



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
18th session  
Agenda item 30

FUND/A.18/26  
20 October 1995

Original: ENGLISH

## RECORD OF DECISIONS OF THE EIGHTEENTH SESSION OF THE ASSEMBLY

(held from 17 to 20 October 1995)

### Opening of the session

The 18th session of the Assembly was opened by Mr J Bredholt (Denmark) in his capacity as representative of the delegation from which the Chairman of the previous session had been elected.

Mr Bredholt informed the Assembly of the sad news of the death of Professor John Perrakis (Greece) on 29 July 1995. A minute's silence was observed in his memory.

### **1     Adoption of the Agenda**

The Assembly adopted the Agenda as contained in document FUND/A.18/1.

### **2     Election of the Chairman and Two Vice-Chairmen**

2.1     Mr Bredholt drew attention to the fact that he had informed the Assembly, at the end of its 17th session, that he would not be available for re-election as Chairman.

2.2     The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr J Stewart (Liberia)

2.3 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.

2.4 At the suggestion of the newly elected Chairman, the Assembly decided to grant Mr Bredholt the title of Honorary Chairman of the Assembly in recognition of his 16 years as Chairman.

### **3 Examination of credentials**

3.1 The following Contracting States were present:

Algeria	Greece	Poland
Australia	Indonesia	Portugal
Belgium	Italy	Republic of Korea
Canada	Japan	Russian Federation
Côte d'Ivoire	Liberia	Slovenia
Cyprus	Malaysia	Spain
Denmark	Mexico	Sweden
Finland	Monaco	Tunisia
France	Netherlands	United Arab Emirates
Germany	Nigeria	United Kingdom
Ghana	Norway	Venezuela

The Assembly took note of the information given by the Director that all Contracting States participating had submitted credentials which were in order.

3.2 The Assembly decided to grant observer status to the Republic of Peru, pursuant to a request set out in document FUND/A.18/25.

The following non-Contracting States were represented as observers:

Brazil	Egypt	Panama
Chile	Islamic Republic of Iran	Peru
China	Jamaica	Saudi Arabia
Ecuador	Latvia	United States

3.3 The Assembly decided to grant observer status to the International Salvage Union, pursuant to a request set out in document FUND/A.18/25/Add.1.

The following inter-governmental organisation and international non-governmental organisations were represented as observers:

International Maritime Organization (IMO)  
 Cristal Limited  
 International Chamber of Shipping (ICS)  
 International Group of P & I Clubs  
 International Tanker Owners Pollution Federation Ltd (ITOPF)  
 International Union for the Conservation of Nature and Natural Resources  
 (IUCN)  
 Oil Companies International Marine Forum (OCIMF)

### **4 Report of the Director**

4.1 The Director introduced his report on the activities of the IOPC Fund since the 17th session of the Assembly, contained in document FUND/A.18/2. In his presentation, the Director made reference

to the fact that six States had become Members of the IOPC Fund since the Assembly's 17th session and that several States were expected to ratify the Fund Convention in the near future. He expressed the view that the continuing expansion of membership of the IOPC Fund had demonstrated that the international community had found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one. He referred to the developments with respect to the 1992 Protocols to the Civil Liability Convention and the Fund Convention and the preparations for their entry into force on 30 May 1996. He drew attention to the fact that the Assembly had expressed the opinion that a uniform interpretation of the definition of "pollution damage" was essential for the functioning of the regime of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention. The Director stated that, in his view, it was equally essential that such uniformity be obtained within the framework of the 1992 Protocols to those Conventions.

4.2 The Assembly expressed its gratitude to the Director and the other members of the Secretariat for the efficient way in which they administered the IOPC Fund. It also thanked the staff in the local claims offices set up in connection with the *Aegean Sea* and *Braer* incidents.

4.3 The Assembly congratulated the Director on the IOPC Fund's 1994 Annual Report which contained an instructive presentation of the activities of the Organisation.

4.4 The Assembly noted with appreciation the publication in English and French of the revised booklet containing general information on system of liability and compensation for oil pollution damage and of the revised Claims Manual.

4.5 It was noted that several major oil pollution incidents which had occurred recently in IOPC Fund Member States had resulted in a very heavy workload on the Fund Secretariat. The Assembly acknowledged the need for strengthening the Secretariat's personnel resources.

4.6 The continued growth of the membership of the IOPC Fund was noted by the Assembly with satisfaction. The Director was instructed to continue his efforts to increase the number of Member States.

4.7 The Assembly noted the concerns expressed by the Director and the External Auditor relating to the continued failure of some Member States to submit their reports on contributing oil receipts. It agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly drew the attention of Member States to Resolution N°7, adopted at its 11th session, in which Member States were urged to take the necessary steps to ensure that the reports on contributing oil received in their territories were submitted on time and in the manner prescribed in the IOPC Fund's Internal Regulations. The Director was invited to continue his efforts to encourage Member States to submit outstanding reports.

## **5 Report on investments**

5.1 The Assembly took note of the Director's report on the IOPC Fund's investments during the period 1 July 1994 - 30 June 1995, contained in document FUND/A.18/3.

5.2 The Assembly noted the number of investments made during that period, the large number of institutions used by the Fund for investment purposes and the significant amounts invested by the Fund. It was recognised that the investment of the IOPC Fund's assets had become an important part of the Fund's operations. The Assembly stated that it would continue to follow the investment activities closely.

5.3 It was noted that the IOPC Fund held a fixed term deposit of £2 million with Baring Brothers & Co Ltd on 26 February 1995 when that merchant bank ceased trading. The Assembly noted with satisfaction that the IOPC Fund had recovered the total amount of the principal at maturity, together with interest.

