



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
7th session
Agenda item 32

92FUND/A.7/29
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RECORD OF DECISIONS OF THE SEVENTH SESSION OF THE ASSEMBLY

(held from 15 to 18 October 2002)

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.7/1.

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	France	Philippines
Angola	Germany	Poland
Antigua and Barbuda	Greece	Republic of Korea
Argentina	Grenada	Russian Federation
Australia	Ireland	Saint Vincent and the Grenadines
Bahamas	Italy	Singapore
Barbados	Jamaica	Spain
Belgium	Japan	Sri Lanka
Belize	Latvia	Sweden
Cameroon	Liberia	Trinidad and Tobago
Canada	Malta	Turkey
China (Hong Kong Special Administrative Region)	Marshall Islands	United Arab Emirates
Cyprus	Mexico	United Kingdom
Denmark	Morocco	Uruguay
Dominica	Netherlands	Vanuatu
Fiji	New Zealand	Venezuela
Finland	Norway	
	Panama	

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:

Colombia	Qatar
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Other States

Brazil	Lebanon	Saudi Arabia
Côte d'Ivoire	Malaysia	Syrian Arab Republic
Iran, Islamic Republic of		

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

Intergovernmental organisations:

1971 Fund
European Commission

International non-governmental organisations:

Comité Maritime International
Conférence des Régions Périphériques Maritimes d'Europe
Cristal Ltd
European Chemical Industry Council (CEFIC)
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

- 4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 6th session in October 2001, contained in document 92FUND/A.7/2. 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 eleven States having acceded to the 1992 Fund Protocol since the 6th session. He stated that after the 1971 Fund Convention had ceased to be in force on 24 May 2002 some of the former 1971 Fund Member States had ratified the 1992 Fund Convention, and that it was hoped that the remaining 15 States would soon do so.
- 4.2 The Director referred to the *Neptank VII* incident which had occurred in the Singapore Strait and to the incidents in Spain, Guadeloupe and the United Kingdom where the origin of the pollution had become an issue.
- 4.3 The Director drew attention to the fact that the failure of a number of Member States to submit oil reports continued to give rise to serious concern.
- 4.4 The Director referred to the meeting held in April/May 2002 of the Working Group set up by the Assembly to consider whether the international compensation regime established by the 1992 Conventions needed improvement in order to meet the needs of the international community. He mentioned that at that meeting the Working Group had focused its discussions on questions relating to environmental damage and issues relating to shipowners' liability.
- 4.5 The Assembly congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2001 which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.
- 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.

5 Status of the 1992 Fund Convention

- 5.1 The Assembly took note of the information contained in document 92FUND/A.7/3 concerning the ratification situation in respect of the 1992 Fund Convention and noted there were at present 71 Member States of the 1992 Fund.
- 5.2 The Assembly noted that since the document had been issued one further State, Guinea, had acceded to the 1992 Fund Convention and that by October 2003 the 1992 Fund would have 82 Member States.

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 and June 2001 and April/May 2002.
- 6.2 It was further recalled that at the Assembly's October 2001 session, the Working Group had been given the following 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, 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.

- 6.3 The Chairman of the Working Group, Mr Alfred Popp QC (Canada), introduced the report of the Working Group on its 4th meeting held in April/May 2002, as set out in document 92FUND/A.7/4. The Chairman mentioned that the Working Group had focused on two issues: environmental damage and shipowners' liability.

Environmental damage

- 6.4 The Assembly considered the Working Group's proposal for a revised text of the section of the 1992 Fund's Claims Manual regarding environmental damage.
- 6.5 The Assembly approved the revised text, as reproduced in Annex I to this Record of Decisions.
- 6.6 The Assembly instructed the Director to publish a new version of the Claims Manual incorporating the amended section on environmental damage.

Shipowners' liability and related issues

- 6.7 The Chairman of the Working Group mentioned that there had been a wide divergence of opinions on the question of whether amendments should be made to the provisions in the 1992 Civil Liability Convention regarding shipowners' liability and related issues. He also mentioned that, although the Working Group had recognised that such amendments would give rise to difficult treaty issues for which solutions had to be found, it had been decided to retain this item for further consideration.

Future work

- 6.8 The Assembly decided that the Working Group should continue its work in accordance with the mandate set out in paragraph 6.2, and that the next meeting of the Group should be held during the week commencing 3 February 2003.
- 6.9 The Assembly endorsed a statement by the Chairman of the Working Group that, in order to enable the Working Group to make progress on any issues, delegations should produce written concrete proposals, preferably in the form of draft treaty texts.
- 6.10 The Chairman of the Working Group pointed out that if the Group were to examine the issue of the application of the 1992 Conventions to the Exclusive Economic Zone or an equivalent area (cf Section 23), it would be important for the Group to focus on practical solutions relating to cross-boundary pollution incidents and not to address treaty issues which were governed by the United Nations Convention on the Law of the Sea (UNCLOS).

7 Report on investments

- 7.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2001 to June 2002, contained in document 92FUND/A.7/5.
- 7.2 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.

- 7.3 One delegation referred to the Dual Currency Deposit mentioned in paragraph 5 of document 92FUND/A.7/5 and asked what risk was involved in these deposits. The Director stated that there was no risk since the repayment of the principal sum would be in euros if the exchange rate was favourable at the expiry of the deposit, but would be repaid in sterling plus interest if the exchange rate was not favourable. The Director pointed out that these deposits were only used when the Fund had an ongoing requirement for a particular currency, in this case euros (cf paragraph 8.3 below).

8 Report of the Investment Advisory Body

- 8.1 The Assembly took note of the report of the Investment Advisory Bodies, contained in the Annex to document 92FUND/A.7/6. It also took note of the objectives for the coming year and the Internal Investment Guidelines.
- 8.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work.
- 8.3 In reply to a question concerning Dual Currency Deposits (cf paragraph 7.3 above), a member of the Investment Advisory Body confirmed that such deposits would only be used if the 1992 Fund needed a particular currency other than pounds sterling.

