



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
3rd session
Agenda item 29

92FUND/A.3/27
30 October 1998
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RECORD OF DECISIONS OF THE THIRD SESSION OF THE ASSEMBLY

(held from 26 to 30 October 1998)

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr P Gómez-Flores (Mexico)

Opening of the Session

The 3rd session of the Assembly was opened by Mr C Coppolani (France) in his capacity as representative of the delegation from which the Chairman of the previous session had been elected.

Procedural Matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A.3/1.

2 Election of the Chairman and two Vice-Chairmen

2.1 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 P Gómez-Flores (Mexico)

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

3 Examination of credentials

3.1 The following Member States were present:

Australia	Ireland	Philippines
Cyprus	Japan	Republic of Korea
Denmark	Liberia	Spain
Finland	Marshall Islands	Sweden
France	Mexico	Tunisia
Germany	Netherlands	United Kingdom
Greece	Norway	Uruguay

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

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

States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:

Algeria	Croatia	Singapore
Belgium	Latvia	United Arab Emirates
Canada	New Zealand	Venezuela

Other States:

Argentina	Estonia	Panama
Brazil	Fiji	Peru
Cameroon	Gabon	Poland
Chile	Guyana	Russian Federation
China	Indonesia	Saudi Arabia
Colombia	Italy	Slovenia
Côte d'Ivoire	Kenya	Syrian Arab Republic
Ecuador	Morocco	United States
Egypt	Nigeria	

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)
United Nations

International non-governmental organisations:

Comité Maritime International (CMI)
European Chemical Industry Council (CEFIC)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

General review

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1992 Fund since its 2nd session, contained in document 92FUND/A.3/2. In his presentation, the Director made reference to the fact that the past twelve months had seen a considerable growth in 1992 Fund membership, eleven more States having ratified the 1992 Fund Convention. He stated that it was expected that the number of 1992 Fund Member States would soon be greater than the number of 1971 Fund Member States.

4.2 The Director mentioned that on 16 May 1998 the 1992 Fund had established its own Secretariat which administered also the 1971 Fund. He referred to the management consultants' statement in their report that the IOPC Funds' Secretariat could be rightly proud of its reputation with both governments and organisations with which it worked in partnership. The Director looked forward to being able to implement fully the decisions taken by the Assembly in respect of the increased resources of the Secretariat and the changes in its working methods, so that the efficiency of the Secretariat could be enhanced.

4.3 The Director informed the Assembly that revised versions of the Claims Manual had been published to reflect the new situation which had existed since 16 May 1998, following the end of the transitional period.

4.4 The Director noted that, in accordance with the Assembly's decision at its 3rd extraordinary session, interpretation to and from Spanish was taking place for the first time for the 1992 Fund Assembly and Executive Committee sessions, in advance of Spanish becoming a working language of the 1992 Fund on 1 January 1999.

4.5 The Assembly expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they administered the 1992 Fund. It also thanked the staff of the Local Claims Office established in Kobe following the *Nakhodka* incident, as well as the lawyers and technical experts who had undertaken other work for the 1992 Fund.

4.6 The Assembly congratulated the Secretariat on the 1997 Annual Report which contained an instructive presentation of the activities of the 1971 and 1992 Funds.

Treaty questions

5 Status of the 1992 Fund Convention and related matters

5.1 The Assembly took note of the information contained in document 92FUND/A.3/3 concerning the ratification situation in respect of the 1992 Fund Convention. It was noted that there were at present 26 Member States of the 1992 Fund and that by October 1999 the 1992 Fund would have 37 Member States.

5.2 The Assembly took note of a statement by the observer delegation of the People's Republic of China that the Chinese Government had decided to denounce the 1971 Fund Convention, which applied only to the Hong Kong Special Administrative Region, and to accede to the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention. The Chinese observer delegation informed the Assembly that the application of the 1992 Fund Protocol would be limited to the Hong Kong Special Administrative Region.

5.3 Some delegations expressed reservations about the accession limited to the Hong Kong Special Administrative Region, as suggested by the Chinese delegation, and stated that this matter would have to be studied further.

5.4 The Assembly noted that it was for the depositary, the Secretary-General of the International Maritime Organization, to receive and circulate information to the States Parties on any new instruments of accession and for any objections on such instruments to be forwarded to the Secretary-General.

*Financial matters***6 Report on investments**

6.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 1997 to June 1998, contained in document 92FUND/A.3/4.

6.2 The Assembly noted the number of investments made during the twelve-month period, the number of institutions used by the 1992 Fund for investment purposes, and the significant amounts invested by the 1992 Fund. It was recognised that the investments of the 1992 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.

7 Report of the Investment Advisory Body

7.1 The Assembly took note of the report of the Investment Advisory Bodies, contained in the Annex to document 92FUND/A.3/5, and of the document submitted by the Director containing a proposal to increase the limits of investments in individual institutions (document 92FUND/A.3/5/1).

7.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work.

7.3 It was noted that the Investment Advisory Bodies had expressed the view that the maximum amount to be held in any one financial institution should be increased, since the amounts to be invested had grown and the number of institutions meeting the criteria for investments had been declining. It was recognised that it was difficult to predict the level of the assets which would be held by the 1992 Fund and the 1971 Fund during 1999 and beyond. The Assembly shared the Investment Advisory Bodies' view that the maximum investment which the 1992 Fund and the 1971 Fund could normally hold jointly in any given institution should be increased from £10 million to £15 million.

7.4 The Assembly shared the Director's view that, since the IOPC Funds had not made investments with discount houses in recent years and the role of these institutions was declining, the reference in the Financial Regulations to making investments with discount houses should be deleted.

7.5 Financial Regulation 10.4 was amended to read as follows:

10.4 The assets of the 1992 Fund shall be invested by the Director in accordance with Financial Regulation 10.1 and the following principles:

- (a) *[Unchanged]*
- (b) the assets shall be placed on term deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;
- (c) the maximum investment in any bank or building society shall not normally exceed 25% of the 1992 Fund's total assets; the investments in any such institution by the 1992 Fund and the 1971 Fund shall not together normally exceed £15 million;
- (d) *[Unchanged]*

These principles shall be reviewed from time to time.

7.6 It was noted that the 1971 Fund Executive Committee had at its 59th session decided to make the corresponding amendments to the 1971 Fund's Financial Regulations.

7.7 It was recalled that Financial Regulation 10.4(a) provided that the Funds' "assets shall be held in pounds sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future". The Assembly noted that, in view of the launch of the Euro in January 1999, the Advisory Bodies had considered whether the Funds should consider holding some of their assets in Euros. It was noted that in their opinion the Euro would be, from a sterling perspective, just another currency in which some future claims might be made. The Assembly noted that the issue of holding Euros as part of the Funds' normal assets had not been pursued by the Advisory Bodies, but that it might have to be reconsidered at a later stage, in the context of the wider issue of whether the IOPC Funds should hold currencies other than pounds sterling in anticipation of future claims. The Assembly considered that it was premature to consider the question of whether the 1992 Fund should make investments in Euros.

8 Financial Statements and Auditor's Opinion

8.1 The Director introduced document 92FUND/A.3/6 containing the Financial Statements of the 1992 Fund for the financial year 1997 and the External Auditor's Opinion thereon.