## **6 Report of the Investment Advisory Body**

6.1 The Assembly took note of the report of the Investment Advisory Body, contained in the Annex to document FUND/A.18/4. Internal investment guidelines approved by the Director and reproduced in the Appendix to that report were noted.

6.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work since the 17th session of the Assembly.

## **7 Financial Statements and Auditor's Report and Opinion**

7.1 The Director introduced document FUND/A.18/5 containing the Financial Statements of the IOPC Fund for the period ended 31 December 1994 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor introduced the Auditor's Report and Opinion.

7.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document FUND/A.18/5.

7.3 The Assembly approved the accounts of the IOPC Fund for the financial period 1 January to 31 December 1994.

## **8 Appointment of members of the Investment Advisory Body**

The Assembly reappointed Mrs M E Beaman Gordon, Mr D Jude and Mr S Whitney-Long as members of the Investment Advisory Body for a term of one year.

## **9 Review of investment policy**

9.1 The Director introduced document FUND/A.18/7 relating to the IOPC Fund's investment policy.

9.2 The Assembly agreed with the Director that no changes to the IOPC Fund's investment policy were required at this stage.

## **10 Report on contributions**

The Assembly took note of the Director's report on contributions contained in documents FUND/A.18/8 and FUND/A.18/8/Add.1. It noted that over 98% of the 1994 annual contributions, due by 1 February 1995, had been paid. The Assembly expressed satisfaction with the situation regarding the payment of contributions.

## **11 Reports of the Executive Committee on its 41st, 42nd, 43rd and 44th sessions**

11.1 Professor H Tanikawa (Japan) chaired the session during the consideration of this Agenda item, in his capacity as first Vice-Chairman of the Assembly.

11.2 The Chairman of the Executive Committee, Mr C Coppolani (France), informed the Assembly of the work of the Committee during its 41st, 42nd, 43rd and 44th sessions and reported to the Assembly the decisions taken by the Committee at these sessions.

11.3 In his report the Chairman of the Executive Committee referred to the most important issues dealt with by the Committee since the 17th session of the Assembly. He mentioned in particular the problems

that had arisen in relation to the *Haven* incident and the offer of a global settlement which had been made by the shipowner/UK Club and the IOPC Fund. He expressed his deep regret that the Italian Government had not accepted the offer nor had given an indication that it was looking favourably at the offer. For this reason, the Executive Committee had decided to refer the matter to the Assembly.

11.4 The Chairman of the Executive Committee also referred to the work carried out by the Executive Committee in respect of other incidents, in particular the *Aegean Sea, Braer, Keumdong N°5* and *Seki* incidents, as well as the incidents which had taken place in the Republic of Korea and Japan in the summer of 1995.

11.5 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Chairman of the Executive Committee for the work of the Committee during the particularly busy period of his chairmanship.

11.6 Mr Coppolani (France) took the Chair again for the remaining part of the session.

11.7 A number of delegations, namely Canada, Denmark, Finland, France, Germany, Greece, Japan, Monaco, the Netherlands, Norway, Poland, Sweden and the United Kingdom took the floor to address the situation which had arisen in the *Haven* case. All these delegations expressed their regret that the Italian Government had neither accepted the offer nor made any indication that it considered the offer favourably. They drew attention to the serious consequences of the Italian Government's position for the Italian claimants, in particular individuals and small businesses who, under the offer, would have been paid promptly after an agreement was reached but who might now have to wait for many more years before receiving any payment at all. Reference was also made to the difficulties caused for those claimants who had complied with the provisions of the Conventions relating to the time-bar but had nevertheless not received any compensation. They also expressed their deep concern of the consequences of this situation for the future of the international compensation system established by the Civil Liability Convention and the Fund Convention. It was pointed out that a compensation system of this kind could function only if all Member States were willing to respect the principles generally agreed upon within the framework of the Fund Convention and referred in particular to the problems which had arisen in respect of the Italian Government's claim for environmental damage.

11.8 After having expressed its regret that no agreement had been reached on the proposed global settlement, and its concern regarding the consequences for the international compensation system, Professor H Tanikawa of the Japanese delegation made the following statement:

We have heard the report of the Chairman of the Executive Committee. We regret that there has been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the IOPC Fund. For this reason we interpret this to mean that the offer has not been accepted by the Italian Government. We therefore believe that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government. As already decided by the Assembly, the *Haven* Major Claims Fund remains, but no further contributions have been levied. The terms and conditions of the previous offer of a global settlement are well known. Should the claimants, including the Italian Government, wish to revert to a settlement on the terms of that offer, then the matter would have to be referred to the Assembly for decision.

11.9 Many delegations supported the statement of Professor Tanikawa of the Japanese delegation. The Assembly endorsed the statement made by Professor Tanikawa as the position of the IOPC Fund.

11.10 The Director informed the Assembly that if an extraordinary Assembly were to be necessary to address this matter, it could, under Article 19.2 of the Fund Convention, be convened with 30 days notice.

11.11 The Assembly decided that the Consultation Group established by the Executive Committee at its 42nd session should continue to be available for consideration of matters which might arise in respect

of the *Haven* incident. It was noted that the Consultation Group had been composed of the Chairman of the Executive Committee and the delegations of Algeria, Japan, Norway and the United Kingdom. It was decided that the Consultation Group should include the Chairman of the Assembly and the new Chairman of the Executive Committee, to be elected at the Committee's 45th session.

