



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
4th session
Agenda item 33

92FUND/A.4/32
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RECORD OF DECISIONS OF THE FOURTH SESSION OF THE ASSEMBLY

(held from 18 to 22 October 1999)

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Captain A Saúl Bandala (Mexico)

Opening of the session

The 4th 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.4/1.

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:	Captain A Saúl Bandala (Mexico)

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

2.3 The Chairman informed the Assembly that, having served as Chairman of the Assemblies of the 1971 and 1992 Funds for a total of five years and previously as Chairman of the 1971 Fund Executive Committee, he had decided that he would not be available to serve as Chairman beyond the end of the present session. He therefore proposed that a new Chairman should be elected before the close of the session, to be available to assist the Director in the preparation of next year's Assembly.

3 Examination of credentials

3.1 The following Member States were present:

Algeria	Grenada	Norway
Australia	Ireland	Republic of Korea
Belgium	Japan	Singapore
Canada	Latvia	Spain
Cyprus	Liberia	Sweden
Denmark	Marshall Islands	Tunisia
Finland	Mexico	United Arab Emirates
France	Monaco	United Kingdom
Germany	Netherlands	Uruguay
Greece	New Zealand	Venezuela

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:

China (Hong Kong Special Administrative Region)	Italy	Sri Lanka
	Panama	Vanuatu

Other States:

Argentina	Estonia	Nigeria
Brazil	Fiji	Peru
Cameroon	Georgia	Poland
Chile	Ghana	Russian Federation
Colombia	India	Saudi Arabia
Congo	Malaysia	Turkey
Côte d'Ivoire	Malta	United States
Ecuador		

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)
United Nations
International Maritime Organization (IMO)

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)

4 Grant of observer status

The Assembly decided to grant observer status to the Republic of the Congo and Turkey pursuant to requests as set out in documents 92FUND/A.4/2 and 92FUND/A.4/2/1.

General review

5 Report of the Director

5.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 3rd session, contained in document 92FUND/A.4/3. In his presentation, the Director made reference to the fact that the past twelve months had seen a considerable growth in 1992 Fund membership, nine more States having ratified the 1992 Fund Convention. He mentioned that by the time of the Assembly's 5th session in October 2000 the number of 1992 Fund Member States would be greater than the number of 1971 Fund Member States.

5.2 The Director reported on the progress of the implementation of the Assemblies' decisions with regard to the structure of the Secretariat and new working methods. He informed the Assembly that a review had been undertaken in order for the Funds to derive maximum benefits from the changes. He also mentioned that, as a result of the new structure, the Secretariat would have to be relocated outside the IMO building, and that it was expected that the negotiations on a lease of new premises would be completed in the near future so that the Secretariat could relocate in the spring of 2000.

5.3 The Director referred to the fact that the Assembly had emphasised the importance of the 1992 Fund's strengthening the Secretariat's activities in the field of public relations. He informed the Assembly that the IOPC Funds' web site was now open at the address <http://www.iopcfund.org>.

5.4 The Assembly congratulated the Secretariat on the 1998 Annual Report which contained an instructive presentation of the activities of the 1971 and 1992 Funds, and noted that it was envisaged that the Annual Report for 1999 would be published in Spanish also.

5.5 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.

Treaty questions

6 Status of the 1992 Fund Convention and related matters

The Assembly took note of the information contained in document 92FUND/A.4/4 concerning the ratification situation in respect of the 1992 Fund Convention. It was noted that there were at present 37 Member States of the 1992 Fund and that by October 2000 the 1992 Fund would have 46 Member States.

7 Revision of Article 36 of the Final Clauses of the 1992 Protocol to the 1971 Fund Convention

7.1 The Assembly considered document 92FUND/A.4/5 which addressed the issue of whether steps should be taken at an early stage to facilitate the winding up of the 1992 Fund in the future, should the need arise. A draft amendment to Article 36 of the Final Clauses to the 1992 Fund Protocol was considered. The

Assembly thanked the Director for having raised this important question which would have to be addressed at some stage.

7.2 A number of delegations considered that the question of amending Article 36 of the Final Clauses should be considered a priority issue. Those delegations were of the view that it would be easier to introduce an amendment to the 1992 Fund Protocol before the number of Member States became very large. They also considered that if a Diplomatic Conference were to be convened to consider amending Article 43 of the 1971 Fund Convention, it would be appropriate for that Conference to consider amending Article 36 of the Final Clauses of the 1992 Fund Protocol at the same time. One delegation was of the view that if the 1992 Fund were to find itself in a position similar to the 1971 Fund, it would be better placed to deal with the situation if the mechanism of a supplementary protocol was already in place.

7.3 Many other delegations were of the view that amending Article 36 of the Final Clauses was not a priority issue for the 1992 Fund for the time being, but that the question should be reviewed after further consideration by Member States.

