INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
6th session
Agenda item 32

92FUND/A.6/28
19 October 2001
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RECORD OF DECISIONS OF THE SIXTH SESSION OF THE ASSEMBLY

(held from 16 to 19 October 2001)

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.6/1.

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.

3 Examination of credentials

3.1 The following Member States were present:

Algeria	India	Poland
Antigua and Barbuda	Ireland	Republic of Korea
Argentina	Italy	Russian Federation
Australia	Japan	Singapore
Bahamas	Latvia	Slovenia
Belgium	Liberia	Spain
Canada	Malta	Sri Lanka
China (Hong Kong Special Administrative Region)	Marshall Islands	Sweden
	Mauritius	Trinidad and Tobago
Cyprus	Mexico	Tunisia
Denmark	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Norway	Vanuatu
Germany	Panama	Venezuela
Greece	Philippines	

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:

Cameroon	Turkey

Other States

Malaysia	Peru	Saudi Arabia
Nigeria	Portugal	Syrian Arab Republic

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

Intergovernmental organisations:
1971 Fund
Commission of the European Community

International non-governmental organisations:
Comité Maritime International
Cristal Ltd
Federation of European Tank Storage Associations
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping
International Group of P & I Clubs
International Tanker Owners Pollution Federation Ltd
International Union for the Conservation of Nature and Natural Resources
Oil Companies International Marine Forum

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 5th session, contained in document 92FUND/A.6/2. In his presentation the Director made

reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership, a further ten States having acceded to the 1992 Fund Protocol since the 5th session. He stated that since the 1971 Fund Convention would cease to be in force on 24 May 2002 it was expected that a number of the remaining 1971 Fund Member States would soon ratify the 1992 Fund Convention.

4.2 The Director referred to the *Baltic Carrier* incident which had occurred off the coast of Germany and the *Zeinab* incident which had occurred off Dubai (United Arab Emirates).

4.3 The Director also referred to the meetings held in March and June 2001 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. He mentioned that a draft Protocol establishing a Supplementary Compensation Fund had been drawn up by the Working Group and would be submitted to the Assembly for consideration.

4.4 The Director mentioned that he had continued to review the operation of the Secretariat.

4.5 The Assembly congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2000 which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund. The Chairman commented that the new modern appearance of the 2000 Annual Report reflected the development of the Funds.

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.6/3 concerning the ratification situation in respect of the 1992 Fund Convention and noted there were at present 62 Member States of the 1992 Fund.

5.2 The Director informed the Assembly that since that document had been issued, three further States (Angola, St Vincent and the Grenadines and Cameroon) had acceded to the 1992 Fund Convention and that by October 2002 the 1992 Fund would have 71 Member States.

5.3 The Turkish delegation announced that the 1992 Conventions would enter into force for Turkey on 17 August 2002 and thanked the Director and the Secretariat for their efforts to promote the membership of the 1992 Fund.

6 Report of the 3rd intersessional Working Group

6.1 It was recalled that in April 2000, the Assembly had established an intersessional Working Group to discuss the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention. It was noted that the Working Group had met in July 2000, March 2001 and June 2001.

6.2 It was also recalled that the Assembly had at its 5th session given the Working Group the following revised mandate (document 92FUND/A.5/28 paragraph 7.13):

(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.

6.3 The Chairman of the Working Group, Mr Alfred Popp QC (Canada), introduced the report of the Working Group set out in document 92FUND/A.6/4.

6.4 It was noted that the Working Group had divided the issues under discussion into the following groups:

(a) issues in respect of which there was an urgent need for improvement of the compensation regime which could not be achieved within the present text of the 1992 Conventions;

(b) issues in respect of which solutions could be found in the short term within the scope of the present Conventions, eg by Assembly Resolutions or changes of Fund policy;

(c) issues which needed further consideration in the longer term.

Draft Protocol establishing a Supplementary Fund

6.5 The Assembly noted that the Working Group had prepared a draft Protocol establishing a Supplementary Fund for Compensation (document 92FUND/A.6/4, Annex II). It was also noted that, as invited by the Working Group, the Director had reconsidered the text of the draft Protocol and prepared a revised text which was set out in document 92FUND/A.6/4/1 and that the Director had prepared a note on certain of the issues addressed in the draft Protocol in the light of observations made by delegations (document 92FUND/A.6/4/1/Add.1).

6.6 The Assembly took note of the documents which had been submitted by the Japanese delegation and by the OCIMF and the International Group of P & I Clubs observer delegations (documents 92FUND/A.6/4/6, 92FUND/A.6/4/2 and 92FUND/A.6/4/3 respectively).

6.7 In introducing its document the observer delegation of OCIMF stated that it strongly believed that the optional third tier should consist of two parts so as to preserve the present balance of contributions between shipowner and cargo interests that had been the foundation for the success of the existing framework. The OCIMF delegation recognised, however, that there was a need to take prompt action as a means of preserving the global character of the existing regimes. That delegation accepted therefore that the optional third tier would initially be funded exclusively by oil receivers but saw this only as an interim solution. It was stated that OCIMF's support for an optional third tier funded entirely by oil receivers was premised on certain fundamental principles set out in document 92FUND/A.6/4/2.

6.8 The Assembly noted that in the document submitted by the International Group of P & I Clubs it was stated that the P & I Clubs with the support of shipowners were developing a proposal for a voluntary increase of the limits of liability for small ships under the 1992 Civil Liability Convention which would apply only in those States which ratified the proposed supplementary Protocol. It was noted that the scheme for such a voluntary increase would operate along the following lines:

i. The scheme would only apply in the event of a tanker spill affecting a State Party to the third tier when liability was imposed under the 1992 Civil Liability Convention. The scheme would come into effect at the same time as the entry into force of the third tier. The flag of the vessel or the ownership of the cargo would not be relevant.

ii. The limit under the 1992 Civil Liability Convention (including the increases which come into effect in 2003) would have to be exceeded but the scheme would operate even if claims did not reach the third tier.

iii. The tanker owner's liability under the scheme would not exceed the limit under the 1992 Civil Liability Convention plus the voluntary tranche. Although Club Boards had not yet considered the amount of the voluntary increase, the document submitted by the International Group to the June 2001 meeting of the Working Group (document 92FUND/WGR.3/8/3) used an illustrative figure of 13.5 million SDR. At this level the scheme would potentially cover 5000 tank vessels out of a world fleet of approximately 7 700 tank vessels. Of the 5000 tank vessels 97% by number were known to be insured for pollution risks by Clubs in the International Group. Of the remainder, the majority were covered by one insurer outside the Group which, it was hoped, would eventually join the scheme.

iv. The tanker owner would contract with the IOPC Fund to reimburse claims paid in excess of the increased limit under the 1992 Civil Liability Convention. All contributors to the 1992 Fund would therefore benefit in circumstances where the scheme applied.

v. Attempts would be made to find a mechanism which would avoid the necessity for tanker owners to sign up individually to the scheme.

vi. The P & I Clubs would guarantee the contractual liability to the Fund under the agreement, subject only to the defences available to shipowners and insurers under the 1992 Civil Liability Convention.