11.12 The representative of the UK Club stated that the Club would, at least for some time, continue its negotiations and discussions with the local authorities in Italy in the hope that, if these authorities would agree to be part of a global settlement, the Italian Government's position might be modified.

11.13 The French delegation referred to its statement at the 44th session of the Executive Committee (document FUND/EXC.44/17, paragraphs 3.2.26-3.2.28). The French delegation reminded the Assembly that the delegation had requested that the Director should take the necessary steps in the coming weeks so that compensation could be paid to the French claimants immediately after the next session of the Executive Committee.

11.14 The Assembly decided to authorise the Executive Committee to approve at least partial payments to claimants in France, Monaco and Italy who had taken the steps required under the Conventions to prevent their claims from becoming time-barred. The Director was instructed to study this matter further, in consultation with the French delegation, and refer the matter to the Executive Committee at a future session for decision.

## 12 Election of members of the Executive Committee

The Assembly elected the following Contracting States as members of the Executive Committee:

<u>Elected under Article 22.2(b) of the Fund Convention</u>	<u>Elected under Article 22.2(a) of the Fund Convention</u>
Canada	Algeria
Germany	Australia
India	Finland
Japan	Liberia
Netherlands	Mexico
Norway	Nigeria
Spain	Russian Federation
	United Arab Emirates

## 13 Appointment of members and substitute members of the Appeals Board

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 20th session of the Assembly.

<u>Members</u>	<u>Substitute Members</u>
Mr A Benguerrah (Algeria)	Mr N Schuldt (Germany)
Mr K J Weerasinghe (Sri Lanka)	Mr E Conte (Italy)
Sir Frank Berman (United Kingdom)	Mr K Takiguchi (Japan)

**14     Transfers within the 1995 Budget**

The Assembly authorised the Director to transfer, within the 1995 Budget, up to £15 000 from Chapter I (Personnel) to Chapter V (Miscellaneous expenditure) to cover increased costs for using consultants, as proposed in document FUND/A.18/11.

**15     Entry into force of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention**

15.1     The Assembly noted that the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention would enter into force on 30 May 1996. The Assembly took note of the information contained in documents FUND/A.18/12 and FUND/A.18/12/Add.1 concerning the prospects for further ratifications of the 1992 Protocols.

15.2     The Director drew the attention of delegations to some consequences of the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by States which had ratified the 1992 Protocols when the total quantity of contributing oil received in all States Parties to the 1992 Protocol to the Fund Convention exceeded 750 million tonnes (document FUND/A.18/12/1). The Director indicated that if, as expected, the requirements for compulsory denunciation were fulfilled during the summer of 1996, the denunciations would take effect 18 months later, ie by approximately the end of 1997. The Assembly noted that at such time, the Parties to the 1992 Fund Convention would cease to be Parties to the 1971 Fund Convention. The Director informed the Assembly that he had drawn the attention of the Governments of States which were Parties to the 1971 Fund Convention, but which had not yet ratified the 1992 Protocols, to the effect of the compulsory denunciations on the respective shares of contributions payable by contributors in the remaining Member States of the 1971 Fund.

15.3     In the light of the great progress in ratifications, it was stressed that States should, when depositing their instruments of ratification of the 1992 Protocol to the Fund Convention, inform the Secretary-General of the quantity of contributing oil received, and thereafter, in subsequent years, submit this information to the Director of the IOPC Fund, since this data was vital in order to establish when the total tonnage of 750 million tonnes which would trigger compulsory denunciations had been reached. The observer delegation of the International Maritime Organization confirmed that the Secretary-General would make every effort to ensure that States received notification in their capitals as promptly as possible, so that Governments would be able to take the necessary steps to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within the six-month period laid down in Article 31 of the Final Clauses of the 1992 Protocol to the Fund Convention.

15.4     The Director suggested that States which were not yet Members of the IOPC Fund should ratify both the 1971 Fund Convention and the 1992 Protocols. He mentioned that, if a State ratified only the 1992 Protocols, potential claimants might receive less compensation during the transitional period than if that State had ratified also the 1969 Civil Liability Convention and the 1971 Fund Convention.

15.5     The Assembly took note of document FUND/A.18/12/2, which set out the amounts of compensation that would be payable to claimants in various situations during the transitional period under the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention.

**16     Preparations for the entry into force of the 1992 Protocol amending the 1971 Fund Convention**

16.1     The Director introduced the following documents concerning the preparations for the entry into force of the 1992 Protocol amending the 1971 Fund Convention:

<u>Document</u>	<u>Subject</u>
FUND/A.18/13	General questions
FUND/A.18/13/1	Rules of Procedure of the Assembly
FUND/A.18/13/2	Internal Regulations
FUND/A.18/13/3	Financial Regulations
FUND/A.18/13/4	Staff Regulations
FUND/A.18/13/5	Capping of contributions
FUND/A.18/13/6	Levying of contributions
FUND/A.18/13/7	Handling of claims for compensation: consequences of the abolition of the Executive Committee
FUND/A.18/13/8	Criteria for the admissibility of claims for compensation
FUND/A.18/13/9	Application of the 1992 Fund Convention to the EEZ
FUND/A.18/13/10	Grant of observer status by the 1992 Fund
FUND/A.18/13/11	Accounts, budget and audit
FUND/A.18/13/12	Secretariat
FUND/A.18/13/13	Headquarters Agreement
FUND/A.18/13/14	Agreements with the International Maritime Organization
FUND/A.18/13/15	Publication of basic documents
FUND/A.18/13/16	Decisions to be taken by the 1971 Fund Assembly

16.2 The Assembly expressed its appreciation to the Director and the Secretariat for the excellent documentation prepared. It also expressed its gratitude to the Director, Legal Affairs and External Relations Division of IMO, for his valuable contribution.

