

8.2.93 The vote by roll-call was taken in the alphabetical order of the names of the Member State, beginning with the Member State (Italy) whose name was drawn by lot by the Chairman. The results of the vote of those present and voting is listed below.

8.2.94 The following 29 States voted Yes:

Algeria	India	Norway
Australia	Ireland	Oman
Cameroon	Italy	Papua New Guinea
Canada	Japan	Qatar
Colombia	Malaysia	Republic of Korea
Denmark	Marshall Islands	Russian Federation
Estonia	Mexico	Spain
Finland	Morocco	Sri Lanka
Germany	Netherlands	Sweden
Ghana	New Zealand	

8.2.95 The following 14 States voted No:

China	Kenya	Poland
Côte d'Ivoire	Liberia	United Kingdom
Cyprus	Malta	Vanuatu
France	Nigeria	Venezuela
Greece	Panama	

8.2.96 Three States abstained from the vote: Bahamas, Monaco and United Arab Emirates.

8.2.97 Following the vote, the Chairman of the Administrative Council reminded delegations that the freezing order granted by the English High Court on 7 May 2014 remained in force, and that since this affected paragraph 3 of the draft Resolution N°18, this required amendment.

DOCUMENT IOPC/OCT14/8/WP.1 (Draft Resolution N°18)

8.2.98 The Director introduced document IOPC/OCT14/8/WP.1 (draft Resolution N°18) and explained that due to the fact that the freezing injunction ordered by the English High Court on 7 May 2014 remained in force and that it was not possible to know if, or when the freezing order would be lifted, the draft Resolution had been drafted to provide the ability to fulfil the wishes of the Administrative Council in the future.

8.2.99 The Director stated that the draft Resolution had been drafted with the assistance of Dr Rosalie Balkin, Mr Frederick Kenney (Director of the Legal Affairs and External Relations Division of the IMO), Professor Dan Sarooshi, the Fund's lawyers and the Fund's Legal Counsel. The Director also stated that paragraph 3 of the draft Resolution which proposed authorising the Director, in consultation with the Chairman of the 1971 Fund Administrative Council, to take any necessary and reasonable steps to implement paragraphs 6 and 7 of Resolution N°17 of 9 May 2014, was drafted to comply with the intention of returning the remaining monies available to the contributors, once the freezing order was lifted.

8.2.100 The Director further stated that since the Administrative Council had decided to dissolve the 1971 Fund with effect from 31 December 2014, it would not possess any legal personality after that date. He explained that it was currently impossible to distribute monies to contributors as a result of the freezing order, and stated that paragraph 3 of the draft Resolution was intended to permit a range of possibilities. These included instructions to be given to the 1971 Fund's banks prior to the dissolution of the 1971 Fund, to distribute monies to contributors, once the order was lifted. It was recognised that this might take place after the 1971 Fund had been dissolved. An alternative possibility that would be explored prior to dissolution, was for the money to be paid into Court for subsequent distribution to contributors by the Court, once the freezing order was lifted. One delegation asked whether reference to paragraph 6 would also mean that the Director would have to act prior to 15 December 2014. After confirmation that that was the case, that delegation was of the opinion that the Director could and should be entrusted with the task to repay all monies available to contributors even after that date.

8.2.101 One delegation stated that since the Resolution was to be adopted by a majority, there was no room for different interpretations. That delegation also requested the Director to provide a list of the contributors who would receive the reimbursed money, and the Director indicated that a list containing the Member States where the contributors were located as well as the percentage of the total amount to be distributed would be attached to Resolution N°18 and would be included in the Record of Decisions (see Annex V).

8.2.102 A number of delegations were of the view that as presently drafted, the draft Resolution N°18 did not provide sufficient leeway to enable funds to be distributed to contributors.

8.2.103 In response, Dr Balkin confirmed that although Resolution N°17 dated 9 May 2014 referred to the reimbursement of funds to contributors taking place by 15 December 2014 to allow for an ordered winding up of the 1971 Fund to take place, in view of the freezing order remaining in place it was not known whether the Fund would be able to reimburse funds to contributors by that date. Accordingly, paragraph 3 of draft Resolution N°18 was intended to give the Director discretion to take any necessary and reasonable steps, and to explore suitable mechanisms to allow him to act in the spirit of Resolution N°17, to ensure that funds were returned to contributors even after the 1971 Fund had been dissolved.

8.2.104 In response to a request from one delegation for clarification upon the identity of the contributors who would receive the reimbursement, the Director explained that the balance available on the General Fund would be reimbursed to those contributors identified in document 71FUND/AC.15/15, Annex II and approved by the 1971 Fund Administrative Council at their 15th session in October 2004 (see document 71FUND/AC.15/21, paragraphs 17.10 and 17.11), and that the balance available in the *Nissos Amorgos* Major Claims Fund, would be reimbursed to those contributors who had paid contributions into the *Nissos Amorgos* Major Claims Fund, ie those contributors who received oil in 1996.

8.2.105 One delegation expressed the view that the text of paragraph 3 of the draft Resolution N°18, provided the Director with the power to investigate suitable mechanisms to enable money to be returned to contributors, and for this reason the Resolution should be adopted. This view was supported by most delegations.

8.2.106 Following one minor amendment proposed by a delegation to paragraph 6 of draft Resolution N°18, the Resolution was adopted by the 1971 Fund Administrative Council.