7.4 The Assembly noted the Director's proposal that a supplementary protocol amending Article 36 of the Final Clauses should require ratification by all States Parties to the 1992 Fund Protocol for its entry into force (Article V of the draft text contained in the Annex to document 92FUND/A.4/5). One delegation was of the view that it would be difficult to obtain ratification by all States Parties and that the supplementary protocol would therefore not come into force. Some delegations considered that entry into force dependent on ratification by all States created certain treaty law questions which would need to be resolved.

7.5 It was pointed out by one delegation that unless the entry into force was dependent on ratification by all States Parties, a complex situation would arise if the proposed supplementary protocol were ratified by some but not all of the present 1992 Fund Member States. That delegation considered that the matter would be further complicated if some non-Member States ratified the 1992 Fund Protocol and its supplementary protocol whilst others ratified only the 1992 Fund Protocol. That delegation therefore had serious doubts as to the Director's proposal of a supplementary protocol.

7.6 The Assembly decided that it was premature to request the Secretary-General of IMO to convene a Diplomatic Conference to consider amending Article 36 of the Final Clauses of the 1992 Fund Protocol.

Financial matters

8 Report on investments

8.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 1998 to June 1999, contained in document 92FUND/A.4/6.

8.2 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.

9 Report of the Investment Advisory Body

9.1 The Assembly took note of the report of the Investment Advisory Bodies, contained in the Annex to document 92FUND/A.4/7. It noted in particular the review of the activities of those Bodies during the period 1994 - 1999, and the objectives for the coming year.

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

10 Financial Statements and Auditor's Opinion

10.1 The Director introduced document 92FUND/A.4/8 containing the Financial Statements of the 1992 Fund for the financial year 1998 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Martin Sinclair, Assistant Auditor General, introduced the Auditor's Report and Opinion.

10.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.4/8 which went into great depth and detail. In particular, the Assembly welcomed the 'value-for-money' audit and agreed with the External Auditor that this type of audit should be continued.

10.3 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 1998.

11 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

12 Report on contributions

The Assembly took note of the Director's report on contributions contained in document 92FUND/A.4/10. It noted that over 97% of the 1998 contributions had been paid. The Assembly expressed its satisfaction with the situation regarding the payment of contributions.

13 Non-submission of oil reports

13.1 It was recalled that at its 3rd session the Assembly had instructed the Director to make contacts with any State which failed to submit its contributing oil reports and to inform the competent persons of the State concerned that the Assembly would review individually each such State. The Assembly noted that two Member States had not submitted oil reports for 1998 and that for one State the reports for 1997 and 1998 were outstanding.

13.2 The Assembly considered that the situation regarding the submission of oil reports was generally good. It was stressed, however, that it was a duty of States as Members of the 1992 Fund to submit oil reports each year, even if no contributing oil was received. The Assembly therefore instructed the Director to pursue his efforts to obtain oil reports from all Member States.

13.3 The Assembly renewed its instruction 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.

14 Amendment of Internal Regulations

14.1 The Assembly considered the proposals contained in document 92FUND/A.4/12 that the date for the submission of oil reports and the normal due date for the payment of contributions should be amended to allow Member States and contributors more time to carry out those functions.

14.2 The Assembly decided to amend Internal Regulations 3.7, 3.9, 4.1 and 4.3 to read as follows:

- 3.7 Payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions, unless the Assembly decides otherwise.
- 3.9 Interest shall be charged on unpaid annual contributions from the date on which payment is due at an annual rate which for each period of twelve months from 1 March shall be 2% higher than the lowest London clearing bank base rate prevailing on 1 March.
- 4.1 Each Member State shall forward annually to the Director reports on contributing oil receipts, using the form annexed to these Internal Regulations. The reports shall reach the Director not later than 30 April each year. They shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the 1992 Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year.
- 4.3 Each State in respect of which the Convention enters into force after 30 April of any year shall, on or before the date of entry into force of the 1992 Fund Convention for that State, submit a report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.

15 Definition of 'contributing oil'

15.1 The Assembly considered document 92FUND/A.4/13 relating to the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form which is annexed to the Internal Regulations.

15.2 It was recalled that the Assembly had decided at its 3rd session that 'contributing oil' should be limited to 'persistent oil' and that the classification of condensates should be dependent on whether the type of oil in question was persistent.

15.3 The Assembly noted that in the list marine diesel oil was placed in the column for 'non-contributing oil'. It also noted that it had been established that some marine diesel oils were persistent whereas others were non-persistent. It was further noted that the specifications against which marine diesel oils were marketed did not normally include distillation data and that a distinction for contribution purposes between persistent and non-persistent marine diesel oil would therefore require additional tests to be carried out. The Assembly decided that in view of the small quantity of marine diesel oil carried by sea as cargo in relation to the total quantity of contributing oil so transported, and the considerable administrative burden oil receivers would face if they had to distinguish in their reports to the IOPC Funds between persistent and non-persistent marine diesel oils, marine diesel oil should continue to be classified as 'non-contributing oil'.