9 Financial Statements and Auditor's Report and Opinion

- 9.1 The Director introduced document 92FUND/A.7/7 containing the Financial Statements of the 1992 Fund for the financial year 2001 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.
- 9.2 The representative of the External Auditor mentioned that a review had been carried out of the Secretariat's overall financial control systems, particularly in relation to claims payments, contributions income, payroll, administrative expenditure and cash management. He stated that the review had found that the Secretariat continued to have satisfactory controls in place and continued to adhere to appropriate control procedures and the Fund's financial and investment policies. He also confirmed that claims had been verified and settled as promptly as possible, and had properly taken into account the interest of the Fund and the claimants.
- 9.3 It was recalled that at its 6th session in October 2001, the Assembly had invited the External Auditor, as part of the 2001 audit, to investigate allegations of fraud which had been made against the Claims Handling Office and the 1992 Fund in connection with the *Erika* incident. The External Auditor's representative reported that a further review of the controls and operations of the Lorient office had been carried out for the purpose of drawing audit conclusions on whether the 1992 Fund's maximum liability had been correctly calculated in relation to the *Erika* incident, particularly in relation to the conversion of Special Drawing Rights to French francs, and whether the assets and transactions of the Fund were properly reflected in the books of account of the Lorient office. The representative stated that the External Auditor's staff had reviewed the Assembly and Executive Committee papers documenting the conversion of the maximum liability of the Fund and had concluded that the Director had acted on the instructions of the Executive Committee, using the date for conversion fixed by the Committee, which in turn had acted under the authority of the Assembly. He further reported that, in relation to the integrity of the records and books of account of the Lorient office, local payment and banking arrangements had been reviewed to confirm safe custody and handling of all funds. He stated that the External Auditor's staff were satisfied that effective controls were in place to safeguard funds and to monitor payments made from the account.
- 9.4 The External Auditor's representative also reported that a detailed review had been carried out of the recently established Claims Handling Database and Tourism Claims Assessment and Tracking

Systems (TCATS). He stated that the systems had been developed and implemented in a satisfactory and effective manner, that controls were adequate to ensure that data integrity could be relied upon and that the review gave assurance over the adequacy of security and back-up procedures. He concluded that the Claims Handling Database and TCATS had clearly enhanced the Fund's ability to manage claims arising from incidents.

- 9.5 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.7/7, and that the External Auditor had provided an unqualified audit opinion on the 2001 Financial Statements following a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The Assembly also appreciated that the Report went into great depth and detail.
- 9.6 The Assembly also noted with particular satisfaction the External Auditor's thorough review of the allegations mentioned above and the assurance that the allegations were unfounded.
- 9.7 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2001.

10 Appointment of members of the Investment Advisory Body

- 10.1 The Assembly reappointed Mr David Jude and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year. Mr Brian Turner was appointed to replace Mr Clive Ffitch as member of the Investment Advisory Body for one year.
- 10.2 The Assembly expressed its gratitude to Mr Clive Ffitch, who had been a member of the Audit Body since 1997, for his valuable work.

11 Appointment of the 1992 Fund's and 1971 Fund's External Auditors

The Assembly reappointed the Comptroller and Auditor General of the United Kingdom as External Auditor of the 1992 Fund for a term of four years from the financial period 2003.

12 Election of members of the Audit Body

- 12.1 It was recalled that, at their October 2001 session, the governing bodies of the 1992 Fund and 1971 Fund had decided to establish a joint Audit Body for the two organisations (document 92FUND/A.6/28, paragraph 12.5). It was further recalled that, at their April/May 2002 sessions, the governing bodies had decided the composition and mandate of the Audit Body as set out in Annex I of document 92FUND/A.7/10.
- 12.2 It was noted that the joint Audit Body was to be composed of seven members elected by the governing bodies: one named Chairman nominated by Member States, five named individuals nominated by Member States and one named individual not related to the Organisations ('outsider'), with expertise and experience in audit matters nominated by the Chairmen of the respective governing bodies.
- 12.3 The Assembly recalled that it had decided that of the six members elected from Member States, three should be elected from the eleven Member States in the territory of which the largest quantities of oil were received during the preceding calendar year and three from the other Member States and that when electing members the Assembly should take into account the desirability of an equitable geographical distribution of the seats (paragraph 2 of the mandate).
- 12.4 The Assembly considered document 92FUND/A.7/10/1 submitted by the United Kingdom delegation. It was noted that in that delegation's view the mandate as adopted by the governing bodies would add an unnecessary restriction to the choice of nominees. The United Kingdom delegation expressed the view that representatives on the Audit Body should act in an independent and personal capacity. It should not in that delegation's view be the State from which a nominee

came that was of prime concern and all nominees should be considered on an equal basis by the Assembly. That delegation considered that the opportunity should not be missed to support the appointment of a high calibre nominee simply because of the restrictions that had been established in the composition and mandate of the Audit Body. The United Kingdom delegation proposed that the restriction on the composition of the Audit Body according to the ranking of the contributing States should be removed. This would in that delegation's view ensure that appointments could be made entirely on merit and experience within the Fund while still achieving a wide representation.

- 12.5 A number of delegations, while supporting in principle the proposal by the United Kingdom delegation to delete the restriction on the composition of the Audit Body, stated that late amendments of the rules were not ideal and that they could only accept such amendments if required in order to reach satisfactory results as to the composition of the Body.
- 12.6 The Assembly decided to delete paragraph 2 of the composition and mandate of the Audit Body. The revised text is reproduced in Annex II.
- 12.7 It was noted that at its 9th session the 1971 Fund Administrative Council had taken the same decision in respect of the Mandate of the Audit Body, as that set out in paragraph 12.6 above.
- 12.8 The United Kingdom delegation also proposed that consideration should be given in the future to paying members of the Audit Body nominated by Member States a modest honorarium, since this might attract a wider geographical distribution of candidates. Most delegations supported that proposal.
- 12.9 It was decided that the election should be held jointly by the governing bodies of the 1992 and 1971 Funds. It was noted that the election of members of the Audit Body should be by secret ballot in accordance with the Rules of Procedure of the Assembly (cf Rules 32, 38 and 40). It was also decided that all 1992 Fund Member States and all States which had at any time been Members of the 1971 Fund were eligible to vote, provided that each State had only one vote. It was agreed that each voting delegation had to select six candidates, failing which the voting paper would become invalid.
- 12.10 The 1992 Fund Assembly and the 1971 Fund Administrative Council held a joint session which is covered by paragraphs 12.11 - 12.19 below.
- 12.11 The Assembly and the Administrative Council elected Professor L S Chai (Republic of Korea) and Mr Paul Nelson (Australia) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.
- 12.12 At the joint session, the Assembly and the Administrative Council considered the nominations made by Member States circulated in document 92FUND/A.7/10/Add.1 and elected the following as members of the Audit Body for a period of three years:
- Professor Eugenio Conte (Italy)
Mr Charles Coppolani (France)
Mr Maurice Jaques (Canada)
Mr Heikki Muttilainen (Finland)
Dr Reinhard Renger (Germany)
Professor Hisashi Tanikawa (Japan)
- 12.13 The Assembly and the Administrative Council expressed their sincere gratitude to all persons nominated for their willingness to serve on the Audit Body, which would operate in the general interests of the Funds.

