



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
5th session
Agenda item 33

92FUND/A.5/28
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RECORD OF DECISIONS OF THE FIFTH SESSION OF THE ASSEMBLY

(held from 23 to 27 October 2000)

Chairman:	Mr W Oosterveen (Netherlands)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr J Aguilar-Salazar (Mexico)

Opening of the session

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A.5/1.

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 W Oosterveen (Netherlands)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr J Aguilar-Salazar (Mexico)

- 2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the renewed confidence shown in them.
- 2.3 One delegation suggested that it might be more practical to elect the Chairman at the end of future sessions rather than at the beginning to allow time for preparation, but the Director pointed out that this would require a change to the Rules of Procedure.

3 Examination of credentials

- 3.1 The following Member States were present:

Algeria	Germany	Panama
Australia	Greece	Republic of Korea
Bahamas	Grenada	Singapore
Belgium	Ireland	Spain
Canada	Italy	Sweden
China (Hong Kong Special Administrative Region)	Japan	Tunisia
Croatia	Latvia	United Arab Emirates
Cyprus	Liberia	United Kingdom
Denmark	Marshall Islands	Uruguay
Finland	Mexico	Vanuatu
France	Netherlands	Venezuela
	Norway	

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:

Antigua and Barbuda	India	Russian Federation
Argentina	Malta	Slovenia
Fiji	Morocco	Tonga
Georgia	Poland	Trinidad and Tobago

Other States

Brazil	Estonia	Peru
Cameroon	Ghana	Saudi Arabia
Chile	Malaysia	Turkey
Colombia	Nigeria	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)
International Maritime Organization (IMO)
European Commission (EC)

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 Report of the Director

- 4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 4th session, contained in document 92FUND/A.5/2. In his presentation the Director made reference to the fact that the last 12 months had seen a considerable growth in 1992 Fund membership, a further 16 States having acceded to the 1992 Fund Protocol since the 4th session. He mentioned that the 1992 Fund now had more Members than the 1971 Fund and that by the time of the Assembly's 6th session in October 2001 the 1992 Fund would have 62 Member States. He stated that it was expected that a number of other States would soon ratify the 1992 Fund Convention.
- 4.2 The Director referred also to the *Erika* incident which occurred off the coast of Brittany (France) on 12 December 1999 and which had led to a worldwide discussion on measures to be taken to improve the safety of navigation.
- 4.3 The Director referred also to the decision taken by the Legal Committee of the International Maritime Organization (IMO) at its October 2000 session, under the tacit acceptance procedure laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention, to increase the limits of compensation laid down in these Conventions. He also referred to the meeting held in July 2000 of the Working Group set up by the Assembly to consider whether the international compensation regime established by the 1992 Conventions needed improvements in order to meet the needs of the international community.
- 4.4 The Director mentioned the progressive implementation of the Assemblies' decisions with regard to the structure of the Secretariat and new working methods and mentioned in particular the strengthening of the IOPC Funds' use of information technology. He also stressed the importance of the gradual implementation of the Assembly's decisions to introduce Spanish as an official and working language of the 1992 Fund. The Director referred to the fact that the Secretariat had relocated from the IMO building to Portland House, Stag Place, in the heart of London, giving the Secretariat the additional office space necessary, including space for future expansion, if required.
- 4.5 The Assembly congratulated the Secretariat on the 1999 Annual Report which contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund and noted that for the first time the Report had been published in Spanish also.
- 4.6 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 Claims Handling Office established in Kobe (Japan) following the *Nakhodka* incident, and the Claims Handling Office set up in Lorient (France) to deal with claims arising from the *Erika* incident, as well as the lawyers and technical experts who had undertaken other work for the 1992 Fund.

Treaty questions

5 Status of the 1992 Fund Convention

- 5.1 The Assembly took note of the information contained in document 92FUND/A.5/3 concerning the ratification situation in respect of the 1992 Fund Convention and noted that two more States (Morocco and Argentina) had ratified the 1992 Fund Convention since that document had been

issued. It was noted that there were at present 46 Member States of the 1992 Fund and that by October 2001 the 1992 Fund would have 62 Member States.

- 5.2 The Moroccan observer delegation informed the Assembly that steps were being taken to deposit Morocco's instrument of denunciation of the 1971 Fund Convention as soon as possible.
- 5.3 The Colombian observer delegation informed the Assembly that legislation to implement the 1992 Conventions was at an advanced stage and that Colombia would accede to the 1992 Fund Convention and denounce the 1971 Fund Convention in the near future.

6 Revision of the limits contained in the 1992 Conventions

- 6.1 The Director informed the Assembly of the outcome of the consideration by the Legal Committee of IMO at its October 2000 session of the proposal submitted by a number of States to increase the limits contained in the 1992 Civil Liability Convention and 1992 Fund Convention (document 92FUND/A.5/INF.1).
- 6.2 The Assembly noted that the Legal Committee had adopted two Resolutions amending the limits laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention by 50.37% and that as a result the maximum amount available for compensation under the 1992 Conventions would be 203 million Special Drawing Rights (£180 million). It was also noted that the amendments would enter into force on 1 November 2003, unless prior to 1 May 2002 a quarter or more of the Contracting States had communicated to IMO that they did not accept the amendments.