Nissos Amorgos reconciliation of joint costs

8.2.107 The Director also recommended that the 1971 Fund paid the Gard Club the amount of US$344 090 in settlement of the 1971 Fund's contribution to the joint costs incurred in respect of the *Nissos Amorgos* incident. Additionally, the Director stated that as a result of the hearing on 21 October 2014, the Judge had ordered the Gard Club to pay the 1971 Fund, the sum of £400 000 on account of costs, with the balance of the 1971 Fund's legal costs, to be paid on an assessed basis.

Decision to write off £43 038.75 from the Russian Federation

8.2.108 In order to facilitate the winding up of the 1971 Fund, the 1971 Fund Administrative Council also agreed to write off the sum of £43 038.75 due from contributors in the Russian Federation.

1971 Fund Administrative Council Decision

8.2.109 The 1971 Fund Administrative Council adopted draft Resolution N°18 (attached at Annex V) and decided to write off the sum of £43 038.75 from contributors in the Russian Federation.

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

> It is incumbent on this delegation to express the concern of the International Group with the outcome of the discussions on the winding up of the 1971 Fund this week given that the International Group has been so central to the discussions on this issue.
>
> The International Group has noted with regret and concern the decision taken not to postpone the winding up of the 1971 Fund in order to allow the discharge of its outstanding obligations pursuant to Art 44 of the Convention. As the meeting is aware, the winding up is not supported by the International Group, the International Union of Marine Insurers, ICS, BIMCO and Intertanko or by a number of the 1971 fund Signatory

states who all consider that the winding up is premature whilst there are still outstanding claims which engage the liability of the 1971 Fund.

This delegation has made its position clear this week in terms of how it views last week's court judgement. We have already stated this week as well the position of the International Group Clubs in terms of funding interim payments in the future, but if Clubs are to be able even to consider the possibility of advancing payments in excess of the CLC limit, there would need to be, at a minimum, a legally binding and enforceable agreement in place with the Fund concerned to make good any overpayment by the club up to the Fund limit, coupled with an unconditional waiver by the Fund of the right to rely on immunity from suit.

Given the position taken by the Fund and the Fund Director both this week and in the court proceedings, it seems that this would be highly unlikely.

For reasons which have been well articulated, the 1971 Fund treatment of the Nissos Amorgos incident has, in the view of the International Group, seriously and fundamentally undermined the confidence of the International Group in the current system.

The International Group Clubs will of course fully and promptly respect their CLC obligations and are confident that States' contributors will do likewise. The IG deeply regrets the outcome and consequences of the Nissos Amorgos discussions on future cooperation but, as I've said, the International Group Clubs will continue as in the past to fully comply with their CLC obligations.

The International Group thanks all States and observer delegations for their interventions during this difficult but important discussion, in particular those who supported the position on a postponement in the winding up of the 1971 Fund and also you, Mr Chairman, for your hard work and continued patience in chairing the Council throughout these difficult sessions.

8.2.111 The delegation of Mexico made the following statement (original Spanish):

We will try to be brief: Mexico has endeavoured to participate in a constructive manner in the decision on the winding up of the 1971 Fund. It has involved a complex process in which the alternatives presented to the Member States were not ideal. The resolution which we adopted today, while reflecting the opinion of the majority, could not be adopted by consensus as would have been desirable.

We sincerely regret that this process has damaged the relationship with the P&I Clubs and we would like to emphasize that this divergence had its origin in the decisions of third parties, leaving us between a rock and a hard place.

We should recall that in order for this compensation system not merely to remain in force but also to be strengthened, it must not be abused by any of the parties, in particular the Member States.

In this regard, we in our delegation, as I am sure many others here present, wish to work to restore confidence in our organization and the Clubs in order to fulfil our noble aim of compensating the victims of oil pollution.

8.3	**Preparation for the entry into force of the 2010 HNS Protocol** **Document IOPC/OCT14/8/3**	**92A**			

8.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT14/8/3 on the update of the work carried out by the Secretariat to set up the Hazardous and Noxious Substances (HNS) Fund.

8.3.2 It was noted that the HNS Correspondence Group, which was reinstated at the 101st session of the IMO Legal Committee in April 2014, had continued to communicate via email and the HNS blog to discuss a programme of activities as well as exchanging views and information on progress made towards ratification of, or accession to, the 2010 HNS Protocol. It was noted that the Correspondence Group consisted of 36 States and nine organisations but remained open for other interested parties to join. The HNS blog can be accessed via the homepage of the HNS Convention website (www.hnsconvention.org).

8.3.3 It was noted that a new edition of the HNS Brochure was published in English in October 2014 and that French and Spanish versions would be made available in November 2014. It was also noted that the HNS website, which had been available in English only since its re-launch in 2012, was progressively being made available in French and Spanish as well.

Debate

8.3.4 The Italian delegation reported on the outcomes of the workshop on the HNS Convention, organised in Rome on 10 October 2014. That delegation expressed its gratitude to the Director and the Secretariat of the 1992 Fund for their participation in and excellent support of the workshop and for facilitating its organisation. It also thanked François Marier, the coordinator of the HNS Correspondence Group for his leadership during the workshop, which was well attended by the Italian private sector and a number of participants from abroad. The Italian delegation reported that it was clear from the discussions at the workshop that many States were advancing towards ratification but that both States and the industry required practical support to facilitate implementation. In addition, it found that there was a need for increased coordination among interested States, internationally and regionally. In that regard, that delegation noted the efforts recently deployed by the European Union to provide specific guidelines and pointed out that this workshop had been organised under the Italian presidency of the European Union.

