



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
2nd extraordinary session
Agenda item 22

71FUND/A/ES.2/22
28 June 1996

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RECORD OF DECISIONS OF THE SECOND EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 24 to 28 June 1996)

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

Opening of the session

The 2nd extraordinary session of the Assembly was opened by the Chairman, Mr Charles Coppolani.

Procedural Matters

Examination of credentials

The following Member States were present:

Australia	Finland	Kuwait
Belgium	France	Liberia
Benin	Germany	Mexico
Canada	Greece	Monaco
Cyprus	Indonesia	Morocco
Denmark	Italy	Netherlands
Fiji	Japan	Nigeria

Norway	Slovenia	Tunisia
Poland	Spain	United Arab Emirates
Portugal	Sweden	United Kingdom
Republic of Korea	Syrian Arab Republic	Venezuela
Russian Federation		

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

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 71FUND/A/ES.2/1.

2 Non-contracting States to be invited as observers

2.1 The Assembly decided that the following additional categories of States should be invited to send observers to sessions of the Assembly and that the Rules of Procedure should be amended accordingly, as proposed in document 71FUND/A.ES/2/2 (cf agenda item 4):

- States which were Members of the organisation established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended by the 1992 Protocol thereto (1992 Fund) but not of the 1971 Fund; and
- States which would be invited to send observers to meetings of the Assembly of the 1992 Fund, in accordance with the latter's Rules of Procedure.

2.2 The following non-Member States were represented as observers:

Brazil	Latvia	Peru
Chile	Panama	Saudi Arabia
China		

3 Grant of observer status to Intergovernmental and International non-governmental organisations

3.1 The Assembly decided to grant observer status to the 1992 Fund, as proposed in document 71FUND/A/ES.2/3, and to amend the Rules of Procedure accordingly (cf agenda item 4).

3.2 The Assembly decided to grant observer status also to the Federation of European Tank Storage Associations, pursuant to a request set out in document 71FUND/A/ES.2/21/2.

3.3 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1992 (1992 Fund)
International Maritime Organization (IMO)

International non-governmental organisations:

Comité Maritime International (CMI)
Cristal Limited
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation Limited (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Amendment of Rules of Procedure

4.1 The Assembly adopted amendments to the Rules of Procedure for the Assembly, as proposed by the Director in document 71FUND/A/ES.2/4, subject to the following modifications.

Rule 17 - Documentation

4.2 Many delegations were of the view that there should be deadlines for distributing documentation to be considered at any session of the Assembly, in order to allow them time for necessary consultations. Other delegations were willing to adopt a more flexible approach, provided that documents were sent as early as possible.

4.3 It was decided that the text of Rule 17 should be retained as worded in the present Rules of Procedure, and therefore read as follows:

"The provisional agenda together with supporting documents for each session shall normally be communicated by the Director to the Members at least forty-five days before regular sessions and thirty days before extraordinary sessions."

4.4 It was recognised, however, that different considerations applied to documentation issued in connection with incidents, where the most up-to-date information was needed to allow informed decisions to be made by the Executive Committee, and in order not to delay the settlement of claims. The Assembly instructed the Director to study the question of which guidelines should apply for the distribution of documentation for sessions of the Executive Committee, and to report to the Assembly at its 19th session.

4.5 It was noted that the revised Rules of Procedure for the Assembly of the 1971 Fund as adopted would be published in document 71FUND/A/ES.2/22/1.

4.6 The Director informed the Assembly that the 1971 Fund was considering whether E-mail could be introduced for the distribution of important documents, so as to ensure that they reached delegations without delay. He also invited delegations to inform the Secretariat of direct contact addresses, including telefax numbers, for the distribution of documentation.

