



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
8th session
Agenda item 34

92FUND/A.8/30
24 October 2003
Original: ENGLISH

RECORD OF DECISIONS OF THE EIGHTH SESSION OF THE ASSEMBLY

(held from 20 to 24 October 2003)

Chairman:	Mr W Oosterveen (Netherlands)
First Vice-Chairman:	Mr José Aguilar-Salazar (Mexico)
Second Vice-Chairman:	Mr Zafrul Alam (Singapore)

Opening of the session

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A.8/1.

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:	Mr José Aguilar-Salazar (Mexico)
Second Vice-Chairman:	Mr Zafrul Alam (Singapore)

- 2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.
- 2.3 The Vice-Chairmen expressed their gratitude to the Assembly.
- 2.4 The Assembly expressed its deepest appreciation to the outgoing first Vice-Chairman, Professor Hisashi Tanikawa (Japan), for his outstanding contribution to the work of the Assembly for many years.

3 Examination of credentials

3.1 The following Member States were present:

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

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

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

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

Ghana

Other States

Brazil	Democratic People's Republic	Malaysia
Chile	of Korea	Peru
Côte d'Ivoire	Ecuador	

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)
European Commission
Central Commission for Navigation on the Rhine (CCNR)

International non-governmental organisations:

Comité Maritime International (CMI)
Conference of Peripheral Maritime Regions (CPMR)
Cristal Ltd
Federation of European Tank Storage Associations (FETSA)
Friends of the Earth International (FOEI)

International Association of Independent Tanker Owners (INTERTANKO)
International Group of P & I Clubs
International Salvage Union (ISU)
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

- 4.1 In a joint session of the 1992 Fund Assembly and the 1971 Fund Administrative Council, both bodies took note of the information contained in document 92FUND/A.8/2 (document 71FUND/AC.12/2) on the activities of the 1992 and 1971 Funds since their October 2002 sessions.
- 4.2 The Director took the opportunity to comment on the achievements of the IOPC Funds in its 25 years of existence and the significant developments of the international compensation regime during this time.
- 4.3 The Director stated that the 1971 Fund Convention had entered into force on 16 October 1978 and that it was the 25th anniversary of the 1971 Fund that was being celebrated during the week's sessions of the Funds' governing bodies. The Director welcomed Mr Jørgen Bredholt, who had chaired the 1971 Fund Assembly for the first 16 years, and Mr Charles Coppolani, who not only chaired the 1971 Fund Assembly, but also the 1992 Fund Assembly. The Director also welcomed his predecessor Dr Reinhard Ganten, the 1971 Fund's Director for its first six years, and Professor Hisashi Tanikawa and Mr Heikki Muttilainen, who had both participated in the Diplomatic Conference in 1971 adopting the Fund Convention.
- 4.4 The Director mentioned that the 1992 Fund was created when the 1992 Fund Convention entered into force on 30 May 1996, and that the two Conventions had co-existed until 24 May 2002 when the 1971 Fund Convention ceased to be in force, although the 1971 Fund would remain in existence until such time as all claims had been settled when the Fund could be finally wound up.
- 4.5 The Director noted that when the 1971 Fund had been set up in 1978 it had just 14 Member States, the membership growing steadily over the years to a maximum of 76, whilst the 1992 Fund started off with just nine Member States, but today a total of 86 States had ratified the 1992 Fund Convention. He mentioned that the Funds had been involved in some 125 incidents in over 20 States during the past 25 years and had paid out some £420 million in compensation, and that the growth of the membership was an indication that the international compensation scheme had in general worked well.
- 4.6 The Director acknowledged, however, that some recent major incidents had resulted in the compensation regime being subject to criticism for not providing adequate protection to victims of oil pollution, but that the Member States had taken steps to improve the regime, namely by an increase in the limitation amounts by 50.37% with effect from 1 November 2003, the adoption of the Supplementary Fund Protocol and the development of the Fund policy on environmental damage. He stated that the review of the adequacy of the regime would be continued by the intersessional Working Group created for the purpose.
- 4.7 The Director referred to the fact that the IOPC Funds had acquired over the years considerable experience in handling claims and that the governing bodies had developed criteria for the admissibility of various types of claims, which had been reflected in a Claims Manual, the most recent version of which had been published in November 2002.
- 4.8 The Director stated that when the 1971 Fund had been set up, it had been decided that it should have a small Secretariat and engage experts on a consultancy basis as and when required, and that although the Secretariat had grown considerably from its original staff complement of four, it remained a compact structure that still relied heavily on external experts. The Director took the

opportunity to thank not only the present staff members but also former staff for their outstanding work.

- 4.9 The Director reminded the governing bodies that when he had presented the budget for 2003 he had included an appropriation for the publication of a commemorative book in the three official languages of the Funds to mark the occasion of the 25th anniversary. In introducing the book, which gave an account in the form of 18 articles of the developments that had taken place within the framework of the international compensation regime over the past 25 years, the Director expressed his gratitude to the authors who had contributed to the publication.
- 4.10 In conclusion, the Director pointed out that on the occasion of the 25th anniversary it was important not only to look back on what had been accomplished, but also to look ahead so as to ensure that the regime continued to meet the needs and aspirations of the international community in the 21st century.
- 4.11 Dr Reinhard Ganten expressed his pleasure at being present on the occasion of the 25th anniversary of the setting up of the IOPC Funds. He commented that although 25 years could be considered a short period of time, a great deal had been achieved and many changes had taken place. He recalled that the first meeting of the 1971 Fund Assembly had taken place in a small meeting room at the IMO Headquarters, then in Piccadilly, with only a few Member States at that time present. He compared that meeting to the present session of the Assembly, which he pointed out was being held in a very large and full conference room which, in his view, was an indication of the success of the Organisations.
- 4.12 Dr Ganten congratulated the authors of the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions as well as all those who had played a part over the years in creating and developing an international compensation regime which had been up to the challenges with which it had been faced. He commented that in spite of the problems that the IOPC Funds had encountered over the years the Organisations were in a position to celebrate.
- 4.13 The United Kingdom delegation expressed, on behalf of the Host Government, the view that all Contracting States should congratulate themselves on being part of and contributing to the creation of a truly international Organisation. That delegation commented that the great strength of the Organisation was, in its view, the mutual support and respect that the representatives of many States had for and gave to each other, particularly in times of crisis. He suggested that this was indeed a time for celebration.
- 4.14 Professor Hisashi Tanikawa of Japan expressed his congratulations to the IOPC Funds, the Member States and the Secretariat. He explained that he was one of the veteran's of the international compensation scheme, having been involved in the work of the IOPC Funds for about one third of his life, starting with the preliminary work on setting up the organisation, becoming the first Chairman of the 1971 Fund Executive Committee and Vice-Chairman of the 1971 Fund Assembly. He said that he had enjoyed his involvement with the IOPC Funds during 24 years, which he had found both interesting and valuable, and he hoped to be able to continue to serve the Organisations in the future.
- 4.15 The representative of the International Maritime Organization also congratulated the IOPC Funds on their success and thanked the staff of the Secretariat for their tireless efforts in promoting the international Conventions worldwide and for the help that they had given in compensating the victims of oil pollution incidents.
- 4.16 Mr Alfred Popp QC (Canada), in his role as Chairman of the 1992 Fund third intersessional Working Group and as Chairman of two Diplomatic Conferences that had made changes to the present system, intervened as a representative of the voice of the future of the IOPC Funds. He expressed the view that as a result of the outstanding work of the two Directors, all Chairmen past and present and the Secretariat, the Funds were among the most efficient Organisations in the

family of the United Nations. He recalled that the two Organisations had originally met great scepticism within the international community but that the records would show that millions of pounds of claims had been settled without the need to go to court.