15.4 It was recalled that it had been decided that a bituminous emulsion used for the production of heat and power, known as *orimulsion*, should be considered as falling within the definition of 'contributing oil'. It was noted that there were a number of products similar to *orimulsion* which were also used for the production of heat and power. It was decided that those products should be considered as 'contributing oil' for the purpose of Article 1.3 of the 1992 Fund Convention, but that it was not necessary in the designation to include the phrase 'used for the production of heat and power'. The Assembly decided, therefore, that those products should be referred to in the list by the generic term 'bituminous emulsions and fuel oil emulsions'. It was also decided that no allowance should be made for the water content in those products for the assessment of contributions.

- 15.5 The Assembly decided to correct a typographical error in footnote <1> in the list.
- 15.6 A revised list, as reproduced in Annex I, was approved by the Assembly.

Secretariat and administrative matters

16 Implementation of organisational changes within the Secretariat

16.1 The Assembly noted that the Director had instructed a consultant to undertake a review of the implementation of the Assemblies' decisions with regard to the new working methods and new structure of the Secretariat. The Assembly took note of the report of this review (document 92FUND/A.4/14, Annex). The Assembly also took note of a document submitted by the Director on the same issues (document 92FUND/A.4/14/1).

16.2 A number of French and Spanish-speaking delegations expressed their satisfaction with the translation of documents for the October 1999 sessions. It was noted by some delegations that it was preferable to have in-house translators if there was sufficient work, in order to ensure consistency. One delegation suggested that, for this reason, it might be appropriate to consider employing an additional part-time French translator and/or a part-time Spanish translator, rather than relying on freelance translators until the workload was sufficient to justify employing a full-time translator.

16.3 The Assembly approved the creation of two posts in the Professional category, namely an IT Officer and a French Translator/Reviser.

16.4 It was decided that the question of the employment of a Spanish translator should be kept under review.

16.5 The Assembly took note of the Director's intention to convert two posts in the General Service category in the External Relations and Conference Department, and of the Director's intention to recruit to those posts. The Assembly further noted the appointment of a Clerk-Secretary instead of a Claims Clerk in the Claims Department.

16.6 One delegation had hoped that the review carried out by the consultant would have contained a more thorough evaluation of whether the consultants' original proposals regarding the Secretariat's working methods were being followed and implemented.

16.7 The Assembly decided that a further evaluation of the working methods should be arranged once the Secretariat had settled into its new premises.

17 Relocation of the IOPC Funds' offices

17.1 The Director introduced document 92FUND/A.4/15 dealing with the relocation of the IOPC Funds' offices outside the IMO building. The Director informed the Assembly that he had decided that, subject to the conclusion of ongoing negotiations with the landlord and the United Kingdom Government, the IOPC Funds' Secretariat would be relocated to Portland House, Stag Place, London SW1.

17.2 It was recalled that the Assembly had decided at its 3rd session to authorise the Director to make the necessary decisions with regard to the relocation of the IOPC Funds' offices (document 92FUND/A.3/27, paragraph 14.12).

17.3 The Assembly noted that the United Kingdom Government had undertaken to refund 80% of the rent relating to Portland House for the duration of the lease, and that it would also subsidise the rates as was customary for Diplomatic Missions. It was also noted that the United Kingdom Government was prepared to make a contribution to the relocation costs provided that the costs fell within the Government's budget year ending 31 March 2000, and that the level of the Government's contribution was being discussed. The

Assembly expressed its great appreciation of the financial assistance given by the United Kingdom Government to the IOPC Funds.

17.4 The Assembly expressed its concern at the high cost of refurbishing the proposed office premises. It was considered that, as such one-off costs were high, it would be appropriate for the period of the lease to be reasonably long, say 10 - 15 years.

17.5 Having noted the Director's decision in respect of relocation, the Assembly confirmed the Director's authority to sign on behalf of the 1992 Fund any agreement, lease and other documents relating to the premises in Portland House, or relating to any other property in the London area should it not be possible to conclude a lease agreement relating to Portland House.

17.6 The Assembly approved an appropriation of £600 000 to cover expenses in connection with the relocation of the IOPC Funds' offices.

17.7 It was noted that the Executive Committee of the 1971 Fund, acting on behalf of the Assembly, had at its 62nd session approved the same appropriation.

17.8 The Assembly authorised the Executive Committee to take any decision in relation to the relocation of the IOPC Funds' offices which might be required before the 5th session of the Assembly.