16.3 The Assembly noted that under Article 36 of the 1971 Fund Convention as amended by the 1992 Protocol thereto (the 1992 Fund Convention), the Secretary-General of IMO should convene the 1st session of the Assembly of the organisation established under that Convention (the 1992 Fund) and that this session should be held as soon as possible after the entry into force of the 1992 Protocol to the Fund Convention and, in any case, not more than 30 days after the entry into force. The Director informed the Assembly that the Secretary-General of IMO had tentatively scheduled the 1st session of the 1992 Fund Assembly for the week commencing 24 June 1996.

16.4 It was noted that, in view of the very close link which will exist between the present Fund Organisation (the 1971 Fund) and the 1992 Fund, in particular during the period when the two Funds would operate concurrently, the 1971 Fund Assembly would be called upon to take certain decisions in the light of the decisions taken by the 1992 Fund Assembly at its 1st session (cf document FUND/A.18/13/16). For this reason, the Assembly decided to hold an extraordinary session during the same week as the 1st session of the 1992 Fund Assembly, viz the week commencing 24 June 1996.

16.5 It was noted that any positions taken by the Assembly of the 1971 Fund in respect of the structure or operation of the 1992 Fund were only proposals, and that any decisions on these issues would have to be taken by the Assembly of the 1992 Fund.

16.6 It was also noted that the Director had based his study and resulting proposals on the following assumptions:

- (a) The 1992 Fund's Headquarters would be located in the United Kingdom.
- (b) The 1971 Fund and the 1992 Fund would be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remained Parties to the 1971 Fund Convention.



- (c) In view of the very close link that would exist between the 1971 Fund and the 1992 Fund, it was important that close co-ordination was ensured between the decisions of the 1971 Fund Assembly (and of the Executive Committee of the 1971 Fund in respect of functions allocated to it under the 1971 Fund Convention or by the 1971 Fund Assembly) and those of the 1992 Fund Assembly.
- (d) It would be an advantage if, to the extent possible, the same Internal Regulations and Financial Regulations were to apply in respect of the 1971 Fund and the 1992 Fund.
- (e) It would be necessary to co-ordinate the decisions of the Executive Committee of the 1971 Fund and the body of the 1992 Fund handling claims for compensation, since claims arising out of a particular incident might have to be dealt with by both Organisations.
- (f) As regards the payment of contributions to the 1971 Fund and the 1992 Fund, procedures should be developed which did not put an unnecessary administrative burden on the contributors.
- (g) A simple formula should be found for sharing the running costs of the joint Secretariat between the 1971 Fund and the 1992 Fund.
- (h) The two Organisations should, if possible, have the same External Auditor.

16.7 The Assembly reiterated the views expressed at its 17th session that the 1971 Fund and the 1992 Fund should be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil were Parties to the 1971 Fund Convention.

16.8 The Assembly agreed in general with the proposed revised Rules of Procedure for the 1971 Fund Assembly and the draft Rules of Procedure for the 1992 Fund Assembly contained in document FUND/A.18/13/1. The Assembly took the view that these texts should be submitted to the June 1996 sessions of the 1971 Fund Assembly and the 1992 Fund Assembly, respectively.

16.9 The proposed revised Internal Regulations and Financial Regulations of the 1971 Fund and the draft Internal Regulations and Financial Regulations of the 1992 Fund, as contained in documents FUND/A.18/13/2 and FUND/A.18/13/3, were considered by the Assembly. The Assembly endorsed in general these proposals. The Director was instructed to submit these texts to the June 1996 sessions of the 1971 Fund Assembly and the 1992 Fund Assembly.

16.10 The Assembly agreed with the Director that, while the Secretariat and the Director of the 1971 Fund were acting also as Secretariat and Director of the 1992 Fund, there would be no need for a separate set of Staff Regulations for the 1992 Fund. It was noted that, since the 1971 Fund and 1992 Fund would share a joint Secretariat, it would be necessary to revise the Staff Regulations of the 1971 Fund to permit the staff of the 1971 Fund Secretariat to act for both Organisations. The proposed revised Staff Regulations of the 1971 Fund, as contained in document FUND/A.18/13/4, were endorsed in general by the Assembly. The Director was instructed to submit the text to the June 1996 session of the 1971 Fund Assembly.

16.11 The Assembly considered a number of questions arising from the application of the provisions in the 1992 Protocol to the Fund Convention on the capping of contributions (document FUND/A.18/13/5). The Assembly shared the Director's view that the capping system should apply separately for a given year to each levy for the general fund and to each levy for a major claims fund. It was considered that the contributors should be informed in an appropriate manner of the basic levy and the capping levy (or deduction in respect of contributors in a capped State) separately. The Assembly was of the view that the Director should make the decision at the time of invoicing of whether to cap contributions, since this would make it possible to base the decision on more complete figures on oil receipts than if the decision were taken by the Assembly. The Assembly noted the Director's view that the capping procedure should

not apply in respect of decisions to levy contributions taken by the Assembly of the 1992 Fund after the date on which the reported total quantity of contributing oil received in all Member States exceeded 750 million tonnes, and that this approach was in conformity with the wording of Article 36 ter, paragraph 4 of the 1992 Fund Convention. Most delegations shared this view. One delegation stated, however, that the question of when the application of the capping provisions should cease ought to be considered separately for each fund. The Director was instructed to study this issue further, bearing in mind that the majority of delegations favoured the former approach.