7 Report of the 3rd intersessional Working Group

- 7.1 It was recalled that an intersessional Working Group had been established by the Assembly at its 4th extraordinary session to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention with the following mandate (document 92FUND/A/ES.4/7, paragraph 5.3.5):
- (a) to hold a general preliminary exchange of views, without drawing any conclusions, concerning the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention;
 - (b) to draw up a list of issues which could merit further consideration in order to ensure that the compensation system meets the needs of society; and
 - (c) to report to the Assembly at its 5th session, to be held in October 2000.
- 7.2 The Chairman of the Working Group, Mr Alfred Popp QC (Canada), introduced the Report of the Working Group set out in document 92FUND/A.5/4.
- 7.3 The Working Group's Chairman reminded the Assembly that the international compensation regime established under the Civil Liability and Fund Conventions had operated successfully for over 20 years, that the vast majority of compensation claims had been settled amicably as a result of negotiations and that he was not aware of any similar worldwide system. He stated that the Assembly should not be distracted by the few major cases which had gone to court. He pointed out that as a living scheme, the regime needed to be kept up to date in the light of experience so as to be able to adapt to the changing needs of society and to ensure the regime's survival by remaining attractive to States. The Working Group's Chairman also expressed the view that it would be appropriate to make a distinction at an early stage between issues in respect of which improvements could be achieved within the existing framework of the texts of the 1992 Conventions and issues where improvements could only be made by formal amendments to the Conventions. He made the point that if the work were to be continued, it would be necessary to

draw up at some appropriate time a shortlist of items which were essential for improving the system.

7.4 The Assembly noted that the Working Group had agreed that the following subjects should be included in the list of issues which could merit further consideration:

- 1 Ranking of claims/priority treatment (including prescription periods)
- 2 Uniform application of the Conventions
- 3 Sanctions for failure to submit oil reports
- 4 Dissolution and liquidation of the Fund
- 5 Maximum compensation levels
- 6 Weighting of contributions according to the quality of ships used for the transport of oil
- 7 Environmental damage

7.5 The Assembly also noted that the following subjects had been proposed for consideration but due to lack of time had not been discussed by the Working Group:

- Can co-operation with shipowners be improved?
- Are preventive measures inhibited by the Conventions?
- Should the shipowner's limitation amount be increased for ships carrying cargoes which could cause particularly serious pollution damage?
- Channelling of liability (Article III.4 of the 1992 Civil Liability Convention)
- Possibility of mediation before legal actions are taken
- Restricting the conditions for the shipowner's right to limit his liability
- Clarification of the definition of 'ship', eg in respect of the application of the Conventions to offshore craft
- Geographical scope of application of the Conventions in areas where no exclusive economic zone has been established
- More precise provisions on the submission and handling of claims
- Steps to reduce delays in the payment of compensation
- Admissibility of claims for fixed costs
- Admissibility of claims relating to the cost of salvage operations

7.6 The Assembly expressed its gratitude to the Working Group and its Chairman for their work.

7.7 Many delegations emphasised that the international regime established by the Civil Liability and Fund Conventions had in general operated very successfully and that therefore any revision should be carried out in such a way as to preserve and strengthen this regime. It was also stressed that this regime was a world wide system for compensation to victims of oil pollution damage and that it was important that the global character of the regime was preserved. It was stated that lessons should be learned from the experience of several major incidents involving the IOPC Funds in recent years.

7.8 Several delegations urged caution in any revision exercise and stressed that amendments should not be made for the sake of change but that it was important to limit the revision to issues where changes were really justified.

- 7.9 It was emphasised that it would be necessary to examine carefully which issues should be retained for inclusion in a possible revision of the 1992 Conventions, in order to make it possible to carry out such a revision within a reasonable period of time. A number of delegations indicated that it was important to focus on the most important issues, particularly those which could provide clear benefits for claimants, and pointed to the increase of the 1992 Convention limits as an indication of what could be achieved by setting realistic goals.
- 7.10 Other delegations, whilst mindful of the need to complete the work within a reasonable period of time, considered that the remit of the Working Group should not be unnecessarily restricted at this early stage and that it was important to make it possible to consider new issues. It was suggested that it should be left for the Working Group to consider the scope of its examination.
- 7.11 Several delegations considered that in order to enable the Working Group to make progress it would be necessary for the Group to base its discussions on concrete proposals for amendments supported with justification of why amendments were required. It was stated that it would be useful if individual States or groups of States could submit documents for consideration by the Working Group.
- 7.12 Some delegations considered that the mandate should include a reference to the importance of maintaining the basic principles of the Conventions, but other delegations considered that the wording of the revised mandate should allow for the widest possible discussions.
- 7.13 The Assembly instructed the Working Group to continue its work under the following revised mandate:
- (a) to hold an exchange of views concerning the need for and possibilities of improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention;
 - (b) to continue the consideration of issues identified by the Working Group as important for the purpose of improving the compensation regime and to make appropriate recommendations in respect of these issues; and
 - (c) to report to the next regular session of the Assembly on the progress of its work and make recommendations as to the continuation of the work.
- 7.14 It was decided that the Working Group would meet during the weeks of 12 March and 25 June 2001.
- 7.15 The Assembly invited Member States as well as observer States, and intergovernmental and non-governmental organisations to submit documents for consideration by the Working Group.