18 Appointment of Director

18.1 The Assembly unanimously appointed the present Director, Mr Måns Jacobsson, to serve as Director of the 1992 Fund for a further term of office of five years.

18.2 It was recalled that at its 4th extraordinary session, the Assembly of the 1971 Fund had decided that the Director of the 1971 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agreed and that the Director of the 1992 Fund agreed to carry out the functions of Director of the 1971 Fund (document 71FUND/A/ES.4/16, paragraph 15.1.27). The Assembly decided that the Director of the 1992 Fund should be allowed to carry out the functions of Director of the 1971 Fund also.

18.3 The Assembly decided that the Director should continue to receive the same salary, allowances and other benefits as decided by the 1971 Fund Assembly at its 17th and 19th sessions (documents FUND/A.17/35, paragraph 18.3 and 71FUND/A.19/30, paragraph 24.2). In view of the fact that the present Director would at the end of his new term of office have served as Director for 20 years and would be 65 years of age, and that his retirement benefits in his home country would be significantly reduced, the Assembly decided that he should receive annually a special contribution of £12 000 to the Provident Fund, payable on 1 January each year.

18.4 The Director accepted his reappointment, including the role of Director of the 1971 Fund, and expressed his gratitude for the renewed confidence shown in him.

19 Amendment of Staff Rules

The Assembly noted the information contained in document 92FUND/A.4/17 with regard to the 1992 Fund's Staff Rules.

20 Appointment of members and substitute members of the Appeals Board

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 5th session of the Assembly:

Members		Substitute Members	
Mr M Schindler	(France)	Mr P Macfarlane	(Australia)
Mr H Narahira	(Japan)	Mr P Escherich	(Germany)
Sir Franklin Berman	(United Kingdom)	Mr A Saúl Bandala	(Mexico)

Compensation matters

21 Reports of the Executive Committee on its 1st - 3rd sessions

21.1 The Chairman of the Executive Committee, Professor L S Chai (Republic of Korea), informed the Assembly of the work of the Committee during its 1st - 4th sessions (cf documents 92FUND/EXC.1/9, 92FUND/EXC.2/10, 92FUND/EXC.3/7 and 92FUND/EXC.4/11). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.

21.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman for the work of the Committee during this period.

22 Election of members of the Executive Committee

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)
Canada	Denmark
France	Greece
Germany	Latvia
Republic of Korea	Liberia
Singapore	Marshall Islands
Spain	Mexico
United Kingdom	Tunisia
	Venezuela

23 Application of the 1992 Fund Convention to the EEZ

The Assembly took note of the information in documents 92FUND/A.4/20 and 92FUND/A.4/20/Add.1. It was also noted that Ireland had provided information on its designated area in accordance with Article 3(a)(ii) of the 1992 Fund Convention.

24 Report of the 2nd Intersessional Working Group

24.1 It was recalled that the Intersessional Working Group had been set up by the Assembly at its 3rd session to study two issues relating to the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention (document 92FUND/A.3/27, paragraph 20.11 and 20.14):

- (i) the circumstances in which an unladen tanker would fall within the definition of 'ship'; and
- (ii) whether, and if so to what extent, the 1992 Conventions apply to offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs).

24.2 The Chairman of the Intersessional Working Group, Mr J Wren (United Kingdom), introduced the Report of the Working Group set out in document 92FUND/A.4/21.

Application of the 1992 Conventions to offshore craft

24.3 As regards the application of the 1992 Conventions to offshore craft it was noted that the Working Group had drawn the following conclusions:

- (i) Offshore craft should be regarded as 'ships' under the 1992 Conventions only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate.
- (ii) Offshore craft would fall outside the scope of the 1992 Conventions when they leave an offshore oil field for operational reasons or simply to avoid bad weather.

24.4 It was noted that in letters to the Director some companies operating in the offshore sector had expressed concerns as to the restrictive interpretation recommended by the Working Group. It was also noted that these companies had expressed the view that there was no support in the text of the 1992 Civil Liability Convention for a distinction between offshore craft and trading tankers.

24.5 The observer delegation of INTERTANKO apologised for not having participated in the deliberations of the Working Group and requested the Assembly to defer its decision on the issue of offshore craft on the ground that some of its members involved in the operation of such craft wished to submit further information for the Assembly's consideration.

24.6 A number of delegations expressed their surprise at the late intervention of some members of the offshore industry, given that wide consultations had taken place prior to and during the Intersessional Working Group, and that no new legal or technical arguments were being presented. Those delegations stressed that any final decision regarding the applicability of the 1992 Conventions to offshore craft was a matter for national courts, but that it was expedient for the 1992 Fund to adopt a policy before an incident involving such a craft occurred in a 1992 Fund Member State. For this reason those delegations were of the view that the Assembly should not defer its decision on the issue, recognising that such a decision was always open to revision in the light of new information.