- 12.14 The Assembly and the Administrative Council elected Mr Charles Coppolani (France) as Chairman of the Audit Body.
- 12.15 It was noted that under the mandate and composition of the Audit Body the mandate of three of the six members should not be renewable after three years. It was agreed that this matter should be considered by the Audit Body, that the Body's Chairman should report on this issue to the governing bodies no later than at their autumn sessions in 2004 and that if agreement on this point could not be reached between the members of the Audit Body, the governing bodies would decide.
- 12.16 The Assembly and the Administrative Council elected Mr Nigel Macdonald as the member of the Audit Body not related to the Organisations ("outsider").
- 12.17 The Assembly and the Administrative Council decided that the six members of the Audit Body elected from Member States should receive a reasonable honorarium. The Director was instructed to discuss the amount of the honorarium with the members and submit a proposal in this regard to the October 2003 sessions of the governing bodies. It was decided that the honorarium, once determined, would be paid to the members with effect from the date of their appointment.
- 12.18 The Assembly and the Administrative Council instructed the Audit Body to adopt its own Rules of Procedure and invited the Chairman of the Audit Body to submit, in his first report to the governing bodies at their October 2003 sessions, the Rules of Procedure for endorsement.
- 12.19 It was noted that most of the nominees were from developed countries although the personal capacities of the nominees were of an excellent and respectful nature. Nevertheless the hope was expressed that in the future more candidates would be nominated from other countries.

13 Report on contributions

The Assembly took note of the Director's report on annual contributions outstanding for previous years contained in document 92FUND/A.7/11. The Assembly expressed its satisfaction with the situation regarding the payment of contributions.

14 Non-submission of oil reports

- 14.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.7/12 (cf document 71FUND/AC.9/10). It was noted that since the document had been issued one State (Oman) had submitted the outstanding oil report. It was also noted that a total of 31 States therefore still had outstanding oil reports for the year 2001: 16 States in respect of the 1971 Fund and 19 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.
- 14.2 The Assembly recalled that at its 6th session in October 2001, it had decided 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 reported that letters had been sent to 23 States with outstanding oil reports and that three direct responses had been received, although it was possible that subsequent submissions of oil reports by other States had been a result of these letters. One delegation observed that this level of response was disgraceful.
- 14.3 The Assembly repeated its serious concern as regards the number of Member States which had failed to fulfil their treaty obligations to submit oil reports. The Assembly also 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.

- 14.4 The Assembly instructed the Director to pursue his efforts to obtain the outstanding oil reports. It was noted however that there was a limit to what the Secretariat could achieve by persistence. The Director noted that the problem seemed to lie more with Governments than with potential contributors.
- 14.5 Several delegations made suggestions as to organisations which could assist the Secretariat in obtaining outstanding oil reports. The observer delegation of OCIMF stated that it had brought the matter to the attention of its members and would do so again at the meeting of its Executive Committee in November 2002 and thereafter on a regular basis. However, that delegation pointed out that many of the States with outstanding oil reports either were not oil receivers or did not have OCIMF members operating there.
- 14.6 Some delegations mentioned the possibility of the IOPC Funds' providing technical assistance to the competent authorities in developing countries to assist them in fulfilling their obligations in this regard.
- 14.7 The Assembly recognised that it was its responsibility to find creative solutions to the problem within the constraints of the 1992 Fund Convention and then to support the Secretariat in the implementation of these solutions. It was recalled that the non-submission of oil reports had been included in the list of issues for consideration by the 3rd intersessional Working Group, and States were requested to submit concrete proposals on this issue.
- 14.8 One delegation enquired whether Article 15 of the 1992 Fund Convention could be used as a basis for sanctions against contributors who had not submitted oil reports. The Director stated that in his opinion Article 15 could only be used as the basis for sanctions against Member States and not against individual contributors.

15 Organisation of meetings

- 15.1 The Assembly took note of the information contained in documents 92FUND/A.7/13 and 92FUND/A.7/13/1 regarding the organisation of meetings.

Location, timing and duration of meetings

- 15.2 The Assembly decided that it would not be feasible to increase the length of the autumn session and that holding joint meetings of the governing bodies of the two Funds would result in only a marginal saving of time. It was accepted that the difficulties would be alleviated as the operation of the 1971 Fund progressively wound down.
- 15.3 The Italian delegation suggested that a fixed time limit of, say, 5 minutes for each intervention would help to reduce the time taken over meetings. Other delegations felt that this would not be practical. It was agreed that time could be saved by not introducing at the meeting documents in respect of which no decision was required, unless the Director felt that there was a need to do so.
- 15.4 It was emphasised that it would be preferable to continue to hold meetings in the IMO building for convenience as well as for cost reasons, recognising that this restricted the number and timing of meetings. There was also support for the existing policy of holding meetings back-to-back with IMO meetings to reduce the amount of travelling for delegations.
- 15.5 It was agreed that it would be useful for delegations if a provisional timetable was made available to them at the beginning of the meeting week.

Restricted documents

- 15.6 The Assembly decided that in future the Director should be authorised to decide, after consultation with the respective Chairman, whether a particular document should be restricted. It was agreed that this issue would be kept under review.