6.9 At the suggestion of the Chairman of the Working Group, the Assembly agreed to take up the following principal issues:

i. Should the draft Protocol be more precise about the time and circumstances of payment of claims;
ii. Should Article 4, paragraph 2(b) in the draft Protocol be deleted;
iii. Should capping of contributions be introduced into the Protocol;
iv. Should provisions be included in the draft Protocol to deal with potential conflicts of interest between the 1992 Fund and the Supplementary Fund;
v. Should there be increases in the maximum amount available from the Supplementary Fund consequential upon increases to the 1992 Fund limit as a result of the tacit amendment procedure ("lock-step");
vi. Should specific criteria for the recognition of claims by the Supplementary Fund be included.

Time and circumstances of payment by the 1992 Fund

6.10 The Assembly noted that in the Director's view there were two options as to the circumstances in which the Supplementary Fund would make payments, as set out in document 92FUND/A.6/4/1. It was noted that one option would be that the Supplementary Fund would only make payments when it was established that the total amount available for compensation under the 1992 Conventions was insufficient to meet all established claims in full and perhaps also the deficit could be assessed with some accuracy. It was also noted that another option would be that the Supplementary Fund should start its payments when the 1992 Fund had considered that there was a risk that the total amount of the established claims would exceed the maximum amount available under the 1992 Fund Convention and therefore had decided to pro rate its payments. It was further noted that under the latter option the Supplementary Fund would pay the balance of the established claims and acquire by subrogation the claimants' rights against the 1992 Fund

which would later reimburse the Supplementary Fund to the extent funds would be available under the 1992 Conventions when all claims had been settled and paid.

6.11 A number of delegations stated that, in their view, the Supplementary Fund would not fulfil any useful purpose unless the second option was adopted. After some discussion, it was agreed that the second option was preferable and that, in view of the importance of this issue, a provision should be included on this subject in the Protocol. The Assembly agreed to adopt with a slight amendment the text proposed by the Director as set out in paragraph 2.4 of document 92FUND/A.6/4/1/Add.1. It was also agreed to reflect this option in the Preamble and to make a consequential change to Article 4, paragraph 1 of the draft Protocol.

Article 4, paragraph 2(b)

6.12 It was noted that there was a corresponding provision in the 1984 Protocol to the 1971 Fund Convention which had been included for the purpose of making that Protocol attractive to certain States. It was agreed that this provision no longer served any purpose and should be deleted.

Capping of contributions

6.13 It was noted that the Japanese delegation proposed the inclusion in the Protocol of a provision on capping of contributions to read as follows:

1 The aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed [ ] % of the total amount of annual contributions to be made pursuant to the Protocol of the Supplementary Fund in respect of that calendar year.

2 If, under the provisions in paragraphs 2 and 3 of Article 10, the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeds [ ]% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal [ ]% of the total annual contributions to the Supplementary Fund in respect of that year.

3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

6.14 A number of delegations were opposed to the inclusion of such an Article on the grounds that all contributors should be treated equally. The point was made that if capping were to be introduced, it would result in some distortions in trade. Other delegations felt some sympathy for the Japanese proposal and indicated that they might be able to agree to such a concept if it were only a transitional measure.

6.15 The Assembly agreed that this matter required further consideration.

Conflicts of interest between the 1992 Fund and the Supplementary Fund

6.16 It was noted that the Japanese delegation had proposed to include in the draft Protocol an Article on potential conflicts of interest between the 1992 Fund and the Supplementary Fund as set out in document 92FUND/A.6/4/6. It was further noted that a similar provision was contained in Article 36 *quater* of the 1992 Fund Convention. The Assembly decided to include the proposed text in the draft Protocol.

Lock-step

6.17 It was agreed that the lock-step provision in the second sentence of Article 23, paragraph 5 should be deleted.

Article 24

6.18 It was noted that the Japanese delegation had proposed deletion of Article 24 of the draft Protocol which dealt with the link between increases in the limits laid down in the 1992 Fund Convention and increases in the maximum amount available from the Supplementary Fund.

6.19 Due to time constraints, this issue was not considered by the Assembly.

Criteria for admissibility of claims

6.20 After some discussion, it was agreed that in the light of other provisions already contained in the draft Protocol (Articles 1.8 and 4.4), it would be unnecessary and might even be misleading to set out in the draft protocol criteria for the admissibility of claims.

Other issues

6.21 The Assembly decided that Article 4, paragraph 2(c) in the draft Protocol relating to the conversion of Special Drawing Rights should be worded as set out in paragraph 3.1 of document 92FUND/A.6/4/1/Add.1.

6.22 It was decided that Article 4, paragraph 4 of the draft Protocol should be worded as set out in the alternative text in the draft Protocol in the Annex to document 92FUND/A.6/4/1.

6.23 It was decided that the Supplementary Fund Assembly should hold regular sessions every year and that consequential amendments should be made to various provisions in the draft Protocol.

6.24 The Assembly decided that Article 14, paragraph 2 should be worded as set out in paragraph 3.8 of document 92FUND/A.6/4/1/Add.1.

Adoption of draft Protocol

6.25 The Assembly decided to adopt the text of the draft Protocol as set out in Annex I to the Record of Decisions.

6.26 The Assembly instructed the Director to submit the text of the draft Protocol to the Secretary-General of the International Maritime Organization requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

Environmental damage and environmental studies

6.27 The Assembly noted the conclusions of the third intersessional Working Group in respect of the admissibility of claims for environmental damage and the costs of environmental impact studies. It was recalled that the Working Group had examined a proposal to change the 1992 Fund's policy as regards environmental damage to the effect that compensation for such damage should no longer be limited to cases where the claimant had suffered economic loss, but should also allow compensation to be calculated through theoretical models. It was recalled that this proposal had not been accepted by the Working Group since it was considered that it went beyond the present definition of 'pollution damage' in the 1992 Conventions.

6.28 The Assembly noted that the Working Group had agreed that an examination should be made of what could be achieved within the present definition of 'pollution damage' as regards the admissibility of claims for reinstatement of the environment and for the costs of environmental

impact studies. It was also noted that a proposal to address the issues in an Assembly Resolution had received considerable support in the Working Group. It was noted that there had also been support for an in-depth consideration of the issue of environmental damage in the longer term.

6.29 The Assembly considered a proposal set out in a document submitted by the delegations of Australia, Canada, Sweden and the United Kingdom (document 92FUND/A.6/4/5) for new criteria for the admissibility of measures for reinstatement of impaired components of the environment and for post-spill studies.

6.30 It was noted that neither the 1992 Civil Liability Convention nor the 1992 Fund Convention contained any definition of 'measures of reinstatement', but it was suggested in the document that such measures could be considered as measures that aimed to bring an impaired environment into the state which would have existed had the damage not occurred, or at least as close as possible to the *status quo ante* (that is to re-establish a healthy biological community in which the organisms characteristic of that community are present and are functioning normally).

6.31 It was noted that in the document it had been proposed that any 'reasonable' measures (ie measures that met the criteria already established by the Fund) that would help accelerate the natural recovery of components of the environment that had been impaired by an oil spill should, in principle, be considered admissible. It was further noted that it had been proposed that innovative approaches should be encouraged, including measures taken at some distance from (but still in the general vicinity of) the damaged area, so long as it could be demonstrated that they would actually enhance the recovery of the damaged components of the environment. It was noted that it had been stated in the document that such a link between the measures and the damaged component was necessary to avoid remote and speculative claims that were inconsistent with the definition of pollution damage in the Conventions.