8.2 The Assembly noted with appreciation the External Auditor's Opinion contained in Annex II to document 92FUND/A.3/6.

8.3 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 1997.

8.4 The Assembly took note of the Report of the External Auditor on the Financial Statements of the 1971 Fund and the recommendations contained therein (document 71FUND/A.21/8, Annex II).

9 Appointment of the 1992 Fund's Auditors

The Assembly reappointed the Comptroller and Auditor General of the United Kingdom as External Auditor of the 1992 Fund for a term of four years from the financial period 1999.

10 Appointment of members of the Investment Advisory Body

The Assembly reappointed Mr Clive Ffitch, Mr David Jude and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year.

Contribution questions

11 Report on contributions

11.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.3/9. It noted that over 95% of the 1997 contributions had been paid. The Assembly expressed its satisfaction with the situation regarding the payment of contributions.

11.2 The Assembly noted that an agreement had been reached with regard to a German contributor which had gone into liquidation and that the 1992 Fund had recovered a substantial proportion of the outstanding sum. The Assembly expressed its satisfaction that it had been possible to resolve the matter out of court.

11.3 The Assembly noted that, if the 1992 Fund were to receive a report on contributing oil received in 1996 by a Dutch contributor which had gone into liquidation, the 1992 Fund would become a creditor of the company. It was noted, however, that it appeared unlikely that such a report would be submitted, that

contributions payable to the 1992 Fund, if any, would not have preferential status under Dutch law and that it was therefore in any event unlikely that there would be any dividend to the 1992 Fund.

12 Submission of oil reports: consideration of sanction mechanisms

12.1 It was recalled that the Assembly at its 2nd session had considered the question of whether, in the case of a State which had not submitted its reports on oil receipts during a given year, annual contributions to be based on quantities received during that year could instead be invoiced on the basis of the figures of the latest reports submitted by the State (document 92FUND/A.2/29, paragraph 12.7).

12.2 It was also recalled that the Assembly had taken the view that the obligation to pay contributions arose under Article 10 of the 1992 Fund Convention when an entity had received more than 150 000 tonnes in a calendar year and that this obligation existed whether or not the State in question had submitted the relevant oil reports. The Assembly considered that, although the onus lay on the contributor to fulfil this obligation, it could not reasonably be expected that an entity made a payment to the 1992 Fund without having first received an invoice. It was noted that the invoices were calculated on the basis of levies per tonne of contributing oil received and that, in the absence of oil reports being submitted by the State, the question arose as to how to establish the quantities of oil received.

12.3 The Director introduced document 92FUND/A.3/10 in which he set out possible ways of determining the quantities of oil received in States which had not submitted their oil reports. He outlined the following possible options:

- (a) Invoices could be based on the figures of the latest report submitted by the State in question for the entity concerned. However, it would not be possible to apply this approach to those States which had not submitted any reports on oil receipts since joining the 1992 Fund. Furthermore, this approach took no account of the annual variations in quantities received.
- (b) The 1992 Fund could contact contributors directly and invite them to submit the oil reports directly to the Fund, with a copy to the competent authority. However, there would be no legal obligation for the contributors to respond to such a request, the procedure might undermine the reporting system laid down in the 1992 Fund Convention and, furthermore, this procedure did not resolve the problem of those States which had never submitted any reports to the Fund.
- (c) Indirect contacts could theoretically be made with contributors, but, in his view, such approaches would be inappropriate and the result haphazard.

12.4 The Director stated that it would not be practicable to determine the quantities of the receipts of individual contributors on the basis of publicly available statistics on oil receipts, since such statistics would normally relate to aggregate quantities received in particular States and would therefore not provide information on receipts by individual entities.

12.5 The Assembly noted the Director's analysis and his view that there was no practicable and viable procedure for levying contributions in the absence of oil reports submitted by States. Nevertheless, the Assembly considered that the non-submission of oil reports was a very important issue which should be kept on the Assembly's agenda, as it represented a matter of serious concern to other Member States and in particular to the contributors in those States.

12.6 The Assembly considered whether to adopt a resolution to supplement Resolution N°2 adopted at its 1st session. It was decided, however, that it was unlikely that a new resolution at this stage would resolve the matter.

12.7 It was stressed by a number of delegations that the matter in question was one of non-reporting, and that the problem of non-payment of contributions was a separate issue. It was noted that contributors who did not pay after having been invoiced faced sanctions in the form of the payment of interest.

12.8 It was pointed out that Article 15.4 of the 1992 Fund Convention made a Member State which had not submitted its oil reports liable to compensate the 1992 Fund for any financial loss suffered by the Fund as a result thereof. It was noted that this sanction could not be implemented in respect of States which had failed to submit reports, since the loss suffered by the 1992 Fund could not be calculated until the reports had actually been submitted.

12.9 A number of delegations stressed the duty of Member States to fulfill their obligations as Parties to the 1992 Fund Convention and reference was made to the principle of *pacta sunt servanda* (treaties are to be kept) contained in Article 26 of the 1969 Vienna Convention on the Law of Treaties. One delegation suggested that the non-submission of oil reports might be a "material breach of a multilateral treaty" as it could be construed as a "violation of a provision essential to the accomplishment of the object or purpose of the treaty" (cf Article 60.3 of the Vienna Convention on the Law of Treaties) and that such non-submission could therefore be invoked as a ground for terminating the treaty or suspending its operation in whole or in part.

12.10 It was suggested that a Member State which did not fulfill its obligation to submit oil reports could be invited to denounce the 1992 Fund Convention. It was recognised, however, that a State could not be deprived of its sovereign rights with regard to accession to and denunciation of a treaty.

12.11 Some delegations raised the possibility of withholding compensation payments to claimants in States which had not submitted oil reports. Many delegations were of the view, however, that such a course of action could be considered only in respect of claims submitted by a Government or Government authority.

12.12 The question was raised whether States which did not submit oil reports should be eligible to the Executive Committee. It was recalled that this issue had been considered by the Assembly at its 2nd session. It was noted that the Assembly had recognised, however, that there might be cases in which States could have valid reasons for having been unable to fulfill their obligations to submit oil reports to the 1992 Fund and that it would therefore be inappropriate to impose automatically the sanction of ineligibility in all cases of the non-submission of reports. It was also recalled that the Assembly had considered that this sanction should be imposed on States only in cases of continued non-fulfilment of the obligation to report. It was recalled that it had been agreed that, in the case of incomplete reports, sanctions should be imposed only if the reports were incomplete in a significant respect (document 92FUND/A.2/29, paragraph 12.4).

12.13 The Assembly recalled that the issue referred to in paragraph 12.3 was dealt with in 1992 Fund Resolution N°5 on the Establishment of the Executive Committee. It was noted that paragraph (d) of the Resolution provided that the Assembly might, when electing members of the Committee, take into account the extent to which a particular State had fulfilled its obligation to submit reports on receipts of contributing oil (document 92FUND/A.2/29, Annex I).

12.14 It was suggested that a State which did not fulfil its obligation to submit oil reports should not be entitled to vote in the 1992 Fund bodies. It was recalled, however, that this issue had been examined by the Assembly at its 1st extraordinary session on the basis of a study carried out by the Director which concluded that, since the issue was not dealt with in the 1992 Fund Convention, the Assembly would be acting outside the powers invested in it under the Conventions if it were to decide to restrict the voting rights of Member States (document 92FUND/A/ES.1/4, paragraph 3.2.2).