- 4.17 One delegation led the Assembly in applauding all those who had contributed to the work of the IOPC Funds, the Director, Chairmen and Secretariat in recognition and appreciation of their hard work, which, he said, had ensured the growth in the number of Member States.
- 4.18 The representative of the Friends of the Earth stated that the existence of the IOPC Funds was undoubtedly a good thing given that it was sometimes difficult to find the person liable who had the means to pay compensation. He said that whilst it should be recognised that the IOPC Funds were beneficial to victims, it should equally not be forgotten that victims had rarely been happy with the manner in which they had been treated and that the *Erika* and *Prestige* incidents had reinforced this view. He stated that the primary objective of the Funds should be to solve the problems for both victims and the environment and that he hoped the entry into force of the Supplementary Fund Protocol would resolve this problem.
- 4.19 The Chairman of the 1992 Fund Assembly thanked the Secretariat, the Director and all those involved in the core work that ensured genuine claimants were compensated as quickly as possible.
- 4.20 The Chairman of the 1971 Fund Administrative Council stated that although his role was to finally liquidate the 1971 Fund, he nevertheless wanted to add his congratulations to those of others in celebrating its 25th anniversary.
- 4.21 The Director presented copies of the anniversary publication 'The IOPC Funds' 25 years of compensating victims of oil pollution incidents' to the Chairmen of the 1971 Fund Administrative Council and the 1992 Fund Assembly following which copies were distributed to delegates.

5 Status of the 1992 Fund Convention

The Assembly took note of the information contained in document 92FUND/A.8/3 concerning the ratification situation in respect of the 1992 Fund Convention and noted there were at present 82 Member States of the 1992 Fund and four more States that would become Members within the next eight months. It was also noted that 13 States which were Members of the 1971 Fund when the 1971 Fund Convention ceased to be in force had not yet acceded to the 1992 Fund Convention.

6 Progress of the 3rd intersessional Working Group

As a result of the late cancellation of the sixth meeting of the 3rd intersessional Working Group, which was due to take place on 23 October 2003, this agenda item was not discussed.

7 Report on International Conference on the establishment of a supplementary fund for compensation for oil pollution damage

- 7.1 The Assembly took note of the information contained in document 92FUND/A.8/4 regarding the International Conference on the establishment of a supplementary fund for compensation for oil pollution damage, which was held under the auspices of IMO from 12 to 16 May 2003.
- 7.2 The Assembly noted the Resolution adopted by the International Conference in which it was acknowledged that the funding for the Conference had been made available by the 1992 Fund on the understanding that the amount paid to IMO for convening and holding the Conference would be reimbursed, with interest, by the Supplementary Fund to the 1992 Fund and that the Conference had urged the Contracting States to the Protocol, when it had entered into force, to ensure that this reimbursement would be made.

- 7.3 It was further noted that the International Conference which had adopted the Protocol had also adopted a Resolution on the Establishment of the International Oil Pollution Compensation Supplementary Fund which requested the 1992 Fund Assembly to authorise and instruct the Director, on the basis that all costs and expenses that may be incurred will be reimbursed by the Supplementary Fund:
- (a) to perform, in addition to the Director's functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the Supplementary Fund in accordance with the provisions of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, provided that the interests of Contracting States to the 1992 Fund Convention were not unduly affected;
 - (b) to provide all necessary assistance for the setting up of the Supplementary Fund;
 - (c) to make the necessary preparations for the first session of the Assembly of the Supplementary Fund, which was to be convened by the Secretary-General of IMO, in accordance with Article 22 of the Protocol;
 - (d) to enter into negotiations with IMO with a view to enabling the Supplementary Fund to reach agreements, as soon as possible, regarding appropriate administrative arrangements;
 - (e) to enter into negotiations with the Supplementary Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling the 1992 Fund and the Supplementary Fund to share a single Secretariat, headed, if appropriate, by the same Director.
- 7.4 The Assembly took note of the information contained in document 92FUND/A.8/4/1 concerning the preparations for the setting-up of the Supplementary Fund.
- 7.5 It was noted that under Article 22 of the Supplementary Fund Protocol, the Secretary-General of IMO should convene the first session of the Assembly and that this session should take place as soon as possible after the entry into force of the Protocol and, in any case, not more than 30 days after such entry into force.
- 7.6 It was noted that Spain had signed the Supplementary Fund Protocol on 26 September 2003 without reservation as to ratification, acceptance or approval.
- 7.7 It was noted that it was possible that the Protocol would enter into force during 2004 and that the first session of the Supplementary Fund Assembly might therefore have to be held during that year.
- 7.8 The Director was instructed to base the preparatory work on the assumption that the Supplementary Fund would have its Headquarters in London and that the 1992 Fund and the Supplementary Fund would be administered by a joint Secretariat headed by a single Director.
- 7.9 The Assembly noted the Director's view that, if the 1992 Fund and the Supplementary Fund were to have a joint Secretariat, agreement would need to be reached between the Organisations on a formula for sharing the costs of running the Secretariat. It was noted that, in the Director's view, it was important to find a simple formula for this purpose and that the arrangements for sharing of such costs between the 1992 Fund and the 1971 Fund on a percentage basis could be considered in this context. One delegation suggested that the costs should be shared in proportion to the amount of compensation paid by the respective Funds.
- 7.10 The Assembly agreed with the Director that, since the Supplementary Fund would not make its own examination of claims for compensation, but pay compensation for claims which had been recognised by the 1992 Fund or had been accepted as admissible by a decision of a competent

court binding on the 1992 Fund, there would be no need for the Supplementary Fund to set up a body to deal with claims for compensation.

- 7.11 The Director was instructed to enter into consultations with the United Kingdom Government on the preparations of a Headquarters Agreement governing the relationship between the Host State and the Supplementary Fund and at the same time consider with the Government whether the 1992 Fund's Headquarters Agreement should be revised in the light of developments.
- 7.12 The Director was also instructed to enter into negotiations with IMO concerning administrative arrangements for the Supplementary Fund.
- 7.13 The Director was instructed to study the other issues dealt with in document 92FUND/A.8/4/1 and submit draft texts for examination at a future session of the Assembly.
- 7.14 It was noted that it might be necessary to convene an extraordinary session of the 1992 Fund Assembly to consider these issues during 2004.
- 7.15 Since the first Assembly of the Supplementary Fund to be convened by the Secretary-General of IMO would have to be held within one month of the entry into force of the Supplementary Fund Protocol, the Assembly stressed the importance of Member States keeping the Secretary-General and the Director informed of their progress towards ratification of that Protocol.

8 Developments within the European Union on matters of interest to the 1992 Fund

The Assembly took note of the information contained in document 92FUND/A.8/5 regarding the developments in respect of a proposed European Union Directive on environmental liability and in respect of a proposal for a decision of the Council of the European Union authorising European Community Member States to become parties to the Supplementary Fund Protocol.