Content, production and distribution of documents

- 15.7 The Assembly noted the Director's intention to produce shorter documents in future and welcomed this initiative, which would reduce the workload for both Secretariat and delegations. The point was made, however, that documents should contain sufficient information to enable delegations to prepare for the meetings.
- 15.8 The Assembly took note of the Director's comments regarding deadlines for submission of Assembly and Executive Committee documents. It was noted that it would be very useful if documents could in general be available to delegations two weeks before meetings. The Director pointed out, however, that this approach might cause difficulties in particular for incident-related documents, and that in his view it was important that the governing bodies were prepared to consider documents even if they were submitted very late.
- 15.9 The Assembly decided that documents prepared by delegations to the Assembly, the Executive Committee or Working Groups should in general be submitted to the Secretariat at least three weeks before the meeting started, to allow them to be distributed to delegations no less than two weeks before the meeting. It was also decided that documents prepared by the Secretariat should in general be available no less than two weeks before the start of a meeting, although a degree of flexibility in this regard should be maintained, especially in respect of incident-related documents.
- 15.10 Some delegations considered that a core document could be useful for incident documents to avoid repeating background information which had previously been presented. It was stated that it would also be necessary to ensure that access to all relevant previous documents was given through the website. It was suggested that a box could be inserted on incident documents giving a summary of the claims situation, including the amounts paid.
- 15.11 It was suggested by one delegation that it would be easier if documents had the same number as the agenda item to which they referred. That delegation also suggested that each incident could have a reference number which was unchanged from one session to another, to make referencing of documents easier. The Director undertook to consider these proposals.
- 15.12 The Assembly noted the Director's recommendation that delegations not already using the document server should do so. Delegations were invited to consider whether they could reduce the number of copies received by post or not require any hard copies at all and to inform the Secretariat accordingly.
- 15.13 It was decided that the issues of the content, production and distribution of documents should be included in the agenda for the October 2003 sessions.

Access to meetings

- 15.14 With regard to access to meetings by the public, the Assembly endorsed the Director's view that meetings of the IOPC Funds' bodies should in general continue to be held in public, in the interest of transparency. The Assembly decided, however, that the body in question should have the right to decide that a particular meeting, or part of a meeting, should be held in private. It was also decided that even if a meeting of an IOPC Funds' body were held in public, the body in question should have the right to exclude at any time from attendance groups or individuals who interrupted or disturbed the meeting or if the body considered there was a risk that they might do so. It was agreed that a provision to this effect should be inserted in the respective Rules of Procedure.
- 15.15 It was also decided that the current policy of not allowing filming or recording of the meetings should be maintained.

- 15.16 The Assembly decided to amend the Rules of Procedure for the Assembly and the Executive Committee as set out below (amendments underlined):

**RULES OF PROCEDURE FOR THE
1992 FUND ASSEMBLY**

Access to meetings by the public

Rule 12

Sessions of the Assembly shall be held in public unless the Assembly decides otherwise. The Assembly may decide that a particular meeting or part of a meeting shall be held in private. If a meeting or part of a meeting is held in private, any decisions taken shall be reflected in the Record of Decisions. Even if a meeting of the Assembly is held in public, the Assembly may exclude at any time from attendance groups or individuals who interrupt or disturb the meeting or if the Assembly considers there is a risk that they may do so.

Meetings of subsidiary bodies of the Assembly other than the Administrative Council and the Executive Committee shall be held in private unless the Assembly decides otherwise in any particular case.

**RULES OF PROCEDURE FOR THE
1992 FUND EXECUTIVE COMMITTEE**

Rule (iv)

Sessions of the Committee shall be held in public unless the Committee decides otherwise. The Committee may decide that a particular meeting or part of a meeting shall be held in private. If a meeting or part of a meeting is held in private, any decisions taken shall be reflected in the Record of Decisions. Even if a meeting of the Committee is held in public, the Committee may exclude at any time from attendance groups or individuals who interrupt or disturb the meeting or if the Committee considers there is a risk that they may do so.

Meetings of subsidiary bodies of the Committee shall be held in private unless the Committee decides otherwise in any particular case.

16 Consideration of requests for observer status

- 16.1 The Assembly recalled that at its 6th extraordinary session, held in April/May 2002, it had been suggested that in future requests for observer status should be considered in detail by a small working group as was the normal practice within IMO. The information in document 92FUND/A.7/14 regarding the procedures within IMO was noted by the Assembly.

- 16.2 The Assembly decided that in future the following procedure would be followed:

At the beginning of a session at which a request for observer status by an international non-governmental organisation should be considered, the Assembly shall set up a small group of five Member States which shall during the session screen the request in order to establish whether the applicant fulfils the criteria set out in the 1992 Fund guidelines for the granting of observer status. The group shall report its findings to the Assembly before the end of its session so as to enable the Assembly to take a decision on the request.

- 16.3 The Assembly also decided that the 1992 Fund's guidelines for the granting of observer status should be amended to include the granting of such status on a provisional basis. It was agreed

that the following new paragraph B.2 should be inserted in the Guidelines, the present paragraph B.2 to be renumbered as B.3:

Observer status may be granted on a provisional basis for a period normally not exceeding three years.

- 16.4 It was further decided that the Assembly should review periodically whether observer organisations still fulfil the criteria set out in the guidelines. It was agreed that a new paragraph B.4 should be added to the guidelines to read as follows:

The Assembly will review every three years the list of international non-governmental organisations having observer status in order to determine whether the continuance of observer status for any particular organisation is of mutual benefit.

- 16.5 It was decided that the first review of the list of international non-governmental organisations having observer status should take place at the Assembly's October 2003 session. The Director confirmed that he would write to all observer organisations well before the session to inform them that the review would be taking place and to invite their comments.

17 Amendment to the Executive Committee's Rules of Procedure

- 17.1 The Assembly took note of the information in document 92FUND/A.7/15 regarding an inconsistency in the Rules of Procedure of the Executive Committee.

- 17.2 It was decided to amend item (vi) of the Executive Committee's Rules of Procedure to read (amendment underlined):

The provisional agenda for each session shall normally be communicated by the Director to the members of the Executive Committee and to other Member States at least 30 days before the session. Supporting documents should be distributed as early as possible, taking into account the need for Member States to prepare the sessions, the availability of the necessary information and the importance of claims for compensation and other urgent issues to be dealt with promptly.

- 17.3 In response to a request, the Director undertook to issue a document containing the Rules of Procedure of the Assembly and the Executive Committee and to consider making the Rules of Procedure available on the website.