24.7 A number of other delegations expressed the view that, whilst the work of the Working Group provided the opportunity for the consideration of all relevant issues and submissions, there was however no pressing need for the Assembly to endorse the Working Group's conclusions on the applicability of the 1992 Conventions to offshore craft at the present session. In their view, the Assembly should postpone its endorsement until its next session to provide an opportunity for additional information to be submitted as indicated by INTERTANKO.

24.8 Other delegations expressed the view that notwithstanding the late request to postpone the decision on the issue of offshore craft, it was important to ensure that there were no gaps in the compensation coverage. Some delegations considered it also important that there was harmonisation between the 1992 Conventions and other related Conventions, such as the 1976 Convention on Limitation of Liability for Maritime Claims.

24.9 The observer delegation of the International Group of P & I Clubs noted that the Working Group had concluded that offshore craft should be regarded as 'ships' under the Conventions only when they carried oil on voyages fulfilling certain criteria. In that delegation's view the Working Group's conclusions related more to the effect of the term 'oil' than to the term 'ship', and that few conclusions had been reached as to the types of craft which satisfied the definition of 'ship'. That delegation understood therefore that an incident would

not involve 'oil' as defined in the Conventions except when an offshore craft was carrying oil as cargo on a voyage to or from a port or terminal outside the oil field in which it normally operated, and that no firm conclusions had been reached on the question of whether a structure would be considered a 'ship', which would depend on the facts of the particular case.

24.10 The Assembly decided to endorse the conclusions of the Working Group regarding the applicability of the 1992 Conventions to offshore craft. The Assembly emphasised that in any event the decision as to whether the 1992 Conventions applied to a specific incident would be taken in the light of the particular circumstances of that case. It was noted that the issue could be reconsidered if new information were to come to light.

24.11 The United Kingdom delegation drew attention to the Offshore Pollution Liability Agreement (OPOL) which covered certain risks associated with offshore oil and gas exploration and production in European waters.

Application of the 1992 Conventions to unladen tankers

24.12 It was noted that the Working Group had drawn the following conclusions as regards the circumstances in which an unladen tanker would fall within the definition of 'ship':

- (i) the word 'oil' in the proviso in Article I.2 of the 1992 Civil Liability Convention means persistent hydrocarbon mineral oil, as defined in Article I.5 of the Convention;
- (ii) the expression 'other cargoes' in the proviso should be interpreted to mean non-persistent oils as well as bulk solid cargoes;
- (iii) as a consequence the proviso in Article I.2 should apply to all tankers and not only to ore/bulk/oil ships (OBOs);
- (iv) the expression 'any voyage' should be interpreted literally and not be restricted to the first ballast voyage after the carriage of a cargo of persistent oil;
- (v) a tanker which had carried a cargo of persistent oil would fall outside the definition if it was proven that it had no residues of such carriage on board; and
- (vi) the burden of proof that there were no residues of a previous carriage of a persistent oil cargo should normally fall on the shipowner.

24.13 The Assembly also took note of a document on this issue submitted by Australia, Canada, the Netherlands and the United Kingdom (document 92FUND/A.4/21/1). The Assembly noted the views expressed in the document that:

- (i) a dedicated oil tanker (ie a tanker capable of carrying persistent oil and non-persistent oil) is always a 'ship' for the purposes of the 1992 Civil Liability Convention; and
- (ii) the proviso in the definition of 'ship' applies only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.

24.14 Several delegations stated that they supported the interpretation proposed by the Working Group. Some delegations expressed the opinion that they did not agree with the conclusions of the Working Group but supported the views set out in the document presented by the four delegations.

24.15 One delegation stated that the overriding issue was the definition of 'oil' in the Convention, which was restricted to 'persistent oil', and that it would not be legally possible to widen the interpretation of the definition of 'ship' beyond that proposed by the Working Group.

24.16 Other delegations considered that it was premature for the Assembly to take a decision, particularly in view of the limited time which had been available to study the new document, and that the matter should be examined further.

24.17 The Assembly instructed the Director to reconvene the Working Group for a one day meeting during the week of the session of the 1992 Fund Executive Committee in April 2000 and urged all interested delegations to submit documents well in advance of that meeting in order to allow delegations to consider the matter in detail before the meeting.

24.18 The Director was invited to carry out a further study, with particular emphasis on the ramifications of the proposal by Australia, Canada, the Netherlands and the United Kingdom. It was suggested that the study should take into account the fact that the 1971 Fund Convention was concluded after the 1969 Civil Liability Convention, whereas the 1992 Civil Liability Convention and the 1992 Fund Convention were adopted at the same time. It was also suggested that the study should focus on three main issues, namely: the relationship between 'oil' as described in Article I.1 and 'oil' as defined in Article I.5 of the 1992 Civil Liability Convention, the potential economic burden on contributors of including within the scope of the 1992 Fund Convention vessels which only carried 'non-persistent' oils, and the consequences of such vessels not being required to have insurance cover. The point was made that the study should take into account the practical consequences, in light of the proposed Bunker Convention, of dedicated tankers requiring different insurance arrangements for different voyages.