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 2002 to June 2003, contained in document 92FUND/A.8/6.
- 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.8/7. It also took note of the objectives for the coming year and took note of the amendments to the Internal Investment Guidelines proposed by the Investment Advisory Bodies and accepted by the Director.
- 10.2 The Assembly noted a proposal by the Investment Advisory Bodies that the Funds' Financial Regulation 10.4 (b) should be amended so as to enable the Funds to invest in Certificates of Deposits. This proposal was dealt with under agenda item 33 (Any other business).
- 10.3 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their valuable work.

11 Financial Statements, Auditor's Report and Opinion and Audit Body's Report

- 11.1 The Director introduced document 92FUND/A.8/8 containing the Financial Statements of the 1992 Fund for the financial year 2002 and the External Auditor's Report and Opinion thereon.

- 11.2 A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.
- 11.3 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 and other income, administrative expenditure, cash management and investments. 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 had been settled as promptly as possible, and that the settlements had properly taken into account the interest of the Fund and the claimants.
- 11.4 It was noted that the External Auditor's staff had carried out a review of original claims supporting documentation at the Claims Handling Office in Lorient set up to deal with claims arising from the *Erika* incident and had found that satisfactory controls remained in place and that the office was well organised and efficiently managed. It was further noted that a review had been carried out of the amount recovered arising from the global settlement reached in 2002 in relation to the *Nakhodka* incident and that the External Auditor had confirmed that the receipts in respect of the global settlement had been applied in accordance with the agreement signed by the Funds and the shipowner's insurer and that the apportionment of this receipt between the Funds was made in accordance with the decisions of the governing bodies.
- 11.5 The Assembly noted that the External Auditors had welcomed the establishment of the Audit Body for the two Organisations and considered that it was a significant initiative in the governance and financial management of the Funds' operation.
- 11.6 It was noted with satisfaction that the External Auditor's reviews of allegations made in relation to the *Erika* incident were satisfactory and that no further matters had arisen in respect of this.
- 11.7 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.8/8, and that the External Auditor had provided an unqualified audit opinion on the 2002 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.
- 11.8 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.8/8/1 (document 71FUND/AC.12.5/1) containing the Audit Body's Report. In his introduction Mr Coppolani, on behalf of the members, thanked the governing bodies for the trust placed in them. He added that the Body was not a substitute for the External Auditor and that its aim was to help the Director and the Secretariat maintain transparency in respect of the Funds fulfilling their tasks. He also mentioned that the Body intended to address the issue of risk management over the coming year.
- 11.9 It was noted that the Audit Body had considered *inter alia* procedures to ensure that the Annual Report continued to address the need of increasing numbers of users for comprehensive and accurate financial and other information covering the full range of the Funds' activities as well as the relationship of the Audit Body with the External Auditor and with the Investment Advisory Bodies.
- 11.10 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1971 and 1992 Funds for the Financial Year 2002.
- 11.11 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2002.
- 11.12 The Assembly expressed its gratitude for the important work being carried out by the Audit Body.

- 11.13 Some delegations suggested that in future the Report of the Audit Body should form a separate agenda item.
- 11.14 Many delegations expressed the view that the Audit Body should not confine its work to the financial aspects of the Funds but also be involved in reviewing operational and management issues.

12 Honorarium of Members of the Audit Body

The Assembly took note of the information contained in document 92FUND/A.8/9 (document 71FUND/AC.12/6) and decided that the six members of the Audit Body elected from Member States should be entitled to an honorarium of £1 500 for a twelve-month period from 1 November to 31 October, payable with effect from the date of their appointment (ie October 2002).

13 Appointment of members of the Investment Advisory Body

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

14 Report on contributions

- 14.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.8/11. It also noted that further contributions had been received from contributors in three Member States.
- 14.2 The Assembly expressed its satisfaction with the situation regarding the payment of contributions.

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.8/12 (cf document 71FUND/AC.12/9). It was noted that, since the document had been issued, four States (Fiji, Grenada, India and Ireland) had submitted their outstanding oil reports. It was also noted that a total of 31 States therefore still had outstanding oil reports for the year 2002 and/or previous years: 14 States in respect of the 1971 Fund and 24 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.
- 15.2 The Assembly noted with satisfaction that some States which had had outstanding reports for a number of years to either the 1971 Fund or the 1992 Fund or to both had submitted some or all of their reports, notably the Syrian Arab Republic (12 years), Mozambique (7 years), the Maldives (5 years), Kuwait (4 years), Panama (4 years), India, (3 years), Fiji (2 years), Grenada (2 years), Morocco (2 years) and Trinidad and Tobago (2 years).
- 15.3 Many delegations expressed their very serious concerns as regards the number of Member States which had failed to submit oil reports. It was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1992 Fund Convention.
- 15.4 The following suggestions were made as to ways in which it might be possible to obtain the outstanding reports:
- A document drawing attention to the issue could be submitted to the forthcoming IMO Assembly, where high-level representatives from a number of the States with outstanding reports would be present;
 - The Secretariat could engage lawyers on a contingency basis to obtain the outstanding reports;

- In their national legislation States could provide for severe penalties for contributors who failed to submit reports.
- 15.5 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 Assembly urged all delegations to do their utmost to make sure that their national administrations submitted oil reports.
- 15.6 The question was raised as to whether a State which had not submitted its oil reports was covered by the 1992 Fund Convention.
- 15.7 The Director pointed out that the issue of whether it was possible to use sanctions against States which had not submitted oil reports had been considered several times by the Assembly and mentioned that the conclusion had been that there was not much that could be done under the present text of the Conventions.
- 15.8 It was decided that the matter should be kept under review and that it should be brought to the attention of the Assembly every year.
- 15.9 The Assembly recalled that it had previously 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 noted that a real solution for the future could only come from a revision of the 1992 Conventions being considered by the intersessional Working Group.

16 **Organisation of meetings**

- 16.1 The Assembly took note of the information contained in document 92FUND/A.8/13 (document 71FUND/AC.12/10) regarding the organisation of meetings.

Restricted documents

- 16.2 The Assembly decided that in future it was not necessary to restrict access to documents relating to the draft Budget and the levy of contributions as these documents did not in general contain information which should not be available to the public.
- 16.3 It was recalled that the governing bodies had decided, at their October 2002 sessions, that in future the Director should be authorised to decide, after consultation with the respective Chairmen, whether a particular document should be restricted. The Assembly confirmed that the Director's authority in this regard remained.

Content, production and distribution of documents

- 16.4 The Assembly noted the Director's intention to continue to produce shorter documents in future.
- 16.5 The Assembly noted the Director's observations regarding deadlines for submission of documents to the Assembly, the Executive Committee or Working Groups.
- 16.6 The Assembly noted the Director's recommendation that delegations not already using the document server should do so. Delegations were also invited to consider again 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.

17 Review of observer status

- 17.1 The Assembly recalled that at its 7th session, held in October 2002, it had decided to insert in the Guidelines on relations between the 1992 Fund and inter-governmental organisations and international non-governmental organisations a new provision which 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.