12.15 The Assembly decided that, if a State did not submit its oil reports, the Director should make contacts with that State and emphasise the concerns expressed by the Assembly in this regard. The Director was also instructed to inform the competent persons of the States concerned that the Assembly would review individually each State which had not submitted its report and that it would then be for the Assembly to decide on the course of action to be taken for each State.

13 SUMED pipeline

13.1 The Assembly noted a request by the observer delegation of the Arab Republic of Egypt that the 1992 Fund should reconsider whether Article 10.1 of the 1992 Fund Convention would apply to oil passing through the SUMED pipeline.

13.2 The Assembly took note of a document submitted by the Director (document 92FUND/A.3/11/1) containing information on the 1971 Fund Assembly's consideration of this issue and on the relevant discussions at the 1971 Diplomatic Conference.

13.3 The Egyptian observer delegation introduced document 92FUND/A.3/11 which had been submitted with the objective of clarifying SUMED's activities and the nature of the crude oil transportation through its pipeline. The Egyptian delegation stated that Egypt wanted to become a Member of the 1992 Fund but needed to clarify a misunderstanding. The delegation explained that, as a result of a decision to establish new refineries in Egypt, within seven to ten years Egypt would start importing crude oil and that the receivers of that oil would pay contributions to the 1992 Fund. This delegation also stated that, if oil passing through the SUMED pipeline had to pay contributions to the 1992 Fund, the price for the transport of oil through the pipeline would increase and, as a result, the oil industry might find it more economical to transport the oil around the Cape of Good Hope, thus increasing the risk of oil pollution incidents. This delegation made the point that this would increase the amounts of compensation that the 1992 Fund would have to pay to victims of oil pollution. This delegation pointed out that SUMED was fully insured, both offshore and onshore and from the pipeline, and that SUMED was unique since no other similar pipeline existed in the world.

13.4 The Egyptian observer delegation proposed that the Assembly should consider accepting Egypt as a Member of the 1992 Fund on the basis that the oil passing through the SUMED pipeline would not be subject to contributions and that the right to receive compensation from the 1992 Fund would be waived in respect of incidents relating to the SUMED pipeline.

13.5 One delegation supported the proposal by the Egyptian observer delegation.

13.6 Another delegation expressed its understanding of the arguments put forward by the Egyptian delegation. Nevertheless, that delegation considered that the proposal by the Egyptian delegation could be accommodated only by an amendment to the definition of the term 'receiver' in the 1992 Fund Convention, which would require a Diplomatic Conference. The delegation added that in its view it would be dangerous to make acceptance of the 1992 Fund Convention adopted by a Diplomatic Conference conditional upon a waiver of rights in respect of certain types of incidents.

13.7 The Assembly decided that it could not accept the proposal of the Egyptian delegation referred to in paragraph 13.4 above that oil passing through the SUMED pipeline should not be subject to contributions, since an amendment to the 1992 Fund Convention adopted by a Diplomatic Conference would be necessary for receipts of such oil to be excluded from the contribution system.

Secretariat and administrative matters

14 Implementation of organisational changes within the Secretariat

14.1 The Assembly welcomed the measures taken by the Director so far to implement the decisions of the 1971 and 1992 Fund Assemblies with regard to the new structure of the Secretariat, the introduction of new working methods and the strengthening of Fund activities in certain fields. The Assembly noted the present staffing of the Secretariat, as set out in document 92FUND/A.3/12. In particular, the Assembly noted the appointment of Mr Joe Nichols as Head of the Claims Department, with effect from 28 September 1998. The Assembly welcomed the staff members who had joined the Secretariat since the 3rd extraordinary session.

14.2 The Assembly took note of the observations made by the Director in document 92FUND/A.3/12 concerning the use of information technology and the developments in respect of claims handling. It noted, in particular, the role of the Head of the Claims Department in the recruitment of managers of local claims offices and external experts, in monitoring and assessing their performance and in giving them the necessary instructions, and also that the new structure of the Secretariat would make it possible to ensure that external experts gave the Funds value for money. It was recognised that it would be necessary to continue to use external experts to examine claims and to operate local claims offices. The Assembly noted with satisfaction the steps taken by the Director to develop expanded guidelines for the setting up of local claims offices and the on-going discussions with the International Group of P & I Clubs on this matter.

14.3 Reference was made by one delegation to the need to manage the changes which were taking place within the Secretariat. It was suggested that the Funds should continue to employ management consultants to assist with the implementation of the Assemblies' previous decisions on restructuring and working practices.

14.4 The Assembly considered the Secretariat's need for additional office space on the basis of document 92FUND/A.3/12/1 submitted by the Director.

14.5 It was noted that the IOPC Funds would require significant additional office space as a result of the decisions of the 1971 and 1992 Fund Assemblies on the new structure of the Secretariat. It was also noted that, prior to the April 1998 Assembly sessions, the Secretary-General of IMO had informed the Director that IMO would not be able to provide the additional office space required. It was recalled that at those sessions the Assemblies of the two Organisations had shared the Director's view that it would be most unfortunate if the IOPC Funds could not be given sufficient office space to remain in the IMO building.

14.6 The Assembly noted that, as instructed by the Assemblies, the Director had pursued his discussions with the Secretary-General who had confirmed that IMO was unable to provide the IOPC Funds with the additional office space required.

14.7 The Assembly noted that in the Director's view the best solution would be for the IOPC Funds Secretariat to remain in the IMO building. However, it was noted that, in view of the outcome of his discussions with the Secretary-General of IMO and on the basis of the Headquarters Agreements between the United Kingdom Government and the IOPC Funds, the Director had requested that the United Kingdom Government should assist the Funds in finding premises outside the IMO building.

14.8 It was noted that discussions had been held between the United Kingdom Government and the Director in which the Director had presented the needs of the IOPC Funds in respect of office space in the medium and long term. The Assembly recognised that the IOPC Funds' Secretariat should, if possible, be located within a short distance of the IMO building, so as to enable the Funds to continue to use the conference facilities provided by IMO and to facilitate contacts between the Secretariat and Government representatives participating in IMO meetings. It was noted that various options were being discussed between the United Kingdom Government and the Director.

14.9 It was recognised that it was not possible to give an estimate of the costs which would arise from a relocation of the IOPC Funds Secretariat outside the IMO building, since these would depend *inter alia* on the level of rent, rates and service charges of the premises chosen and the need for refurbishment and additional furniture and office equipment. It was noted that a Secretariat located outside the IMO building would have to undertake certain tasks which at present were handled by IMO, including internal security, maintenance and repairs, reception facilities and library services.

14.10 It was also recognised that the implementation of the Assemblies' decisions on the new Secretariat structure and working methods depended partly on additional office space being made available and that the resolution of this issue was therefore both important and urgent.

14.11 The Assembly noted the Director's view that the increased volume of documentation prepared by the Funds and the introduction of Spanish as an official language of the 1992 Fund might make it necessary to reconsider the arrangements for translation of these documents.

14.12 The Assembly authorised the Director to make the necessary decisions with regard to relocation of the IOPC Funds' offices, after consultation with the Chairmen of the Assemblies and Executive Committees of the 1971 Fund and the 1992 Fund.