18 Working methods of the Secretariat

- 18.1 The Assembly took note of the information in document 92FUND/A.7/16 regarding the steps taken to improve the efficiency of the Secretariat and the Director's intentions as regards further actions to this effect.

- 18.2 One delegation asked whether any progress had been made on the suggestion to initiate a quality assurance scheme discussed at the Assembly's 5th session held in October 2000. The Director confirmed that this issue was under consideration and that the Secretariat was working towards improving the quality of the different elements of the Organisations' work before implementing any quality assurance scheme.

- 18.3 The Assembly noted that a Claims Manager position provided for in the existing budget remained vacant. The Assembly confirmed that the Director had the authority to change job descriptions of staff and make any other adjustments necessary to make the most effective use of the available resources in the light of changing needs of the Organisations.

- 18.4 It was agreed that the Director should continue to present a report to the Assembly on the working methods of the Secretariat so that the Assembly would be kept informed of developments, but that a shorter document would be sufficient, showing only follow-up actions and new initiatives, together with any budgetary implications.
- 18.5 The Assembly expressed its appreciation of the IOPC Funds' website and emphasised the importance of its further development.

19 Amendments to Staff Rules

The Assembly noted the information contained in document 92FUND/A.7/17 with regard to the 1992 Fund's Staff Rules.

20 Appointment of members and substitute members of the Appeals Board

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 9th session of the Assembly.

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

21 Reports of the Executive Committee on its 15th – 18th sessions

- 21.1 The Chairman of the Executive Committee, Mr G Sivertsen (Norway), informed the Assembly of the work of the Committee during its 15th - 18th sessions (cf documents 92FUND/EXC.15/2, 92FUND/EXC.16/6, 92FUND/EXC.17/10 and 92FUND/EXC.18/14). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.
- 21.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman for the work of the Committee during this period and for his able chairmanship during the last two years.

22 Election of members of the Executive Committee

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

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Cameroon
France	Greece
Italy	Liberia
Republic of Korea	Marshall Islands
Singapore	Mexico
Spain	Philippines
United Kingdom	Poland
	Sweden

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.7/20.

23.2 As an introduction to document 92FUND/A.7/20/1, the Algerian delegation made the following statement:

Algeria has pointed out the difficulties of applying the 1992 Civil Liability Convention and the 1992 Fund Convention. It emphasises that the provision contained in Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention is challenged on the following grounds:

The text fails to take account of the configuration of certain maritime areas throughout the world, such as the Mediterranean, or of the special arrangements applying to enclosed and semi-enclosed seas as provided for in the 1982 United Nations Convention on the Law of the Sea. Articles 123 and 74(3) of that Convention provide for an agreement or arrangement for the delimitation of such enclosed or semi-enclosed seas between the opposing coastal States concerned.

In substance, Algeria stresses the need to amend the texts of the 1992 Conventions because of the impossibility in practical terms of applying those texts since the area between two opposing coastal States is in some places less than the 200 miles under the area equivalent to the exclusive economic zone (EEZ).

These texts, far from constituting a solution to the extension of the EEZ provided for in the 1992 Conventions, is, on the contrary, a potential source of contention and disputes and calls into question international legality.

Algeria therefore confirms its position on this question, namely that any application of the 1992 Conventions in enclosed and semi-enclosed seas implies a prior agreement or arrangement between the coastal States concerned.

23.3 The Italian delegation made the following statement:

Allow me to add just few comments to our statements made at the 5th and 6th Assembly, as recorded in the respective records, which we totally confirm and stress.

First of all, we want to welcome the decision of Algeria - which has accepted our invitation and suggestion made at the 6th Assembly - to make a declaration similar to ours, with which it establishes its rights to claim pollution damages within the national territory, the territorial sea and a zone outside the territorial sea of 200 miles from the base line.

Such declared zone overlaps the similar zone established in the tripartite declaration made by Spain, France and Italy: and this was actually our wish and our suggestion and still is, as for other Mediterranean countries, in a spirit of good neighbourhood and cooperation.

That said, I must add that I need some meditation to understand the aim of the proposal of the Algerian delegation to amend the Convention. Does it mean that Algeria wants to cancel its own just made declaration establishing their 200 miles zone? Or does this declaration mean that they fully recognise the legitimacy of this type of declarations?

Now, a short consideration on the Mediterranean situation. It is just the particular shape of its coasts which makes difficult, or perhaps impossible, to reach agreements as for the boundaries between or among the EEZs, perhaps for

technical reasons much more than for political ones. The result is anyway that no Mediterranean country has until now established its own EEZ. Exactly the same difficulties would be raised if we would try to establish separated equivalent zones according to the Conventions. The result would be: no agreement on the boundaries, no equivalent zone, no right to claim damages suffered beyond the very small strip of the territorial waters. Is this the aim of Algeria?

Finally, I want to remind that factually a pollution incident in the Mediterranean high sea, beyond the territorial waters, will surely affect several States, not only in their respective coasts, but also as for their respective fisheries: it is bearing in mind this reality that Italy, France and Spain made the tripartite declaration, and once again suggest and invite all the Mediterranean States to make a similar one.

As for the way to handle this issue, we fairly accept the decisions of the Assembly.

23.4 The Spanish delegation made the following statement:

This delegation has carefully read the draft Resolution submitted by the Algerian delegation and has followed with interest the statement made by the distinguished representative of Algeria.

For our part, we are most regretfully in disagreement with what he said and must therefore reaffirm the substance of the tripartite declaration presented by the delegations of Italy, France and Spain, together with the clarifications furnished by the Italian and Spanish delegations during the 6th session of the Assembly and recorded in document 92FUND/A.6/28.

We wish to highlight the fact that, for obvious reasons, neither France nor Italy nor Spain has established an EEZ in the Mediterranean.

The tripartite declaration was not intended to establish an EEZ; nor was its purpose to determine the existence of an equivalent space subject to exclusive jurisdiction. Our sole intention was and is to avail ourselves of the possibility afforded Member States under Articles 3(a)(ii) of the 1992 Protocol amending the CLC 69 and 4(a)(ii) of the 1992 Protocol modifying the 1971 Fund Convention, to claim compensation payments (including loss of profits) arising from pollution incidents occurring beyond the territorial sea. Hence the invitation to all States of the Mediterranean to embrace the tripartite declaration, in the realisation that it is in the interests of all.