8.3.5 The Italian delegation further indicated that although more tools could be developed to assist States and stakeholders with implementation of the HNS Convention, the willingness of those States to ratify was paramount. That delegation also stated that public opinion was an important aspect that had to be taken into account given the risk that the transportation of HNS represented around the world. That delegation concluded that doing nothing was not an option in that regard.

8.3.6 The coordinator of the HNS Correspondence Group, François Marier (Canada) reported on the reinstatement of the HNS Correspondence Group by the IMO Legal Committee and the work done so far by the Group, in particular the project to develop a document aimed at explaining the purpose of the HNS Convention in simple terms, designed for the general public and policy makers. He indicated that the document would complement existing publications and would draw from real examples and representative scenarios to show how the HNS Convention can better help to compensate victims of HNS incidents. He highlighted that HNS incidents were happening and made reference to the *Shoko Maru* incident in Japan as a typical example. He also indicated that based on recent interactions with States and stakeholders, he felt that there was willingness for a coordinated effort among States to implement and ratify the Convention within an agreed period of time.

8.3.7 He finally thanked the Secretariat for the excellent support it continued to provide, facilitating the entry into force of the HNS Convention.

9 Budgetary matters

9.1	**Supplementary budget for 2014 – 1971 Fund** **Document IOPC/OCT14/9/1**				**71AC**

9.1.1 The 1971 Fund Administrative Council considered the draft supplementary administrative budget for 2014 as set out in document IOPC/OCT14/9/1 in respect of the 1971 Fund General Fund.

9.1.2 It was noted that in view of the substantial additional time spent by the Director and Secretariat staff in matters dealing with the winding up of the 1971 Fund, the Director proposed that the 1971 Fund pay an additional management fee of £240 000 for 2014 to the 1992 Fund.

9.1.3 It was also noted that an additional appropriation for audit fees totalling £17 000 was included in the supplementary budget to cover extra fees of £2 700 for audit of the 2013 Financial Statements prepared on the basis other than that of going concern and £14 000, payable in 2014, for the audit of the 2014 Financial Statements, should the 1971 Fund be wound up in 2014.

9.1.4 It was noted that additional costs might be incurred in 2014 as a result of the winding up of the 1971 Fund which would be met from the appropriation for winding up approved by the Administrative Council at its October 2013 session. No supplementary budget was included for costs relating to the winding up of the 1971 Fund.

1971 Fund Administrative Council Decisions

9.1.5 The 1971 Fund Administrative Council approved the supplementary budget for 2014 of £257 000 in respect of the administrative expenses of the 1971 Fund.

9.1.6 The 1971 Fund Administrative Council authorised the Director to use the balance on the General Fund to pay for the supplementary administrative expenditure for 2014.

9.1.7 The 1971 Fund Administrative Council adopted the revised budget for 2014 in respect of the administrative expenses of the 1971 Fund for a total of £762 300, as set out in Annex VI.

9.2	**Budgets for 2015 and assessments of contributions to the General Fund** **Documents IOPC/OCT14/9/2, IOPC/OCT14/9/2/1 and IOPC/OCT14/9/2/2**	**92A**		**SA**	

9.2.1 The governing bodies took note of the information contained in document IOPC/OCT14/9/2.

9.2.2 The 1992 Fund Assembly considered the draft 2015 budget for the administrative expenses of the IOPC Funds' joint Secretariat and the apportionment of joint administrative costs between the two Organisations as proposed by the Director in document IOPC/OCT14/9/2/1.

9.2.3 The Supplementary Fund Assembly considered the draft 2015 budget and assessment of contributions to the Supplementary Fund General Fund in document IOPC/OCT14/9/2/2.

9.2.4 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.

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

9.2.6 It was noted that there was an overall increase of 3.4% in the draft joint Secretariat budget compared to the 2014 budget. The increase was mainly due to an increase in consultants' and other fees to cover lawyers' costs to be incurred in recovery of contributions; and cost of the Audit Body to be operated with the full complement of six members and the 'external expert'.

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

9.2.8 The 1992 Fund Assembly noted that the lease for the current premises in Portland House which had been due to expire in March 2015 was to be extended to 24 March 2018 with a mutual break in June 2016. It was recalled that the 1992 Fund Assembly at its May 2014 session had decided to accept the Director's proposal to fund the relocation through appropriations in the 2014, 2015 and 2016 budgets to be borne only by the 1992 Fund (document IOPC/MAY14/10/1, paragraph 6.1.14).

9.2.9 The 1992 Fund Assembly 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.

Debate

9.2.10 One delegation referred to the level of working capital which was set at £22 million in 2004. That delegation stated that this was appropriate at that time given the number of incidents involving the 1992 Fund. However, with the possibility of deferred levies and loans from Major Claims Funds that delegation requested the Director to review the level of working capital requirement and make a proposal to the next session of the Assembly.