14.13 The Assembly authorised the Director to use £400 000 in 1999 for expenses in connection with relocation and the increased cost of running the Secretariat as a result thereof. It was decided that an appropriation to that effect should be included in a new Chapter VII of the 1999 budget, the amount to be split 50:50 between the two Organisations.

14.14 It was noted that the Executive Committee of the 1971 Fund had at its 59th session approved the same additional appropriation and had agreed to the 50:50 distribution between the two Organisations.

14.15 The Assembly authorised the Executive Committee to take any necessary decisions of a financial nature on its behalf relating to the relocation of the IOPC Funds' offices.

15 Delegation of Director's authority

15.1 Standing delegation to a senior staff member to act when the Director is unable to do so

15.1.1 It was recalled that the Assembly had recognised at its 3rd extraordinary session that, in view of the scale of operation of the 1971 Fund and the 1992 Fund, it was necessary that the Director should be able to authorise a senior staff member to act on his behalf whenever he was on mission or otherwise unable to act. It was also recalled that the Assembly had agreed that there was a need for the general delegation of authority to either the Legal Counsel or the Head of the Claims Department, depending on the circumstances.

15.1.2 The Assembly shared the Director's view that it was necessary that, vis-à-vis third parties, the Officer concerned had the unrestricted authority to act on behalf of the 1992 Fund, but that the Director should have the discretion to lay down in Administrative Instructions the conditions and extent of such general delegation, in particular that the authority should be used only when the Director was on mission or otherwise unable to act.

15.1.3 The Assembly decided to insert a new Regulation 11bis in the 1992 Fund's Internal Regulations to allow for the general delegation to the Legal Counsel or the Head of the Claims Department to act on behalf of the Director whenever the latter was on mission or otherwise unable to act, to read as follows:

Internal Regulation 11bis

Delegation of authority in the absence of the Director

The Director may authorise the Legal Counsel or the Head of the Claims Department to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

15.2 Permanent delegation to various officers

15.2.1 The Assembly shared the Director's view that, under the new structure of the Secretariat, he should be entitled to make significantly wider delegations in the field of the approval claims.

15.2.2 The Assembly agreed with the Director that he should be entitled to give the Head of the Claims Department a general authority to approve claims up to £500 000 for each individual claim, but that the extent of this delegation should be laid down in Administrative Instructions, and that the Head of the Claims Department would consult the Director or the Legal Counsel on legal issues, if required.

15.2.3 The Assembly supported the Director's proposal that he should be entitled to authorise any Officer familiar with a particular incident to approve individual claims arising out of that incident up to an amount of £75 000.

15.2.4 The Assembly accepted that the Director should be able to stipulate certain conditions and restrictions for any delegated authority, for example, that certain types of claims or certain issues should be referred to him or to the Head of the Claims Department for decision, or that the Director should be consulted if a claim was particularly sensitive or gave rise to an important question of principle as regards admissibility. The Assembly shared the Director's view that, if an Officer considered a claim to be wholly or partly inadmissible in principle, the claim should be referred to the Head of the Claims Department for decision, as the claim might become the subject of legal proceedings.

15.2.5 The Assembly decided to amend Internal Regulations 7.13 and 7.14 to read as follows:

Internal Regulation 7.13

The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

- (a) in respect of the Head of the Claims Department, be limited to approvals not exceeding £500 000 for a particular claim; and
- (b) in respect of other officers:
 - (i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident; and
 - (ii) be limited to approvals not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

Internal Regulation 7.14

Any settlements made under Internal Regulation 7.13(a) shall be reported to the Director and those made under Regulation 7.13(b) to the Head of the Claims Department.

15.3 Delegation of authority to make commitments on behalf of the 1992 Fund in other respects

15.3.1 It was recognised that, in view of the extent of the 1992 Fund's activities, it was necessary that some Officers other than the Director should have the authority to make commitments on behalf of the 1992 Fund in respect of aspects of the Organisation's activities other than the approval of claims.

15.3.2 The Assembly decided to insert a new Regulation 12bis in the 1992 Fund's Internal Regulations to allow the Director to authorise other Officers to make commitments on behalf of the 1992 Fund up to a maximum of £50 000, to read as follows:

Internal Regulation 12bis

The Director may authorise other officers to make commitments on behalf of the 1992 Fund in connection with the procurement of goods and services. The conditions and extent of such delegation, which shall not exceed £50 000, shall be laid down in Administrative Instructions issued by the Director.

15.4 Making payments

15.4.1 The Assembly shared the Director's view that the limits laid down in Financial Regulation 9.2 for making payments on behalf of the 1992 Fund were too low and that there should be fewer instances in which his own signature was required. The Assembly considered that the Legal Counsel and the Head of the Claims Department should be given the permanent authority to authorise much larger payments than at present and that other Officers' authority should also be increased.

15.4.2 The Assembly decided to amend Financial Regulation 9.2 to read as follows:

Financial Regulation 9.2

The Director may authorise one or more officers to act as signatories on behalf of the 1992 Fund in giving payment instructions. The 1992 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1992 Fund when signed as follows:

- (a) for any sum up to £10 000, by any officer from category A, B or C;
- (b) for any sum in excess of £10 000 up to £25 000, by an officer from category A or by any two officers from category B or C;
- (c) for any sum in excess of £25 000 up to £100 000, by any two officers from category A, B or C;
- (d) for any sum in excess of £100 000, by one officer from category A or B plus one officer from category A, B or C.

For the purposes of this Regulation, the categories are as follows:

Category A	Director
Category B	Legal Counsel and Head of the Claims Department
Category C	Other officers

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

15.5 Investment of the 1992 Fund's assets

The Assembly agreed with the Director that there was no need for any amendment to Financial Regulation 10.5 which governed the authority to invest the 1992 Fund's assets.

15.6 Reporting to the Assembly or Executive Committee on delegated authority

The Director was instructed to inform the Assembly or the Executive Committee of any delegation of authority and of the conditions of such delegation which would be laid down in Administrative Instructions.

16 Amendment of Staff Rules

The Assembly noted the information contained in document 92FUND/A.3/14 with regard to the 1992 Fund's Staff Rules.

Compensation matters

17 Election of members of the Executive Committee

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

Eligible under paragraph (a)	Eligible under paragraph (b)
Greece Japan Netherlands Norway Republic of Korea Spain United Kingdom	Cyprus Denmark Finland Ireland Liberia Mexico Philippines Tunisia

17.2 The Assembly decided that the 1992 Fund should follow the practice adopted by the 1971 Fund of having a successive renewal of its Executive Committee members, with seven or eight States being replaced each year. The Chairman informed the Assembly that a number of the States elected this year had informed him that they did not intend to present their candidature for the election which would take place at the 4th session of the Assembly, to be held in October 1999.

17.3 It was noted that the 1st session of the Executive Committee would be held on 28 October 1998 and that the Committee would report to the Assembly at its 4th session.

18 Alternative dispute settlement procedures

18.1 The Assembly shared the Director's view that, in the light of the policy laid down by the Assembly as regards the admissibility of claims, it was not possible to pursue the question of using arbitration, mediation and conciliation in the settlement of claims beyond the conclusions of the Assembly at its 2nd session.