General questions

5 General principles

5.1 The Assembly recalled that the 1992 International Conference which had adopted the two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention had also adopted a Resolution (Resolution 2) which invited the Assembly to instruct the Director to perform duties under the 1992 Fund Convention (in addition to his functions under the 1971 Fund Convention), to encourage the early entry into force of the 1992 Protocol to the Fund Convention, and to make the necessary preparations for the first session of the Assembly of the organisation which would be established under that Protocol (the 1992 Fund). It was also recalled that the Resolution requested that the Director should enter into negotiations with the 1992 Fund with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director.

5.2 It was recalled that the Assembly had instructed the Director to make the necessary preparations for the entry into force of the 1992 Fund Convention and to carry out the appropriate studies for this purpose. It was also recalled the Director had based his studies and resulting proposals on certain assumptions, as set out in document 71FUND/A/ES.2/5.

5.3 The Assembly recalled that, at its 17th session, it had expressed the view 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. It was also recalled that, at its 18th session, the Assembly had endorsed in general proposals made by the Director in respect of a number of issues relating to the structure and operation of the 1992 Fund. The Assembly further recalled that it had recognised that any positions it took in respect of the structure or operation of the 1992 Fund were only proposals and that any decisions on those issues would have to be taken by the 1992 Fund Assembly. It was noted that the proposals presented by the Director to the Assembly of the 1992 Fund had been based on the considerations of the 1971 Fund Assembly.

5.4 It was noted that, in view of the very close link which would exist between the 1971 Fund and the 1992 Fund, the 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.

Secretariat and Headquarters matters

6 Joint Secretariat with the 1992 Fund

6.1 The Assembly recalled that it was provided in Article 36 quater (a) of the 1992 Fund Convention that, during the period in which both the 1971 Fund Convention and the 1992 Fund Convention were in force, the Secretariat of the 1971 Fund, headed by the Director of the 1971 Fund, might also function as the Secretariat and the Director of the 1992 Fund. It was also recalled that, in Resolution 2 adopted by the 1992 International Conference, the Assembly had been requested to authorise and instruct the Director to perform, in addition to his functions under the 1971 Fund Convention, duties under the 1992 Fund Convention, provided that the interests of the Parties to the 1971 Fund Convention were not unduly affected.

6.2 It was noted that the Assembly of the 1992 Fund had decided at its 1st session that the Headquarters of the 1992 Fund should be located in London. It was also noted that the 1992 Fund Assembly had decided, subject to the agreement of the 1971 Fund Assembly, that the 1992 Fund and the 1971 Fund should have a joint Secretariat, and had therefore requested the 1971 Fund Assembly to authorise the Secretariat of the 1971 Fund to administer also the 1992 Fund for the time being.

6.3 The Assembly agreed that the 1971 Fund and the 1992 Fund should have a joint Secretariat and authorised the Secretariat of the 1971 Fund to administer also the 1992 Fund.

6.4 The Assembly considered the question of 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 noted that the situation of the two Organisations would change when the States with the major oil receipts ceased to be Parties to the 1971 Fund Convention by denouncing it, pursuant to Article 31 of the 1992 Protocol to that Convention. The Assembly noted that it was expected that the requirements for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention would be fulfilled during the autumn of 1996, and that the denunciations would then take effect within 18 months, ie in the spring of 1998. It was further noted that, when the denunciations took effect, the 1992 Fund would become the more important of the two Funds, in terms of receipts of contributing oil, and that there would no longer be any States which were Members of both Organisations. The Assembly recalled that, at its 18th session, it had taken the view that this question should be considered at a later stage, for example at the end of the transitional period (ie when the compulsory denunciations had taken effect and the Member States of the 1992 Fund were no longer Members of the 1971 Fund). Some delegations expressed the view that consideration of this question should not be delayed.

6.5 The Assembly instructed the Director to study the question of Secretariat functions after the expiry of the transitional period, and to report to the Assembly at its 19th session, to be held in October 1996.

6.6 The Assembly recalled that, in Resolution 2 adopted by the 1992 International Conference, it had been recommended 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".