16.12 The Assembly recognised that it would be essential for the smooth functioning of the 1992 Fund that Member States fulfilled their obligations under the 1992 Fund Convention and the proposed Internal Regulations to submit their oil reports at the time and in the manner prescribed. For this reason, the Assembly endorsed the Director's proposal to submit to the 1992 Fund Assembly a draft resolution as set out in Annex II to document FUND/A.18/13/5.

16.13 The Assembly endorsed the Director's view that it would be preferable if the 1992 Fund Assembly were to postpone the first levy of contributions until an extraordinary session of the 1992 Fund Assembly, to be held in October 1996, by which time the Assembly of the 1992 Fund would be in a better position to assess an appropriate level for contributions (document FUND/A.18/13/6). It was noted that this approach might require the 1992 Fund to take loans until contributions were received in February 1997. The Assembly stated that it would be prepared to consider favourably a request from the 1992 Fund Assembly that the 1971 Fund should, if the need were to arise, grant loans to the 1992 Fund, to the extent that this could be done without prejudice to the operations of the 1971 Fund. The Assembly shared the Director's view that the contributions to the 1992 Fund should, to the extent possible, be levied at the same time as contributions were levied to the 1971 Fund, and that a single invoice covering levies to both the 1971 Fund and the 1992 Fund would be preferable for contributors.

16.14 The Assembly considered the consequences of the 1992 Fund Convention not providing for an Executive Committee, and the need for the 1992 Fund Assembly to decide on the structure for the handling of claims for compensation (document FUND/A.18/13/7). It noted that in recent years the Executive Committee of the 1971 Fund had played a vital role in the consideration of claims. The Assembly took the view that it would not be practicable to set up separate working groups to deal with claims arising out of each major incident, as had been suggested at the 1984 International Conference which adopted the 1984 Protocols.

16.15 The Assembly considered the Director's proposal for handling claims for compensation within the four-layer framework of the Director, a claims 'bureau', a claims subsidiary body and the Assembly. It was noted that the purpose of this proposal was to speed up settlements when no questions of principle were involved, while Member States would retain their role as policy makers.

16.16 The Assembly considered that a claims subsidiary body should be established by the Assembly of the 1992 Fund and that its composition and role should be similar to those of the Executive Committee of the 1971 Fund. It did not support the Director's proposal to set up a claims 'bureau'.

16.17 The Assembly was of the view that it would not be necessary to establish the claims subsidiary body at the 1st session of the 1992 Fund Assembly, since there would be only nine Member States at that time. The Assembly considered that if an extraordinary session of the 1992 Fund Assembly were to be held in October 1996, the 1992 Fund Assembly might wish to consider at that session, in the light of the progress in ratifications, whether to establish a claims subsidiary body.

16.18 The Assembly took the view that it might be appropriate to set up a working group in June 1996 to consider the establishment of a subsidiary body to deal with claims and whether a Finance and Audit Committee should be established. It was noted that consideration would have to be given as to whether credentials should be required for subsidiary bodies.

16.19 The Assembly agreed with the Director that it was essential to ensure consistency between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims. The Assembly

endorsed the Director's proposed draft resolution to be considered by the Assembly of the 1992 Fund regarding the 1992 Fund's policy on the admissibility of claims for compensation (document FUND/A.18/13/8, Annex). It was agreed that the publication of a Claims Manual issued jointly by the 1971 Fund and the 1992 Fund would be of considerable assistance to claimants.

16.20 Certain questions relating to the application of the 1992 Fund Convention to the exclusive economic zone (EEZ) established under the United Nations Convention on the Law of the Sea were examined by the Assembly (document FUND/A.18/13/9). The Assembly decided to instruct the Director to submit to the 1st session of the Assembly of the 1992 Fund a draft resolution urging States to notify the 1992 Fund of the establishment of an EEZ or the determination of an area under Article 3(a)(ii) of the 1992 Fund Convention, as set out in the Annex to document FUND/A.18/13/9. The Assembly shared the Director's view that the relevant date for determining whether the 1992 Fund Convention would apply to pollution damage within the EEZ (or an area determined under Article 3(a)(ii) of the 1992 Fund Convention) of a given State should be whether the EEZ (or area) was established (or determined) before the incident occurred. The Director was instructed to examine further the question of how the IOPC Fund should act in the event of there being a dispute between two States (only one of which was a Member of the 1992 Fund) as regards the delimitation of their respective EEZs and oil pollution damage being caused in the disputed area.

16.21 The Assembly agreed in general with the Director's proposal in respect of the granting of observer status to non-Member States and inter-governmental and non-governmental organisations, as set out in document FUND/A.18/13/10. It was noted that also States which had denounced the 1971 Fund Convention should be invited as observers to sessions of the 1971 Fund Assembly and Executive Committee.

16.22 The Assembly shared the Director's view that the accounts and budget of the 1992 Fund should be established so as to mirror as closely as possible those of the 1971 Fund. As proposed by the Director in document FUND/A.18/13/11, the Assembly agreed that the same person should act as External Auditor for both the 1971 Fund and the 1992 Fund. It recommended, therefore, that the Comptroller and Auditor General of the United Kingdom, who was External Auditor of the 1971 Fund, should also be appointed as External Auditor of the 1992 Fund, that the first appointment should be for the period 30 May 1996 to 31 December 1998, and that appointments thereafter should be for periods of four years.