9.2.11 The Director responded that he would review the level of working capital requirement of the 1992 Fund in the light of the possibility of the P&I Clubs not making interim payments. He agreed to report on this at the next session of the Assembly.

9.2.12 Another delegation pointed out that a nominal increase of 3.4% in the budget year on year might not be sustainable given that increases in government expenditure were being constrained to zero real growth in most cases. That delegation was aware that the increase was mainly due to legal action to recover contributions and the cost of the Audit Body. In the view of that delegation, the authority given to the Director at this session to use his judgement when undertaking legal action might help reduce the cost under this Chapter.

9.2.13 The Director responded that he had, over the last two budget cycles, managed a reduction year on year but that this had not been possible this time due to increases in the cost of litigation, consultancy and the operation of the Audit Body with a full complement of members.

1992 Fund Assembly Decisions

9.2.14 The 1992 Fund Assembly 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 2015 budget).

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

9.2.16 The 1992 Fund Assembly adopted the budget for 2015 for the administrative expenses of the 1992 Fund for a total of £4 604 140 (including the cost of the external audit for the 1992 Fund and relocation costs), as set out in Annex VII, page 1.

9.2.17 The 1992 Fund Assembly also approved the Director's estimate of the expenses to be incurred in 2015 in respect of the preparation for the entry into force of the HNS Convention.

9.2.18 The 1992 Fund Assembly decided to maintain the working capital of the 1992 Fund at £22 million.

9.2.19 The 1992 Fund Assembly decided to instruct the Director to review the level of working capital required and make a proposal to the Assembly at its session in October 2015.

9.2.20 The 1992 Fund Assembly decided to levy contributions of £3.8 million to the General Fund payable by 1 March 2015.

9.2.21 The 1992 Fund Assembly decided not to make a deferred levy.

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2015	
			Levy (£)	Estimated levy per tonne (£)
General Fund	2013	1 528 031 310	3 800 000	0.0024869

Supplementary Fund Assembly Decisions

9.2.22 The Supplementary Fund Assembly adopted the budget for 2015 for the administrative expenses of the Supplementary Fund for a total of £46 500 (including the cost of the external audit), as set out in Annex VII, page 2.

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

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

1992 Fund Assembly and Supplementary Fund Assembly Decision

9.2.25 The 1992 Fund Assembly and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay flat management fees of £33 000 to the 1992 Fund for the financial year 2015.

9.3	**Assessment of contributions to Major Claims Funds and Claims Funds** **Documents IOPC/OCT14/9/3, IOPC/OCT14/9/3/1 and IOPC/OCT14/9/3/2**	**92A**		**SA**	

9.3.1 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the Director's proposal for contributions to Major Claims Funds and Claims Funds, respectively, for the Organisations as outlined in documents IOPC/OCT14/9/3, IOPC/OCT14/9/3/1 and IOPC/OCT14/9/3/2.

1992 Fund Assembly Decisions

9.3.2 The 1992 Fund Assembly decided not to levy 2014 contributions in respect of the *Prestige* Major Claims Fund.

9.3.3 The 1992 Fund Assembly decided not to levy 2014 contributions in respect of the *Volgoneft 139* Major Claims Fund.

9.3.4 The 1992 Fund Assembly decided not to levy 2014 contributions in respect of the *Hebei Spirit* Major Claims Fund.

Supplementary Fund Assembly

9.3.5 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.

9.4	**Transfer within the 2014 budget** **Document IOPC/OCT14/9/4**	**92A**			

9.4.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT14/9/4.

9.4.2 It was noted that the budget appropriation relating to 'Consultants and other fees' under Chapter V in the 2014 budget may not be sufficient due to various additional non-incident related studies and legal fees in pursuing contributors.

1992 Fund Assembly Decision

9.4.3 The 1992 Fund Assembly decided to authorise the Director to make the necessary transfer from Chapter VI – Unforeseen expenditure, to cover costs that may exceed the amount that can be transferred under Financial Regulation 6.3.

10 Other matters

10.1	**Future sessions**	**92A**	**92EC**	**SA**	**71AC**

1992 Fund Assembly and Supplementary Fund Assembly Decisions

10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 19 October 2015.

10.1.2 The governing bodies agreed that their next sessions would take place during the week of 20 April 2015. It was also agreed that the fourth 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 63rd session on 24 October 2014, during which it would consider the date for its 64th session.

1971 Fund Administrative Council

10.1.4 The 1971 Fund Administrative Council noted that there will be no further meetings of the Administrative Council since the decision had been taken to wind up the 1971 Fund by 31 December 2014. The Administrative Council further noted that the Secretary-General of IMO was prepared to convene a meeting of former Member States of the 1971 Fund at no expense to IMO and had tentatively proposed that the meeting be held on Friday 17 April 2015.

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

10.2.1 The delegation of Canada made a statement regarding a shocking incident which had taken place in Ottawa on Wednesday 22 October 2014 resulting in the tragic death of a Canadian soldier. A number of delegations took the floor to offer condolences to the Government of Canada. The Chairman of the 1971 Fund Administrative Council, on behalf of all the governing bodies, expressed sorrow and condolences to the people of Canada and in particular the soldier's family.