6.32 The Assembly noted that the sponsors of the document had proposed that an admissible claim for compensation for costs of measures of reinstatement should fulfil the following criteria on the basis of the information available when the reinstatement measures were planned or undertaken:

- the measures should be likely to accelerate the natural process of recovery;
- the measures should, as far as possible, seek to prevent further injury as a result of the incident;
- the measures should not result in the degradation of other habitats or in adverse consequences for other natural or economic resources;
- the measures should be technically feasible; and
- the costs of the measures should not be disproportionate to the extent and duration of the damage and the benefits likely to be achieved.

6.33 It was also noted that the sponsors of the document had suggested that the Assembly might wish to consider whether the Fund should limit its consideration of claims to those from any person or organisation (or any person or organisation acting with their consent) with a direct ownership, control or management responsibility for the impaired environment.

6.34 The Assembly noted that in the document it was proposed that the Fund should encourage scientifically justified studies that quantify or verify pollution damage and determine whether or not reinstatement measures were necessary or feasible, but concurred with the present policy of the Fund that the studies should not be out of proportion to the extent of the contamination and the predictable threats.

6.35 A number of delegations supported the proposals contained in the document, which in their view added clarity to the test of reasonableness as regards reinstatement measures whilst at the same time remaining consistent with the Funds' policy. Those delegations considered that the proposals were consistent with the conclusions of the intersessional Working Group.

6.36 Other delegations considered that the document did not go far enough since they had hoped that reinstatement measures should be extended to include equivalent or alternative sites.

6.37 A number of delegations expressed serious reservations about the proposed additional criteria, and in particular the first four criteria, which in their view would allow claims that would normally fall outside the Conventions and would lead to a plethora of such claims.

6.38 One observer delegation argued that the concept of equivalent or alternative sites was more appropriate to land-based activities such as industrial development, but that there was little scientific justification for applying the concept to pollution damage, since the acquisition of such sites would do little to benefit the damaged site.

6.39 Many delegations expressed the view that whilst restricting those eligible to submit claims for reinstatement measures would help to avoid excessive numbers of claims, it was doubtful whether this would be possible, since under the Conventions any person suffering pollution damage was entitled to compensation.

6.40 A number of delegations considered that due to the late submission of the document they had had little time to study it in detail. Those delegations were of the view that the proposed criteria introduced more uncertainty and would be open to a wide variety of interpretations. Some delegations suggested that it would be helpful to examine the proposed criteria against claims arising from past incidents that had either been settled or were under review by the Funds.

6.41 Some delegations considered that documents such as the one presented by the sponsoring delegations would stand a better chance of being accepted by the Assembly if they were submitted on behalf of the Working Group rather than by individual Member States.

6.42 The point was made that it was vital that decisions on such an important issue were based on a wide consensus. Nevertheless, some delegations pointed out that if the outcome of the debate were to be that the modification of the Claims Manual would not seem possible, this would give a very bad signal.

6.43 The Assembly noted that although there was a clear majority in favour of the proposals set out in the document, a significant number of delegations had expressed serious doubts about the wording of the proposed criteria in respect of reinstatement measures. It was decided that for this reason the matter should be referred back to the Working Group for further consideration with the view that the Assembly should take a decision at its next session.

Resolution relating to the Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC (HNS) 2000)

6.44 The Assembly considered a document submitted by the United Kingdom delegation regarding the importance of marine pollution contingency planning and a proposed Resolution encouraging Contracting States to the 1992 Conventions to become parties to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention 1990) and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC (HNS) Protocol 2000).

6.45 It was noted that in the document the United Kingdom delegation expressed the view that it was imperative that effective measures were in place to deal with major incidents, since this was in the best interests of Contracting States and their contributors as well as the shipping and insurance industries. It was proposed by the United Kingdom delegation that one way of encouraging this might be for States Parties to the 1992 Conventions to ratify the OPRC Convention 1990 and the OPRC (HNS) Protocol 2000.

6.46 It was noted that the OPRC Convention 1990 provided a framework for international co-operation for combating major oil spills and included requirements for ships, ports and oil handling facilities to have oil pollution emergency plans.

6.47 A number of delegations supported the proposal in principle, although one delegation thought that some redrafting of the Resolution might be required so as not to act as a disincentive for some States to ratify the OPRC Convention 1990 and the OPRC (HNS) Protocol 2000.

6.48 The Assembly adopted the Resolution on this subject set out in Annex II.

Mandate of the Working Group

6.49 The Assembly gave the Working Group the following revised mandate:

(a) to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including issues mentioned in paragraph 27.3 of document 92FUND/A.6/4, paragraph 27.3, which had already been identified by the Working Group, but not yet resolved; and

(b) to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it may deem appropriate.

7 European Commission proposal for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

7.1 The Assembly took note of the information contained in document 92FUND/A.6/5 regarding a proposal by the European Commission for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures and the amendments thereto proposed by the European Parliament.

7.2 One delegation suggested that the Director should submit more information to the European Parliament with the aim of giving it a complete understanding of the international compensation regime. However, the Director considered that it was not appropriate for him to contact the European Parliament and felt it would be more suitable for the Governments of European Union Member States to provide the Parliament with further information.

7.3 The Director was instructed to continue to provide information to the Assembly on any developments within the European Union relating to the proposed Regulation, whenever appropriate. He was also instructed to continue to provide factual information to the bodies of the European Union on the international compensation regime, as appropriate, so as to enable those bodies to ensure that any measures taken within the Union would not be detrimental to the global compensation system.

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

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

8.2 The Assembly noted that under Article 43.1 of the original version of the 1971 Fund Convention the Convention would remain in force until the number of States Parties fell below three. It was recalled that in September 2000 a Protocol had been adopted to amend Article 43.1 to the effect that the Convention would cease to be in force when the number of members fell below 25. The Assembly noted that this Protocol had entered into force on 27 June 2001. It was further noted that the 1971 Fund Convention would cease to be in force on 24 May 2002 when the condition set out above would be fulfilled, and that the Convention would not apply to incidents occurring after that date.

8.3 The Assembly also noted that in October 2000 the 1971 Fund had purchased insurance to cover its liabilities in respect of incidents occurring during the period up to 31 December 2001 (subject to a deductible of £220 000 per incident). It was also noted that the Director had used an option to extend this insurance cover to incidents occurring up to 31 October 2002.

8.4 It was recalled that at the October 1998 session of the 1992 Fund Assembly, delegations of former 1971 Fund Member States had expressed concern in respect of the 1992 Fund's continued involvement in the operation of the 1971 Fund. It was further recalled that at the October 2000 session these delegations had stated that, due to 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. The Assembly recalled that it had decided therefore in October 2000 to maintain the arrangement under which the 1992 Fund shared a Secretariat and Director with the 1971 Fund.

8.5 The Assembly considered the future involvement of the 1992 Fund in the operation of the 1971 Fund and decided to maintain the existing arrangement whereby the 1992 and 1971 Funds have a joint Secretariat and Director.

Financial matters

9 Report on investments

9.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2000 to June 2001, contained in document 92FUND/A.6/7.

9.2 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.