6.7 It was noted that the Assembly of the 1992 Fund, at its 1st session, had adopted a Resolution (1992 Fund Resolution N°1) to the effect that, when the 1992 Fund established its own Secretariat, the personnel employed by the 1971 Fund would, if they so wished, be entitled to employment with the 1992 Fund Secretariat and that the terms and conditions of their service would be no less favourable than during their employment with the 1971 Fund. The Assembly welcomed the adoption of this Resolution by the 1992 Fund Assembly.

7 Director's contract

7.1 It was noted that the Assembly of the 1992 Fund, at its 1st session, had requested the 1971 Fund Assembly to authorise the Director of the 1971 Fund to perform the function of Director of the 1992 Fund while the 1971 and 1992 Fund Conventions were both in force.

7.2 The Assembly decided to authorise the Director to perform that function.

7.3 It was noted that the Assembly of the 1992 Fund, at its 1st session, had appointed Mr Måns Jacobsson, the present Director of the 1971 Fund, as Director of the 1992 Fund.

7.4 The Chairman of the Assembly was authorised to agree with the Director on the necessary amendments to his contract, in order to permit him to carry out functions under the 1992 Fund Convention. The Assembly also authorised the Chairman to sign the revised contract on behalf of the 1971 Fund. It was decided that the mandate of the Director's term of office under the revised contract should remain unchanged, ie that it should expire on 31 December 1999.

8 Amendment of Staff Regulations

8.1 In the light of the decision that the Secretariat and the Director of the 1971 Fund should act also as Secretariat and Director of the 1992 Fund, the Assembly adopted certain amendments to the Staff Regulations to allow staff members to act also for the 1992 Fund, as proposed by the Director in document 71FUND/A/ES.2/8.

8.2 It was noted that the revised Staff Regulations of the 1971 Fund as adopted would be published in document 71FUND/A/ES.2/22/2.

8.3 The Assembly noted that the Director intended to make the necessary amendments to the Staff Rules, and that these amendments would be reported to the Assembly in due course.

9 Sharing of joint administrative costs with the 1992 Fund

9.1 It was noted that the Assembly of the 1992 Fund, at its 1st session, had proposed to the 1971 Fund Assembly that the costs of running the joint Secretariat should, for the period 30 May to 31 December 1996, be distributed with ¾ to be paid by the 1971 Fund and ¼ by the 1992 Fund, and that the distribution for subsequent periods should be decided yearly by the Assemblies of the two Funds.

9.2 The Assembly agreed to the distribution of joint administrative costs as set out in paragraph 9.1.

10 Lease agreement with the International Maritime Organization

10.1 The Assembly recalled that the premises of the 1971 Fund within the headquarters of IMO were subject to an Agreement, licence to occupy and sublease with IMO, expiring on 31 October 2002. The Assembly authorised the Director to agree with the Secretary-General of IMO on the text of letters which would be exchanged in order to extend the application of these documents to cover also the activities of the 1992 Fund.

10.2 It was noted that the question of the lease agreement with IMO would have to be re-examined when the 1992 Fund established its own Secretariat.

Contribution questions

11 Levy of contributions

11.1 The Assembly recalled that, at its 18th session, some delegations had expressed their concern that the 1971 Fund had in recent years levied considerable sums of money to Major Claims Funds well in advance of compensation being paid. It was noted that it had been 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. It was further recalled that the Assembly had instructed the Director to study this matter, specifically as regards the relationship between the size of the working capital and the levying of contributions.

11.2 The Assembly considered a system of "deferred invoicing" proposed by the Director under which the Assembly would fix the total amount to be levied in annual contributions for a given calendar year, but that, at the same time, the Assembly would decide that only a specific lower total amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary (document 71FUND/A/ES.2/11).

11.3 The Assembly decided to introduce a deferred invoicing system as proposed by the Director. It was decided that the deferred invoicing system could be applied both to the General Fund and to Major Claims Funds, but it was considered that deferred invoicing would normally be applied only in respect of Major Claims Funds. In order to achieve greatest flexibility, the Director was authorised to decide on whether to issue the invoices for all or part of the additional amount authorised by the Assembly. The Assembly further decided that deferred invoices should not be issued more than once per calendar year. It was stressed that, at the time of the first invoicing, contributors should be advised of the maximum amount for which a deferred invoice might be issued that year. The Director indicated that, if it should prove unnecessary to issue deferred invoices in a given year, he would notify contributors accordingly.