8 European Commission's White Paper on Environmental Liability

The Assembly took note of the comments presented by the Director on behalf of the 1992 Fund, as instructed by the Assembly, to the European Commission on the Commission's White Paper on environmental liability, drawing the Commission's attention to the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, as set out in the Annex to document 92FUND/A.5/5. The Assembly noted in particular the observation made by the Director in his comments that the Commission should take fully into consideration the existing global regime based on the 1992 Conventions and that any action by the Commission should not hamper the functioning of that regime.

9 Future role of the 1992 Fund in the operation of the 1971 Fund

- 9.1 The Assembly noted the information contained in document 92FUND/A.5/6 regarding the future role of the 1992 Fund in the operation of the 1971 Fund.

- 9.2 The Assembly noted that a Diplomatic Conference held from 25 – 27 September 2000 under the auspices of IMO had adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. It was noted that under the amended text, the 1971 Fund would cease to be in force on the date on which the number of 1971 Fund Member States fell below 25 or 12 months following the date on which the Assembly (or any other body acting on its behalf) noted that the total quantity of contributing oil received in the remaining Member States fell below 100 million tonnes, whichever was the earlier. It was noted that the Protocol would enter into force on 27 June 2001 unless at least one third of the remaining Contracting States have lodged opposition to its entering into force by 27 March 2001.
- 9.3 It was noted that as at 25 October 2000 the 1971 Fund had 40 Member States, and that twelve States had deposited instruments of denunciation, so that the number of Member States would have fallen to 28 by the end of October 2001. The Assembly also noted that it was expected that at least another four States would denounce the 1971 Fund Convention during the autumn of 2000 and that consequently the number of Member States would have decreased to 24 by late 2001, which would result in the Convention ceasing to be in force. It was further noted that in any event the total quantity of contributing oil would have fallen below 100 million tonnes by 21 June 2001 (when the denunciation by India took effect), and that the Convention would therefore cease to be in force during the summer of 2002 at the latest, on the assumption that objections to the entry into force of the 2000 Protocol would not be lodged by at least one third of the remaining Member States.
- 9.4 The Assembly considered that as a result of the adoption of the Protocol, the problems facing the 1971 Fund had been reduced considerably, unless a sufficient number of objections were lodged. It was suggested that the issue would now be how to ensure the operation of the 1971 Fund and its viability in respect of incidents occurring before the date when the Convention ceased to be in force, ie the latter half of 2001, or the summer of 2002 at the latest.
- 9.5 The Assembly noted that the Administrative Council of the 1971 Fund had, at its 2nd session, authorised the Director to purchase insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£55 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention, as well as legal and other expert fees, in respect of all incidents occurring during the period up to 31 December 2001 with the Fund itself having to cover a deductible of 250 000 SDR for each incident, and the 1971 Fund having the option to extend the insurance cover up to 31 October 2002. The Director informed the Assembly that this insurance had come into effect at 17:00 hrs GMT on 25 October 2000.
- 9.6 The Assembly noted that the Administrative Council of the 1971 Fund had decided that it would not be appropriate to appoint a liquidator in the normal sense to deal with the liquidation of the 1971 Fund but that the liquidation should be dealt with by the organs of the 1971 Fund.
- 9.7 The Assembly recalled the concerns expressed by delegations of former 1971 Fund Member States at the Assembly's 4th extraordinary session held in April 2000, when the future role of the 1992 Fund in the operation and activities of the 1971 Fund was discussed. A number of delegations stated that in the light of the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover their concerns had been allayed.
- 9.8 Since it was likely that the 1971 Fund Convention would cease to be in force by the end of 2001 or during the summer of 2002 at the latest, the Assembly decided to maintain the existing arrangement under which the 1992 Fund shared a Secretariat with the 1971 Fund and that the 1992 Fund Director was also Director of the 1971 Fund, in order to ensure the efficient handling of pending incidents involving the 1971 Fund and the orderly winding up of that Organisation.

- 9.9 The Assembly further decided that if the 2000 Protocol to the 1971 Fund Convention did not enter into force, the Assembly would reconsider the 1992 Fund's involvement in the administration of the 1971 Fund.

Financial matters

10 Report on investments

- 10.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 1999 to June 2000, contained in document 92FUND/A.5/7.
- 10.2 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. The Assembly stated that it would continue to follow the investment activities closely.

11 Report of the Investment Advisory Body

- 11.1 The Assembly took note of the report of the Investment Advisory Bodies, contained in the Annex to document 92FUND/A.5/8. It noted in particular the meeting held between the members of the Bodies and a representative of the External Auditor and took note of the objectives for the coming year. The Assembly also noted the Internal Investment Guidelines.
- 11.2 In answer to a question from a delegation, the Investment Advisory Body confirmed that spot purchases of currencies other than Pound Sterling in anticipation of meeting claims for compensation were always made after consultation with the Body, and that the consideration of whether such purchases should be made was an ongoing exercise.
- 11.3 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work.