1992 Fund Assembly

10.2.2 The Director drew the attention of the 1992 Fund Assembly to the decision which had been taken by the 1971 Fund Administrative Council to wind up the 1971 Fund. He pointed out that the Assembly would have to decide that from 1 January 2015, the 1992 Fund Secretariat would no longer administer the 1971 Fund and that the Director of the 1992 Fund will cease to be, *ex officio*, Director of the 1971 Fund.

1992 Fund Assembly Decision

10.2.3 The 1992 Fund Assembly noted the decision on the winding up of the 1971 Fund taken by the 1971 Fund Administrative Council. They took note of the information that had been provided by the Director and decided that from 1 January 2015, the 1992 Fund Secretariat would no longer administer the 1971 Fund and that the Director of the 1992 Fund would cease to be, *ex officio*, Director of the 1971 Fund.

1971 Fund Administrative Council

10.2.4 The Director made the following statement on the decision to wind up the 1971 Fund:

> It has been a very difficult week, with tough decisions and lengthy debates taking place and, whilst it is the first time in the history of this organisation that we have not been able to reach a decision by consensus, which is undoubtedly regrettable, we do now have a decision. As I have stated previously, it is with great regret that our relationship with the P&I Clubs has been damaged along the road but it remains my sincere hope that this difficult situation is temporary and the IOPC Funds and the P&I Clubs will ultimately reach an agreement which enables us to continue to work together successfully to compensate victims of oil pollution damage in the years to come.
>
> The decision is to dissolve the original International Oil Pollution Compensation Fund after 36 years of existence. The legacy it leaves behind is quite something. It has paid some £330 million in compensation and it has laid the foundations for the new regime which exists today. I am glad that the Administrative Council has taken the decision to close this prestigious and innovative organisation in an organised and efficient manner and would like to take this opportunity to thank the Chairman of the 1971 Fund Administrative Council for guiding the Secretariat and delegations through the difficult discussions this week and also in all previous sessions leading to this moment since 2008. It is not an easy job to be a Chairman and to guide the discussions through many very difficult debates whilst remaining neutral at all times, but Captain Bruce has done just that. He has been an excellent Chairman, as I am sure you will all agree and I would like to express my sincere appreciation and gratitude to him.

10.2.5 The Chairman of the 1971 Fund Administrative Council made the following statement:

> Although our session is not quite over, the decision that we took this morning means that this will be the last meeting of the 1971 Fund Administrative Council. I wanted to take this opportunity to express what an honour it has been to be Chairman of this Council since 2008. It has been a very difficult job at times, but certainly enjoyable.
>
> In particular I would like to thank Member States for their support and pragmatic approach to help resolve the outstanding issues since the Convention ceased to be in force and particularly in the last few years when some difficult decisions have had to be taken.
>
> I have also had the privilege of being able to rely upon many people who were able to provide such excellent advice. In particular, the Chairmen of the other governing bodies, those who were involved in the Consultation Group on the winding up of the 1971 Fund and of course the Director and his Secretariat.

I look forward to seeing how the compensation regime will develop under the 1992 Fund and Supplementary Fund and I do hope that it will be possible to once again have a strong and positive relationship with the P&I Clubs since at heart we both want the regime to benefit victims of oil spills.

Supplementary Fund Assembly and 1992 Fund Executive Committee

10.2.6 No items were raised under this agenda item.

11 Adoption of the Record of Decisions

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

The draft Record of Decisions of the October 2014 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT14/11/WP.1 and IOPC/OCT14/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

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

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

40	Morocco	●		●	●
41	Namibia	●			
42	Netherlands	●	●	●	●
43	New Zealand	●			●
44	Nigeria	●	●		●
45	Norway	●		●	●
46	Oman	●			●
47	Panama	●			●
48	Papua New Guinea	●			●
49	Philippines	●			
50	Portugal	●		●	●
51	Qatar	●			●
52	Republic of Korea	●	●	●	●
53	Russian Federation	●			●
54	Saint Kitts and Nevis	●			●
55	Singapore	●	●		
56	South Africa	●			
57	Spain	●		●	●
58	Sri Lanka	●			●
59	Sweden	●		●	●
60	Turkey	●		●	
61	United Arab Emirates	●			●
62	United Kingdom	●	●	●	●
63	Uruguay	●			
64	Vanuatu	●			●
65	Venezuela (Bolivarian Republic of)	●			●

1.2 States represented as observers

		1992 Fund	**Supplementary Fund**	**1971 Fund**
1	Bolivia (Plurinational State of)	●	●	
2	Chile	●	●	●
3	Nicaragua	●	●	
4	Saudi Arabia	●	●	●
5	Ukraine	●	●	

1.3 Intergovernmental organisations

		1992 Fund	**Supplementary Fund**	**1971 Fund**
1	European Commission	●	●	●
2	International Maritime Organization (IMO)	●	●	●

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund	1971 Fund
1	BIMCO	●	●	●
2	International Association of Classification Societies Ltd (IACS)	●	●	
3	International Association of Independent Tanker Owners (INTERTANKO)	●	●	●
4	International Chamber of Shipping (ICS)	●	●	●
5	International Group of P&I Associations	●	●	●
6	International Spill Control Organization (ISCO)	●	●	
7	International Tanker Owners Pollution Federation Ltd (ITOPF)	●	●	●
8	International Union of Marine Insurance (IUMI)	●	●	
9	Oil Companies International Marine Forum (OCIMF)	●	●	●
10	World Liquid Petroleum Gas Association (WLPGA)	●	●	