- 17.2 It was noted that many international non-governmental organisations having observer status to the 1992 Fund Assembly also had observer status to the 1971 Fund. It was therefore agreed that the review should be carried out on behalf of both governing bodies.
- 17.3 It was also recalled that the Assembly had decided at the October 2002 session that the first review should take place at the October 2003 session.
- 17.4 It was noted that in April 2003 the Director had written to all the international non-governmental organisations having observer status at the meetings of IOPC Funds' bodies - except for the Conference of Peripheral Maritime Regions (CPMR), which had only recently (April/May 2002) been granted observer status with the 1992 Fund on a provisional basis - inviting comments on whether the continuance of observer status would be of mutual benefit to the respective organisation and to the 1992 Fund.
- 17.5 The Assembly took note of the information contained in Annex III to document 92FUND/A.8/14 (document 71FUND/AC.12/12) which set out the responses received from the organisations concerned. In accordance with a decision taken at its October 2002 session, the Assembly decided to set up a group of five States to screen the responses in order to establish whether the continuance of observer status for any particular international non-governmental organisation was of mutual benefit and to report its findings during the present session to the governing bodies.
- 17.6 The Assembly decided upon the composition of the group as follows:

China (Hong Kong Special Administrative Region)
Cyprus
Liberia
Trinidad and Tobago
United Kingdom

- 17.7 The group held a meeting during the present session and reported to the Assembly as follows.

The group considered the information about non-governmental organisations having observer status provided in document 92FUND/A.8/14 (documents 71FUND/AC.12/12), and in particular the information concerning attendance at meetings of the IOPC Funds since 1996.

The group noted that Friends of the Earth International (FOEI) had not attended any meetings during the period 1996-2002, but that it had attended a number of meetings during 2003. It therefore recommended that the Assembly request the Director to write to FOEI encouraging it to continue its active participation.

The group noted that both BIMCO and the International Salvage Union (ISU) had only attended a small number of meetings during the period 1996-2003. It therefore recommended that the Assembly request the

Director to write to these two organisations informing them that the Assembly wished to strongly encourage them to attend meetings on a regular basis and that their observer status would be considered again at the next regular review in October 2006.

The group noted that the Advisory Committee on Protection of the Sea (ACOPS) had not attended any meetings during the period 1996-2003 and therefore recommended that the Assembly request the Director to write to ACOPS stating that the Assembly was seriously concerned that ACOPS had not attended any meetings since the establishment of the 1992 Fund, despite enjoying observer status, notifying it of the meeting dates for 2004 and informing it that the Assembly would consider whether to withdraw the observer status of ACOPS at its session in October 2004.

The group recommended that the Assembly should confirm the continuance of observer status of the other non-governmental organisations included in the review, ie:

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

The group noted that the provisional observer status of CPMR would need to be reviewed by the Assembly no later than April 2005 and recalled that when observer status was granted to CPMR on a provisional basis some doubt had been expressed as to whether CPMR was an organisation of 'truly international character'. The group therefore recommended that, in advance of that review, the Assembly should clarify the term 'truly international character' and that the Assembly should instruct the Director to write to CPMR requesting an updated membership list.

The group considered that for the next regular review in October 2006 it would be helpful if the Director could also make available information on submission of documents to meetings and on contacts between the Secretariat and the organisations concerned.

- 17.8 The Assembly endorsed the group's recommendations.
- 17.9 The Assembly decided that the provisional observer status of CPMR should be reviewed at its session in October 2004.
- 17.10 One delegation of a non-governmental organisation with observer status spoke on behalf of all such delegations to express their gratitude for the welcome they were given by the Assembly.

18 Working methods of the Secretariat

- 18.1 The Assembly took note of the information contained in document 92FUND/A.8/15 (document 71FUND/AC.12/11) regarding the working methods of the Secretariat.

- 18.2 It was recalled that Staff Regulation 17 of the 1992 Fund provided that the emoluments of members of staff should follow the United Nations common system as applied by IMO. The Assembly noted the work carried out by a consultant with extensive experience of classification of posts within the United Nations system who had reviewed the job descriptions of all staff within the Secretariat and developed a formal job classification methodology. It was noted that the Director had, in the light of the consultant's assessments, and in order to bring the Funds' grading of posts in line with the grading of posts in other organisations within the United Nations system, upgraded and reclassified a number of posts with effect from 1 October 2003.
- 18.3 The Assembly noted the staff policies issued by the Director as set out in paragraph 5.2.1 of document 92FUND/A.8/15.
- 18.4 One delegation expressed its satisfaction with the work carried out to classify posts, but proposed that at some stage in the future the Assembly should give consideration as to whether it was appropriate for a small intergovernmental organisation like the 1992 Fund to stay in step with the United Nations system, or whether some performance related salary should be introduced.
- 18.5 The Director stated that it could have far reaching consequences if the Fund were to move outside the United Nations common system. He mentioned that the United Nations was reviewing the system to make it more flexible and that he would prefer to await the outcome of this review unless the Secretariat were to face recruitment problems.
- 18.6 Another delegation acknowledged the progress that had been made in developing a modern management structure, but expressed a reluctance to move out of the United Nations remuneration system entirely, although this need not, in its view, preclude additional remuneration related to performance. That delegation also stated that he did not want the Secretariat to lose sight of the need to introduce recognised management standards into the Funds' operating practices.

19 Amendments to Staff Rules

The Assembly noted the information contained in document 92FUND/A.8/16 with regard to the 1992 Fund's Staff Rules.

20 Reports of the Executive Committee on its 19th – 22nd sessions

- 20.1 The Chairman of the Executive Committee, Mr J Rysanek (Canada), informed the Assembly of the work of the Committee during its 19th – 22nd sessions (cf documents 92FUND/EXC.19/2, 92FUND/EXC.20/7, 92FUND/EXC.21/5 and 92FUND/EXC.22/14). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.
- 20.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman for his work.

Prestige incident

- 20.3 The Assembly noted that earlier in the week the Spanish delegation had made a proposal to the 1992 Fund Executive Committee that the 1992 Fund should make advance payments on account to the Spanish Government and to the Governments of other affected States. It was noted that the proposal contained the following elements:

The Executive Committee should authorise the advancing "on account" to the Government or Governments of the affected States which wished to receive such on account payments, sums that would be estimated by the Director on the basis of the assessment of the damage. Such advances could vary over time in accordance with how the situation evolved in the various countries.

The advances would be subject to the following conditions:

- (a) They would be advances "on account". Consequently, should it transpire from the final settlement that a particular State had been advanced more than it was entitled to, the State in question should return the corresponding overpayment. A State receiving advances should provide the necessary guarantees in that respect.
- (b) The 1992 Fund should in any event follow its customary practice when conducting evaluations in accordance with its criteria and, on the basis of such assessments, determine the final settlement and, thereunder, the sums due to all and each of the affected parties.
- (c) In no case should 100% of the Fund's available resources be committed to advance payments. A sufficient percentage should be retained to enable the Fund to honour payments to those affected parties who made direct claims to it.