It is important to point out that both in the tripartite declaration and in the subsequent clarifications to which reference has been made, it is specified that there shall be no prejudice to 'present or future disputes and legal views of any Party to this Declaration, concerning the law of the sea and the nature and extent of coastal flag State jurisdiction'.

In conclusion, we wish to emphasise that this delegation is completely open and willing to broach this matter with any other interested party for the purpose of reaching a mutually agreed solution through whatever channels may be deemed appropriate.

23.5 The Moroccan delegation made the following statement.

The Moroccan delegation has taken note of the Algerian initiative; many countries are known to be concerned by this problem.

We think that this delicate matter requires a detailed study, and it is for that reason that we share the view of Cyprus that it should be settled by the Working Group, which will be instructed to draw up a draft amendment, taking as a basis the various views that will be submitted, possibly in writing, by the end of February 2003, when that Group's next meeting is to be held.

23.6 The Algerian delegation made the following additional statement:

In response to the statement by Italy's representative, Algeria is anxious to point out that the Declaration that it has made should not be seen in connection with any other declaration, least of all the Tripartite Declaration, which it duly denounced at the 5th and 6th Assemblies in October 2000 and 2001.

Algeria made its Declaration pursuant to the 1992 Conventions in order to safeguard its rights to compensation pending the definitive settlement of this issue. Algeria points out that the problem concerns exclusively the text of Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention.

Algeria is open to any solution to rectify this situation, which will give rise to disputes for all opposing coastal States in enclosed and semi-enclosed seas, and requests the Assembly to examine Algeria's draft resolution, in respect of which it has full authority.

23.7 The French delegation made the following statement:

The French delegation pointed out that France's sole intention has been to declare an area in which the Civil Liability and Fund Conventions will apply beyond its territorial waters in the interest of any victims of pollution. The French delegation stated that it is amenable to any detailed discussion within the framework of the Assembly's Working Group, as has been suggested by certain delegations. This discussion should not relate to the declaration itself, in particular to its validity, but to the practical consequences for the implementation of the Civil Liability and Fund Conventions.

23.8 Some delegations suggested that the issue under discussion would be relevant also for areas other than the Mediterranean. It was stated that this issue was very complex and could not be resolved within the IOPC Funds but was a matter of general international law.

23.9 The Director pointed out that any amendment of the Articles in the 1992 Conventions referred to by the Algerian delegation would require a Diplomatic Conference and that if amendments were made, difficulties would arise if some States Parties to the 1992 Conventions did not ratify the instrument containing such amendments. He also pointed out that in the context of the 1992 Conventions the overlapping of EEZs or equivalent areas would not in most cases give rise to problems in respect of claims for compensation for clean-up costs and economic loss, unless the claims became the subject of litigation where questions of jurisdiction might arise.

23.10 The Assembly decided that it could not solve this issue which went beyond the scope of the 1992 Conventions and that it was for the Algerian delegation to raise this matter in the 3rd intersessional Working Group at its meeting in February 2003 if it wished to do so. It was emphasised that, if the Working Group were to take up this issue, it should focus on the practical problems of the implementation of the 1992 Conventions rather than on issues of general international law.

24 Sharing of joint administrative costs between the 1992 Fund and the 1971 Fund

- 24.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 2003 should be distributed with 80% to be paid by the 1992 Fund and 20% 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 2003 (document 92FUND/A.7/23).
- 24.2 It was noted that the Administrative Council of the 1971 Fund had agreed at its 9th session to the distribution proposed by the Director.

25 Working capital

The Assembly decided to maintain the working capital of the 1992 Fund at £20 million.

26 Budget for 2003 and assessment of contributions to the General Fund

- 26.1 The Assembly considered the draft 2003 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.7/23.
- 26.2 The Assembly adopted the budget for 2003 for the administrative expenses for the joint Secretariat with a total of £3 012 857, as reproduced in Annex III of this document.
- 26.3 It was noted that the Administrative Council of the 1971 Fund had at its 9th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.
- 26.4 The Assembly renewed its authorisation to 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.
- 26.5 The Assembly decided to levy contributions to the General Fund for a total of £3 million, with the entire levy due for payment by 1 March 2003.

27 Assessment of contributions to Major Claims Funds

- 27.1 The Director introduced document 92FUND/A.7/24 which contained proposals for the levy of 2002 contributions to Major Claims Funds.
- 27.2 In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Erika* incident, the Assembly decided to raise 2002 contributions to the *Erika* Major Claims Fund of £28 million. The Assembly also decided that the entire levy to the *Erika* Major Claims Fund should be due for payment by 1 March 2003.
- 27.3 The Assembly noted that its decisions in respect of the levy of 2002 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2003		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2001	1 270	3 000 000	3 000 000	0.0023622	0	0
<i>Erika</i>	1998	1 116	28 000 000	28 000 000	0.0250896	0	0
Total			31 000 000	31 000 000	0.0274518	0	0

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 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. It was also recalled that at its 1st session, the Assembly had 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.
- 28.2 The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 6th session of the Assembly as set out in document 92FUND/A.7/25.
- 28.3 It was noted that the Secretariat was carrying out the final phase of the development of a system to assist in identifying and reporting contributing cargo under the HNS Convention and that the database would include all substances qualifying as hazardous and noxious substances. The Director informed the Assembly that IMO had kindly agreed to provide data to the 1992 Fund in electronic format on the substances covered by the relevant IMO Conventions and Codes and that this would greatly facilitate the development of the database. He stated that the final system would be demonstrated to delegations at the earliest opportunity.
- 28.4 The Assembly expressed its gratitude to the Secretariat for the development of the system, noting that it would be of crucial importance for the implementation of the HNS Convention.
- 28.5 One delegation asked what work by the Secretariat would be needed in order to prepare for the entry into force of the HNS Convention. The Director stated that since it appeared that the HNS Convention might enter into force within a few years, it was necessary to commence the administrative preparations for the setting-up of the HNS Fund. He mentioned that a number of documents would have to be prepared for submission to the first session of the HNS Fund Assembly and that it was also important to consider how to handle claims relating to types of damage other than oil pollution damage, in particular those relating to personal injury and death. He suggested that, pending a decision on where the Secretariat function of the HNS Fund would be carried out and subject to the agreement of the Assembly, he could prepare a document on the preparation for the setting up of the HNS Fund for consideration by the Assembly at its 8th session in October 2003.
- 28.6 The Assembly invited the Director to prepare such a document for its October 2003 session.
- 28.7 1992 Fund Member States and interested non-governmental organisations were encouraged to refer to the work of the IMO Legal Committee on implementation of the HNS Convention. Particular attention was drawn to the information on the IMO website (www.imo.org) and the work of the Legal Committee Correspondence Group at (<http://folk.uio.no/erikro/WWW/HNS/hns.html>).