* * *

ANNEX II

Working Group on issues related to the definition of 'ship'

REVISED TERMS OF REFERENCE

Adopted by the 1992 Fund Assembly at its 19th session, October 2014

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; and

3. To present a final report to the October 2015 session of the 1992 Fund Assembly.

4. The Working Group shall have as its Chairman Mrs Birgit Sølling Olsen (Denmark).

* * *

ANNEX III

Financial Regulation 14.1 of the 1992 Fund, Supplementary Fund and 1971 Fund

(as amended by the 1992 Fund Assembly at its 19th session, the Supplementary Fund Assembly at its 10th session and the 1971 Fund Administrative Council at its 33rd session, October 2014)

External Audit

14.1 An External Auditor, who shall be the Auditor-General (or officer holding the equivalent title) of a Member State, or a commercial firm with the requisite capabilities nominated by a Member State or identified by the Audit Body, shall be appointed in the manner and for the period decided by the Assembly.

* * *

ANNEX IV

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

(as amended by the 1992 Fund Assembly at its 19th session, October 2014)

Regulation 7

Settlement of Claims

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

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

(b) in respect of other officers:

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

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

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

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

Regulation 12

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Legal Counsel, the Head of the External Relations and Conference Department or the Head of the Claims Department, in that order, to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

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

(as amended by the 1992 Fund Assembly at its 19th session, October 2014)

Regulation 9

Management of Monies

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

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

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

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

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

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

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

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

(as amended by the Supplementary Fund Assembly at its 10th session, October 2014)

Regulation 7

Settlement of Claims

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

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

(b) in respect of other officers:

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

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

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

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

Regulation 12

Delegation of authority in the absence of the Director

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

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

Regulation 9

Management of Monies

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

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

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

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

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

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

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

Regulation 7

Settlement of Claims

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

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

(b) in respect of other officers:

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

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

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

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

Regulation 12*bis*

Delegation of authority in the absence of the Director

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Legal Counsel, the Head of the External Relations and Conference Department or the Head of the Claims Department, in that order, to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1971 Fund Convention, and to be the legal representative of the 1971 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation on the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

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

Regulation 9

Management of Monies

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

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

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

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

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

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

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

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ANNEX V

1971 Fund Resolution N°18 – Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) (October 2014)

(Adopted at the October 2014 session of the 1971 Fund Administrative Council)

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

RECALLING the adoption on 18 December 1971 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter the "1971 Fund Convention") at an International Conference convened by the Intergovernmental Maritime Consultative Organization at the Palais des Congress, Brussels and the subsequent establishment on 16 October, 1978 of the International Oil Pollution Compensation Fund (hereinafter the "1971 Fund")

RECALLING FURTHER that, pursuant to Article 2(a) of the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the 1971 Fund Convention had ceased to be in force as from 24 May 2002,

BEARING IN MIND that this did not result in the dissolution of the 1971 Fund,

RECALLING Resolution N°10 of the Assembly of the 1971 Fund (October 1996) whereby, as from the date of the establishment of the Secretariat of the International Oil Pollution Compensation Fund, 1992 (hereinafter "the 1992 Fund Secretariat"), the 1971 Fund, including all secretariat functions, has been administered by the 1992 Fund Secretariat,

RECALLING FURTHER Resolution N°13 of the Assembly of the 1971 Fund (May 1998) whereby the Director of the 1992 Fund was designated ex officio as the Director of the 1971 Fund,

TAKING INTO ACCOUNT Resolution N°13 of the Assembly of the 1971 Fund (May 1998), as amended by Resolution N°15 of the Assembly of the 1971 Fund (May 2002), which created the 1971 Fund Administrative Council and authorised it to perform the functions allocated to the Assembly under the 1971 Fund Convention, including the taking of appropriate measures to complete the winding up of the 1971 Fund and the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund,

NOTING that all former 1971 Fund Member States have fulfilled their obligations under the 1971 Fund Convention, including the submission of oil reports,

BEARING IN MIND the obligations contained in Article 44(1) and (2) of the 1971 Fund Convention, in the event that the 1971 Fund Convention ceased to be in force,

CONSIDERING that the 1971 Fund has now met its obligations under Article 44(1) and (2),

CONSIDERING FURTHER that there is no longer any need for the 1971 Fund to exist as a legal person pursuant to Article 44(3) of the 1971 Fund Convention,

MINDFUL of the decision of the 1971 Fund Administrative Council at its thirty-first session in October 2013 to wind up the 1971 Fund as soon as possible,

RECALLING the procedures for dissolution of the 1971 Fund adopted by the 1971 Fund Administrative Council by Resolution N° 17 at its thirty-second session (May 2014), Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) (May 2014),

1 Resolves that, with effect from the expiry of the last day of the financial year 2014 (31 December 2014), the 1971 Fund shall be dissolved and its legal personality shall cease to exist;

2 Agrees that the Director shall inform all States having at any time been Members of the 1971 Fund, as well as the Secretary-General of the International Maritime Organization (IMO) in his capacity as Depositary of the 1971 Fund Convention, and all other relevant organisations, as well as the Government of the United Kingdom of Great Britain and Northern Ireland of the dissolution of the 1971 Fund, with effect from the expiry of the last day of the financial year 2014 (31 December 2014);