10 Report of the Investment Advisory Body

10.1 The Assembly took note of the report of the Investment Advisory Bodies, contained in the Annex to document 92FUND/A.6/8. It also took note of the objectives for the coming year and the Internal Investment Guidelines.

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

11 Financial Statements and Auditor's Report and Opinion

11.1 The Director introduced document 92FUND/A.6/9 containing the Financial Statements of the 1992 Fund for the financial year 2000 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Richard Maggs, Director International, introduced the Auditor's Report and Opinion.

11.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.6.9, and that the External Auditor had provided an unqualified audit opinion on the 2000 Financial Statements. The Assembly also appreciated that the Report went into great depth and detail.

11.3 The representative of the External Auditor drew attention to the financial controls operating in the Claims Handling Office in Lorient. He stated that the efficient operation of that office was of great credit to Mr Merri Jaquemin and his staff. He also drew attention to the claims handling database that had been developed for the *Erika* incident and stated that a detailed system review would be undertaken during the course of the audit of the 2001 Financial Statements.

11.4 Given the difficulties faced by staff at the Lorient Office, a number of delegations welcomed the Auditor's assessment of the operation of that office.

11.5 One delegation referred to the allegations of fraud which had been made against the Claims Handling Office and the 1992 Fund in connection with the *Erika* incident and wondered whether the External Auditor had reviewed these allegations. It was noted that these allegations related to the 2001 financial year. The External Auditor was invited to investigate these issues as part of the 2001 audit unless the investigation carried out by the French judicial authorities made an investigation by the External Auditor unnecessary.

11.6 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2000.

12 Audit procedures

12.1 It was recalled that at its 2nd extraordinary session, held in June 1996, the 1971 Fund Assembly had considered a proposal by the Chairman that the 1971 Fund should establish an Audit Committee in order to strengthen the involvement of Member States in the monitoring of the operations of the Organisations and to increase the transparency of the latter (document 71FUND/A/ES.2/21/1). It was further recalled that a number of delegations had questioned the need for an Audit Committee and that no decision had been taken on this issue.

12.2 The Assembly noted that in February 2001 the External Auditor, the Auditor and Comptroller General of the United Kingdom, had raised again the issue of the establishment of a special body to deal with audit matters, as set out in document 92FUND/A.6/10.

12.3 It was noted that under the Director's proposal, the Audit Body would be composed of five members, namely a Chairman with knowledge and interest in management and financial matters, three persons elected from delegations of Member States and one outside member with expertise in financial matters.

12.4 During the discussions, it was suggested that the number of members of the audit body proposed by the Director was too low, and a figure of seven rather than five was mentioned.

12.5 The Assembly took the view that, since the IOPC Funds held significant assets and made compensation payments totalling high amounts, they should ensure maximum transparency in their operations. It was also considered that such a body would enable Member States to have a broader involvement in Fund matters. Subject to the agreement of the 1971 Fund Administrative Council, it was decided therefore to create a joint Audit Body for the 1992 Fund and the 1971 Fund.

12.6 Some delegations considered that the members of the Audit Body should reflect the geographical distribution of Member States. Other delegations suggested appointing members on a rotation basis for a term of four years, non-renewable.

12.7 Some delegations suggested that it could be left to governments to appoint the member for their State, whilst others considered that members should be appointed in their personal capacity according to their expertise.

12.8 It was emphasised that the Audit Body should not control or duplicate the External Auditor's work and should not affect the independence of the External Auditor. It was also suggested that the members of the Audit Body should be independent and should not take instructions from their Governments. The point was made that the Audit Body should not impinge on the Director's general authority as regards the operation of the IOPC Funds. It was also suggested that the Audit Body's role should not be restricted to purely financial matters but should cover also the efficiency of the Secretariat.

12.9 The question arose as to whether the expenses incurred by Audit Body members would be paid by the Funds. Several delegations stated that the Funds should not pay travel expenses and that it should be for the Governments to cover such expenses. Other delegations considered that unless the Funds paid these expenses this would restrict the membership.

12.10 The Assembly decided to postpone to its next session consideration of the composition and mandate of the Audit Body.

12.11 It was agreed that the Executive Committee should hold a preliminary discussion of this issue, provided that any decision would be taken by the Assembly.

13 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

14 Report on contributions

14.1 The Assembly took note of the Director's report on annual contributions outstanding for previous years contained in document 92FUND/A.6/12. 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 would be pleased to assist 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.6/13. It was noted that since the document had been issued three States (Cameroon, Oman and Slovenia) had submitted oil reports. It was also noted that a total of 30 States therefore still had outstanding oil reports for the year 2000: 28 States in respect of the 1971 Fund and 11 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for many years.

15.2 The Assembly considered that the situation regarding the submission of oil reports gave rise to serious concern. It was noted that the situation in respect of the 1992 Fund was likely to deteriorate as States which had outstanding reports in respect of the 1971 Fund became Members of the 1992 Fund.

15.3 A number of delegations drew attention to the fact that the submission of oil reports was part of the treaty obligations that a State had undertaken when ratifying the 1992 Fund Convention and that a failure to submit these reports constitutes a breach of these obligations. The point was made that there should be a balance between treaty obligations and rights under a treaty.

15.4 It was recalled that the issue of the non-submission of oil reports had been considered by the Assembly at its 3rd session, in particular as to whether sanctions could be imposed if States did not fulfil their obligations in this regard (document 92FUND/A.3/27, paragraphs 12.3 - 12.14).

15.5 It was suggested that the Secretariat should try to establish why States had not submitted reports and whether there was anything that the Secretariat could do to assist these States.

15.6 Some delegations considered that it could be useful to raise the issue with delegations from the State concerned in other fora. It was also noted that non-governmental organisations having observer status with the IOPC Funds could play a useful role in encouraging States to submit oil reports. The OCIMF observer delegation stated that the OCIMF member companies had in fact taken steps to this effect and would continue to do so.

15.7 The Assembly emphasised that it was crucial for the functioning of the regime of compensation established by the Fund Conventions that States submitted the reports on oil receipts. The Assembly considered what further measures could be taken to resolve the problem but concluded that in the short term little more could be done than to instruct the Secretariat to make all practicable efforts to obtain reports.

15.8 The Assembly decided, however, that a letter should be sent from the Chairman on behalf of the Assembly to the Governments of States which had outstanding oil reports, emphasising the Assembly's serious concerns, requesting an explanation as to why reports had not been submitted and explaining the procedure for submission of oil reports. The Director was instructed to prepare such a letter. He was further instructed to report to the Assembly at its next session on the answers received.

15.9 The Assembly noted that the issue of non-submission of oil reports had been considered by the 3rd intersessional Working Group and that this issue had been included in the Working Group's revised mandate (cf paragraph 6.2 above). It was agreed that the Working Group should consider what measures could be taken within the scope of the 1992 Fund Convention *vis-à-vis* States which failed to submit oil reports and whether the issue should be dealt with in any future revision of the Convention.

Secretariat and administrative matters

16 Organisation of meetings

16.1 The Assembly took note of the information contained in document 92FUND/A.6/14 regarding the organisation of meetings.

16.2 It was recalled that at their January 2001 sessions, the Director had informed the governing bodies that a system ("document server") had been established to enable delegates to access documents for meetings via the internet by using a password. It was also recalled that the question had been raised as to whether it would be necessary to continue to require passwords for access to documents and that it had been agreed that this issue should be considered at the October 2001 sessions of the governing bodies when experience had been gained from the operation of the system.