25 Co-operation with P & I Clubs

25.1 It was recalled that the co-operation between the 1971 Fund and the P & I Clubs was governed by a Memorandum of Understanding signed in 1980 by the 1971 Fund and the International Group of P & I Clubs. It was also recalled that a special Memorandum of Understanding, signed in 1985, governed the co-operation between the 1971 Fund and the Japan Shipowners Mutual Protection and Indemnity Association (JPIA), which at that time was not a member of the International Group. It was further recalled that the 1980 Memorandum had been extended to apply also to the 1992 Fund by an exchange of letters. It was noted that JPIA had become a full member of the International Group and that JPIA therefore considered that there was no need for a special Memorandum covering co-operation between JPIA and the 1992 Fund.

25.2 The Assembly noted the Director's opinion that the 1980 Memorandum of Understanding together with the agreement on the application of that Memorandum to the 1992 Fund should in general be sufficient to ensure continued co-operation between JPIA and the 1992 Fund. It was noted that discussions were being held with JPIA concerning an exchange of letters dealing with co-operation in case of incidents involving small coastal tankers where the total amount of the claims might exceed the limit applicable to the vessel under the 1992 Civil Liability Convention, ie 3 million SDR.

Budgetary matters

26 Sharing of joint administrative costs with the 1971 Fund

26.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 2000 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 2000 (document 92FUND/A.4/24).

26.2 It was noted that the Executive Committee of the 1971 Fund, acting on behalf of the Assembly, had agreed at its 62nd session to the distribution proposed by the Director.

27 Budget for 2000

27.1 The Assembly considered the draft 2000 Budget for the administrative expenses of the 1992 Fund and 1971 Fund, as proposed by the Director in documents 92FUND/A.4/24 and 92FUND/A.4/24/Add.1.

27.2 A number of delegations expressed their concern at the increases in the budget during the last few years and suggested that a nominal zero growth budget might have to be considered in the future.

27.3 Whilst appreciating those concerns, many other delegations did not envisage that the trend would continue, since the budget for 2000 related to a period of transition.

27.4 The Director drew the Assembly's attention to the fact that the increases were a direct result of decisions taken by the Assembly, such as the introduction of Spanish as a working language of the 1992 Fund, an increase in activities in the field of public relations, improvement of the Organisation's IT facilities, the establishment of two new posts and relocation. He also pointed out that there had been a saving of 20% in the total budget appropriations for the 1998 financial year. The Director assured delegations that the Secretariat would endeavour, as in the past, to keep the administrative costs to a minimum.

27.5 The Assembly adopted the budget appropriations for 2000, with a total administrative expenditure for the joint Secretariat of £3 225 040, as reproduced in Annex II.

27.6 It was noted that the Executive Committee of the 1971 Fund, acting on behalf of the Assembly, had at its 62nd session adopted the same budget appropriations.

27.7 The Director was invited to consider how a clearer presentation of the budget could be made, for example whether all budgetary aspects relating to the General Fund (ie those relating to administrative expenses and those relating to minor claims) could be presented in one document.

27.8 The Assembly took note of the information contained in the Annex to document 92FUND/A.4/24 of the decisions by the Director concerning the grading of posts in the general service category and promotions.

28 Working capital

The Assembly decided to increase the working capital of the 1992 Fund from £12 million to £15 million.

29 Assessment of contributions

29.1 The Director introduced document 92FUND/A.4/26 which contained proposals for the levy of 1999 contributions.

29.2 The Assembly decided not to levy contributions to the General Fund.

29.3 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 paid by the 1992 Fund exceeded 4 million SDR, the Assembly decided to make a levy of £13 million to the *Nakhodka* Major Claims Fund as 1999 contributions, the entire levy to be deferred. It was noted that the capping procedure would not apply to this levy. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2000, if and to the extent required.

29.4 The Assembly noted that there would be no further claims against the 1992 Fund arising out of the *Osung N°3* incident and that all expenses had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial the Assembly decided, pursuant to Financial Regulation 4.6, that an

amount of £3.7 million should be reimbursed to the contributors to the *Osung N°3* Interim Major Claims Fund and that the balance should be transferred to the General Fund. It was also decided that the credits should be calculated on the same basis as that on which the original contributions had been made, ie by applying the capping procedure to the reimbursement, and that the reimbursement should be made on 1 March 2000.