- 20.4 It was noted that the Spanish delegation had stated that since the damage far exceeded the amount of compensation available under the 1992 Conventions there was no way in which the level of payments by the Fund could be increased beyond 15% of the proven losses and that the measures that had been adopted by the Spanish Government would enable all claimants to receive 100% of their proven losses as assessed by the 1992 Fund in accordance with the Fund's criteria.
- 20.5 The Assembly noted that during the discussion in the Executive Committee a number of delegations had expressed their appreciation for the innovative approach proposed by the Spanish Government, the primary aim of which was to ensure that claimants received prompt and full compensation. It was also noted that other delegations had stated that the proposal needed very careful consideration, since it had been submitted very late and since it represented a considerable departure from the Fund's policy which could have profound implications for the future of the Fund. It was further noted that some delegations had asked for clarification of the legal basis of the proposal.
- 20.6 It was also noted that some delegations had expressed a preference for the well tried and tested method followed in some previous major incidents in the United Kingdom, the Republic of Korea and France whereby the Governments of those countries had agreed to stand last in the queue with respect to their own claims thereby enabling the Funds to make substantial payments to other claimants.
- 20.7 It was noted that in response to a question raised in the Executive Committee as to the extent to which the level of payments could be increased if the French and Spanish Governments agreed to stand last in the queue, the Director had stated that if all the claims in respect of clean-up costs by central and local government, as well as subrogated claims, were included the Fund should be able to make substantial payments, probably in excess of 50%.
- 20.8 It was noted that during the discussion in the Executive Committee two delegations had supported the proposal by Spain in principle, although one of the delegations stressed the need to have sufficient safeguards in place to avoid an overpayment situation, particularly since the full extent of the damage in Spain and the other countries affected was still uncertain.
- 20.9 The Assembly noted that the Executive Committee had considered a proposal submitted by the Chairman of the Committee (document 92FUND/EXC.22/8/Add.1), which was discussed in the Committee on Monday 22 October 2000.
- 20.10 It was noted that the Committee had considered the question of whether to authorise the Director to make a payment to the Spanish Government in excess of the level of payments decided in May 2003 subject to the following conditions:

- (a) The amount to be paid to the Spanish Government should not exceed €60 million so as to ensure that sufficient funds remained available, should other Member States affected by the incident wish to make a similar request and in order to be able to meet claims from other claimants in Spain as well as claims from claimants in France, Portugal and the United Kingdom.
 - (b) The Government of Spain should provide a guarantee from a financial institution, not from the Spanish State, which would have a financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.
 - (c) The guarantee should cover the difference between the €60 million paid by the Fund and the level of payments finally established by the Executive Committee.
 - (d) The terms and conditions of the guarantee should be to the satisfaction of the Director.
- 20.11 It was noted that the Spanish delegation had stated that in its view the proposal offered a compromise solution, which was transparent, upheld the principle of equal treatment of claimants and was consistent with the provisions of the 1992 Conventions. It was noted that that delegation had further stated that it supported fully the Chairman's proposal and withdrew its own proposal.
- 20.12 It was noted that a number of delegations, including the observer delegation of Portugal, had supported the Chairman's proposal, which in their view provided an innovative solution to one of the major problems faced by the Fund, namely the rapid payment of compensation to victims.
- 20.13 The Assembly noted that during the discussion in the Executive Committee a number of delegations had considered that the proposal deserved due consideration, but had expressed serious reservations, since it involved making payments to the Spanish Government in excess of the agreed level of 15%, which deviated from the requirement that all claimants should be treated equally. It was further noted that those delegations had also expressed concerns about the Fund appearing to act as a bank, since it was never intended to operate in that way. It was also noted that some delegations had questioned the method of calculation of the additional amount requested by Spain as indicated in the proposal.
- 20.14 The Assembly noted that some delegations had stated that the proposal did not represent a compromise solution, but was merely a clarification of the original proposal by Spain. It was noted that those delegations had further stated that if the total claim submitted by the Spanish Government were to be assessed as admissible in full, they would have no difficulty approving payment of the claim at the agreed level of 15%, but that they could not support any payment without a prior assessment.
- 20.15 It was noted that the Chairman of the Executive Committee had stated to the Committee that in the light of the debate that had taken place with respect to his initial proposal he had, with the help of a number of delegations, prepared a document setting out a revised proposal. It was noted that he had further stated that, in view of the great importance of the issue and the enormous ramifications involved, he had proposed that the 1992 Fund's supreme body, the Assembly, should consider the document. It was noted that the Executive Committee had endorsed the Chairman's proposal.
- 20.16 The Chairman of the Executive Committee introduced document 92FUND/EXC.22/8/WP1, referred to in paragraph 20.15, relating to the assessment and payment of claims arising from the *Prestige* incident, which had been drafted in the light of comments during the discussions in the Committee on document 92FUND/EXC.22/8/Add.1 (cf the Record of Decisions of the Executive Committee's 22nd session, document 92FUND/EXC.22/14, paragraphs 3.7.25 – 3.7.40). The Chairman drew attention to paragraph 5 of the document in which the Spanish Government had requested that, subject to an interim assessment of the submitted claim, a payment should be made

of 15% of the assessed amount as authorised by the Executive Committee and had further requested a payment of the balance between 15% of the assessed amount and an amount equal to 15% of the submitted claim (15% of €383.7 million = €57 555 000).

- 20.17 The Spanish delegation stated that the key difference between this latest proposal and the previous one submitted by the Chairman of the Executive Committee was that Spain, Portugal and France, the most affected States, had all supported it. That delegation also stated that the new proposal was in accordance with Articles 4.5 and 18.7 of the 1992 Fund Convention. The Spanish delegation proposed that in order to overcome concerns expressed by some delegations about the Fund making payments over and above the interim assessed amount, the second sentence of paragraph 5 of the document should be modified to the effect that the payment of the balance between 15% of the assessed amount and an amount equal to 15% of the submitted claim should be subject to a general assessment by the Director.
- 20.18 A number of delegations, including the French delegation, agreed that the latest proposal was in line with the Fund's procedures and addressed many of the previous concerns expressed by some delegations.
- 20.19 A number of delegations expressed the view that the proposal still had defects with regard to the equal treatment of claimants and could lead to payments being made in respect of inadmissible claims.
- 20.20 In response to a query raised about the safety of the 1992 Fund accepting bank guarantees, the Director expressed the view that provided the financial institution in question had the required standing the Fund would be adequately protected.
- 20.21 In response to another question whether the proposal was in conformity with the Convention, the Director stated that according to his reading of Article 4.5 of the 1992 Fund Convention, the requirement for equal treatment only referred to the final result of claims settlements as opposed to the settlement process. He also expressed the view that Article 18.7 gave the Assembly wide ranging powers regarding the terms and conditions according to which provisional payments in respect of claims could be made with a view to ensuring that victims of pollution damage were compensated as promptly as possible, provided that Article 4.5 was not violated. He added, however, that the notion of equal treatment could be given a wider meaning to the effect that not only should the final result give equal treatment but also the claimant's rights during the assessment period. He also stated that the proposed text only gave the right to payments over 15% of the assessed amounts to States but not to other public bodies or to private claimants, and it could in his view be argued that on this point the proposal did not provide for equal treatment of all claimants. As regards the reference by some delegations to the requirements of the Claims Manual on claims handling, he made the point that the Manual was not a legal document. He also drew attention to Article 31.3 of the Vienna Convention on the Law of Treaties, which provided that in the implementation of treaties account should be taken of any subsequent practice in the application of the treaty, and he expressed the view that the practice established by the Funds' governing bodies could be considered as such practice. The Director stated that in his view Contracting States were, however, entitled to change their practice
- 20.22 Some delegations considered that the new proposal, together with the caveat suggested by the Spanish delegation, was approaching something that was acceptable, and expressed the view that with a little more time and effort it might be possible to reach a satisfactory outcome that would be agreed by everyone.
- 20.23 The Assembly noted that as a result of informal consultations a compromise proposal had been drafted as set out in document 92FUND/A.8/WP1.