18.2 The Assembly reiterated its view that arbitration could be used by the 1992 Fund in certain particular cases and that the techniques normally used in the context of mediation and conciliation should be applied by the 1992 Fund in its efforts to reach out-of-court settlements, as had been the case in the past.

18.3 The Assembly shared the Director's view that further measures could be taken by the 1992 Fund in the field of disseminating information about the international compensation system, since improved

information might in certain cases contribute to claims being settled out of court. It was noted that the increased resources of the Secretariat within its new structure would enable the 1992 Fund to strengthen its activities in this field.

18.4 It was suggested that the 1992 Fund could in appropriate cases engage a person with a legal background who would be outside the Fund's structure and whose task should be to facilitate a dialogue between claimants and the 1992 Fund, to promote the claimants' understanding of the compensation system and to present the views of the claimants to the Fund. It was noted that the task of such a person should not be to mediate or propose settlements on the basis of equity, since the 1992 Fund's policy that a claim was admissible only if it fell within the definitions of "pollution damage" and "preventive measures" laid down in the Conventions as interpreted by the 1992 Fund bodies should be maintained.

18.5 The Director was instructed to examine whether a procedure along the lines set out in paragraph 18.4 should be used and to present a document on this issue to the Assembly at a future session.

19 Application of the 1992 Fund Convention to the EEZ

19.1 The Assembly recalled that at its 1st session it had adopted a Resolution (1992 Fund Resolution N°4) to the effect that States which had established an exclusive economic zone (EEZ) or designated an area under Article 3(a)(ii) of the 1992 Fund Convention before ratifying the 1992 Fund Convention were invited to notify the Secretary-General of the IMO accordingly when they deposited their instruments of ratification in respect of that Convention and that States which established an EEZ or designated an area after ratification were invited to notify the Director accordingly.

19.2 The Director informed the Assembly that so far only nine States had submitted such information (document 92FUND/A.3/17).

20 Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention to floating storage units (FSUs) and floating production storage and offloading units (FPSOs)

20.1 The United Kingdom delegation introduced document 92FUND/A.3/18 on the question of whether the 1992 Civil Liability Convention and the 1992 Fund Convention applied to oil spills from floating storage units (FSUs) and floating production storage and offloading units (FPSOs). The delegation considered that for the purposes of the discussion it would be more appropriate to describe the vessels concerned as offshore craft. The delegation stated that it did not seek to extend the scope of the Conventions but rather wished to obtain clarification as to whether, and if so, which offshore craft were covered by the Conventions.

20.2 The United Kingdom delegation stated that three types of offshore craft had been identified:

- (i) craft which were 'ships' and which carried 'oil' within the meaning of the 1992 Fund Convention;
- (ii) craft which were 'ships' but which did not carry 'oil' within the meaning of the 1992 Fund Convention;
- (iii) craft which were not 'ships' within the meaning of the 1992 Fund Convention.

20.3 The United Kingdom delegation expressed the view that offshore craft of the first type were covered by the regime of compensation established by the 1992 Conventions whereas the other types of craft might not be covered.

20.4 Many delegations agreed with the United Kingdom delegation that the interpretation of the terms 'ship' and 'pollution damage' contained in the 1992 Civil Liability Convention determined which units fell within the scope of the regime established by the 1992 Conventions. Those delegations also shared the view that, to be covered by the Conventions, an offshore craft must be a 'ship' (ie a sea-going vessel or seaborne

craft constructed or adapted for the carriage of oil in bulk as cargo) and that the craft must also have 'oil' on board (ie persistent hydrocarbon mineral oil carried on board either as cargo or in the bunkers).

20.5 The Assembly noted the United Kingdom delegation's view that the expression 'carried as cargo' could be interpreted in any of the following three ways:

- (i) oil carried on voyage to or from a port or terminal could be considered to be 'carried as cargo';
- (ii) oil carried on any voyage between two distinct points could be considered to be 'carried as cargo'; or
- (iii) oil carried on any movement whatsoever could be considered to be 'carried as cargo'.

20.6 A number of delegations expressed the view that the circumstances set out in paragraph 20.5(i) should be covered by the Conventions. As regards the circumstances referred to in paragraph 20.5(ii), some delegations were of the opinion that a voyage would be covered by the Conventions only if it was from one point to another with the intention of carrying oil as cargo, and that, if such a voyage was not for the purpose of carrying oil as cargo, then that voyage should not be covered. Some delegations expressed doubts as to whether any voyages referred to in paragraph 20.5(ii) would be covered. A number of delegations considered that the conditions described in paragraph 20.5(iii) would not be covered by the Conventions.

20.7 Some delegations stressed that a distinction should be made between the production and the transportation of oil. One delegation stated that it was essential to retain the concept of a journey that was planned and that vessels had all the relevant certificates on board, such as bills of lading, to make the voyage. Some delegations were of the view that only oil in respect of which contributions were paid should give rise to compensation in the event of a spill.

20.8 One delegation stated that, as the Conventions applied only to ships "constructed and adapted for the carriage of oil in bulk as cargo", oil rigs, rigs for exploitation and offshore units did not, in its view, fall within the scope of the Conventions. That delegation pointed out that the reference in the Convention to "carried on board as cargo" excluded offshore craft permanently moored in position.

20.9 Many delegations stated that offshore craft of the type under discussion were operating in their waters and that therefore this matter was of great interest to them.

20.10 Several delegations considered that they needed more detailed information about the particular circumstances in which certain offshore craft were being deployed in order that specific cases could be considered by the Assembly.

20.11 The Assembly decided to set up an intersessional Working Group to study the issues considered under this agenda item. It was agreed that all Member States of the 1971 Fund and the 1992 Fund, as well as States and Organisations with observer status with the 1992 Fund, would be invited to participate in the Working Group which would be held in public.

20.12 It was agreed that the Working Group would meet in connection with the session of the Executive Committee to be held during the week of 26 April 1999.

20.13 The Director was invited to consider whether to engage a consultant to study the issues involved.

20.14 The Assembly noted that the Executive Committee had considered it useful if the Working Group referred to in paragraph 20.11 could consider the interpretation of the definition of 'ship' in the 1992 Civil Liability Convention in respect of the question which had arisen in relation to the *Santa Anna* incident. It was agreed that the Working Group should study that issue.

21 Co-operation with P & I Clubs

21.1 The Assembly recalled that it had noted at its 2nd session that the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) had expressed the view that, since it was now a full member of the International Group of P & I Clubs, it was not necessary to have a special Memorandum covering co-operation between JPIA and the 1992 Fund and that, in JPIA's view, it would be more appropriate if the same Memorandum were to apply to JPIA as to the other members of the International Group.

21.2 The Assembly noted that the Director was continuing his discussions with JPIA concerning co-operation between JPIA and the 1992 Fund.

Budgetary matters

22 Sharing of joint administrative costs with the 1971 Fund

22.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 1999 should be distributed with 50% to be paid by the 1992 Fund and 50% by the 1971 Fund, with the proviso that this distribution would not apply to certain items in respect of which it was possible to make a distribution based on the actual costs incurred by each Organisation as set out in the explanatory notes to the draft budget for 1999 (document 92FUND/A.3/21).

22.2 It was noted that the Executive Committee of the 1971 Fund had agreed at its 59th session to the distribution proposed by the Director.

