



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
3rd extraordinary session
Agenda item 22

92FUND/A/ES.3/21
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RECORD OF DECISIONS OF THE THIRD EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 29 April to 1 May 1998)

Chairman: Mr C Coppolani (France)
First Vice-Chairman: Professor H Tanikawa (Japan)
Second Vice-Chairman: Mr P Gómez-Flores (Mexico)

Opening of the Session

The 3rd extraordinary session of the Assembly was opened by the Chairman, Mr Charles Coppolani (France).

Procedural matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A/ES.3/1.

2 Examination of credentials

2.1 The following Member States were present:

Australia
Denmark
Finland
France
Germany
Greece

Japan
Liberia
Marshall Islands
Mexico
Monaco

Netherlands
Norway
Sweden
Tunisia
United Kingdom

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

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

Cyprus	Canada	New Zealand
Grenada	Chile	Nigeria
Ireland	China	Panama
Latvia	Colombia	Peru
Philippines	Côte d'Ivoire	Saudi Arabia
Republic of Korea	Ecuador	Poland
Spain	Egypt	Russian Federation
United Arab Emirates	Estonia	Slovenia
Uruguay	Fiji	Sri Lanka
Algeria	Gabon	Switzerland
Argentina	Georgia	Syrian Arab Republic
Belgium	India	United States
Benin	Italy	Venezuela
Brazil	Kenya	

2.3 The following inter-governmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)
United Nations

International non-governmental organisations:

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 Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
Oil Companies International Marine Forum (OCIMF)

3 Grant of observer status

The Assembly decided to grant observer status to the Republic of Georgia.

Secretariat and administrative matters

4 Transfer of Secretariat functions

4.1 The Assembly recalled that it had decided at its 1st session that the 1971 Fund and the 1992 Fund should have a joint Secretariat and that it had been agreed with the 1971 Fund that the Secretariat of the 1971 Fund should administer also the 1992 Fund. It was also recalled that the Assembly of the 1992 Fund had decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended, ie the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund Convention would take effect (15 May 1998). It was further recalled that the 1971 Fund Assembly had decided that the 1971 Fund should be administered by the 1992 Fund Secretariat once the latter had been established.

4.2 The Assembly considered certain issues resulting from the transfer of secretariat functions (cf document 92FUND/A/ES.3/3).

4.3 The Assembly noted that the contracts of employment of 1971 Fund staff members which had been concluded or extended after June 1996 contained a clause to the effect that the respective staff member would be employed by the 1992 Fund as from 16 May 1998, and that the remaining staff members had agreed to be employed by the 1992 Fund.

5 Adoption of Staff Regulations

The Assembly adopted the Staff Regulations of the 1992 Fund as set out in the Annex to document 92FUND/A/ES.3/4.

6 Introduction of Staff Rules

The Assembly took note of the Director's intention to issue the Staff Rules of the 1992 Fund as set out in the Annex to document 92FUND/A/ES.3/5.

7 Appointment of members and substitute members of the Appeals Board

7.1 It was noted that the Staff Regulations of the 1992 Fund, which had been adopted by the Assembly under agenda item 5, established an Appeals Board to settle disputes between staff members, former staff members or rightful claimants to their estates and the Director concerning individual decisions applying to persons in the former categories, who based their case on the non-observance of the Staff Regulations, Staff Rules or the conditions of employment.

7.2 The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 4th regular session of the Assembly.

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

8 Secretariat working methods

8.1 It was recalled that, at its 19th session, the Assembly of the 1971 Fund had instructed the Director to review the working methods within the Secretariat, possibly with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the 1971 Fund and the 1992 Fund. It was noted that the review had been carried out by two external consulting firms, ER Consultants of Manchester (United Kingdom) and Gestion Publique Conseil of Paris (France).

8.2 It was further recalled that, at its 20th session, the 1971 Fund Assembly had established a steering group to liaise with the consultants through to the preparation of their final report.

8.3 The consultants introduced their report, as contained in the Annex to document 71FUND/A/ES.4/3, and as summarised in the Annex to document 71FUND/A/ES.4/3/Add.1. In their presentation to the Assemblies, the consultants emphasised the great increase in the Secretariat's workload in recent years and the need to restructure the Organisation to facilitate the working of the IOPC Funds in the future. The consultants recommended a new structure for the Organisation and the creation of new posts.

8.4 The Chairman thanked the consultants for their work. He also thanked the members of the steering group.

8.5 The Director introduced document 71FUND/A/ES.4/3/1 (which was annexed to document 92FUND/A/ES.3/7) containing his proposals regarding the Secretariat's working methods, which he had made in the light of the consultants' final report. He outlined his proposals, which included a new structure for the Secretariat, comprising three departments, and the creation of certain new posts.

8.6 The Chairman drew attention to the statement by the consultants in their report that the IOPC Funds' Secretariat could be rightly proud of its reputation with both governments and organisations with which it worked in partnership. He referred to the consultants' statement that throughout their study they had been consistently impressed by the high regard and esteem in which the Secretariat was held and that many people to whom they had spoken had gone out of their way to pay tribute to the efficiency of the Secretariat and the extraordinarily high quality of the work it carried out.