3 Authorises the Director, in consultation with the Chairman of the 1971 Fund Administrative Council, to take any necessary and reasonable steps to implement paragraphs 6 and 7 of Resolution N°17 of 9 May 2014;

4 Further authorises the Director, in consultation with the Chairman of the 1971 Fund Administrative Council, to take any necessary and reasonable steps to give any remaining monies not so distributed to the World Maritime University, the International Maritime Law Institute and the International Maritime Safety, Security and Environment Academy in equal shares;

5 Requests the External Auditor to carry out a final audit of the 1971 Fund for the 2014 financial year;

6 Decides to request the Secretary-General of IMO to convene a meeting of all former Member States of the 1971 Fund to review and approve the Financial Statements of the 1971 Fund for the 2014 financial year;

7 Requests that States having at any time been Members of the 1971 Fund be informed of the approval of the Financial Statements of the 1971 Fund for the 2014 financial year; and

8 Decides to transfer full title to the archives of the 1971 Fund to the 1992 Fund.

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REIMBURSEMENT TO CONTRIBUTORS TO THE GENERAL FUND
(based on contributing oil received in 1997)

	Member State	Total Net Levy paid to General Fund £	% of Total General Fund Levy
1	Japan	8,972,615	27.887
2	Italy	4,903,246	15.239
3	France	3,269,217	10.161
4	United Kingdom	2,843,798	8.838
5	Netherlands	2,794,810	8.686
6	Spain	1,658,613	5.155
7	Germany	1,017,387	3.162
8	Republic of Korea	988,990	3.074
9	India	774,488	2.407
10	Canada	694,327	2.158
11	Sweden	655,494	2.037
12	Norway	606,502	1.885
13	Greece	452,568	1.407
14	Indonesia	367,243	1.141
15	Finland	350,954	1.091
16	Bahamas	349,002	1.085
17	Portugal	347,703	1.081
18	Denmark	226,409	0.704
19	Poland	130,645	0.406
20	Tunisia	91,400	0.284
21	Venezuela	87,478	0.272
22	Morocco	85,199	0.265
23	Cote d'Ivoire	83,651	0.260
24	Mexico	81,637	0.254
25	Sri Lanka	53,013	0.165
26	Croatia	40,073	0.125
27	Cameroon	36,685	0.114
28	Ireland	34,675	0.108
29	Ghana	34,249	0.106
30	Cyprus	27,591	0.086
31	Kenya	26,584	0.083
32	Nigeria	20,706	0.064
33	China (HKSAR)	17,775	0.055
34	Algeria	14,513	0.045
35	Belgium	13,176	0.041
36	Malta	8,991	0.028
37	Russian Federation	6,791	0.021
38	New Zealand	6,065	0.019
39	Colombia	1,018	0.003
	Member States not in existence		
40	Yugoslavia	201,003	0.000
41	USSR	189,030	0.000
	Nil oil received in 1997		
42	Syrian Arab Republic	45,038	0.000
43	Slovenia	6,010	0.000
44	Gabon	5,029	0.000
45	Papua New Guinea	2,899	0.000
46	Liberia	1,868	0.000
	Nil net contributions to General Fund due to reimbursements made in 1997 and 1998 from General Fund		
47	Australia	0	0.000
48	Barbados	0	0.000
49	Malaysia	0	0.000
50	Mauritius	0	0.000
		32,626,158	100.000

REIMBURSEMENT TO THE CONTRIBUTORS TO THE NISSOS AMORGOS MAJOR CLAIMS FUND

Nissos Amorgos incident (28 February 1997)

	Member State	Contributing oil (tonnes) received in 1996	% of Total Contributing Oil
1	Japan	276,405,884	22.803
2	Italy	144,315,162	11.906
3	Republic of Korea	113,290,983	9.346
4	Netherlands	103,153,535	8.510
5	France	96,844,142	7.989
6	United Kingdom	77,525,395	6.396
7	Spain	56,208,957	4.637
8	India	43,720,614	3.607
9	Canada	39,581,235	3.265
10	Australia	32,362,331	2.670
11	Norway	28,239,838	2.330
12	Germany	27,616,884	2.278
13	Sweden	21,573,170	1.780
14	Greece	20,146,111	1.662
15	Venezuela	16,842,544	1.389
16	Malaysia	16,434,656	1.356
17	Portugal	12,945,513	1.068
18	Mexico	10,790,306	0.890
19	Finland	9,830,428	0.811
20	Indonesia	9,271,145	0.765
21	Belgium	7,018,628	0.579
22	Denmark	6,842,016	0.564
23	Morocco	5,335,586	0.440
24	New Zealand	4,408,937	0.364
25	China (HKSAR)	4,029,619	0.332
26	Croatia	3,931,933	0.324
27	Poland	3,670,933	0.303
28	Côte d'Ivoire	3,340,637	0.276
29	Ireland	3,130,883	0.258
30	Tunisia	2,550,364	0.210
31	Sri Lanka	1,977,298	0.163
32	Bahamas	1,500,193	0.124
33	Cyprus	1,456,807	0.120
34	Kenya	1,411,427	0.116
35	Cameroon	1,266,953	0.105
36	Malta	824,209	0.068
37	Nigeria	754,106	0.062
38	Ghana	660,677	0.055
39	Algeria	490,000	0.040
40	Russian Federation	290,100	0.024
41	Barbados	170,372	0.014
42	Albania	0	0.000
43	Antigua and Barbuda	0	0.000
44	Bahrain	0	0.000
45	Benin	0	0.000
46	Brunei Darussalam	0	0.000
47	Djibouti	0	0.000