11.4 The Assembly took the view that any amounts due in respect of deferred invoices should be considered as an integral part of the levy of the year in which the Assembly determined the total amount of the annual contributions.

11.5 It was decided that General Fund contributions in respect of contributors in a State which became a Member of the 1971 Fund during a particular year should be calculated on a *pro rata* basis for the deferred levy as well as for the first levy of that year's annual contributions, with the same pro rating for each levy.

11.6 The Assembly also decided that General Fund contributions in respect of contributors in a State which ceased to be a Member of the 1971 Fund during a particular year would be pro-rated for the deferred levy as well as for the first levy of that year's annual contributions, with the same pro rating for each levy. The Internal Regulations were amended accordingly (cf agenda item 15).

11.7 It was stressed by a number of delegations that the introduction of a deferred invoicing system should not be applied in such a way that the 1971 Fund would not have sufficient funds for the prompt payment of claims for compensation.

Compensation matters

12 Criteria for the admissibility of claims

12.1 The Assembly was of the view that it would be essential to ensure consistency between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims, in particular because one incident might involve both Funds. The Assembly considered that it would be inappropriate and confusing for claimants if claims of a certain type were rejected by one Organisation but accepted by the other, and made reference to Article 36 quater (d) of the 1992 Fund Convention which provided that "The Assembly of the [1992] Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund."

12.2 It was noted that the Assembly of the 1992 Fund, at its 1st session, had adopted a Resolution to the effect that the report of the 7th Intersessional Working Group of the 1971 Fund should form the basis of the 1992 Fund's policy on the criteria for the admissibility of claims, that the criteria previously laid down by the Executive Committee of the 1971 Fund should be applied also by the 1992 Fund, that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims.

12.3 As regards the admissibility of claims in respect of situations not covered by the criteria adopted so far within the 1971 Fund, the Assembly considered that consistence of decisions between the two Organisations could be achieved through consultations between their competent bodies.

12.4 The Assembly adopted a Resolution (1971 Fund Resolution N°9, reproduced in the Annex) to the effect that the 1971 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims.

13 Claims Manual

13.1 It was noted that the Assembly of the 1992 Fund had taken the view, at its 1st session, that, subject to the agreement of the 1971 Fund Assembly, the 1992 Fund and the 1971 Fund should issue together a Claims Manual, based on the present (4th) edition of the Claims Manual of the 1971 Fund adopted by the Executive Committee at its 43rd session, and published in June 1995. It was also noted that the 1992 Fund Assembly had considered that, subject to such agreement, the text should be revised to reflect the amendments to the Civil Liability Convention and the Fund Convention in the 1992 Protocols thereto, but that it would otherwise remain in its present form, with the information on the criteria for the admissibility of claims unchanged.

13.2 The Assembly agreed to the proposal of the 1992 Fund Assembly to publish a joint Claims Manual.

13.3 The Director informed the Assembly that he intended to submit a draft text of a joint Claims Manual for consideration by the Assemblies of the two Funds at their sessions in October 1996.

14 Sharing of joint costs in respect of incidents involving both the 1971 Fund and the 1992 Fund

14.1 The Assembly considered how costs incurred in handling incidents involving both the 1971 Fund and the 1992 Fund should be shared between the two Organisations. It was noted that the Assembly of the 1992 Fund had taken the view, at its 1st session, that, subject to the agreement of the 1971 Fund Assembly, a certain flexibility should be allowed in the apportionment of costs incurred in the handling of such incidents, but that normally such costs should be shared on the basis of the ultimate liabilities of the two Funds in respect of the incident in question.