16.3 The Assembly decided that, except as regards restricted documents, access to documents on the document server should be unrestricted and that documents should be accessed via the IOPC Funds' website and not, as at present, via a separate address.

16.4 In view of the limited time available at the meeting, it was decided not to discuss other matters relating to the organisation of meetings further at this stage but to return to these matters at a later session.

17 Working methods and structure of the Secretariat

17.1 The Assembly held a session in private, pursuant to Rule 12 of the Rules of Procedure, to consider document 92FUND/A.6/15 on the working methods and structure of the Secretariat. During the closed session, covered by paragraphs 17.1 – 17.5, only the representatives of the Member States of the 1992 Fund or 1971 Fund were present.

17.2 The Assembly took the following decisions:

(a) to approve the Director's proposal to establish a network of persons in various regions and sub-regions serving as contact points;
(b) to separate the roles of Technical Adviser and Head of the Claims Department;
(c) to instruct the Director to appoint a Deputy Director;
(d) to amend Internal Regulations 7.13 and 11bis and Financial Regulation 9.2 as set out in Annex III;
(e) to promote on a personal basis the Head of the Claims Department, Mr Joseph Nichols, from grade D1 to grade D2;
(f) to promote on a personal basis the Head of the Finance and Administration Department, Mr Ranjit Pillai, from grade P5 to grade D1; and
(g) to create an additional post in the General Service category in the External Relations and Conference Department;

as regards items (b) – (g) with effect from 1 January 2002.

17.3 The Assembly instructed the Director to appoint one of the present staff members as Deputy Director. The Assembly considered that the person to be appointed should have the following qualifications:

- wide experience in the core activities of the Funds, particularly in claims handling;
- wide experience in oil pollution matters;
- management skills;
- expertise complementary to that of the Director.

17.4 The Assembly instructed the Director to develop a clear job description for the Deputy Director and inform the Assembly on this issue at its next session.

17.5 The Assembly authorised the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.

18 Amendment to Financial Regulations

The Assembly considered document 92FUND/A.6/16 in which the Director had proposed an amendment to the Financial Regulations. It was decided to insert a new Regulation 7.3 to read as follows:

(a) Contributions to the Provident Fund established in accordance with Staff Regulation 26 which are paid by each staff member and by the 1992 Fund in respect of that staff member as well as any withdrawals by a staff member shall be shown separately.

(b) The assets of the Provident Fund shall be invested together with the assets of the 1992 Fund.

19 Amendments to Staff Rules

The Assembly noted the information contained in document 92FUND/A.6/17 with regard to the 1992 Fund's Staff Rules.

20 Appointment of a member of the Appeals Board

The Assembly appointed Mr H Horike (Japan) to replace Mr H Narahira (Japan) as a substitute member of the Appeals Board until the 7th session of the Assembly.

Compensation matters

21 Reports of the Executive Committee on its 10th – 14th sessions

21.1 The Chairman of the Executive Committee, Mr G Sivertsen (Norway), informed the Assembly of the work of the Committee during its 10th - 14th sessions (cf documents 92FUND/EXC.10/2, 92FUND/EXC.11/6, 92FUND/EXC.12/4 and 92FUND/EXC.13/7). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.

21.2 The Executive Committee's Chairman draw particular attention to the consideration given by the Committee at its 14th session to the threats and allegations which had been made, mainly by one individual, against staff at the Claims Handling Office in Lorient set up by the shipowner's P & I insurer, Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual), and the 1992 Fund to deal with claims arising out of the *Erika* incident, against experts engaged by the Steamship Mutual and the 1992 Fund and against the Director and mentioned that these threats and allegations had been made more or less continually. He referred to the complaint made in September 2001 by an association for the protection of the sea, 'Keep it Blue', joined by another entity, la Confédération Maritime, to the public prosecutor maintaining that the Director had committed fraud in connection with the decision on the conversion of the maximum amount payable under the 1992 Fund Convention expressed in Special Drawing Rights (SDR) into French francs. The Chairman mentioned that the Director had been accused of having violated the 1992 Fund Convention by converting the SDR into francs on a date different from that laid down in the Convention and that the Director had personally made the calculation on the basis of a rate chosen by him, ie 15 February 2000, whereas the conversion should have been made using the rate on 4 April 2000, ie on the date when the Assembly had considered the matter, thereby depriving the victims of FFr35 227 130. It was noted that the accusers had requested that the Director should be removed and that the members of the French delegation to the 1992 Fund be dismissed since they had not defended the legitimate interests of the victims, the French State and the taxpayers. It was noted that these accusations had been set out in a press release dated 3 September 2001 and repeated at a press conference held in Nantes on 4 September 2001.

21.3 The Chairman informed the Assembly that he had made the following summary of the discussion which had been endorsed by the Committee (document 92FUND/EXC.14/12, paragraphs 3.4.36 and 3.4.37):

> The decision which fixed the date which should be used as a basis for conversion of SDR into French francs had been taken by the Executive Committee and not by the Director. Contrary to what was stated in the complaint, the Director had not violated any Convention but had carried out the conversion in accordance with the Executive Committee's instructions using 15 February 2000 as the date of conversion, a purely mathematical calculation. The Director's actions had been endorsed by the Executive Committee which, acting on the authority of the Assembly, had the power to take this decision. In its decision in the *Nakhodka* case, the Assembly had explicitly recognised that decisions on the date for conversion would be taken by the Executive Committee. The Assembly had approved the reports on the Executive Committee's sessions at which this issue was considered.

21.4 The Assembly endorsed the position taken by the Executive Committee.

21.5 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)
Australia	Algeria
Italy	Croatia
Japan	Ireland
Netherlands	Liberia
Republic of Korea	Mexico
Spain	Norway
United Kingdom	Philippines
	Vanuatu

23 Application of the 1992 Fund Convention to the EEZ or an area designated under Article 3(a)(ii) of the 1992 Fund Convention

23.1 The Assembly took note of the information in document 92FUND/A.6/20.

23.2 The Italian delegation referred to the declaration by Algeria annexed to that document and made the following statement:

> The Italian delegation appreciates the attention given by the Government of the People's Democratic Republic of Algeria (IMO Circular letter No. 2315 of 11 June 2001) to the Declaration signed by France, Italy and Spain on 27 September 2000 and takes this opportunity to further explain its content, limits and purpose.
>
> Bearing in mind the difficulty in establishing exclusive economic zones in the Mediterranean, it was necessary and urgent to declare an "area" in accordance with Article 3(a)(ii) of the 1992 Protocol to amend the CLC '69 and Article 4(a)(ii) of the 1992 Protocol to amend the 1971 Fund. In the absence of such a declaration, the Mediterranean countries can only claim the pollution damage, as defined by the Conventions, which is suffered within the limited extent of their territorial seas.
>
> In case of major oil pollution in the Mediterranean high seas, it is likely, given the short distance between the coasts of bordering countries, that more than one state could be affected and suffer damage. This could happen, for instance, if fishing vessels of several States are prevented from carrying out their activity or if one or more States undertake the burden of reasonable measures of reinstatement on the high seas.
>
> It must be stressed that the purpose of the Declaration made by France, Italy and Spain is, and cannot be other than, specifically and strictly limited to the application of the CLC and Fund Conventions. The Declaration does not establish any "area" under the jurisdiction of the three declaring States. It is only related to the bilateral financial relationship between a claiming country and the Fund. In no case does the Declaration prejudice either the right of any State to establish its own coastal zone or the delimitation of the coastal zone already established.
>
> Italy is fully aware that also Algeria is exposed to the risk of major oil pollution because of the large amount of oil traffic passing along its coasts. With the

deepest respect for the Algerian views and intentions, it is the understanding of Italy that the interest of all other Mediterranean countries should be to join France, Italy and Spain in the Declaration they have made. This would enable each of those countries to claim the pollution damage it has suffered within a similar "area". In fact, such a Declaration does automatically give the right to claim pollution damage suffered within that area to any declaring Mediterranean State and not only to France, Italy and Spain.