12 Financial Statements and Auditor's Report and Opinion

- 12.1 The Director introduced document 92FUND/A.5/9 containing the Financial Statements of the 1992 Fund for the financial year 1999 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Dudley Lashmar, Audit Manager, introduced the Auditor's Report and Opinion.
- 12.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.5/9 which went into great depth and detail. In particular, the Assembly welcomed the 'value-for-money' audit and took the view that this type of audit should be continued.
- 12.3 Several delegations considered that the Auditor's follow up of how his recommendations, if any, from the previous year had been implemented would be very valuable and that such a follow up should be an ongoing process.
- 12.4 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 1999.

13 Appointment of members of the Investment Advisory Body

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

Contribution questions

14 Report on contributions

- 14.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.5/11. It noted that 98% of the 1999 contributions had been paid. The Assembly expressed its satisfaction with the situation regarding the payment of contributions.
- 14.2 One delegation expressed its concern that some contributors in its country were in arrears and that it was its intention to discuss the matter with the Secretariat, in order to ensure that payments were made.
- 14.3 The Assembly noted that the Secretariat would appreciate any assistance which delegations could give to ensure that the contributors in their respective States fulfilled their obligations.

15 Non-submission of oil reports

- 15.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.5/12. The Assembly noted that seven Member States had not submitted oil reports for 1999, that for two States the reports for 1998 and 1999 were outstanding and that for one State the reports for 1997, 1998 and 1999 were outstanding.
- 15.2 The Assembly considered that the situation regarding the submission of oil reports was reasonably satisfactory. However, the Assembly expressed its concern that three Member States had outstanding oil reports for more than one year.
- 15.3 The Assembly emphasised that it was crucial for the functioning of the regime of compensation established by the 1992 Fund Convention that States submitted the reports on oil receipts. 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 such State.
- 15.4 The Director drew attention to the procedure for the submission of oil reports laid down in Internal Regulation 4. He mentioned that the forms for oil reports annexed to the Internal Regulations were made available to Member States in January every year and that it was for Member States to make the forms available to each potential contributor in the State concerned.
- 15.5 Several delegations expressed their concern that there should be no repetition of the 1971 Fund's experience where many States did not fulfil their obligation to submit oil reports. It was noted that the issue of non-submission of oil reports was on the list of items to be discussed by the 3rd intersessional Working Group (cf paragraph 7.4) and would be a matter of great importance.

Secretariat and administrative matters

16 Relocation of the IOPC Funds' offices

- 16.1 The Assembly noted that the IOPC Funds' offices had been relocated from the IMO building to Portland House, Stag Place, in Victoria in June 2000 and that the new premises gave the Secretariat the additional office space necessary, including space for future expansion if required.
- 16.2 It was noted that the total cost of the relocation was estimated to be in the region of £840 000 and that, after deduction of the contribution of the United Kingdom Government, the cost to the IOPC Funds would fall well below the amount of £600 000 included in the 2000 Budget for this purpose. It was also noted that the benchmark figure for cellular office fit outs was

£500 - 520 /m² and that the cost relating to the IOPC Funds' offices would be in the region of £438/m².

- 16.3 One delegation stated that, having also been involved in a search for office premises in London, it considered that the IOPC Fund's rent represented very good value for money.
- 16.4 The Assembly expressed its gratitude to the United Kingdom Government for its assistance in finding the new premises, for making available consultants and for the generous financial support.

17 Working methods of the Secretariat

- 17.1 The Assembly took note of the information contained in document 92FUND/A.5/14 regarding the developments in respect of the working methods of the Secretariat.
- 17.2 In his introduction the Director stated that he intended to continue to review the process for claims handling and pursue the development of the Secretariat's use of information technology. He mentioned that he intended to continue to improve the public relations activity of the Organisations and the use of the website. He also emphasised the need for continuous staff training. The Director stated that the evaluation of the Secretariat's working methods would be an ongoing process, that external consultants would be used as required and that in his view it would not be necessary to engage external consultants to make a general evaluation of the Secretariat's working methods at this stage.
- 17.3 The Assembly noted that under the new structure established by the Assemblies in 1998 the Director delegated considerable authority to the Heads of Departments and, as regards the handling of claims for compensation, to the Legal Counsel and the Claims Officers, which had enabled the Director to concentrate on matters of major strategic importance, policy issues, long-term planning and high level contacts with Governments.
- 17.4 Many delegations expressed their appreciation of the dedication and quality of work of the Director and the Secretariat and noted with satisfaction that the changes that the Director had introduced had brought about significant improvements in the IOPC Funds' main activity of dealing with claims. Several delegations stated that it was important for the IOPC Funds not only to operate effectively but also that this was seen to be so by the public, and in particular by claimants, and that transparency was of great importance. It was suggested that whilst the 1992 Fund clearly had responded to the need for change, the necessity of ongoing development was stressed and a number of quality assurance schemes were mentioned in this context. It was suggested that the 'value-for-money' audit carried out by the External Auditor could be of assistance in this regard. Other delegations cautioned that the Secretariat should not be burdened with too much in the way of reviews as this could be detrimental to its main work of handling claims. Some delegations expressed the view that it was premature to engage external consultants at this stage.
- 17.5 The Assembly noted with satisfaction the developments that had taken place in respect of the IOPC Funds' use of information technology and of the translation of documents. It also noted the Secretariat's enhanced involvement in the operation and monitoring of local Claims Handling Offices and in the monitoring of the work of technical experts.
- 17.6 Two delegations questioned the Fund's sole reliance on ITOPF as its technical advisers and suggested that it might be appropriate to consider using – in addition to ITOPF - experts to be chosen by the Fund from a panel of experts nominated by governments. In the view of these delegations such a panel could contribute to ensuring that the public perceived the response to oil spills as balanced.
- 17.7 The Assembly decided that it was not necessary to carry out a further general external evaluation of the working methods at this stage.