16.23 The Assembly endorsed the Director's proposal that the joint administrative costs of the 1971 Fund and the 1992 Fund should be apportioned according to a simple formula (document FUND/A.18/13/12). It was agreed that a certain flexibility should be allowed in the apportionment of costs incurred in the handling of incidents involving both Organisations, but that the most appropriate method might be to share the costs on the basis of the ultimate liabilities of the two Funds in respect of the incident in question.

16.24 The Assembly took the view that the Director of the 1992 Fund should be the same person as the Director of the 1971 Fund. Different views were expressed as regards the procedure for making this appointment.

16.25 The Assembly also considered when there should be a transition from the 1992 Fund being administered by the 1971 Fund Secretariat to a situation when the 1992 Fund would have its own Secretariat. It was agreed that this question should be considered at a later stage, for example at the end of the transitional period (ie when the compulsory denunciations have taken effect and the Member States of the 1992 Fund are no longer Members of the 1971 Fund).

16.26 The Assembly took note of the Resolution adopted by the 1992 International Conference recommending that the 1992 Fund should "ensure, in its Staff Rules and Regulations, that personnel employed by the 1971 Fund on the date when the 1971 Fund Convention ceases to be in force will receive treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of the organization;" (Resolution 2 of the 1992 Conference,

paragraph 3(a), reproduced as Annex I to document FUND/A.18/13). The Assembly agreed with the Director that when the 1992 Fund established its own Secretariat, it would seem appropriate for members of the 1971 Fund Secretariat at that time to be transferred to the 1992 Fund Secretariat, if they so wished.

16.27 The Director was instructed to pursue his discussions with the United Kingdom Government concerning the conclusion of a Headquarters Agreement for the 1992 Fund (document FUND/A.18/13/13).

16.28 The Assembly noted the Agreement for Co-operation between the 1971 Fund and IMO and shared the Director's view that it would be appropriate if a corresponding agreement were concluded between IMO and the 1992 Fund (document FUND/A.18/13/14). The Director was instructed to continue his discussions with the Secretary-General of IMO on this matter. He was also instructed to pursue the discussions with the Secretary-General concerning the required modifications of the lease agreement for office space in the IMO building so as to cover also the 1992 Fund and its activities.

16.29 It was noted that a booklet had been published containing the English texts of the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1976 and 1992 Protocols thereto, and a consolidated version of the Conventions as modified by the 1992 Protocols. It was also noted that the French texts of these instruments would be published shortly.

16.30 The Assembly instructed the Director to proceed (after the 1st session of the Assembly of the 1992 Fund) with a publication containing the texts of the Rules of Procedure of the Assemblies of the 1971 and 1992 Funds and of the Executive Committee of the 1971 Fund, the Internal Regulations and Financial Regulations of the two Organisations, and the Staff Regulations of the 1971 Fund, as proposed in document FUND/A.18/13/15.

16.31 It was noted that there were some questions relating to the operation of the joint Secretariat and the relationship between the 1971 Fund and the 1992 Fund which had not yet been examined. The Assembly instructed the Director to pursue his study of these matters.

16.32 The Assembly instructed the Director to prepare revised documents in the light of the discussions at this session and any further observations which might be made by Governments of Member States before 31 December 1995. The Assembly also instructed him to present to the Secretary-General of IMO any document prepared by him for submission to the 1st session of the 1992 Fund Assembly, inviting the Secretary-General to circulate the documents to the States and organisations concerned.

16.33 The Assembly considered the draft provisional agenda for the 1st session of the 1992 Fund Assembly which had been prepared by the Director, as set out in Annex II to document FUND/A.18/13. The Assembly noted that this draft would have to be developed in the light of its discussions at the present session and the Director's further studies of the issues involved.

16.34 The Assembly decided that the following issues, *inter alia*, should be placed on the agenda of the extraordinary session of the Assembly to be held during the week of 24 June 1996:

- (a) administration of the 1971 Fund and the 1992 Fund, for the time being, by the 1971 Fund Secretariat headed by one Director;
- (b) revision of Rules of Procedure for the Assembly and Executive Committee;
- (c) revision of Internal Regulations;
- (d) revision of Financial Regulations;
- (e) revision of Staff Regulations;
- (f) sharing of joint administrative expenses and joint incident costs with the 1992 Fund;
- (g) granting of loans to the 1992 Fund;
- (h) matters relating to co-operation between the 1971 Fund and the 1992 Fund, including representation of the 1971 Fund at the meetings of the 1992 Fund; and
- (i) agreements between the 1971 Fund and IMO relating to co-operation and in respect of the lease of the 1971 Fund's premises in the IMO building.

## 17 Budget 1996

17.1 The Assembly considered the draft budget for 1996, as proposed by the Director in the Annexes to documents FUND/A.18/14 and FUND/A.14/Add.1.

17.2 During the examination of the budget, a number of delegations emphasised the necessity of strengthening the resources of the Secretariat. The Assembly noted that the Director intended to employ an additional staff member in the professional category from December 1995, and that he had also included in the draft budget an appropriation for an additional secretary. It was also noted that the Director had proposed to recruit a successor to the Finance Officer to work for some time with the present incumbent before the latter retired. The Assembly endorsed these proposals.

17.3 The Assembly adopted the budget appropriations for 1996, with a total expenditure of £1 435 930, as proposed by the Director in the Annex to document FUND/A.18/14/Add.1.

17.4 The Assembly noted with appreciation that the Secretary-General of IMO had made available to the IOPC Fund additional office space which would make it possible to accommodate the additional staff members referred to in paragraph 17.2.