Finally, the Italian delegation is ready to explore the feasibility of the model of operational coordination adopted by the SAR Convention, as suggested by Algeria, also in cases of oil pollution.

23.3 The Spanish delegation made the following statement:

The Spanish delegation welcomes Algeria's consideration of the tripartite declaration issued by France, Italy and Spain on 27 September 2000. However it feels that Algeria's statement raises doubts as to the scope of the tripartite declaration. The Spanish delegation therefore wishes to clarify its position in an effort to resolve any possible misunderstanding.

1 In accordance with the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971, States may only claim compensation for pollution damage caused by the escape or discharge of oil from ships in their territory, including their territorial sea.

2 The 1992 Protocols extended the scope of application of the Conventions to damage caused in the exclusive economic zone (EEZ) or, if a State has not established such a zone – in "an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured."

3 The riparian States of the Mediterranean have the right, under international law, to establish an EEZ in the region. France, Italy and Spain have not yet done so, although France and Spain have established an EEZ in the Atlantic Ocean. Accordingly they could not claim compensation for pollution damage caused in their respective territorial sea in the Mediterranean unless they were to use the second option provided for in Articles 3(a)(ii) and 4(a)(ii) of the respective Protocols.

4 It would be illogical and wrong for Spain to be able to claim compensation for pollution damage caused in the Atlantic Ocean up to 200 nautical miles from its coasts, whereas it could only claim for damage caused up to 12 nautical miles from its coasts in the Mediterranean which, by virtue of being a semi-enclosed sea, is more sensitive to pollution damage.

5 In their tripartite declaration, France, Italy and Spain did not establish a new area of jurisdiction. They simply declared, in accordance with the provisions of the 1992 Protocols, that the Conventions are applicable in an area beyond and adjacent to their respective territorial seas in the Mediterranean, within the 200 mile limit.

6 The declaration includes the reservation that nothing contained therein will prejudice current or future disputes, nor the legal opinions of the States Parties to

the declaration in respect of the law of the sea and the nature and extent of the jurisdiction of coastal States and flag States. This safeguarding clause is obviously applicable to all the riparian States of the Mediterranean.

7 The Spanish delegation considers, furthermore, that the reference in the tripartite declaration to loss of profit is correct because Article 2.3 of the 1992 Protocol amending Article 2.6 of the 1969 Convention provides that "compensation for impairment of the environment other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken."

8 The Spanish delegation considers that it is inappropriate to use the geographical divisions established within the framework of the International Convention on Maritime Search and Rescue (SAR) of 27 April 1979, as its purpose is very different from that of the 1969 and 1971 Conventions.

9 We are nevertheless mindful of the obligation of the riparian states of a semi-enclosed sea such as the Mediterranean to co-operate in "co-ordinating the exercise of their rights and performance of their duties in respect of the protection and preservation of the marine environment." We are therefore prepared, as is Italy, to consider with Algeria and other riparian States of the Mediterranean, whether it is possible to apply the operational co-ordination model adopted within the SAR Convention in cases of marine pollution.

23.4 The delegation of Cyprus asked whether it was the intention of the delegations of Italy or Spain to amend the tripartite declaration in view of their statements.

23.5 The French delegation made the following statement:

> In the declaration made jointly with Italy and Spain, France had no other intention than to preserve the rights of potential victims outside its territorial waters. As the Assembly was able to establish at its 5th session, this 200-mile zone is not in any way an exclusive economic zone but constitutes only a zone in respect of application of the compensation regime.

23.6 The Algerian delegation stated that it stood by its declaration but would be prepared to discuss it in a regional framework.

23.7 The United Kingdom delegation expressed concerns about the basis of the tripartite declaration under the United Nations Convention on the Law of the Sea. The delegation stressed that any zone equivalent to an EEZ declared under Article II of the 1992 Civil Liability Convention needed to be declared “in accordance with international law”. In the view of the United Kingdom delegation, there was nothing in international law which allowed States to claim overlapping areas equivalent to an EEZ. That delegation was also concerned that there might be practical problems for claimants because it would be unclear as to which court, or courts, would have jurisdiction.

23.8 In answer to a question from a delegation, the Director confirmed that this item would appear on the agenda in future years.

23.9 The Assembly noted the Director's intention to circulate annually any declarations received during the year on the establishment of an exclusive economic zone (EEZ) or an area determined in accordance with Article II(a)(ii) of the 1992 Civil Liability Convention and Article 3(a)(ii) of the 1992 Fund Convention.

Budgetary matters

24 Sharing of joint administrative costs with the 1971 Fund

24.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 2002 should be distributed with 70% to be paid by the 1992 Fund and 30% 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 2002 (document 92FUND/A.6/23).

24.2 It was noted that the Administrative Council of the 1971 Fund, acting on behalf of the Assembly, had agreed at its 6th session to the distribution proposed by the Director.

25 Working capital

The Assembly decided to increase the working capital of the 1992 Fund from £18 million to £20 million.

26 Budget for 2002 and assessment of contributions to the General Fund

26.1 The Assembly considered the draft 2002 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.6/23.

26.2 The Assembly adopted the budget for 2002 for the administrative expenses for the joint Secretariat with a total of £2 816 663, as reproduced in Annex IV.

26.3 The Assembly authorised the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.

26.4 It was noted that the Administrative Council of the 1971 Fund, acting on behalf of the Assembly, had at its 6th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.

26.5 The Assembly decided to levy contributions to the General Fund for a total of £5 million, with the entire levy due for payment by 1 March 2002.

27 Assessment of contributions to Major Claims Funds

27.1 The Director introduced document 92FUND/A.6/24 which contained proposals for the levy of 2001 contributions to Major Claims Funds.

27.2 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 2001 contributions to the following Major Claims Funds.

(a) a levy of £11 million to the *Nakhodka* Major Claims Fund; and

(b) a levy of £46 million to the *Erika* Major Claims Fund.

27.3 The Assembly decided that the entire 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 levy (£21 million) to the *Erika* Major Claims Fund should be deferred.

27.4 The Director was authorised to decide whether to invoice all or part of the deferred levy to the *Erika* Major Claims Fund for payment during the second half of 2002, if and to the extent required.