29.5 The Assembly noted that its decisions in respect of the levy of 1999 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy/ (reimbursement) £	Payment by/(credit on) 1 March 2000		Maximum deferred levy	
				Levy/ (reimbursement) £	Estimated levy/ (reimbursement) per tonne £	Levy £	Estimated levy per tonne £
<i>General Fund</i>	1998	1 118	0	0	0.0000000	0	0.0000000
<i>Nakhodka</i>	1996	770	13 000 000	0	0.0000000	13 000 000	0.0168831
<i>Osung N°3</i>	1996	770	(3 700 000)	(3 700 000)	(0.0048052)	0	0.0000000
Total			9 300 000	(3 700 000)	(0.0048052)	13 000 000	0.0168831

Other matters

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

30.1 It was noted that the IOPC Funds had been represented at informal meetings held in April and June 1999 between Government representatives for discussions concerning 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) (document 92FUND/A.4/27).

30.2 The Director welcomed the opportunity for the IOPC Funds to participate in such meetings as a means of enabling the IOPC Funds to keep abreast of developments.

31 Future sessions

The Assembly decided to hold its next session during the week of 23 - 27 October 2000.

32 Any other business

32.1 Application to the Hong Kong Special Administrative Region of the People's Republic of China of the 1992 Protocol to the 1971 Fund Convention

32.1.1 The Assembly took note of a document submitted by the observer delegation of the People's Republic of China (document 92FUND/A.4/28) concerning the application of the 1992 Protocol to the 1971 Fund Convention to the Hong Kong Special Administrative Region (HKSAR).

32.1.2 The Japanese delegation stated that it had doubts about the validity of China's accession of the 1992 Fund Protocol being limited to HKSAR. That delegation considered that the accession did not fulfil the requirements of Article 29 of the 1969 Vienna Convention on the Law of Treaties, which provided that a treaty was binding upon each party in respect of its entire territory "unless a different intention appears from the treaty or is otherwise established", since a different intention did not appear from the treaty nor had it been otherwise established.

32.1.3 It was recalled that, when the 1971 Fund Assembly had decided at its 20th session that the 1971 Fund Convention should continue to apply to HKSAR after 30 June 1997, it had been noted in the Record of Decisions of the session that the Japanese delegation had reserved its position on the matter.

32.1.4 The Chinese delegation expressed the view that Article 29 of the Vienna Convention had been fulfilled on the ground that a different intention had been otherwise established. That delegation drew the Assembly's attention to the fact that some 80 multilateral treaties applied to HKSAR but not to mainland China.

32.1.5 The Assembly noted the Director's study of the legal and practical implications of the People's Republic of China having limited its accession to the 1992 Fund Convention to HKSAR, as set out in document 92FUND/A.4/29.

32.2 Transfer within the 1999 Budget

32.2.1 The Assembly authorised the Director to transfer £20 000 from Chapter VI to the appropriation for Mission in Chapter IV in the 1999 budget.

32.2.2 It was noted that the Executive Committee of the 1971 Fund, acting on behalf of the Assembly, had at its 62nd session also authorised the Director to make such a transfer.

32.3 Early compensation payments by the 1992 Fund

32.3.1 The United Kingdom delegation drew the Assembly's attention to situations which had recently become apparent in which claimants, who could have expected to receive compensation from the shipowner (or his insurer) as the total amount claimed in respect of the incident was less than the limit of the shipowner's liability, had received no compensation two years after the incident had occurred. That delegation recognised that the regime of the Conventions established a two-tier system in which the 1992 Fund should not normally become involved in the payment of compensation until the limit of the shipowner's liability had been reached. Nevertheless that delegation suggested that it would be appropriate to consider whether there might be a possibility within the system of the Conventions whereby victims could in such circumstances obtain compensation from the 1992 Fund which could then present a subrogated claim to the shipowner.

32.3.2 The Assembly instructed the Director to study the question raised by the United Kingdom delegation and to report to the Assembly at its 5th session. Delegations were invited to submit their views on the matter to the Secretariat, in order to assist the Director in the preparation of his study.

32.4 Election of Chairman

32.4.1 The Assembly elected Mr Willem Oosterveen (Netherlands) as Chairman from the end of its present session, to hold office until the next regular session of the Assembly.

32.4.2 The Assembly expressed its profound gratitude to the out-going Chairman, Mr Charles Coppolani (France), for the extraordinary professionalism, efficiency and good-humoured nature which he had demonstrated during his chairmanship of the Assemblies of both the 1992 and 1971 Funds.

33 Adoption of the Record of Decisions of the 4th session

The draft Record of Decisions, as contained in documents 92FUND/A.4/WP.1 and 92FUND/A.4/WP.1/Add.1, was adopted, subject to some amendments.