- 20.24 The Assembly noted that the Government of Spain had indicated that the compensation received under the proposal in document 92FUND/EXC.22/8/1 would be used to pay compensation to victims of pollution damage arising from the *Prestige* incident in Spain.
- 20.25 It was recalled that at the 21st session of the Executive Committee, held in May 2003, and in accordance with Article 4.5 of the 1992 Fund Convention, an initial level of payments of 15% had been decided for claims relating to the *Prestige* incident.
- 20.26 It was also noted that, according to the Director's initial evaluation (document 92FUND/EXC/22/8, paragraph 15.17), the overall losses arising from this incident were approximately €100 million of which €95 million corresponded to losses in Spain, €193 million to losses in France and €2.6 million to losses in Portugal.
- 20.27 It was further noted that on 2 October 2003 the Government of Spain had submitted a claim with invoices and supporting documents including most of the expenses incurred by the Government up to 31 July 2003 and that the submitted claim amounted to €383.7 million.
- 20.28 The Assembly noted that the Director would make an interim assessment of any claim submitted by the Government of Spain and that he would make a payment of 15% of the assessed amount, as authorised by the Executive Committee at its 21st session.
- 20.29 The Assembly, taking into account the exceptional circumstances of the *Prestige* incident, decided as follows:
- (a) The Assembly authorised the Director, subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 (paragraph 20.25) and 15% of that claim as submitted (15% of €383.7 million = €7 555 000) and also subject to the Government of Spain providing a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.
 - (b) The Assembly decided that such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 (paragraph 20.27) and 15% of that claim as submitted (15% of €383.7 million = €7 555 000). Further, it was decided that the terms and conditions of the guarantee should be to the satisfaction of the Director.
 - (c) The Assembly instructed the Director to provide full information on assessments and payments under paragraph (a) and to provide explanations when required by any Member State.
 - (d) The Assembly decided that the Executive Committee should review, at its next session, payments made under paragraph (a). It was also decided that if the payment amount was reduced by the Executive Committee, the difference should be repaid.
 - (e) It was further decided that if any other State having suffered losses relating to the *Prestige* incident were to seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.
- 20.30 The Spanish delegation expressed the sincere and profound gratitude of the Government of Spain to all those States who had participated in the discussions of the Assembly and who had backed the proposal submitted. The delegation also thanked in particular those delegations which initially had not been in agreement with the proposal but which had, in a spirit of cooperation, agreed to find a solution acceptable to all parties. The Spanish delegation particularly expressed

its gratitude to France and Portugal for their efforts throughout the week in finding a solution for the victims in Spain, France and Portugal. The delegation also thanked the Chairmen of the Executive Committee and of the Assembly for their strenuous efforts to resolve the difficulties encountered and arrive at a satisfactory solution. The Spanish delegation stated that it was pleased to note that a consensus had been reached.

- 20.31 The delegation of Spain stated that it would request the Director of the Fund to convene a meeting of representatives of Spain, France and Portugal to discuss how, by standing last in the queue, these States could help the victims of pollution damage in the three States affected by the *Prestige* incident.
- 20.32 That delegation also stated that the Fund had celebrated its 25th anniversary and, like other institutions, was in need of intelligent reforms to adapt itself to the changing needs of society. The delegation said that the ways in which the Conventions were applied, which had been agreed 25 years ago, were no longer adequate in today's society. The delegation also said that all institutions involved in the transport of oil by sea and in compensation of pollution damage were in urgent need of reform at international and European as well as at national level in Spain. Furthermore the delegation said that Spain would abide by the Conventions but could not accept Member States insisting on maintaining the *status quo* at all costs.

21 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	Australia
France	Cameroon
Germany	Greece
India	Grenada
Japan	Marshall Islands
Netherlands	Poland
Singapore	Sweden
	United Arab Emirates

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

The Assembly took note of the information in document 92FUND/A.8/18.

23 Transfer within the 2003 budget

The Assembly authorised the Director to transfer to Chapter V (Miscellaneous expenditure) within the 2003 budget from Chapter I (Personnel) or Chapter VI (Unforeseen expenditure) the amount required to cover the costs of the Audit Body.

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 1971 fund should pay a flat management fee for the costs of running the joint Secretariat for 2004 set approximately at 10% of the joint administrative expenses (document 92FUND/A.8/20).
- 24.2 It was noted that the Administrative Council of the 1971 Fund had agreed at its 12th 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, as proposed by the Director in document 92FUND/A.8/21.

26 Budget for 2004 and assessment of contributions to the General Fund

26.1 The Assembly considered the draft 2004 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 documents 92FUND/A.8/22 and 92FUND/A.8/22/Add.1.

26.2 One delegation stated in relation to the proposed increase in the budget that since the Fund had a limited number of staff, the administration of the Secretariat should be more efficient by restricting the activities of the 1992 Fund to those really necessary. That delegation proposed that to ensure the efficiency and effectiveness of the IOPC Funds, the Audit Body should include in its remit a management audit of the Secretariat.

26.3 The Assembly adopted the budget for 2004 for the administrative expenses for the joint Secretariat with a total of £3 292 250, as reproduced in Annex of this document.

26.4 It was noted that the Administrative Council of the 1971 Fund had at its 12th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.

26.5 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.

26.6 The Assembly decided to levy contributions to the General Fund for a total of £7 million, with the entire levy due for payment by 1 March 2004.

26.7 In response to a question by the Chairman in connection with the consideration of the budget for administrative expenses, the Director informed the Assembly that he would be very honoured to continue to serve as Director after 31 December 2004 (the date when his present contract with the IOPC Funds would expire) if the Assembly were to decide to reappoint him. However, he indicated that given his age he would be prepared to serve for a couple of years or so but not for a full five-year term.

26.8 A number of delegation welcomed the Director's indication that he would be prepared to continue to serve for a couple of years or so after the expiry of his present contract.

26.9 One delegate proposed that the Audit Body be entrusted to outline a procedure for consideration by the Assembly for the recruitment of the Director in the future. Most delegations supported this proposal on the understanding that it was the Assembly that would make the final decision on any selection procedure.

26.10 The Assembly decided to invite the Audit Body to consider the procedures to be followed in the recruitment of future Directors and give advice to the Assembly in this regard.

26.11 The delegation of Cyprus expressed the desire of clarifying exactly what the task of the Audit Body would be. In that delegation's view the development of any such procedures or guidelines should be the responsibility of the Assembly. In light of the above decision that delegation reserved the position of Cyprus.

27 Assessment of contributions to Major Claims Funds

27.1 The Director introduced document 92FUND/A.8/23 which contained proposals for the levy of 2003 contributions to Major Claims Funds.