## 18 Assessment of Annual Contributions

18.1 The Director introduced documents FUND/A.18/15 and FUND/A.18/15/Add.1, which contained proposals for the levy of 1995 annual contributions.

18.2 The Assembly noted the concern of some delegations that the IOPC Fund had in recent years levied considerable sums of money to major claims funds well in advance of compensation being paid. It was recognised, nevertheless, that this had become unavoidable, since many more claims were submitted to the Fund by small businesses and individuals, and that it was important that the Organisation had the necessary funds so that payment of compensation could be made at the earliest opportunity. The Assembly instructed the Director to study this matter, specifically as regards the relationship between the size of the working capital and the levying of contributions.

18.3 The Assembly decided to levy 1995 annual contributions to the General Fund in the amount of £6 million, pursuant to Article 12.2(a) of the Fund Convention, payable by 1 February 1996, corresponding to a contribution per tonne of contributing oil of approximately £0.0053756.

18.4 In order to enable the IOPC Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 and for indemnification under Article 5 of the Fund Convention arising out of the *Braer*, *Sea Prince*, *Yeo Myung*, *Senyo Maru* and *Yuil N°1* incidents, to the extent that the aggregate amount of the payments made by the Fund in respect of each incident exceeded 15 million (gold) francs (1 million SDR), the Assembly decided, pursuant to Article 12.2(b) of the Fund Convention, to raise 1995 annual contributions, payable by 1 February 1996, to the following Major Claims Funds:

- (a) a second levy of £14 million to the *Braer* Major Claims Fund;
- (b) a levy of £20 million to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund, out of which £11 million related to the *Sea Prince* incident, £2 million to the *Yeo Myung* incident and £7 million to the *Yuil N°1* incident; and
- (c) a levy of £3 million to the *Senyo Maru* Major Claims Fund.

18.5 It was noted that the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents had occurred in the same Member State within a period of two months, that the contributors to Major Claims Funds in respect of these three incidents would be the same, and that the levy would for all three incidents be based on the quantities of contributing oil received in 1994 (document FUND/A.18/15/Add.1, paragraph 8.2).

18.6 The Assembly agreed with the Director that the amount required for the proposed *Agip Abruzzo* Major Claims Fund (£180 000) was relatively insignificant. The Assembly decided that, in the case of the *Agip Abruzzo* incident, the amount required should be paid from the General Fund instead of from a Major Claims Fund.

18.7 As regards the *Haven* incident, the Assembly decided that it was inappropriate to make any further levy of annual contributions to the *Haven* Major Claims Fund.

18.8 The Assembly shared the Director's view that any decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the total cost of the incident could be established.

18.9 The Assembly agreed with the Director that it was premature to make any decision regarding the levy of annual contributions to a *Seki* Major Claims Fund.

18.10 The Assembly also agreed with the Director that no further levy in the form of 1995 annual contributions should be made to the *Aegean Sea* and *Keumdong N°5* Major Claims Funds.

18.11 The Assembly noted the situation in respect of the surpluses on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds.

18.12 The Assembly took note of the fact that all claims and expenses arising out of the *Kasuga Maru N°1* and *Rio Orinoco* incidents had been paid and that the applicable periods for bringing legal actions for compensation in respect of these incidents had expired. Since the amounts remaining in the *Kasuga Maru N°1* and *Rio Orinoco* Major Claims Funds were considered as substantial, the Assembly decided, pursuant to Internal Regulation 4.4.1, that £360 000 and £1 280 000 should be reimbursed to the contributors to each of those Major Claims Funds, respectively, on 1 February 1996, and the balance transferred to the General Fund.

18.13 The Assembly noted that its decisions in respect of the levy of the 1995 annual contributions and reimbursement to contributors could be summarised as follows:

Fund	Total levy £	Relevant year of oil receipts	Estimated total oil receipts (tonnes)	Estimated levy per tonne £
General Fund	6 000 000	1994	1 116 156 726	0.0053756
<i>Braer</i> Major Claims Fund	14 000 000	1992	853 538 011	0.0164023
<i>Sea Prince/Yeo Myung/Yuil N°1</i> Major Claims Fund	20 000 000	1994	1 118 012 695	0.0178889
<i>Senyo Maru</i> Major Claims Fund	3 000 000	1994	1 118 012 695	0.0026833
Fund	Total reimbursement £	Relevant year of oil receipts	Total oil receipts (tonnes)	Reimbursement per tonne £
<i>Kasuga Maru N°1</i> Major Claims Fund	360 000	1987	727 856 304	0.0004946
<i>Rio Orinoco</i> Major Claims Fund	1 280 000	1989	827 673 854	0.0015465

**19     Legal status of the Provident Fund**

The Director introduced document FUND/A.18/16 on the question of the legal status of the Provident Fund. The Assembly instructed the Director to pursue his discussions with the United Kingdom Government on certain problems which had arisen in respect of exemption of the proposed Provident Fund Trust from United Kingdom taxation.

**20     Investigations into the cause of incidents**

20.1     The United Kingdom delegation introduced document FUND/A.18/17 in respect of investigations into the cause of incidents.

20.2     The Assembly thanked the United Kingdom delegation for leading the correspondence group.

20.3     The Assembly invited the United Kingdom delegation to continue to lead the correspondence group with the mandate set out in paragraph 3.2 of document FUND/A.18/17.

**21     Position vis-à-vis the Fund Convention of certain States formerly part of the USSR**

21.1     It was recalled that, at its 17th session, the Assembly had instructed the Director to continue his efforts to clarify the position of the Governments of Azerbaijan, Georgia, Kazakhstan, Latvia, Lithuania, Turkmenistan and Ukraine vis-à-vis the Fund Convention (cf document FUND/A.18/18).