ANNEX I

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
 Bituminous emulsions and fuel oil emulsions ^{<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)
 N°2 fuel (ASTM)
 Lubricating oil
 Marine diesel

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 and at least 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 emulsion received should be reported with no allowance for its water content.

ANNEX II

2000 GENERAL FUND BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 1998 expenditure for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations for 1971 and 1992 Funds		2000 budget appropriations		
								Total	Distribution	
									1992 Fund	1971 Fund
A	SECRETARIAT	£		£		£		£	£	£
I	Personnel									
(a)	Salaries	629 493		780 980		838 050		981 450	490 725	490 725
(b)	Separation and recruitment	17 846		59 215		69 800		80 000	40 000	40 000
(c)	Staff benefits and allowances	193 839		270 200		343 750		360 790	180 395	180 395
(d)	Temporary assistance	38 207		30 000		40 000		40 000	20 000	20 000
(e)	Staff Training	10 748		15 000		35 000		50 000	25 000	25 000
	Sub-total		890 133		1 155 395		1 326 600		1 512 240	756 120
II	General Services									
(a)	Rent of office accommodation (including common services, security services and rates)	93 601		111 700		132 500		218 000	109 000	109 000
(b)	Office machines, including maintenance	49 949		52 500		60 000		71 500	35 750	35 750
(c)	Furniture and other office equipment	18 995		24 500		24 500		24 500	12 250	12 250
(d)	Office stationery and supplies	15 153		22 000		22 000		22 000	11 000	11 000
(e)	Communications (telephone, telefax, telex, postage)	36 304		45 000		52 000		57 100	28 550	28 550
(f)	Other supplies and services	26 928		26 600		30 000		33 500	16 750	16 750
(g)	Representation (hospitality)	9 637		15 000		16 500		16 500	8 250	8 250
(h)	Public Information (previously printing and publication)	79 849		98 000		183 750		220 000	135 000	85 000
	Sub-total		330 416		395 300		521 250		663 100	356 550
III	Meetings									
(a)	Autumn sessions of 1992 Fund and 1971 Fund Assemblies and Executive Committees	35 260		25 800		30 720		33 500	16 400	17 100
(b)	Further sessions of 1971 Fund Executive Committee	6 844		30 600		30 600		31 700	0	31 700
(c)	Extra sessions of 1992 Fund and 1971 Fund Assemblies and 1971 Fund Executive Committee	6 437		25 800		0		0	0	0
(d)	Extra sessions of 1992 Fund Executive Committee	2 624		15 300		22 680		23 100	23 100	0
(e)	Intersessional Working Groups	0		20 600		24 160		25 300	14 650	10 650
	Sub-total		51 165		118 100		108 160		113 600	54 150

STATEMENT OF EXPENDITURE		Actual 1998 expenditure for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations for 1971 and 1992 Funds		2000 budget appropriations		
								Total	Distribution	
									1992 Fund	1971 Fund
		£		£		£		£	£	£
IV	Conferences and travel									
(a)	Conferences and seminars	22 102		20 000		30 000		40 000	20 000	20 000
(b)	Mission	9 866		20 000		20 000		30 000	15 000	15 000
	Sub-total		31 968		40 000		50 000		70 000	35 000
V	Miscellaneous expenditure									
(a)	External audit	52 925		57 925		46 600		56 600	15 350	41 250
(b)	Payment to IMO for general services	6 200		6 200		6 400		6 500	3 250	3 250
(c)	Consultants' fees	129 029		125 000		185 000		125 000	62 500	62 500
(d)	Payment to IMO for translator (French)	63 378		67 000		70 350		0	0	0
(e)	Investment Advisory Bodies	18 000		18 000		18 000		18 000	9 000	9 000
	Sub-total		269 533		274 125		326 350		206 100	90 100
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
VII	Relocation costs						400 000		600 000	300 000
Total Expenditure I-VII			1 573 214		2 042 920		2 792 360		3 225 040	1 621 920
VIII	Expenditure relating only to 92 Fund(1998); 71Fund (2000)		60 000		60 000					250 000
B CLAIMS (See documents 92FUND/A.4/26 and 71FUND/A.22/21)										

STATEMENT OF INCOME		Funds actually accumulated as at 31.12.98		1998 budget estimates		1999 budget estimates		2000 budget estimates		
								Total	Distribution	
									1992 Fund	1971 Fund
		£		£		£		£	£	£
I	Balance from preceding years	8 613 692	12 584 813	9 609 057	6 334 122	6 713 464	8 706 427	23 233 171	15 587 357	7 645 814
II	Any other income			500 000	850 000	350 000	750 000	1 060 000	790 000	270 000
Total Income I-II		8 613 692	12 584 813	10 109 057	7 184 122	7 063 464	9 456 427	24 293 171	16 377 357	7 915 814
III	Income relating only to 1971 Fund		60 000		60 000					0