14.2 The Assembly agreed to the sharing of joint costs in respect of incidents as set out in paragraph 14.1 on the basis of the ultimate liabilities of the two Funds in respect of the incident in question, and decided that the Director should be authorised to use other methods in cases where he deemed this more equitable, for example if, following the joint examination of claims, the amount of compensation payable in respect of an incident was ultimately reduced to such a level that the 1992 Fund would not be called upon to pay compensation.

Operational questions

15 Amendment of Internal Regulations

15.1 The Assembly adopted amendments to the Internal Regulations, as proposed by the Director in documents 71FUND/A/ES.2/15 and 71FUND/A/ES.2/15/Add.1, subject to the following modifications.

Regulation 4.2, oil reporting form and explanatory notes – Oil reports

15.2 A number of delegations considered that government authorities should not be required to 'certify' or 'countersign' the reports on contributing oil, and therefore proposed that the wording on this point should be amended.

15.3 It was decided that the text of Regulation 4.2 should read as follows:

"The reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official."

15.4 The Assembly decided that the subheading of the first page of the oil report form should read "Signature of Report", and that the last paragraph on that page should read:

"The form should also be signed by a responsible official of the Government or competent Government authority to indicate that the Government or authority is satisfied that the information contained therein is correct and complete."

15.5 It was decided that, on the oil reporting form itself, the box in which the government ministry or agency was requested to sign should be headed "For completion by reporting Government Official".

15.6 It was noted that the revised Internal Regulations of the 1971 Fund, as adopted, would be published in document 71FUND/A/ES.2/22/3.

16 Amendment of Financial Regulations

16.1 The Assembly adopted amendments to the Financial Regulations, as proposed by the Director in document 71FUND/A/ES.2/16.

16.2 It was noted that the revised Financial Regulations of the 1971 Fund, as adopted, would be published in document 71FUND/A/ES.2/22/4.

Financial matters

17 Loans to the 1992 Fund

17.1 The Assembly noted that the 1992 Fund Assembly had taken the view, at its 1st session, that it would be preferable to postpone the first levy of contributions to the 1992 Fund until an extraordinary

session of the 1992 Fund Assembly, to be held in October 1996, that the contributions should be payable by the same date as the contributions to the 1971 Fund (ie normally by 1 February).

17.2 It was noted that the Assembly of the 1992 Fund had requested the 1971 Fund Assembly to authorise the Director to make the necessary funds available to the 1992 Fund, as required, to cover the 1992 Fund's administrative expenses and payments of compensation during its first eight months of operation (ie until contributions were received in February 1997).

17.3 The Assembly authorised the Director of the 1971 Fund to make the necessary funds available to the 1992 Fund, to the extent that this could be done without prejudice to the operations of the 1971 Fund. The Assembly decided that the 1992 Fund would be invoiced on 1 February 1997 in respect of funds made available for the 1992 Fund's administrative expenses, for immediate payment, and that funds made available for the payment of claims under the 1992 Fund Convention would be invoiced, with interest, on the same date.

General administrative matters

18 Annual reports

18.1 The Assembly considered that, in view of the close link that would exist between the 1971 Fund and the 1992 Fund, it would be preferable that the 1971 Fund and the 1992 Fund should, at least for such time as the two Organisations were administered by a joint Secretariat, issue joint Annual Reports.

18.2 It was noted that the Assembly of the 1992 Fund, at its 1st session, had proposed, subject to the agreement of the 1971 Fund Assembly, the publication of such a joint Annual Report, and that in respect of 1996 the Report should cover the activities of the 1992 Fund for the period 30 May to 31 December 1996 and the activities of the 1971 Fund for the calendar year 1996.