- 17.8 The Assembly instructed the Director to continue his efforts to implement progressively the new working methods so as to increase the effectiveness of the Secretariat by the optimum use of the staff resources. The Director was also instructed to assess continually the Secretariat's working methods and report the developments to the Assembly at its next regular session.
- 17.9 Several delegations referred to the organisation of work during meetings and a number of suggestions were made relating to the timetable, the possibility of conducting joint meetings for matters common to the 1971 and 1992 Funds, and the opportunities that the Internet could provide to speed up the distribution of documents. The Director was instructed to examine these issues.

18 Amendments to Staff Rules

The Assembly noted the information contained in document 92FUND/A.5/15 with regard to the 1992 Fund's Staff Rules.

19 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 7th session of the Assembly:

<u>Members</u>		<u>Substitute Members</u>	
Mr G Gasc	(France)	Mr N Charalambous	(Cyprus)
Mr H Narahira	(Japan)	Ms U Moetzel	(Germany)
Sir Franklin Berman	(United Kingdom)	Mr J Aguilar Salazar	(Mexico)

Compensation matters

20 Reports of the Executive Committee on its 5th – 9th sessions

- 20.1 The Chairman of the Executive Committee, Professor L S Chai (Republic of Korea), informed the Assembly of the work of the Committee during its 5th - 9th sessions (cf documents 92FUND/EXC.5/2, 92FUND/EXC.6/5, 92FUND/EXC.7/5 and 92FUND/EXC.8/8). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.
- 20.2 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.

21 Election of members of the Executive Committee

- 21.1 In accordance with 1992 Fund Resolution N°5, the Assembly, after informal consultations by the Chairman as a result of which agreement was reached, 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	Algeria
France	Australia
Germany	Croatia
Japan	Ireland
Netherlands	Latvia
Norway	Marshall Islands
Singapore	Vanuatu
	Venezuela

21.2 The Italian delegation made the following statement:

Italy has taken part in the activities of the 1971 Fund for many years, but is a new Member of the 1992 Fund. The Italian delegation does not object to the decision taken by the Assembly in relation to the election of members of the Executive Committee and congratulates the delegations of the countries elected, confident that they will contribute in the most valuable and profitable manner to the activities of the Fund.

However, the Italian delegation wonders to what extent, on this occasion, the election of the Executive Committee, as far as the countries eligible under paragraph (a) are concerned, was governed by all the provisions set out in paragraph 2.1 of document 92FUND/A.5/17, in particular subparagraph (d) which reads: 'The Assembly shall, when electing the members of the Committee, secure an equitable geographical distribution of the seats on the Committee, on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution ...' Nothing is said that the principle of equitable geographical distribution should apply exclusively to the countries eligible under paragraph (b). Furthermore, the principle of equitable geographical distribution should be applied, in the view of the Italian delegation, not only as far as continents are concerned, but also in the European context, ie North Europe and South Europe. This is a subject which has been taken into consideration in other international fora. The Mediterranean Sea, a semi-closed basin, is an area where the transport of oil is the most intensive in the world and this gives a clear idea of the risks incumbent on the coastal Mediterranean countries. It is easy to imagine the consequences of an incident such as the *Erika* in the Mediterranean Sea, so highly developed in tourism, fisheries and transport.

22 Application of the 1992 Fund Convention to the EEZ

22.1 The Assembly took note of the information in document 92FUND/A.5/18/Rev.1.

22.2 The Assembly also took note of a joint declaration made by the Governments of France, Italy and Spain, reproduced in the Annex to document 92FUND/A.5/18/1.

22.3 The Assembly noted that although the agenda item under consideration was entitled 'Application of the 1992 Fund Convention to the EEZ', the joint declaration mentioned in paragraph 22.2 did not refer to the EEZ but to an equivalent zone referred to in Article 3(a)i of the 1992 Civil Liability Convention and Article 4(a)ii of the 1992 Fund Convention.

22.4 The Italian delegation made the following statement:

Each country which did not declare its own Exclusive Economic Zone is entitled – according to the 1992 Protocols – to declare unilaterally an 'equivalent zone' (not beyond 200 miles from the base lines), and damage suffered within it following an oil pollution can be claimed.

It is well known that the Mediterranean Sea is a semi-closed basin, so that it is quite impossible to declare unilaterally an EEZ, bearing in mind the technical and political difficulties to be overcome. In any event, according to the United Nations Convention on the Law of the Sea (UNCLOS), when the distance between the coasts of two States is less than 400 miles it is necessary to reach an agreement between the two States concerned on the border line, which is a further complication.

It seemed necessary and correct that the Mediterranean coastal States, which are exposed to special risks due to the particular shape of the basin and the tremendous oil-tanker traffic which has been developed within that sea, are well protected in view of possible spills to be suffered beyond the territorial waters but nevertheless very close to their own coasts.