- 27.2 It was noted that the Director had proposed to levy £110 million to the *Prestige* Major Claims Fund, out of which £75 million payable by 1 March 2004 and the remaining levy of £35 million to be deferred. The Director stated that, in the light of the Assembly's decision on the payments of compensation in respect of the *Prestige* incident, he suggested that it might be prudent to levy £90 million for payment by 1 March 2004.
- 27.3 Several delegations expressed concern of the heavy burden that the proposed levy to the *Prestige* Major Claims Fund would impose on contributors.
- 27.4 The Director stated that, in the light of these observations, he reverted to his original proposal that £75 million of the levy should be payable by 1 March 2004, on the understanding that he would be entitled to take up bank loans if required to enable the 1992 Fund to pay claimants.
- 27.5 In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Erika* and *Prestige* incidents, the Assembly decided to raise 2003 contributions to the *Erika* Major Claims Fund of £5.5 million and to the *Prestige* Major Claims Fund of £110 million. The Assembly also decided that £75 million of the levy to the *Prestige* Major Claims Fund should be due for payment by 1 March 2004 and that the entire levy to the *Erika* Major Claims Fund and the balance of the levy to the *Prestige* Major Claims Fund (£35 million) should be deferred.
- 27.6 The Director was authorised to decide whether to invoice all or part of the deferred levy to the *Erika* and *Prestige* Major Claims Funds for payment during the second half of 2004, if and to the extent required.
- 27.7 The Assembly noted that as a result of the global settlement reached in respect of the *Nakhodka* incident there would be a significant surplus on the *Nakhodka* Major Claims Fund. The Assembly decided to reimburse £37.7 million of the surplus on the *Nakhodka* Major Claims Fund to contributors to that Fund and transfer the remaining balance to the General Fund, the reimbursement and transfer to take place on 1 March 2004.
- 27.8 It was recalled that Article 36 of the 1992 Fund Convention introduced a system for capping contributions for a certain period whereby if the aggregate amount of the contributions in respect of a levy to a Major Claims Fund for all contributors in any one Member State of the 1992 Fund exceeded 27.5% of the total amount of that particular levy, the amounts payable by contributors in that State should be reduced *pro rata* so that they would together equal 27.5% of the total levy to that Fund. It was noted that the total amount deducted from contributors in the capped State would be borne by all other contributors to the Fund in question. It was also noted that the capping of contributions to the 1992 Fund ceased to apply in respect of decisions to levy contributions taken by the 1992 Fund Assembly after the reports on contributing oil submitted by Member States exceeded 750 million tonnes and that this quantity had reached in May 1997.
- 27.9 It was noted that contributions to the 1992 Fund *Nakhodka* Major Claims Fund totalling £78 000 000 had been paid in the form of the following six levies and that the capping procedure had been applied to the first three levies:
- | | |
|---|--------------------------|
| 1 | £7 000 000 (capped) |
| 2 | £21 000 000 (capped) |
| 3 | £9 000 000 (capped) |
| 4 | £13 000 000 (not capped) |
| 5 | £17 000 000 (not capped) |
| 6 | £11 000 000 (not capped) |
- 27.10 The Assembly endorsed the Director's proposal that the reimbursement on the *Nakhodka* Major Claims Fund should be considered as a reimbursement first in respect of the last levy and thereafter in respect of the penultimate levy and so on. The Assembly noted that the reimbursement of £37.7 million would cover the six, fifth and part of the fourth levy. The

Assembly decided that the repayment should be made on the same basis as that on which these levies had been made, ie that they were not capped.

- 27.11 The Assembly noted that its decisions in respect of the levy of 2003 contributions and reimbursement to contributors to the *Nakhodka* Major Claims Fund could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2004		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2002	1 281 414 899	7 000 000	7 000 000	0.0054627	0	0
<i>Nakhodka</i>	1996	663 380 184	(37 700 000)	(37 700 000)	(0.0568302)	0	0
<i>Erika</i>	1998	1 116 145 184	5 500 000	0	0	5 500 000	0.0049277
<i>Prestige</i>	2001	1 323 522 992	110 000 000	75 000 000	0.0566669	35 000 000	0.0264446
Total			84 800 000	44 300 000		40 500 000	

28 Admissibility of claims relating to subsistence fishing

- 28.1 The Assembly took note of the information contained in document 92FUND/A.8/24 on admissibility of claims relating to subsistence fishing. The Assembly recalled that a key feature of claims for compensation in respect of small-scale fishing activities, including subsistence fishing, was that they were rarely supported by evidence as to normal levels of income against which to assess claims. It was further recalled that in order to assist the 1992 Fund in dealing with such claims in the future the Director had engaged a firm of fishery specialists to prepare technical guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence was likely to be limited or totally lacking.
- 28.2 It was noted that the Fund's fishery experts had revised the Technical Guidelines incorporating editorial and content changes as requested by the Fund's Secretariat.
- 28.3 The Assembly noted that the Director had given further consideration as to the best way to publish the Technical Guidelines in the light of the comments made during the discussion in the 1992 Fund Administrative Council at its May 2003 session. It was noted that he had considered that in view of the size of the document, which ran to some 150 pages of A5 pages, and the technical nature of the contents, it would be impracticable for the 1992 Fund Assembly to review the text with a view to issuing the Guidelines as a Fund document.
- 28.4 The Assembly further noted the Director's proposal that the authors should be requested to publish a limited number of copies of the Technical Guidelines, making it clear in the foreword that although they had been inspired by the Fund, the document had not been approved by the Fund and was not a Fund publication. It was also noted that the Director had proposed that the Technical Guidelines could be made available to the fisheries experts appointed by the Fund and the P&I insurers to assist them in their assessment of claims, particularly in cases where the experts had limited experience in assessing claims for pollution damage.
- 28.5 The Assembly noted that the Director had also given consideration to the suggestion made at the 1992 Fund Administrative Council's May 2003 session that a more concise version of the Guidelines should be produced that would be aimed at claimants and their representatives. It was noted that the Director had expressed the view that a more concise Claimants' Guidelines could be produced drawing heavily on the work already undertaken on the Technical Guidelines. It was also noted that the Director had considered that the Claimants' Guidelines could complement the existing Claims Manual and that the two documents could be distributed to claimants in the

fisheries and mariculture sectors and their representatives. The Assembly noted that the Claimants' Guidelines would explain in simple terms how oil spills affected fishing, mariculture and processing activities, how to present a claim, what claimants can do to support their claims and how the claims were likely to be assessed. The Assembly noted that, in the Director's view, the Claimants' guidelines should be prepared in the 1992 Fund's three official languages and be approved by the Assembly.

- 28.6 Some delegations stated that although the Technical Guidelines might be useful for the work of the Fund, it was not possible for the Member States to authorise the publication of the Guidelines by either the Fund or the authors without first having had an opportunity to review them.
- 28.7 A number of delegations supported the 1992 Fund producing concise Guidelines for claimants in the fisheries, mariculture and fisheries sectors and considered that these might best be reviewed by a working group, although not the working group currently looking at the revision of the 1992 Conventions.
- 28.8 In view of the time constraints the Assembly decided to instruct the Director to submit a revised proposal to the next session of the Assembly, taking into account the observations made at the present session.

29 Insurance under Article VII, paragraph 1 of the 1992 Civil Liability Convention

- 29.1 The representative of the International Group of P&I Clubs introduced document 92FUND/A.8/25 regarding certain problems that had arisen in respect of insurance cover required under Article VII, paragraph 1 of the 1992 Civil Liability Convention.
- 29.2 The Committee noted that the problem had arisen as a result of the exclusions in shipowners' cover and in the Clubs' own reinsurances being more comprehensive than the defence under Article III.2.b of the 1992 Civil Liability Convention according to which the shipowner was exonerated only if he proved that the pollution damage was wholly caused by an act or omission done with intent to cause damage by a third party. It was noted that the consequence of this had been that the shipowner could incur liability under the Convention which, but for the undertaking given in the Blue Card issued by the Clubs, would ordinarily fall outside the shipowner's P&I insurance cover.
- 29.3 The representative of the International Group of P&I Clubs stated that the Clubs would continue to honour certificates that had already been issued up until 20 February 2004, and that they would be able to extend the cover for the following year so as to be able to continue to issue Blue Cards, although this might involve a change in the basis of the Clubs' reinsurance.

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

- 30.1 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.
- 30.2 The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 7th session of the Assembly as set out in document 92FUND/A.8/26.