18.3 The Assembly agreed to proposal of the 1992 Fund to publish joint Annual Reports for the two Organisations.

19 Other administrative matters

19.1 The Assembly decided that, in order to make a clear distinction between the two Organisations established under the 1971 and 1992 Fund Conventions, the following terminology should be used:

	1971 Fund Convention	1992 Fund Convention
Full Name	International Oil Pollution Compensation Fund 1971	International Oil Pollution Compensation Fund 1992
Abbreviated Expression	1971 Fund <i>or</i> IOPC Fund 1971	1992 Fund <i>or</i> IOPC Fund 1992

19.2 In circumstances where it would be necessary or appropriate to refer to the 1971 Fund and 1992 Fund together, the Assembly decided that the following terminology should be used:

	Joint Reference
Full Name	International Oil Pollution Compensation Funds <i>or</i> International Oil Pollution Compensation Funds 1971 and 1992
Abbreviated Expression	IOPC Funds <i>or</i> IOPC Funds 1971 and 1992 <i>or</i> 1971/1992 Funds

19.3 It was noted that the Assembly of the 1992 Fund had taken the view that it would be preferable if the same logo (both in design and colour) were to be used by the 1971 Fund and the 1992 Fund, and had requested the Assembly of the 1971 Fund to allow the use of that Organisation's logo by the 1992 Fund.

19.4 The Assembly agreed to the use of the same logo for the 1971 Fund and the 1992 Fund.

Treaty questions

20 Compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention

20.1 The Assembly noted that it was likely that the requirements for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention would be fulfilled during the autumn of 1996 – ie a total quantity of 750 million tonnes of contributing oil represented by the States which have deposited instruments of ratification in respect of the 1992 Protocol to the Fund Convention. It was also noted that States Parties to the 1992 Protocol to the Fund Convention, as well as States which have deposited their instruments of ratification in respect of that Protocol, would then have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months of the date when that quantity of contributing oil was reached, with effect 18 months after the date on which the instrument of ratification which triggered the compulsory denunciation had been deposited.

20.2 The Director drew the attention of delegations to the fact that, when denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by States which had ratified the 1992 Fund Protocol took effect, those States would cease to be Parties to the 1971 Fund Convention and Members of the 1971 Fund. The Assembly noted that persons receiving contributing oil in those States would not be required to pay contributions to the 1971 Fund in respect of incidents which took place after the date on which they ceased to be Members of the 1971 Fund, and that as a consequence, the total quantity of contributing oil received in the States which remained Parties to the 1971 Fund Convention would be reduced considerably. It was further noted that once the denunciations took effect, responsibility for contributing to the 1971 Fund to enable that Fund to pay compensation for damage resulting from subsequent incidents will fall exclusively on the contributors in the States which remained Parties to the 1971 Fund Convention.

20.3 The Assembly invited Member States which had not already become Parties to the 1992 Protocols to ratify these Protocols as soon as possible. In addition, Member States were invited to keep the Secretariat informed of progress being made in their respective States towards ratification of the 1992 Protocols.

Other matters

21 Any other business

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

21.1.1 The Assembly took note of the information contained in document 71FUND/A/ES.2/21 concerning the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), which had been adopted on 3 May 1996 by an International Conference convened under the auspices of IMO. It was noted that under the HNS Convention, there would be established a system of compensation similar to that created by the Civil Liability Convention and the Fund Convention and that the financial burden would be shared between the shipping industry and the cargo interests. It was further noted that the primary liability would rest on the shipowner, with additional compensation available from the International Hazardous and Noxious Substances Fund (HNS Fund), financed by the cargo interests, and that the functioning of the HNS Fund

under the HNS Convention would follow very closely the operation of the 1992 Fund under the 1992 Fund Convention.

21.1.2 It was noted that, in a Resolution adopted by the Conference (Resolution 1), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund in accordance with the HNS Convention, on condition that this did not unduly prejudice the interests of the Member States of the 1992 Fund, including holding negotiations with IMO to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services. The Assembly also noted that the 1992 Fund had been requested to hold negotiations with the host Government, on behalf of the HNS Fund, to ensure that the question of the privileges, immunities and facilities accorded to the HNS Fund was considered and satisfactorily settled by mutual agreement. It was further noted that it was stated in the Resolution that such tasks would be undertaken by the 1992 Fund on the basis that all expenses incurred would be repaid by the HNS Fund.