The declaration signed by France, Spain and Italy has the aim to cover any damage (as defined in the 1992 Protocols) suffered within 200 miles from the base lines, even if there is an overlapping of two or more of the respective 'equivalent zones'. Every country is encouraged to make every effort to support each other in order to reach an efficient recover of the spill, according to the planning pursued by United Nations Environment Program (UNEP) with the regional Organization of the Mediterranean Action Plan (MAP) and the Regional Emergency Pollution Centre (REMPEC).

It seemed correct that France, Spain and Italy signed a multilateral declaration, in order to underline their unanimous will to strengthen their co-operation in combating pollution, and they wish that other Mediterranean coastal States join the declaration as a significant means to assist each other to attain that important common goal.

The limit of the 'equivalent zone' is, of course, the external border of the territorial waters of each third country. The same would apply in respect of any country which adhered to the joint declaration or made a similar unilateral declaration.

The Italian delegation does not suggest that everything will proceed smoothly thanks to the formal declaration, but certainly the declaration will contribute to facilitating an agreement among countries and authorities concerned, strictly confined to the admissibility of claims for pollution damage as defined in the 1992 Protocols.

22.5 The Algerian delegation made the following statement:

The Algerian delegation takes note of the declaration made by France, Italy and Spain, but nevertheless draws the Assembly's attention to the following consequences arising from the declaration.

(1) The Algerian delegation is surprised to see the tripartite declaration, in view of the fact that talks, in which the representatives of most of the States bordering the Mediterranean are participating, are in progress with the aim of undertaking a joint initiative in order to identify all possible options that would safeguard the interests of all the coastal States concerned.

(2) Considering that the coastal States of the Mediterranean are close to one another, the question arises as to how the tripartite Declaration might be applied in practice, given that between certain coastal States there are maritime areas that do not extend to 200 nautical miles.

(3) Under international public law, the question arises as to whether the proposal in the tripartite Declaration is in accordance with the spirit and letter of the relevant provisions of the United Nations Convention on the Law of the Sea concerning the Exclusive Economic Zones in closed and semi-closed seas such as the Mediterranean.

In conclusion, the Algerian delegation wishes to make clear that Algeria reserves the right to determine and communicate its position on this tripartite Declaration at the appropriate time.

22.6 The Tunisian delegation made the following statement:

The Tunisian delegation wishes to recall that the Mediterranean is a specific zone with its own particular characteristics and that the countries of this region are bound by specific agreements, notably on fishing and protection of the marine environment. An example of this is the 1976 Barcelona Convention as amended by the 1995 Protocols thereto. This Convention, the objective of which is the protection of the Mediterranean against all forms of pollution and deterioration, includes a provision on the establishment of a regional compensation system in the event of pollution. Consequently, the Tunisian delegation considers that the tripartite declaration should be made by agreement among all the countries bordering the Mediterranean, and not by only three countries.

While taking note of the joint declaration, the Tunisian delegation would like this matter to be comprehensively reviewed in the appropriate forums involving all the countries of the region. The Tunisian delegation wishes to make it clear that it became aware of the tripartite declaration only a few minutes before the opening of this session, so that the competent departments in Tunisia have not had an opportunity to study it from the legal perspective and to finalise their position.

Consequently, Tunisia reserves the right to communicate its position on this declaration when it deems it necessary.

22.7 The delegations of Croatia and Cyprus and the observer delegation of Malta stated that they reserved the position of their Governments on the joint declaration, since it had been received too late to enable their Governments to consider the issues involved.

22.8 During the discussion, several States bordering the Mediterranean mentioned that discussions had been going on for the purpose of reaching an agreement between all States bordering the Mediterranean and that they were surprised that three States had made a separate declaration. Some delegations questioned the legal effect of the joint declaration.

22.9 In reply to a question by an observer delegation, the Director informed the Assembly that he was not aware that any other similar declaration had been made in respect of another geographical area.

22.10 The representative of the International Maritime Organization (IMO) stated that the Secretary-General of IMO would circulate the joint declaration to all Contracting States.

22.11 The Assembly invited the Director to circulate the declarations on the establishment of an EEZ or an area determined in accordance with Article II(a)ii of the 1992 Civil Liability Convention and Article 3a(ii) of the 1992 Fund Convention made by the States mentioned in paragraph 2 of document 92FUND/A.5/18/Rev.1.

23 Report of the second meeting of the 2nd intersessional Working Group

23.1 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, paragraphs 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).
- 23.2 It was further recalled that the report of the Working Group had been considered by the Assembly, at its 4th session, and 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.
- 23.3 It was also recalled that during the discussion at the Assembly's 4th session different views had been expressed as to the issue under consideration. It was noted that the Assembly had instructed the Director to reconvene the Working Group for a one-day meeting in April 2000.
- 23.4 The Chairman of the Working Group, Mr John Wren (United Kingdom), introduced the report of the Working Group on its April 2000 meeting (documents 92FUND/A.5/19 and 92FUND/A.5/19/Corr.1).
- 23.5 The Assembly noted that at the April 2000 meeting, the Working Group had confirmed the conclusions drawn at its first meeting as regards the circumstances in which an unladen tanker would fall within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention, set out in paragraph 23.2 above. The Assembly also noted that the Working Group had considered that it had concluded its discussions and that any remaining ambiguity in the definition of 'ship' in the 1992 Conventions could be considered by the 3rd intersessional Working Group on the adequacy of the international compensation system.
- 23.6 The Assembly endorsed the Working Group's conclusions.