It was noted that a target date for ratification of 30 June 2006 had been set in respect of those States which were or would become Members of the European Union.

- 30.3 The Assembly recalled that at its first session, held in May 2003, the 1992 Fund Administrative Council had considered a document presented by the Director which dealt with certain administrative aspects of the preparations for the entry into force of the HNS Convention (document 92FUND/A/ES.7/4). It further recalled that at that session it had been noted that the administrative arrangements would to a large extent depend on the location of the Secretariat of the HNS Fund and that the Council had instructed the Director to continue the preparatory work for the time being on the assumption that the HNS Fund would have a joint Secretariat with the IOPC Funds and would be based in London.
- 30.4 The Assembly also recalled that at that session the Administrative Council had instructed the Director to study further the issues set out in document 92FUND/A/ES.7/4 and submit draft texts for preliminary examination by the 1992 Fund Assembly at a future session.
- 30.5 The Assembly noted that a Correspondence Group established at the 80th session of the Legal Committee of the International Maritime Organization (IMO), held in October 1999, had held a special consultative meeting in Ottawa (Canada) in June 2003 in order to address those issues previously identified as requiring resolution before the entry into force of the HNS Convention and to complete the core work of the Group. The Assembly noted the conclusions of the Correspondence Group contained in the report of the meeting in Ottawa reproduced in Annex II to document 92FUND/A.8/26.
- 30.6 The Assembly recalled 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 Assembly was informed that the final system was expected to be completed during the autumn of 2003 and would be demonstrated to delegations at the earliest opportunity.

31 Quorum at Assembly sessions

- 31.1 It was recalled that at its October 2002 session the Assembly had considered what measures should be taken to ensure that the 1992 Fund could continue to operate if the Assembly were to be unable to achieve a quorum. It was also recalled that at that session the Assembly had adopted Resolution N°7 which created a special body, the Administrative Council, which would assume the functions of the Assembly if the latter did not achieve a quorum.
- 31.2 It was noted that the Assembly, which had been previously convened to hold its 7th extraordinary session from 8 to 10 May 2003, had been unable to achieve a quorum at that session since only 38 States were present whereas the quorum required the presence of 39 States. It was also noted that as a result the Administrative Council had dealt with the items contained in the agenda of the Assembly session.
- 31.3 The Assembly reconsidered the operative part of the Resolution, in particular as regards the quorum requirement (document 92FUND/A.8/27) which had been set at 25 Member States.
- 31.4 The Assembly noted the concerns of one delegation, which was of the opinion that the quorum requirement should be increased to 27 Member States and agreed that it was very important that decisions taken were based on the views of a sufficient number of Member States. However, it was noted that a practical solution was necessary in order for the Fund to be able to operate.
- 31.5 The Assembly decided to maintain the quorum requirement at 25 Member States for the time being but to keep the matter under review.

32 Future sessions

- 32.1 The Assembly decided to hold its next regular session during the week of 18 - 22 October 2004.
- 32.2 It was noted that the weeks of 23 February and 24 May 2004 were available for IOPC Fund meetings.

33 Any other business

33.1 Amendment to Financial Regulations

- 33.1.1 The Assembly took note of the information contained in document 92FUND/A.8/28 regarding a proposal by the Investment Advisory Bodies to amend Financial Regulation 10.4 (b) so as to enable the Funds to invest in Certificates of Deposits.
- 33.1.2 It was noted that at present the Financial Regulations only allowed the Funds to place funds on term deposits. It was further noted that in the IABs' opinion Certificates of Deposit (CDs) would be very useful financial instruments for the Fund as even with a 12 month maturity, CDs could be sold at any time prior to maturity so satisfying the liquidity requirements set out in the Internal Investment Guidelines (cf document 92FUND/A.8/7 and 71FUND/A.C12/4, paragraph 3.2(b)).
- 33.1.3 In view of the proposal by the Investment Advisory Bodies the Assembly decided to amend Financial Regulation 10.4 (b) to read as follows (amendment underlined):
- (b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of the investments shall not exceed one year.

33.2 Observer status

The Assembly granted observer status to the Central Commission for Navigation on the Rhine (cf document 92FUND/A.8/29).

33.3 Increases in the limits of liability and compensation in the 1992 Conventions

- 33.3.1 The Assembly recalled that in accordance with two Resolutions adopted in October 2000 by the Legal Committee of the International Maritime Organization the limits of liability and compensation laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention would be increased by 50.37% with effect from 1 November 2003 (cf document 92FUND/A.8/21, paragraphs 10.1 – 10.3).
- 33.3.2 The Assembly invited the Director to remind 1992 Fund Member States of the increases referred to in paragraph 33.3.1 and the need for ensuring that these increases were reflected in their national legislation.

34 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.8/WP.1, was adopted, subject to certain amendments.

ANNEX

2004 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 2002 expenditure for 1971 and 1992 Funds		2002 budget appropriations for 1971 and 1992 Funds		2003 budget appropriations for 1971 and 1992 Funds		2004 budget appropriations for 1992 Fund 1971 Fund	
		£		£		£		£	
SECRETARIAT									
I	Personnel								
(a)	Salaries	1 067 450		1 190 291		1 275 816		1 341 000	
(b)	Separation and recruitment	5 479		55 000		35 000		115 000	
(c)	Staff benefits, allowances and training	420 021		481 922		523 341		551 800	
	Sub-total		1 492 950		1 727 213		1 834 157	2 007 800	0
II	General Services								
(a)	Rent of office accommodation (including service charges and rates)	225 311		240 450		249 700		249 700	
(b)	Office machines, including maintenance	67 840		71 500		71 500		90 000	
(c)	Furniture and other office equipment	11 437		17 500		17 500		17 500	
(d)	Office stationery and supplies	17 547		20 000		20 000		20 000	
(e)	Communications (courier, postage, telephone, e-mail/internet)	59 922		65 500		65 000		65 000	
(f)	Other supplies and services	32 493		38 000		41 000		41 000	
(g)	Representation (hospitality)	14 675		16 500		22 500		18 000	
(h)	Public Information	91 205		180 000		180 000		180 000	
	Sub-total		520 430		649 450		667 200	681 200	0
III	Meetings								
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		114 685		126 500		126 500	145 000	0
IV	Travel								
	Conferences, seminars and missions		66 328		70 000		70 000	100 000	0
V	Miscellaneous expenditure								
(a)	External audit fees for 2003 Financial Statements- 1992 and 1971 Funds	45 300		50 000		50 000		53 250	
(b)	Payment to IMO for general services	0		6 500		0		0	
(c)	Consultants' fees	111 130		100 000		125 000		125 000	
(d)	Audit Body	0		0		50 000		90 000	
(e)	Investment Advisory Bodies	27 000		27 000		30 000		30 000	
	Sub-total		183 430		183 500		255 000	298 250	0
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		6 028		60 000		60 000	60 000	
Total Expenditure I-VI			2 383 851		2 816 663		3 012 857	3 292 250	0
VII Expenditure relating only to 71Fund									
(a)	Management fee payable to 1992 Fund (cf documents 92FUND/A.8/20 and 71FUND/AC.12/17)							(325 000)	325 000
(b)	Costs for winding up of the 1971 Fund		16 000		250 000		250 000		250 000
(c)	External audit fees for 2003 Financial Statements-1971 Fund only		0		0		0	(15 000)	15 000
Budget for 1992 Fund and 1971 Funds respectively								2 952 250	590 000