21.1.3 The Assembly noted that the Assembly of the 1992 Fund had, at its 1st session, instructed the Director to carry out the tasks requested by the HNS Conference.

21.2 Audit Committee

21.2.1 The Assembly considered a proposal by the Chairman that the 1971 Fund should establish an Audit Committee in order to strengthen the involvement of Member States in the monitoring of the operations of the Organisation and to increase the transparency of the latter (document 71FUND/A/ES.2/21/1). It was noted that this matter had been discussed between the Chairman and the Director, and that discussions had also been held with the External Auditor.

21.2.2 The Assembly noted that, under the Chairman's proposal, the Audit Committee could meet with the External Auditor before the audit of the accounts for a given year commences, to discuss the priorities and special areas to be dealt with, that the Committee might, for example, propose that the audit should cover not only the financial operations but also certain aspects of the Fund's management (performance audit), and that the Audit Committee could meet again with the External Auditor when the audit had been completed, to obtain a more detailed oral presentation of the audit than was possible at the session of the Assembly.

21.2.3 Although many delegations supported the Chairman's proposal, a number of delegations questioned the need for an Audit Committee. Moreover, several delegations considered that the proposed mandate needed to be considered further.

21.2.4 The Assembly instructed the Director to study this issue further, and to submit a revised mandate to the Assembly for consideration at its 19th session.

21.3 Secretariat resources

21.3.1 The Chairman drew attention to the increased workload resulting from a number of major incidents and the entry into force of the 1992 Protocols, as well as from the studies which the Assembly had invited the Director to carry out. The Chairman raised the question of whether there was a need to strengthen and restructure the resources of the Secretariat.

21.3.2 The Director stated that the present workload put a very heavy burden on the Secretariat and that it was likely that the workload would continue to increase. For this reason, he agreed with the Chairman that there was a need to strengthen the resources of the Secretariat. The Director mentioned that he intended to examine the Secretariat requirements for the coming years, and to submit a proposal for consideration by the Assembly at its 19th session. It was noted that any increase in the number of staff members would necessitate further office space being made available.

22 Adoption of the Record of Decisions of the 2nd extraordinary session

The draft Record of Decisions, as contained in document 71FUND/A/ES.2/WP.2, was adopted, subject to some minor amendments.

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ANNEX

Resolution N°9 – Admissibility of claims for compensation

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1971 (1971 Fund),

NOTING that one of the aims of the international compensation system is to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation,

NOTING FURTHER that the definitions of 'pollution damage' and 'preventive measures' in the 1992 Fund Convention which form the basis for the criteria for admissibility are the same as those in the 1971 Fund Convention, except on one point where a modified text was adopted in 1992, in order to codify the interpretation of the definition of 'pollution damage' as decided by the Assembly of the 1971 Fund,

AWARE of the necessity of ensuring consistency between the decisions of the 1971 Fund and those of the International Oil Pollution Compensation Fund, 1992 (1992 Fund) on the admissibility of claims,

RECALLING that the 7th Intersessional Working Group established by the Assembly was given the mandate to examine the general criteria for the admissibility of claims for compensation for 'pollution damage' and 'preventive measures' within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto,

RECALLING FURTHER that the Assembly of the 1992 Fund has adopted a Resolution (Resolution N°3 as contained in Annex III to document 92FUND/A.1/34) on the admissibility of claims in which the 1992 Fund resolves that the report of the 7th Intersessional Working Group of the 1971 Fund (as contained in document FUND/A.17/23) on the criteria for the admissibility of claims for compensation shall form the basis of the policy of the 1992 Fund on the criteria for the admissibility of claims, decides that the criteria hitherto laid down by the Executive Committee of the 1971 Fund should be applied by the 1992 Fund in its consideration of the admissibility of claims, and affirms that the 1992 Fund will do its utmost to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims,

RESOLVES that the 1971 Fund shall endeavour to ensure consistency, as far as possible, between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims.