REIMBURSEMENT TO THE CONTRIBUTORS TO THE NISSOS AMORGOS MAJOR CLAIMS FUND

Nissos Amorgos incident (28 February 1997)

	Member State	Contributing oil (tonnes) received in 1996	% of Total Contributing Oil
48	Estonia	0	0.000
49	Fiji	0	0.000
50	Gabon	0	0.000
51	Gambia	0	0.000
52	Iceland	0	0.000
53	Kuwait	0	0.000
54	Liberia	0	0.000
55	Maldives	0	0.000
56	Marshall Islands	0	0.000
57	Mauritania	0	0.000
58	Mauritius	0	0.000
59	Monaco	0	0.000
60	Mozambique	0	0.000
61	Oman	0	0.000
62	Qatar	0	0.000
63	Saint Kitts and Nevis	0	0.000
64	Seychelles	0	0.000
65	Sierra Leone	0	0.000
66	Slovenia	0	0.000
67	Switzerland	0	0.000
68	Syrian Arab Republic	0	0.000
69	Tonga	0	0.000
70	Tuvalu	0	0.000
71	United Arab Emirates	0	0.000
72	Vanuatu	0	0.000
	TOTAL	**1,212,160,511**	**100.000**

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ANNEX VI

Revised 1971 Fund 2014 Administrative Budget

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ADOPTED 2014 BUDGET APPROPRIATIONS	PROPOSED 2014 SUPPLEMANTARY BUDGET	REVISED 2014 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	240 000	240 000	480 000
II	Costs for winding up of the 1971 Fund	250 000	0	250 000
III	Administrative costs including External Audit fees	15 300	17 000	32 300
1971 Fund Budget Appropriation		**505 300**	**257 000**	**762 300**

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ANNEX VII
2015 Administrative Budget for 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2013 expenditure for 1992 Fund		2013 budget appropriations for 1992 Fund		2014 budget appropriations for 1992 Fund	2015 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 896 199*		*2 060 260*		2 061 920	2 062 790
(b)	Separation and recruitment	*44 730*		*40 000*		40 000	40 000
(c)	Staff benefits, allowances and training	*541 977*		*670 650*		645 775	650 570
(d)	Conscious rewarding scheme [1]	-		-		-	20 000
	Sub-total		***2 482 906***		***2 770 910***	**2 747 695**	**2 773 360**
II	**General services**						
(a)	Rent of office accommodation (including service charges and rates)	*306 288*		*340 800*		332 800	346 800
(b)	IT (hardware, software, maintenance and connectivity)	*232 795*		*278 450*		221 615	223 480
(c)	Furniture and other office equipment	*8 701*		*19 000*		13 000	13 000
(d)	Office stationery and supplies	*10 314*		*20 000*		15 000	12 500
(e)	Communications (courier, telephone, postage)	*35 244*		*45 000*		45 000	35 000
(f)	Other supplies and services	*25 921*		*35 000*		35 000	35 000
(g)	Representation (hospitality)	*14 810*		*25 000*		20 000	20 000
(h)	Public information	*71 430*		*160 000*		110 000	130 000
	Sub-total		***705 503***		***923 250***	**792 415**	**815 780**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' governing bodies and intersessional Working Groups		***140 595***		***100 000***	**130 000**	**130 000**
IV	**Travel**						
	Conferences, seminars and missions		***85 537***		***100 000***	**100 000**	**100 000**
V	**Other expenditure (previously Miscellaneous expenditure)**						
(a)	Consultants' and other fees	*184 479*		*150 000*		100 000	150 000
(b)	Audit Body	*144 271*		*167 000*		165 000	205 000
(c)	Investment Advisory Body	*68 385*		*68 500*		70 850	72 500
	Sub-total		***397 135***		***385 500***	**335 850**	**427 500**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***3,500***		***60 000***	**60 000**	**60 000**
Total joint Secretariat expenditure I-VI (excluding External Audit fees)			***3 815 176***		***4 339 660***	**4 165 960**	**4 306 640**
VII	**External Audit fees 1992 Fund only**		*48 500*		*49 000*	48 500	47 500
VIII	**Relocation costs 1992 Fund only**		**-**		**-**	***250,000***	250 000
Total Expenditure I-VIII			***3 863 676***		***4 388 660***	**4 464 460**	**4 604 140**

[1] Expenditure and budget for 'Conscious rewarding scheme' in 2013 and 2014 was included under 'Salaries'

2015 Administrative Budget for the Supplementary Fund

(Figures in Pounds sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2013 EXPENDITURE	2013 BUDGET APPROPRIATIONS	2014 BUDGET APPROPRIATIONS	2015 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	33 000	33 000	32 000	33 000
II	Administrative expenses (including external audit fees)	3 600	13 600	13 600	13 500
Supplementary Fund Budget Appropriation		**36 600**	**46 600**	**45 600**	**46 500**