24 Early compensation payments by the 1992 Fund

- 24.1 The Assembly recalled that it had at its 4th session instructed the Director to consider whether there was a possibility within the system of the 1992 Conventions for the 1992 Fund to help speed up payments of compensation in cases where the total amount of the established claims was less than the limitation amount applicable to the ship in question, by paying compensation to claimants and thereafter presenting a claim for reimbursement to the shipowner.

- 24.2 The Assembly took note of a study by the Director of the issues contained in document 92FUND/A.5/20.
- 24.3 The Assembly noted that in most cases where it was clear from an early stage that the total amount of the established claims would not exceed the shipowner's limitation amount under the 1992 Civil Liability Convention, the 1992 Fund would not be involved in the incident and it would therefore not take part in the assessment of the claims, since this assessment was made by the shipowner/P & I Club. The Assembly considered that it would therefore be difficult in such cases for the 1992 Fund to pay compensation to victims and then claim reimbursement from the shipowner/P & I Club without the Fund's making an independent assessment of the claims.
- 24.4 The Assembly also noted that the Director had referred to another scenario, namely where it was considered possible in the early stages that the total amount of the established claims would exceed the shipowner's limitation amount, but that it later became apparent that the total of the established claims would not exceed that amount. It was noted that the 1992 Fund would then have been involved in the assessment of claims up to that point and that it would be possible for the 1992 Fund to make payments for claims in respect of which it had been involved in the assessment, and later claim reimbursement from the shipowner/Club. However, it was noted that the Director was not aware of any cases where there had been any significant delay in the Club's payments once the amount of an admissible claim had been established, that the delays in payment had normally been caused by ongoing discussions with the claimant regarding the admissible amount and that these discussions could be protracted either because the claimant had failed to substantiate his claim or because he was not prepared to settle the claim for the amount assessed by the Club/Fund experts. It was noted that even in these cases the Club concerned would normally make advance payments on the basis of the assessment made by the experts engaged by the Fund and the Club. The Assembly noted the Director's view that the 1992 Fund would not be able to speed up payments unless the Assembly would be prepared to accept that the Fund should make advance payments in cases where the amount of the loss or damage had not been substantiated.
- 24.5 The Assembly agreed with the Director that it would not normally be possible for the 1992 Fund to speed up payments in the situations studied by the Director.
- 24.6 Several delegations noted that problems might arise in the future in the following situations: the shipowner could not be identified, the shipowner did not have insurance cover, or the insurer was neither a P & I Club nor a member of the International Group of P & I Clubs. It was noted that the 1992 Fund had in fact made early payments in some similar cases and that this was therefore accepted policy, where appropriate.

25 Co-operation with P & I Clubs

- 25.1 The Assembly took note of the information contained in document 92FUND/A.5/21 concerning the co-operation with the P & I Clubs in general and with the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) in particular.
- 25.2 The Assembly authorised the Director to agree with JPIA on the text of letters to be exchanged concerning the co-operation between the 1992 Fund and JPIA along the lines set out in paragraph 7 of document 92FUND/A.5/21.

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 2001 should be distributed with 60% to be paid by the 1992 Fund and 40% 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 2001 (document 92FUND/A.5/24).

- 26.2 It was noted that the Administrative Council of the 1971 Fund, acting on behalf of the Assembly, had agreed at its 2nd session to the distribution proposed by the Director.

27 Working capital

- 27.1 The Assembly decided to increase the working capital of the 1992 Fund from £15 million to £18 million.
- 27.2 Some delegations expressed concern at the apparent trend to increase the working capital every year, whereas another delegation pointed out that the 1992 Fund was still a new organisation and had to continue to build up its working capital.

28 Budget for 2001 and assessment of contributions to the General Fund

- 28.1 The Assembly considered the draft 2001 Budget for the administrative expenses of the 1992 Fund and 1971 Fund and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in document 92FUND/A.5/24.
- 28.2 The Assembly adopted the budget for 2001 for the administrative expenses for the joint Secretariat with a total of £2 776 970, as reproduced in the Annex.
- 28.3 One delegation suggested that the 1992 and 1971 Funds should in the future aim for a zero nominal growth administrative budget, since the number of oil spills was declining, that as a result of the higher limitation amounts which would apply to shipowners from 2003 the 1992 Fund would become involved in fewer incidents, and that the 1971 Fund would soon cease to exist.
- 28.4 Several delegations supported the budget proposed by the Director. It was stated that the increased number of Member States would result in a greater workload on the Secretariat. It was stated that although the 1971 Fund Convention would probably cease to be in force in the near future, the liquidation of the 1971 Fund would take a number of years. One delegation stated that the proposed budget was in line with the budgets of other similar organisations. It was also pointed out that the IOPC Funds normally had a budgetary surplus at the end of the financial year.
- 28.5 The observer delegation of the Oil Companies International Marine Forum (OCIMF) supported the budget proposed by the Director.
- 28.6 It was noted that the Administrative Council of the 1971 Fund, acting on behalf of the Assembly, had at its 2nd session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.
- 28.7 The Assembly decided to levy contributions to the General Fund for a total of £7.5 million, with the entire levy due for payment by 1 March 2001.