27.5 The Assembly noted that its decisions in respect of the levy of 2001 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2002		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2000	1 276	5 000 000	5 000 000	0.0039182	0	0
Nakhodka	1996	666	11 000 000	11 000 000	0.0165271	0	0
Erika	1998	1 116	46 000 000	25 000 000	0.0223985	21 000 000	0.0188148
Total			62 000 000	41 000 000		21 000 000	

Other matters

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

28.1 The Assembly noted the developments in respect of the ratification and 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) since the 5th session of the Assembly as set out in document 92FUND/A.6/25.

28.2 It was recalled that in a Resolution of the Conference which had adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. The Assembly instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.

28.3 Some delegations questioned whether the 1992 Fund could legally pay costs for the purpose of the implementation of the HNS Convention, since the HNS Fund would be a totally separate entity from the 1992 Fund and carry out activities outside the scope of the 1992 Fund Convention. It was suggested that such costs should be paid on a voluntary basis by interested States. A number of other delegations maintained that there were no legal obstacles to the 1992 Fund making loans for the purpose set out in document 92FUND/A.6/25.

28.4 The question was raised how the 1992 Fund could obtain guarantees that the HNS Fund would repay the proposed loan. Attention was drawn to the possibility that the HNS Convention would not enter into force.

28.5 The Assembly instructed the Director to develop a system in the form of a website or CD-Rom to assist States and potential contributors in the identification and reporting of contributing cargo under the HNS Convention.

28.6 The Assembly granted an extra appropriation of £150 000 for this purpose, provided that the costs incurred would be reimbursed to the 1992 Fund by the HNS Fund when the HNS Convention entered into force. It was noted that these costs would be paid from the General Fund.

28.7 One delegation expressed the view that as the membership of the 1992 Fund increased, it might be necessary to revisit issues and renew instructions from time to time.

28.8 The Assembly renewed its instruction to the Director to carry out the administrative tasks necessary for setting up the HNS Fund in accordance with the HNS Convention as requested by the HNS Conference.

29 Quorum at Assembly sessions

29.1 The Assembly decided to postpone to its next session consideration of this issue as set out in document 92FUND/A.6/26.

29.2 It was agreed that this issue could be referred to the Working Group for further discussion.

30 Future sessions

30.1 The Assembly decided to hold its next regular session during the week of 14 - 18 October 2002.

30.2 The Assembly also decided that the 3rd intersessional Working Group should meet during the week of 29 April 2002 and, if necessary, during the week of 1 July 2002.

31 Any other business

The Assembly decided to grant observer status to Lebanon pursuant to a request set out in document 92FUND/A.6/27.

32 Adoption of the Record of Decisions of the 6th session

The draft Record of Decisions of the Assembly, as contained in documents 92FUND/A.6/WP.1 and 92FUND/A.6/WP.1/Add.1, was adopted, subject to certain amendments.

* * *

ANNEX I

DRAFT PROTOCOL

OF 200_ TO SUPPLEMENT THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

THE PARTIES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992,

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention;

RECOGNISING that a number of States Parties to the 1992 Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish;

BELIEVING that the supplementary scheme should not only ensure that victims of oil pollution damage are compensated in full for their loss or damage, but should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Conventions will be insufficient to pay established claims in full and that as a consequence the 1992 Fund has decided provisionally that it will pay only a proportion of any established claim;

CONSIDERING that accession to the supplementary scheme should be open only to States Parties to the 1992 Fund Convention,

Have agreed as follows:

General provisions

Article 1

For the purposes of this Protocol:

1 "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

2 "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

3 "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

4 "Contracting State" means a contracting state to this Protocol, unless stated otherwise;

5 When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, "Fund" in that Convention means "Supplementary Fund", unless stated otherwise;

6 "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident" and "Organization" have the same meaning as in Article I of the 1992 Liability Convention;

7 “Contributing Oil”, “Unit of Account”, “Ton”, “Guarantor “and” Terminal installation” have the same meaning as in Article 1 of the 1992 Fund Convention, unless stated otherwise;

8 "Established claim” means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in Article 4, paragraph 4 of the 1992 Fund Convention had not been applied to that incident.

Article 2

1 An International Supplementary Fund for compensation for oil pollution damage, to be named “The International Supplementary Fund for compensation for oil pollution damage [200.]” and hereinafter referred to as “the Supplementary Fund”, is hereby established.

2 The Supplementary Fund shall in each Contracting State be recognised as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognise the Director of the Supplementary Fund (hereinafter referred to as “The Director”) as the legal representative of the Supplementary Fund.

Article 3

This Protocol shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Supplementary Compensation

Article 4

1 The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person is unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because there is a risk that the damage exceeds the applicable limit of compensation laid down in Article 4, paragraph 4 of the 1992 Fund Convention in respect of any one incident.

2 (a) The aggregate amount of compensation payable by the Supplementary Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed [ ] million units of account.

(b) The amounts mentioned in sub-paragraph (a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the

date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Conventions.

3 Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2 of this Article, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

4 The Supplementary Fund shall pay compensation in respect of established claims as defined in Article 1, paragraph 8 of this Protocol and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the 1992 Fund Assembly has considered that there is a risk that the total amount of the established claims will exceed the aggregate amount of compensation available under Article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1 Rights of compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under Article 6 of the 1992 Fund Convention.

2 A claim which a claimant made against the 1992 Fund shall be regarded as a claim which the same claimant made against the Supplementary Fund.

Article 7

1 The provisions of Article 7, paragraphs 1, 2, 4, 5 and 6 of the 1992 Fund Convention shall apply to actions for compensation against the Supplementary Fund in accordance with Article 4, paragraph 1 of this Protocol.

2 Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of Article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under Article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a State Party to this Protocol competent under Article IX of the 1992 Liability Convention.

3 Notwithstanding paragraph 1 of this Article, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1 of this Article.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 3 of this Protocol, any judgement given against the Supplementary Fund by a court having jurisdiction in accordance with

Article 7, paragraphs 1 and 2 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

Article 9

1 The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with Article 4, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2 The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.

3 Nothing in this Convention shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

4 Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Contributions

Article 10

1 Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 11, paragraph 2(a) or (b) of this Protocol, has received in total quantities exceeding 150,000 tons:

(a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

(b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2 The provisions of Article 10, paragraph 2, of the 1992 Fund Convention apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1 With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

(a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under Article 4 of this

Protocol, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

(ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

2 The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 9 of this Protocol the amount of his annual contribution:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) of this Article on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Protocol at the date of the incident.

3 The sums referred to in paragraph 2 of this Article shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4 The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.

5 The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with Article 11.2(a) of this Article and funds received in accordance with Article 11.2(b) of this Article.

Article 12

1 The provisions of Article 13 of the 1992 Fund Convention apply to contributions to the Supplementary Fund.

2 A Contracting State may assume itself the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in Article 14 of the 1992 Fund Convention.

Article 13

Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with Article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under Article 15, paragraph 3 of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

Article 14

1 Notwithstanding Article 10 of this Protocol, for the purpose of this Protocol there shall be deemed to be a minimum receipt of [1 000 000] tons of contributing oil in each Contracting State.

2 When the aggregate quantity of contributing oil received in a Contracting State is less than [1 000 000] tons, the Contracting State assumes the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1 If in a Contracting State there is no person to be reported under Article 10 of this Protocol, that Contracting State shall for the purpose of this Protocol inform the Director thereof.