29 Quorum at Assembly sessions

- 29.1 The Assembly considered the information in document 92FUND/A.7/26 relating to the measures that could be taken to ensure that the 1992 Fund would continue to operate if the Assembly were unable to achieve a quorum.
- 29.2 The Assembly noted that pursuant to Article 18.14 of the 1992 Fund Convention the Assembly, as the supreme organ of the 1992 Fund, had the general obligation to ensure the proper operation of

the Organisation. It was also noted that under Article 18.9 the Assembly was authorised to establish any temporary or permanent subsidiary body, to define its terms of reference and to give it the authority to perform the functions entrusted to it.

- 29.3 It was noted that under the draft Resolution proposed by the Director, there would be no quorum requirement for the Administrative Council. A number of delegations considered, however, that a quorum requirement should be inserted in the Resolution. It was also questioned whether it would be necessary, as had been done in the Director's proposal, to insert a provision specifying that the Administrative Council should meet at least once every calendar year. The Director was invited to reconsider these issues.
- 29.4 The Assembly considered a revised draft Resolution prepared by the Director (document 92FUND/A.7/WP.1) which took into account the views referred to in paragraph 29.3 and contained alternative texts relating to the quorum issue and an amended text relating to the frequency of Administrative Council meetings. It was generally considered that a quorum requirement was necessary, but different views were expressed as to the number of States which should be present for a quorum to be achieved. Some delegations suggested that at least 25 to 30 Member States should be present whereas others proposed a quorum requirement of one-fourth or one-third of the Member States.
- 29.5 Several delegations made the point that it was important that a decision was taken at the present session which would provide for an Administrative Council to be set up in the event that the Assembly were unable to achieve a quorum in order to prevent the 1992 Fund from becoming unable to fulfil its functions.
- 29.6 Based on a compromise proposal by the Director, the Assembly decided unanimously to adopt the Resolution reproduced at Annex IV.
- 29.7 The Assembly decided that the operative part of the Resolution should be reconsidered at its 8th session in October 2003.

30 Future sessions

- 30.1 The Assembly decided to hold its next regular session during the week of 20 - 24 October 2003.
- 30.2 It was noted that the weeks of 3 February 2003 and 6 May 2003 were available for IOPC Fund meetings.

31 Any other business

- 31.1 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
- 31.1.1 The Assembly took note of the information contained in document 92FUND/A.7/27 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 (COPE Fund).
- 31.1.2 It was noted that the proposed Regulation had been considered by the European Parliament in June 2001 and that a number of amendments had been proposed by the Parliament, in particular that the COPE Fund should cover not only oil pollution damage but also damage by hazardous and noxious substances.
- 31.1.3 The Assembly noted that, after consideration of the European Parliament's proposal for amendments, the European Commission had adopted an amended proposal for the Regulation in question. It was also noted that the Commission's amended proposal, which would be considered by the Council of Ministers, had not been extended to cover damage by hazardous and noxious substances but remained limited to oil pollution.

31.1.4 The Director stated that he would keep the Assembly informed of any developments in respect of the proposed Regulation.

31.2 Observer status

31.2.1 It was recalled that the 1992 Fund Assembly had, at its 1st session in June 1996, granted observer status to the European Economic Community (document 92FUND/A.1/34, paragraph 4.2).

31.2.2 It was noted that the European Commission had requested that the name to be used in referring to the observer in the IOPC Funds should be the European Commission. The Commission pointed out that this would be in line with the situation in the International Maritime Organization.

31.2.3 The Assembly decided that the name to be used should be the European Commission.

32 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.7/WP.2, was adopted, subject to certain amendments.

* * *

ANNEX I

Amendment to the 1992 Fund's Claims Manual

The Section "Environmental damage" on pages 31 and 32 of the June 2000 edition of the Claims Manual is replaced by the following text:

Environmental damage

In most cases a major oil spill will not cause permanent damage to the environment as the marine environment has a great potential for natural recovery. Whilst there are limits to what man can do in taking measures to improve on natural processes, in some circumstances it is possible to enhance the speed of natural recovery after an oil spill through reasonable reinstatement measures. The costs of such measures will be accepted by the 1992 Fund under certain conditions.

The aim of any reasonable measures of reinstatement should be to bring the damaged site back to the same ecological state that would have existed had the oil spill not occurred, or at least as close to it as possible (that is to re-establish a biological community in which the organisms characteristic of that community at the time of the incident are present and are functioning normally). Reinstatement measures taken at some distance from, but still within the general vicinity of, the damaged area may be acceptable, so long as it can be demonstrated that they would actually enhance the recovery of the damaged components of the environment. This link between the measures and the damaged components is essential for consistency with the definition of *pollution damage* in the 1992 Civil Liability and Fund Conventions (see page 9).

In addition to satisfying the general criteria applied to the admissibility of claims for compensation under the 1992 Fund Convention (see page 19), claims for the costs of measures of reinstatement of the environment will only be considered admissible if the following criteria are fulfilled:

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

The assessment should be made on the basis of the information available when the specific reinstatement measures are to be undertaken.

Compensation is paid only for reasonable measures of reinstatement actually undertaken or to be undertaken, and if the claimant has sustained an economic loss that can be quantified in monetary terms. The Fund will not entertain claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. It will also not pay damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

Studies are sometimes required to establish the precise nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. Such studies will not be necessary after all spills and will normally be most appropriate in the case of major incidents where there is evidence of significant environmental damage.