21.2     The Assembly took the view that the States referred to in paragraph 21.1 were not Parties to the Fund Convention.

21.3     The Director was instructed to continue his efforts to encourage the States concerned to become Parties to the 1971 Fund Convention and, at the same time, to ratify the 1992 Protocols to the Civil Liability Convention and the Fund Convention.

**22     Levy of contributions in respect of an oil receiver in Croatia**

22.1     It was recalled that, at its 17th session, the Assembly had been informed of a problem that had arisen as to whether an oil receiving company in the Republic of Croatia, which had accepted the obligation to pay contributions for the oil received by the company since 8 October 1991 (the date when Croatia became Party to the Fund Convention by virtue of succession), was also liable to pay contributions for oil received before that date by a company with the same name located in the then Socialist Federal Republic of Yugoslavia.

22.2     The Assembly noted with satisfaction that the disputed contributions had been paid in full by the oil receiving company in the Republic of Croatia, as set out in document FUND/A.18/19.

**23     Replacement of instruments enumerated in Article 5.3 of the Fund Convention**

23.1     The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to include the May 1994 Amendments to SOLAS 74 adopted by the Conference of Contracting Governments to SOLAS 74 (Conference Resolution 1) and some of the Amendments covered by Resolution MSC.31(63) (ie those relating to Regulation V/8-1 and Regulation V/15-1) in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 1 May 1996. The reference to the instrument listed in Article 5.3(a)(ii) was amended to read:

- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MSC.1(XLV), MSC.6(48), MSC.13(57) and MSC.27(61) and, as regards Regulations V/8-1 and V/15-1, by Resolution MSC.31(63) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992 and 23 May 1994, respectively, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System and as amended by Resolution 1 adopted on 23 May 1994 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

23.2 The Assembly decided not to include the November 1994 Amendments to MARPOL 73/78 adopted by the Conference of Parties to that Convention and the December 1994 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.42(64)) in the list of instruments contained in Article 5.3(a) of the Fund Convention, because they were not considered relevant for the purposes of Article 5.3 of the Convention.

23.3 The Assembly instructed the Director to study further the relevance of the November 1994 Amendments to MARPOL 73/78 for the purposes of Article 5.3 of the Fund Convention.

23.4 As regards the May 1995 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.46(65)), the Assembly considered that these Amendments were of an important character for the purpose of the prevention of oil pollution. However, the Assembly took the view that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

23.5 The Assembly instructed the Director to notify Governments of Member States of its decision to amend the list of instruments contained in Article 5.3(a) of the Fund Convention.

## **24 Refund of indirect taxes**

24.1 It was recalled that the Assembly had considered at previous sessions certain difficulties which the IOPC Fund had encountered in the application of Article 34.2 of the Fund Convention in respect of fees for the services of lawyers and other experts. It was also recalled that, as instructed by the Assembly, the Director had raised this matter with representatives of the Government of the State in which the IOPC Fund had encountered such problems.

24.2 The Assembly noted with satisfaction that the Ministry of Finance of the State concerned had acknowledged in a letter to the IOPC Fund's lawyer that fees paid by the IOPC Fund to lawyers and other experts should not be subject to the payment of VAT and that the Fund was entitled to a refund of the amounts thus paid in VAT. The Assembly expressed the hope that the amount in question would be refunded to the IOPC Fund by the Government concerned in the near future.

## **25 Amendments to the Staff Rules**

The Assembly took note of the amendments to the Staff Rules which had been issued by the Director, as set out in document FUND/A.18/22.



**26     Draft International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea**

26.1     The Assembly took note of the information contained in document FUND/A.18/23 concerning the draft International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea.

26.2     The Assembly instructed the Director to represent the IOPC Fund at the International Conference on Hazardous and Noxious Substances and Limitation of Liability convened by the Secretary-General of IMO, to be held from 15 April to 3 May 1996, and to make such interventions as may be appropriate in respect of issues where the IOPC Fund's experience in operating the system of liability and compensation for oil pollution damage could be of benefit to the Conference.

**27     Insurance of contributions**

27.1     The Director introduced document FUND/A.18/24 which contained information concerning the possibilities for the IOPC Fund of taking out insurance to cover the levying of contributions.

27.2     The Assembly agreed with the Director that there was no legal basis in the Fund Convention on which premiums paid by the IOPC Fund for insurance of the types referred to in that document could be passed on to contributors.

**28     Date of next session**

The Assembly decided to hold its next ordinary session during the week of 21 to 25 October 1996 in London. It was also decided that an extraordinary session of the Assembly should be held during the week of 24 to 28 June 1996 in London, when the 1st session of the Assembly of the 1992 Fund would be held.

**29     Any other business**

29.1     The United Kingdom delegation referred to the document which it had submitted to the 44th session of the Executive Committee (document FUND/EXC.44/16) in which it had raised certain questions concerning the need for claimants to take legal action to prevent their claims from becoming time-barred. In view of the importance of this issue for claimants, the United Kingdom delegation invited the Assembly to clarify the legal situation of those claimants with whom the IOPC Fund had agreed a full settlement on the admissible quantum of their claims, but where no payment or only a partial payment had been made.

29.2     The Assembly took the view that, if such claimants did not take legal action, the IOPC Fund would not consider their claims to be time-barred.

**30     Adoption of the report of the 18th session**

The draft report, as contained in document FUND/A.18/WP.1, was adopted, subject to some amendments.

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