23 Budget for 1999

23.1 The Assembly considered the draft 1999 Budget for the administrative expenses of the 1992 Fund and 1971 Fund, as proposed by the Director in document 92FUND/A.3/20. In this context the Assembly recalled that it had under agenda item 14 authorised the Director to use £400 000 in 1999 for expenses in connection with the relocation of the IOPC Funds' Secretariat and the increased cost of running the Secretariat as a result of thereof, and had decided to include an appropriation to that effect in a new Chapter VII of the 1999 budget, the amount to be split 50:50 between the two Organisations.

23.2 In response to a question from the Chairman, the Director informed the Assembly that he would be very honoured to continue to serve as Director after 31 December 1999 (the date when his contract with the IOPC Funds would expire), if the Assembly were to decide to reappoint him.

23.3 The Assembly adopted the budget appropriations for 1999, with a total administrative expenditure for the joint Secretariat of £2 792 360 (including the new Chapter VII), as reproduced in Annex I.

23.4 It was noted that the Executive Committee of the 1971 Fund had at its 59th session adopted the same budget appropriations.

23.5 The Assembly considered the procedure to be applied for determining the salary levels of staff members and for promotions, on the basis of document 92FUND/A.3/21/1.

23.6 The Assembly decided to authorise the Director to determine the grades of individual posts in the general service category and in the professional category up to grade P5 and to decide on promotions for these categories, provided that the increased costs resulting therefrom could be covered within the total budget appropriation for Personnel adopted by the Assembly. It was decided that decisions relating to grades above the P5 level (ie grades D1 and D2) would be taken by the Assembly, on the proposal of the Director.

23.7 It was noted that the Director would inform the Assembly, in connection with the adoption of the administrative budget, of decisions taken by him concerning the grading of posts and promotions.

24 Working capital

The Assembly decided to increase the working capital of the 1992 Fund from £9 million to £12 million.

25 Assessment of contributions

25.1 Capping of contributions to the *Nakhodka* Major Claims Fund

25.1.1 The Assembly considered document 92FUND/A.3/23/1 which dealt with certain issues relating to the application of the capping system.

25.1.2 It was recalled that at its 2nd session the Assembly had decided *inter alia* to make a second levy of £30 million to the *Nakhodka* Major Claims Fund and that the whole of this levy should be deferred. It was also recalled that the Assembly had authorised the Director to decide whether to invoice all or part of that levy for payment during the second half of 1998 (document 92FUND/A.2/29, paragraph 27.5).

25.1.3 The Assembly noted that, when assessing the situation in June 1998, the Director had found that, in the light of the likely timetable for the settlement and payment of claims, no further monies were required and that therefore, in accordance with the Assembly's decision, no further levy should be made at that stage to the *Nakhodka* Major Claims Fund. It was noted that the Director had therefore decided not to use the authority given to him to issue invoices for a deferred levy to the *Nakhodka* Major Claims Fund of up to £30 million. It was further noted that the contributors had been notified of this decision in June 1998.

25.1.4 It was noted that the Japanese Government had, in a written submission, requested that the Secretariat should apply the capping system to future invoices up to an amount of £30 million, ie the maximum 1997 deferred levy to the *Nakhodka* Major Claims Fund which had been decided by the Assembly at its 2nd session and in respect of which the Director had decided not to issue invoices.

25.1.5 The Chairman stated that, in his view, it was necessary to distinguish between two issues in this matter: the question of the capping of contributions, which was a legal matter relating to the application of the 1992 Fund Convention, and the question of the application of the system of deferred invoicing of contributions, which was solely a financial matter.

25.1.6 It was recalled by the Chairman that in June 1998 the Director had decided, for the reasons set out in paragraph 25.1.3 above, that it was not necessary to invoice any part of the deferred £30 million. The Chairman stated that, in view of the instructions which the Director had been given by the Assembly, the Director had been obliged to take that decision.

25.1.7 The Chairman stated that, although the Director no longer had the authority to levy the amount of £30 million, the Assembly's decision still stood in principle, and that the Assembly had only to renew the decision within the context of a later decision or decisions on the assessment of contributions. The Chairman stated that the decision correctly taken by the Director not to invoice the deferred levy did not affect the Assembly's decision, but that it only reflected the fact that there was no need for a further levy of contributions to the *Nakhodka* Major Claims Fund during 1998.

25.1.8 The Chairman concluded that, in the light of this analysis, the situation in respect of capping for the £30 million was clear: when the Assembly had taken its decision in October 1996, the £30 million was subject to capping and the fact that the amount had not been invoiced in 1998 did not change the situation in this regard.

25.1.9 The Assembly reiterated its position that deferred levies should be invoiced only if and to the extent necessary for the payment of claims in the period until the following year's contributions would be due. The Assembly noted that the likely timetable for the settlement and payment of claims arising out of the *Nakhodka* incident, as was envisaged in June 1998, had been such that no further monies were required by

the 1992 Fund at that stage. The Assembly endorsed the Director's decision, taken in accordance with the Assembly's instructions, not to make a deferred levy to the *Nakhodka* Major Claims Fund.

25.1.10 The Assembly endorsed the views expressed by the Chairman in respect of the application of the capping system. Consequently, the Assembly decided that future levies to the *Nakhodka* Major Claims Fund should be capped up to an amount of £30 million. It was also decided that the invoices should indicate the amounts which were capped and those which were not capped.

25.2 1998 Assessment

25.2.1 The Director introduced document 92FUND/A.3/23 which contained proposals for the levy of 1998 contributions.

25.2.2 The Assembly decided to levy contributions to the General Fund for a total of £7.2 million. It was decided that this levy should be due for payment by 1 February 1999.

25.2.3 In order to enable the 1992 Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 of the 1992 Fund Convention arising out of the *Nakhodka* incident, to the extent that the aggregate amount of the payments made by the Fund in respect of each incident exceeded 4 million Special Drawing Rights (SDR), the Assembly decided, pursuant to Article 12.2(b) of the 1992 Fund Convention, to make a levy of £41 million to the *Nakhodka* Major Claims Fund as 1998 contributions, £30 million of which represented a renewal of the levy to that Major Claims Fund which had been made by the Assembly at its 2nd session. The Assembly also decided that £21 million should be due for payment by 1 February 1999, and that the remainder of the levy (£20 million) should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1999, if and to the extent required.

25.2.4 The Assembly decided to make a levy of £1.4 million to the *Osung N°3* Interim Major Claims Fund, as 1998 contributions. It was decided that the whole of this levy should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1999, if and to the extent required.

25.2.5 The Assembly noted that its decisions in respect of the levy of 1998 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 February 1999		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
<i>General Fund</i>	1997	967	7 200 000	7 200 000	0.0074457	0	0.0000000
<i>Nakhodka</i>	1996	657					
Capped			30 000 000	21 000 000	0.0319635	9 000 000	0.0136986
Not capped			11 000 000	0	0.0000000	11 000 000	0.0167428
Sub-total			41 000 000	21 000 000	0.0319635	20 000 000	0.0304414
<i>Osung N°3</i>	1996	657	1 400 000	0	0.0000000	1 400 000	0.0021309
Total			49 600 000	28 200 000	0.0394092	21 400 000	0.0325723

25.2.6 The observer delegation of the Oil Companies International Marine Forum (OCIMF) expressed the oil industry's appreciation of the improved quality and content of the document submitted by the Director on the assessment of contributions, as well as of the documents relating to the accounts and the budget, and welcomed the increased transparency.