2 No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with Article 3(a)(ii) of this Protocol of a State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director according to Article 15, paragraph 2 of the 1992 Fund Convention and the preceding paragraph of this Article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3 A Contracting State which temporarily has been denied compensation in accordance with paragraph 2 of this Article, shall be denied any compensation if the conditions have not been met within one year after the Director has notified the State of its failure to report.

4 Any payments of contributions due to the Supplementary Fund shall be set off against compensation to the debtor or his agents.

Organisation and administration

Article 16

1 The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.

2 Articles 17-20 and 28-33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

3 Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

Article 17

1 The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.

2 If, in accordance with paragraph 1 of this Article, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly of the Supplementary Fund.

3 The Director and the staff and experts appointed by him, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of the 1992 Fund Convention applied by Article 15, paragraph 2 of this Protocol in so far as they discharge their duties in accordance with this Article.

4 The Assembly of the Supplementary Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Supplementary Fund

shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

5 The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

Final clauses

Article 18

Signature, ratification, acceptance, approval and accession

1 This Protocol shall be open for signature at London from [ ].

2 Subject to paragraph 4 of this Article, this Protocol shall be ratified, accepted or approved by States which have signed it.

3 Subject to paragraph 4 of this Article, this Protocol is open for accession by States which did not sign it.

4 This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Fund Convention.

5 Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

Article 19

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 18, paragraph 5 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to Article 10 of this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

Article 20

Entry into force

1 This Protocol shall enter into force [twelve] [six] [three] months following the date on which the following requirements are fulfilled:

(a) at least [eight] States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and

(b) the Secretary-General of the Organization has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to Article 10 of this Protocol have received during the preceding calendar year a total quantity of at least [450] million tons of contributing oil, including the quantities referred to in Article 14, paragraph 1 of this Protocol.

2 For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 of this Article for entry into force have been met, the Protocol shall enter into force [twelve] [six] [three] months following the date of the deposit by such State of the appropriate instrument.

3 Notwithstanding paragraphs 1 and 2 of this Article, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

Article 21

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

Article 22

Revision and amendment

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Organization shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.

Article 23

Amendment of compensation limits

1 Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 2, sub-paragraph (a) of this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3 All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3 of this Article, on condition that at least one half of the Contracting States shall be present at the time of voting.

5 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.

6 (a) No amendments of the limits under this Article may be considered before [date of entry into force of this Protocol] nor less than [five years] from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by [six] per cent per year calculated on a compound basis from [the date when this Protocol is opened for signature] to [the date on which the Committee's decision comes into force].

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.

7 Any amendment adopted in accordance with paragraph 4 of this Article shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted [at the end of a period of [eighteen months]] [after the date of notification] unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8 An amendment deemed to have been accepted in accordance with paragraph 7 of this Article shall enter into force [eighteen months] after its acceptance.

9 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 25, paragraphs 1 and 2 of this Protocol, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10 When an amendment has been adopted by the Legal Committee but the [eighteen-month] period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7 of this Article. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 24

Protocols to the 1992 Fund Convention

1 If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in Article 4, paragraph 2, sub-paragraph (a) of this Protocol may be increased by the same amount by means of the procedure set out in Article 23 of this Protocol. The provisions of Article 23, paragraph 6 of this Protocol shall not apply in such cases.

2 If the procedure referred to in paragraph 1 of this Article has been applied, calculation of the limits laid down in Article 23, paragraph 6, sub-paragraphs (b) and (c) of this Protocol, shall be made on the basis of the limits decided in accordance with that procedure.

Article 25

Denunciation

1 This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2 Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4 Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the 1992 Protocol to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

5 Notwithstanding a denunciation of the present Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in Article 11, paragraph 2(b), of this Protocol and occurring before the denunciation takes effect shall continue to apply.

Article 26

Extraordinary sessions of the Assembly

1 Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2 The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3 If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 of this Article decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 27

Termination

1 This Protocol shall cease to be in force on the date when the number of Contracting States falls below [seven] or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in Article 14, paragraph 1 of this Protocol, falls below [250] million tons, whichever is the earliest.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in Article 28 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article 28

Winding up of the Supplementary Fund

1 If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

2 The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3 For the purposes of this Article the Supplementary Fund shall remain a legal person.

Article 29

Depositary

1 This Protocol and any amendments accepted under Article 23 of this Protocol shall be deposited with the Secretary-General of the Organization.

2 The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 23, paragraph 1 of this Protocol;

(iv) any amendment which has been adopted in accordance with Article 23, paragraph 4 of this Protocol;

(v) any amendment deemed to have been accepted under Article 23, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article of this Protocol;

(vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(vii) any communication called for by any Article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3 As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 30

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

* * *

ANNEX II

DRAFT RESOLUTION ON THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION (OPRC) 1990 AND THE PROTOCOL ON PREPAREDNESS, RESPONSE AND CO-OPERATION TO POLLUTION INCIDENTS BY HAZARDOUS AND NOXIOUS SUBSTANCES, 2000 OPRC (HNS) PROTOCOL

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992,

NOTING that the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 ("OPRC") came into force in 1995, and that 59 States have ratified or acceded to the Convention,

ALSO NOTING that the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 OPRC (HNS) Protocol will not come into force until 12 months after ratification by not less than 15 States,

NOTING FURTHER that no States are yet party to the 2000 OPRC (HNS) Protocol,

RECOGNIZING the need for some States to identify existing resources that could form part of the resources needed to implement the 1990 OPRC and 2000 OPRC (HNS) Protocol,

RECOGNIZING FURTHER that some States may not have all the resources needed to effectively implement the OPRC and 2000 OPRC (HNS) Protocol,

BELIEVING it is desirable for coastal States to have in place effective measures and co-operative arrangements to deal with oil spill incidents wherever they may occur,

FURTHER BELIEVING that wider and speedy implementation of both the 1990 OPRC and the 2000 OPRC (HNS) Protocol would benefit potential victims of oil spills and the IOPC Fund in helping to minimize the environmental and financial impact of oil spills,

1. URGES all Contracting States to the 1992 Fund Protocol that have not yet done so to ratify, or to accede to, the 1990 OPRC;

2. ENCOURAGES States Parties to the OPRC to also become party to the 2000 OPRC (HNS) Protocol, with the aim of promoting speedy implementation;

3. FURTHER ENCOURAGES States not parties to the 1990 OPRC to put in place effective contingency plans for oil pollution prevention and response to the best of their abilities.

* * *

ANNEX III

Amendments to the Internal Regulations

(Proposed amendments underlined)

Internal Regulation 7.13

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

(a) in respect of the Deputy Director and the Head of the Claims Department, be limited to approvals not exceeding £500 000 for a particular claim; and

(b) in respect of other officers:

(i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident; and

(ii) be limited to approvals not exceeding £75 000 for a particular claim.

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

Internal Regulation 11bis

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

Amendments to the Financial Regulations

(Proposed amendments underlined)

Financial Regulation 9.2

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

(a) for any sum up to £10 000 by any officer from category A, B or C;

(b) for any sum in excess of £10 000 up to £25 000, by an officer from category A or by any two officers from category B or C;

(c) for any sum in excess of £25 000 up to £100 000, by any two officers from category A, B or C;

(d) for any sum in excess of £100 000, by one officer from category A or B plus one officer from category A, B or C.

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

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

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