The Fund may contribute to the cost of such studies provided that they concern damage which falls within the definition of *pollution damage* in the Conventions, including reasonable measures to reinstate a damaged environment. In order to be admissible for compensation it is essential that any such post-spill studies are likely to provide reliable and usable information. For this reason the studies must be carried out with professionalism, scientific rigour, objectivity and balance. This is most likely to be achieved if a committee or other mechanism is established within the affected Member State to design and co-ordinate any such studies, as well as reinstatement measures.

The scale of the studies should be in proportion to the extent of the contamination and the predictable effects. On the other hand, the mere fact that a post-spill study demonstrates that no significant long-term environmental damage has occurred or that no reinstatement measures are necessary, does not by itself exclude compensation for the costs of the study.

The Fund should be invited at an early stage to participate in the determination of whether or not a particular incident should be subject to a post-spill environmental study. If it is agreed that such a study is justified the Fund should then be given the opportunity of becoming involved in the planning and in establishing the terms of reference for the study. In this context the Fund can play an important role in helping to ensure any post-spill environmental study does not unnecessarily repeat what has been done elsewhere. The Fund can also assist in ensuring that appropriate techniques and experts are employed. It is essential that progress with the studies is monitored, and that the results are clearly and impartially documented. This is not only important for the particular incident but also for the compilation of relevant data by the Fund for future cases.

It is also important to emphasise that participation of the Fund in the planning of environmental studies does not necessarily mean that any measures of reinstatement later proposed or undertaken will be considered admissible.

* * *

ANNEX II

Composition and Mandate of the IOPC Funds' Audit Body

- 1 The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: one named Chairman nominated by Member States, five named individuals nominated by Member States and one named individual not related to the Organisations (“outsider”), with expertise and experience in audit matters nominated by the Chairman of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director at least six weeks in advance of the session at which the election will take place.
- 2 Members of the Audit Body shall hold office for three years, once renewable. Of the first Audit Body to be elected, the term of three of those elected from Member States shall not be renewable.
- 3 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole. The members elected from Member States shall not receive any instructions from their Governments.
- 4 Travel and subsistence expenses of the six members of the Audit Body elected from Member States shall be paid by the Organisations. The member not related to the Organisations (“outsider”) shall be paid travel expenses and an appropriate fee.
- 5 The Audit Body shall:
 - (a) review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;
 - (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;
 - (c) discuss with the External Auditor the nature and scope of each forthcoming audit;
 - (d) review the Organisations' financial statements and reports;
 - (e) consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and
 - (f) make appropriate recommendations to the Assemblies.
- 6 The Audit Body shall normally meet at least twice a year. The Chairman of the Audit Body and the External Auditor may request that additional meetings should be held. The meetings shall be convened by the Director, in consultation with the Chairman of the Audit Body.
- 7 The External Auditor, the Director and the Head of the Finance and Administration Department shall normally be present at the meetings.
- 8 The Chairman of the Audit Body shall report on its work to each regular session of the Assemblies.
- 9 Every three years the functioning of the Audit Body and its mandate shall be reviewed by the Assemblies on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX III

2003 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 2001 expenditure for 1971 and 1992 Funds		2001 budget appropriations for 1971 and 1992 Funds		2002 budget appropriations for 1971 and 1992 Funds		2003 budget appropriations			
								Total		Distribution	
										1992 Fund	1971 Fund
SECRETARIAT		£		£		£		£		£	£
I	Personnel										
(a)	Salaries	1 005 922		1 115 240		1 190 291		1 275 816		1 033 864	241 952
(b)	Separation and recruitment	113 658		113 658		55 000		35 000		28 000	7 000
(c)	Staff benefits, allowances and training	342 835		439 022		481 922		523 341		418 673	104 668
	Sub-total		1 462 415		1 667 920		1 727 213		1 834 157	1 480 537	353 620
II	General Services										
(a)	Rent of office accommodation (including service charges and rates)	215 797		223 950		240 450		249 700		199 760	49 940
(b)	Office machines, including maintenance	45 851		71 500		71 500		71 500		57 200	14 300
(c)	Furniture and other office equipment	7 079		24 500		17 500		17 500		14 000	3 500
(d)	Office stationery and supplies	21 350		22 000		20 000		20 000		16 000	4 000
(e)	Communications (telephone, telefax, telex, postage)	48 741		56 151		65 500		65 000		52 000	13 000
(f)	Other supplies and services	34 449		34 449		38 000		41 000		32 800	8 200
(g)	Representation (hospitality)	15 308		16 500		16 500		22 500		18 000	4 500
(h)	Public Information	67 454		220 000		180 000		180 000		149 000	31 000
	Sub-total		456 029		669 050		649 450		667 200	538 760	128 440
III	Meetings										
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		95 950		126 500		126 500		126 500	88 000	38 500
IV	Travel										
	Conferences, seminars and missions		66 172		70 000		70 000		70 000	56 000	14 000
V	Miscellaneous expenditure										
(a)	External audit	40 936		50 000		50 000		50 000		30 000	20 000
(b)	Payment to IMO for general services (included in II (a) above)	0		6 500		6 500		0		0	0
(c)	Consultants' fees	64 645		100 000		100 000		125 000		100 000	25 000
(d)	Audit Body	0		0		0		50 000		25 000	25 000
(e)	Investment Advisory Bodies	27 000		27 000		27 000		30 000		15 000	15 000
	Sub-total		132 581		183 500		183 500		255 000	170 000	85 000
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		0		60 000		60 000		60 000	48 000	12 000
Total Expenditure I-VI			2 213 147		2 776 970		2 816 663		3 012 857	2 381 297	631 560
VII	Expenditure relating only to 71Fund		8 200		250 000		250 000				250 000

* * *

ANNEX IV

1992 Fund Resolution N°7

Adopted by the 1992 Fund Assembly at its 7th session, held in October 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 11 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions;

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved.
- 2 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
 - (a) to perform such functions as are allocated to the Assembly under the 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
 - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
 - (c) to give instructions to the Director concerning the administration of the 1992 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;
- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:

- (a) 1992 Fund Member States;
- (b) other States which would be invited to attend sessions of the Assembly as observers; and
- (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and

5 **FURTHER DECIDES:**

- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
- (b) that at least 25 Member States shall constitute a quorum for the meetings of the Administrative Council;
- (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
- (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
- (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.