Other matters

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

26.1 It was noted that in February and September 1998 the IOPC Funds had been represented at informal meetings of European government experts on the implementation of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), as well as at a special consultative meeting held at IMO in April 1998 which had been attended by representatives of a number of European and non-European States.

26.2 The Assembly noted that the discussions at the meetings had focused on a number of issues relating to the implementation of the HNS Convention, including the issuance of insurance certificates, the identification of cargo receivers and the tracking and reporting of contributing cargoes. The Director welcomed the opportunity for the IOPC Funds to participate in such meetings as a means of enabling the Funds to keep abreast of developments.

27 Future sessions

The Assembly decided to hold its next session during the week of 18-22 October 1999.

28 Any other business

28.1 Funding of environmental impact studies

28.1.1 The United Kingdom delegation introduced documents 92FUND/A.3/25 and 92FUND/A.3/25/1. The delegation proposed that the 1992 Fund should make it clear, at the beginning of a spill, that there might be resources available for environmental impact studies. That delegation suggested that environmental studies of the type suggested would improve knowledge concerning the most effective methods of carrying out clean-up operations and could therefore reduce the Funds' compensation payments in the future. The United Kingdom delegation stated that in practice the provision to recover costs as defined in the Claims Manual had been found to be ambiguous. In that delegation's view, the problems associated with the practical application needed to be addressed.

28.1.2 It was recalled that the issue of whether expenses for studies of various types should be compensated under the 1969 Civil Liability Convention and 1971 Fund Convention and the 1992 Protocols thereto had been considered by the 7th Intersessional Working Group set up by the 1971 Fund Assembly. It was also recalled that the conclusions set out in the Working Group's report on this point (document FUND/A.17/23, paragraphs 9.1-9.5), which had been endorsed by the 1971 Fund Assembly at its 17th session (document FUND/A.17/35, paragraph 26.8), had been summarised in the 1992 Fund's Claims Manual as follows:

Expenses for studies are compensated only if the studies are carried out as a direct consequence of a particular oil spill, and as a part of the oil spill response or to quantify the level of loss or damage. The 1992 Fund does not pay for studies of a general or purely scientific character.

Post-spill environmental studies are sometimes carried out to establish the precise nature and extent of the pollution damage caused by an oil spill and/or the need for reinstatement measures. The 1992 Fund may contribute to the cost of such studies, provided that the studies concern damage which falls within the definition of *pollution damage* laid down in the Conventions as interpreted by the 1992 Fund, including reasonable measures to reinstate the environment. In such cases, the 1992 Fund should be given the possibility of becoming involved at an early stage in the selection of the experts who will carry out the studies, and in the determination of the mandate of these experts. The studies should be practical and

likely to deliver the required data. Their scale should not be out of proportion to the extent of the contamination and the predictable effects. The extent of the studies and associated costs should also be reasonable from an objective point of view and the costs incurred should be reasonable.

28.1.3 The Assembly recalled that it had adopted Resolution N°3 on the admissibility of claims for compensation which stated that the report of the 7th Intersessional Working Group should form the policy of the 1992 Fund on the criteria for the admissibility of claims.

28.1.4 It was mentioned that since the 1992 Conventions explicitly stated that the cost of reasonable measures for reinstatement of the environment could be compensated, the scope for compensating the cost of environmental studies had been extended in comparison with the 1969 and 1971 Conventions. The point was made that the 1992 Fund should not be seen as taking a generally negative attitude towards environmental studies.

28.1.5 A number of delegations expressed the view that there was a need to clarify the 1992 Fund's position regarding the admissibility of claims for the cost of environmental studies, whereas other delegations considered that the current guidelines were sufficiently clear. Some delegations called for caution in widening the criteria for the admissibility of claims for the cost of environmental studies beyond those fulfilling the criteria set out in the Report of the 7th Intersessional Working Group. Other delegations pointed out that environmental studies often had to be commenced very soon after a spill had occurred and that, in view of the high potential costs of such studies, it would in any event be unwise for the 1992 Fund to make funding commitments before the magnitude of the claims for compensation in respect of pollution damage and preventive measures became clear.

28.1.6 Some delegations suggested that costs of environmental studies could be considered as administrative expenses. Other delegations stated, however, that such costs, if admissible, should be paid from the Major Claims Fund established for the incident in question.

28.1.7 One delegation expressed the view that the cost of environmental studies of the type envisaged would fall outside the scope of the 1992 Fund's mandate as laid down in Article 2 of the 1992 Fund Convention.

28.1.8 The Assembly decided that the interpretation of the 1992 Fund Convention on this issue was based on the Report of the 7th Intersessional Working Group. It was recognised, nevertheless, that it would be inappropriate for the 1992 Fund to reject systematically all claims for the cost of environmental studies in the future. The Assembly agreed that in cases where the 1992 Fund paid claims for the cost of environmental studies, such costs should be attributed to a specific incident and should not be included in the 1992 Fund's administrative costs. It was also agreed that any such claim would have to be examined on a case by case basis.

28.2 Definition of 'contributing oil'

28.2.1 The Director informed the Assembly that the Secretariat had recently received several enquiries from Member States and individual contributors as to whether certain types of oils fell within the definition of 'contributing oil' and that for this reason he proposed that the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations should be amended. It was recalled that the form was intended to serve as a guide for contributors.

28.2.2 It was recalled that at its 16th session in connection with its consideration of whether a particular type of crude oil should be considered as 'contributing oil', the Assembly had taken the view that it was reasonable to interpret the definition of 'crude oil' within the definition of 'contributing oil' in the 1971 Fund Convention as being limited to persistent crude oil, since the compensation system established by the 1969 Civil Liability Convention and the 1971 Fund Convention applied only to persistent oil (document FUND/A.16/32 paragraph 29.3).

28.2.3 The Assembly noted that most of the oils which had been the subject of recent enquiries were termed 'condensates', which at normal ambient conditions were composed of liquid hydrocarbon mixtures and which occurred naturally in the earth, and that all condensates were listed as 'non-contributing oil' on the oil reporting form. It was noted that the classification of condensates as 'non-contributing oil' was in conformity with the decision of the 1971 Fund Assembly at its 16th session for those condensates which were considered non-persistent under the non technical guide to the nature and character of persistent oil elaborated by the 1971 Fund in 1981 (document FUND/A.4/11). It was noted, however, that the classification was not in conformity with that decision for those condensates which were considered persistent under that guide.

28.2.4 Some delegations expressed initial doubts about the proposed amendment of the list on the grounds of lack of time to consider what was essentially a technical matter. Most delegations considered, however, that the proposed amendment constituted merely of an implementation of the Assembly's decision at its 16th session, on the basis of the chemical properties of the condensates in question, and for this reason they supported the Director's proposal.

28.2.5 The Assembly decided that, to maintain consistency with the 1971 Fund Assembly's decision at its 16th session that 'contributing oil' should be limited to 'persistent oil', the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations should be amended to the effect that the classification of condensates was made dependent on whether the type of oil in question was persistent. A revised list, as reproduced in Annex II, was approved by the Assembly.