29 Assessment of contributions to Major Claims Funds

- 29.1 The Director introduced document 92FUND/A.5/25 which contained proposals for the levy of 2000 contributions to Major Claims Funds.
- 29.2 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* and *Erika* incidents to the extent that the aggregate amount paid by the 1992 Fund exceeded 4 million SDR, the Assembly decided to raise 2000 contributions to the following Major Claims Funds.

- (a) a levy of £35 million to the *Nakhodka* Major Claims Fund; and
- (b) a levy of £50 million to the *Erika* Major Claims Fund.
- 29.3 The Assembly decided that £17 million of the levy to the *Nakhodka* Major Claims Fund and £25 million of the levy to the *Erika* Major Claims Fund should be due for payment by 1 March 2001, and that the remainder of the levies should be deferred.
- 29.4 The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2001, if and to the extent required.
- 29.5 The Assembly noted that its decisions in respect of the levy of 2000 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2001		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	1999	1 130	7 500 000	7 500 000	0.0066372	0	0.0000000
<i>Nakhodka</i>	1996	666	35 000 000	17 000 000	0.0255255	18 000 000	0.0270270
<i>Erika</i>	1998	1 116	50 000 000	25 000 000	0.0224014	25 000 000	0.0224014
Total			92 500 000	49 500 000	0.0545641	43 000 000	0.0494284

Other matters

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

The Assembly noted the developments in respect of the Convention since the previous session of the Assembly as set out in document 92FUND/A.5/26.

31 Future sessions

The Assembly decided to hold its next regular session during the week of 15 - 19 October 2001.

32 Any other business

Amendment of the Rules of Procedure

The Assembly took note of the information contained in document 92FUND/A.5/27 and decided to amend Rule 3 of the Rules of Procedure for the Assembly to read as follows:

The Assembly shall hold its sessions in London (United Kingdom) unless it decides otherwise on any particular occasion. If, between sessions, the Director, with the Chairman's approval, or any Member proposes that the next session be held elsewhere, an affirmative decision to that effect may be taken by a majority of Members giving their approval in writing (including by telefax or electronic mail) to the Director. Such majority approval should be communicated to Members at least forty-five days before the commencement of that session.

33 Adoption of the Record of Decisions of the 5th session

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.5/WP.1, was adopted, subject to certain amendments.

ANNEX

2001 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 1999 expenditure for 1971 and 1992 Funds		1999 budget appropriations for 1971 and 1992 Funds		2000 budget appropriations for 1971 and 1992 Funds		2001 budget appropriations				
		£		£		£		Total		Distribution		
										1992 Fund	1971 Fund	
A	SECRETARIAT									£	£	£
I	Personnel									£	£	£
(a)	Salaries	799 897		878 050		1 021 450		1 115 240		734 849	380 391	
(b)	Separation and recruitment	18 333		69 800		80 000		90 000		54 000	36 000	
(c)	Staff benefits, allowances and training	257 674		378 750		410 790		462 680		277 608	185 072	
	Sub-total		1 075 904		1 326 600		1 512 240		1 667 920	1 066 457	601 463	
II	General Services									£	£	£
(a)	Rent of office accommodation (including service charges and rates)	87 590		132 500		218 000		223 950		134 370	89 580	
(b)	Office machines, including maintenance	57 504		60 000		71 500		71 500		42 900	28 600	
(c)	Furniture and other office equipment	7 622		24 500		24 500		24 500		14 700	9 800	
(d)	Office stationery and supplies	13 892		22 000		22 000		22 000		13 200	8 800	
(e)	Communications (telephone, telefax, telex, postage)	41 754		52 000		57 100		57 100		34 260	22 840	
(f)	Other supplies and services	27 364		30 000		33 500		33 500		20 100	13 400	
(g)	Representation (hospitality)	9 576		16 500		16 500		16 500		9 900	6 600	
(h)	Public Information	58 920		183 750		220 000		220 000		135 000	85 000	
	Sub-total		304 222		521 250		663 100		669 050	404 430	264 620	
III	Meetings									£	£	£
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		61 831		108 160		113 600		126 500	86 850	39 650	
IV	Travel									£	£	£
(a)	Conferences and seminars	40 924		30 000		40 000		40 000		20 000	20 000	
(b)	Missions	23 860		40 000		30 000		30 000		15 000	15 000	
	Sub-total		64 784		70 000		70 000		70 000	35 000	35 000	
V	Miscellaneous expenditure									£	£	£
(a)	External audit	46 020		46 600		56 600		50 000		25 000	25 000	
(b)	Payment to IMO for general services	0		6 400		6 500		6 500		3 900	2 600	
(c)	Consultants' fees	107 549		185 000		125 000		100 000		60 000	40 000	
(d)	Payment to IMO for French translator	28 000		70 350								
(e)	Investment Advisory Bodies	18 000		18 000		18 000		27 000		13 500	13 500	
	Sub-total		199 569		326 350		206 100		183 500	102 400	81 100	
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		742		40 000		60 000		60 000	36 000	24 000	
VII	Relocation costs				400 000		600 000		0	0	0	
Total Expenditure I-VII			1 707 052		2 792 360		3 225 040		2 776 970	1 731 137	1 045 833	
VIII	Expenditure relating only to 71Fund		0		0		250 000				250 000	