28.2.6 It was noted that, in accordance with previous practice, the amendment to the list should not lead to amendments of previous reports on contributing oil receipts and should be taken into consideration only for future reports.

28.2.7 The Assembly instructed the Director to review further the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations.

29 Adoption of the Record of Decisions of the 3rd session

The draft Record of Decisions, as contained in documents 92FUND/A.3/WP.1 and 92FUND/A.3/WP.1/Add.1, was adopted, subject to some amendments.

* * *

1999 GENERAL FUND BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 1997 expenditure for 1971 and 1992 Funds		1997 budget appropriations for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations		
								Total	Distribution	
									1992 Fund	1971 Fund
A	SECRETARIAT	£		£		£		£	£	£
I	Personnel									
(a)	Salaries	612 762		652 140		780 980		838 050	419 025	419 025
(b)	Separation and recruitment	106 318		131 020		59 215		69 800	34 900	34 900
(c)	Staff benefits and allowances	175 703		246 530		270 200		343 750	171 875	171 875
(d)	Temporary assistance	38 158		30 000		30 000		40 000	20 000	20 000
(e)	Staff Training	12 753		10 000		15 000		35 000	17 500	17 500
	Sub-total		945 694		1 069 690		1 155 395		1 326 600	663 300
II	General Services									
(a)	Rent of office accommodation (including common services, security services and rates)	91 841		100 580		111 700		132 500	66 250	66 250
(b)	Office machines, including maintenance	43 422		38 000		52 500		60 000	30 000	30 000
(c)	Furniture and other office equipment	11 423		12 000		24 500		24 500	12 250	12 250
(d)	Office stationery and supplies	16 886		20 000		22 000		22 000	11 000	11 000
(e)	Communications (telephone, telefax, telex, postage)	39 932		40 000		45 000		52 000	26 000	26 000
(f)	Other supplies and services	25 077		27 500		26 600		30 000	15 000	15 000
(g)	Representation (hospitality)	12 910		14 000		15 000		16 500	8 250	8 250
(h)	Public Information (previously printing and publication)	62 509		90 000		98 000		183 750	109 750	74 000
	Sub-total		304 000		342 080		395 300		521 250	278 500
III	Meetings									
(a)	Autumn sessions of 1992 Fund and 1971 Fund Assemblies and Executive Committees	20 055		25 000		25 800		30 720	13 520	17 200
(b)	Further sessions of 1971 Fund Executive Committee	16 834		40 000		30 600		30 600	0	30 600
(c)	Extra sessions of 1992 Fund and 1971 Fund Assemblies and 1971 Fund Executive Committee	3 379		30 000		25 800		0	0	0
(d)	Extra sessions of 1992 Fund Assembly or Executive Committee	2 024		0		15 300		22 680	22 680	0
(e)	Intersessional Working Groups	1 600		20 000		20 600		24 160	13 860	10 300
	Sub-total		43 892		115 000		118 100		108 160	58 100

STATEMENT OF EXPENDITURE		Actual 1997 expenditure for 1971 and 1992 Funds		1997 budget appropriations for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations			
								Total		Distribution	
										1992 Fund	1971 Fund
		£		£		£		£		£	£
IV	Conferences and travel										
(a)	Conferences and seminars	29 022		20 000		20 000		30 000		15 000	15 000
(b)	Mission	2 066		20 000		20 000		20 000		10 000	10 000
	Sub-total		31 088		40 000		40 000		50 000	25 000	25 000
V	Miscellaneous expenditure										
(a)	External audit	21 000		21 000		57 925		46 600		10 350	36 250
(b)	Payment to IMO for general services	6 000		6 000		6 200		6 400		3 200	3 200
(c)	Consultants' fees	117 194		100 000		125 000		185 000		92 500	92 500
(d)	Payment to IMO for translator (French)	60 520		49 950		67 000		70 350		35 175	35 175
(e)	Investment Advisory Bodies	18 000		18 000		18 000		18 000		9 000	9 000
	Sub-total		222 714		194 950		274 125		326 350	150 225	176 125
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		0		60 000		60 000		60 000	30 000	30 000
VII	Relocation costs								400 000	200 000	200 000
Total Expenditure I-VII			1 547 388		1 821 720		2 042 920		2 792 360	1 397 085	1 395 275
VIII	Expenditure relating only to 1992 Fund						60 000				
B	CLAIMS (See documents 92FUND/A.3/23 and 71FUND/A.21/22)										

STATEMENT OF INCOME		Funds actually accumulated as at 31.12.97		1997 budget estimates		1998 budget estimates		1999 budget estimates		
								Total		Distribution
		1971 Fund	1992 Fund	1971 Fund	1992 Fund	1971 Fund	1992 Fund	1992 Fund	1971 Fund	
		£		£		£		£		£
I	Balance from preceding years	12 263 234	6 526 112	15 184 524	0	9 609 057	6 334 122	15 419 891	8 706 427	6 713 464
II	Any other income			1 692 224	160 000	500 000	850 000	1 100 000	750 000	350 000
Total Income I-II		12 263 234	6 526 112	16 876 748	160 000	10 109 057	7 184 122	16 519 891	9 456 427	7 063 464
III	Income relating only to 1971 Fund	70 990		0		60 000				0

ANNEX II

List of Contributing Oil and Non-Contributing Oil

The following list of contributing and non-contributing oil is intended as a guide for contributors (see also note 6)

Contributing Oil*Crude Oils*

All naturally occurring crude oils
 Condensate ^{<1>}
 Topped crudes
 Spiked crudes
 Reconstituted crudes

Finished Products

N°4 fuel (ASTM)
 Navy special fuel
 Light fuel oil
 N°5 fuel (ASTM) - light
 Medium fuel oil
 N°5 fuel (ASTM) - heavy
 Bunker C fuel oil
 Heavy fuel oil
 Marine fuel oil
 N°6 fuel oil (ASTM)
 Blended fuel oils by viscosity
 or sulphur content
 OrimulsionTM (a bituminous emulsion used
 for the production of heat or power) ^{<2>}

Intermediate or Process Stocks

Fuel oil blend stocks

Non-Contributing Oil*Crude Oils*

Natural gas liquids
 Condensate ^{<1>}
 Casinghead naphtha
 Natural gasoline
 Cohasset-panuke

Finished Products

LNG and LPG
 Aviation gasolines
 Motor gasoline (petrol, essence)
 White spirit
 Kerosene
 Aviation kerosene
 - Jet 1 A
 - N°1 fuel (ASTM)
 Gas oil
 Heating oil
 N°2 fuel (ASTM)
 Marine diesel
 Lubricating oil

Intermediate or Process Stocks

Straight run naphthas
 Light cracked naphtha
 Heavy cracked naphtha
 Platformate
 Reformate
 Steam-cracked naphtha
 Polymers
 Isomers
 Alkylates
 Catalytic cycle oil
 Reformer feed
 Steam cracker feed
 Gas oil blend stocks
 Catalytic cracker feedstock
 Visbreaker feedstock
 Aromatic tar

^{<1>} To be considered as 'non-contributing oil' if more than 50% by volume distils at a temperature of 340°C, or if more than 95% by volume distils at a temperature of 370°C, when tested by the ASTM Method D 86/78 or any subsequent revision thereof.

^{<2>} Quantity of orimulsionTM received should be reported with no allowance for its water content.