8.7 The Assemblies recognised the need to strengthen the Secretariat resources and restructure the Secretariat. It was emphasised, however, that this should not be interpreted as if there had been any lack of efficiency on the part of the Secretariat in the past.

8.8 During the discussions there was general support for the Director's proposals, in particular for the establishment of three departments and the creation of a Management Team, which together with the Director would manage the operations of the Secretariat. It was noted that the Management Team would be led by the Director and would be composed of the Legal Counsel and the Heads of the three departments.

8.9 It was generally considered that the Director's role should be to concentrate on strategy and policy issues, long term planning, issues of principle, high level contacts with the Governments of Member States, and on furthering an increase in the membership of the 1992 Fund. It was considered that the creation of the Management Team should enable the Director to concentrate on these tasks, while still being accountable for the entire operation of the Funds.

8.10 As regards the Director's involvement in the handling of claims, it was suggested that, since this was the most important activity of the Organisation, it was important that the Director remained involved in claims handling. It was maintained, however, that by the appointment of a Head of the Claims Department and the strengthening of the resources of that Department, it would be possible for the Director to be less involved in the day-to-day examination of individual claims and to concentrate on ensuring that the policy laid down by the Assembly and Executive Committee was properly implemented.

8.11 The Assemblies noted the Director's intention as to the role of the Legal Counsel as set out in paragraph 3.9 of document 71FUND/A/ES.4/3/1.

8.12 A number of delegations stressed the importance that the Secretariat should be strengthened with a staff member with a scientific background. It was suggested that this person should have practical experience in the field of marine pollution. A number of delegations suggested that the staff member with these qualifications would make a valuable contribution in the Fund's selection, instruction and monitoring of technical experts, in the evaluation of their work and in the assessment of their performance. It was also stated that such a person would be able to give useful advice on technical and scientific issues relating to the HNS Convention.

8.13 It was generally considered that the proposed Head of the Claims Department should have the responsibility for ensuring that the claims handling process was efficient and that claims were dealt with in accordance with the policy laid down by the Assembly and the Executive Committee. It was emphasised that the person appointed should have considerable management experience. It was also suggested that the incumbent should have sufficient experience in claims handling to enable the Director to delegate authority in respect of the settlement of claims to a greater extent than had been done so far. It was mentioned that it was essential that the Head of this Department had a detailed knowledge of the compensation system established by the Conventions.

8.14 A number of delegations stated that they agreed with the Director that the roles of the Head of the Claims Department and scientific adviser should be combined into one post, if a person could be recruited with the necessary qualifications. If the incumbent were to cover both roles, the priority would always be to cover claims work. It was emphasised, however, that if this should prove not to be possible, it might be necessary to separate the two roles. It was noted that the Director would refer the matter to the Assembly for renewed consideration, should that situation arise. It was also suggested that in any case it might be necessary in the future to separate these roles.

8.15 A number of delegations stressed that it was important that the Secretariat should make the maximum use of information technology (IT). In this regard reference was made to the importance of using the Internet to disseminate information on the IOPC Funds and for the distribution of documents. Several delegations pointed out that some Fund documents contained restricted information and that the Funds had to exercise a certain caution in this regard. It was generally considered that it would be appropriate, as proposed by the Director, to engage a consultant for a period of time to make a general review of the Secretariat requirements in the field of IT and to assist in the implementation of any changes in this field.

8.16 It was also generally considered that the IOPC Funds should strengthen their activities in the field of information and public relations. It was suggested that an increased knowledge of the international compensation system would in many cases facilitate claims handling. It was recognised, however, that there were limits to what the Funds could achieve in this respect and that the main responsibility for disseminating information within a Member State on the compensation system should lie with the competent authorities in that State.

8.17 As regards the implementation of the proposed changes, some delegations favoured a prudent step-by-step approach. A number of other delegations maintained, however, that the new structure and working methods should be implemented as soon as possible. It was noted that it might be necessary to use the services of the consultants for this purpose.

8.18 It was noted that the 1971 Fund Assembly had approved the Director's proposals for a new structure of the Secretariat, as set out in the table in paragraph 3.35 of document 71FUND/A/ES.4/3/1 and in the Annex to that document. This approval was endorsed by the Assembly of the 1992 Fund. The Assemblies noted that this would result in the Secretariat having 24 staff members or, if Spanish were to be introduced as a working language of the 1992 Fund, 25 staff members.

8.19 The Assembly endorsed the following decisions of the 1971 Fund Assembly with regard to posts in the professional and higher category:

- (a) to rename the post of Legal Officer as Legal Counsel, the grade of the post being maintained at D1;
- (b) to create the post of Head of the Claims Department at grade D1;
- (c) to rename the post of Finance Officer as Head of the Finance and Administration Department, the grade of the post being maintained at P5;
- (d) to create the post of Head of the External Relations and Conference Department at grade P3/P4; and
- (e) to maintain the vacant post of a third Claims Officer at grade P3/P4.

8.20 It was noted that, as a consequence of the creation of these new posts in the professional and higher category, the post of Administrative Officer would cease to exist.

8.21 The Assembly endorsed the following decisions of the 1971 Fund Assembly with regard to posts in the general service category:

- (a) to create the posts of two additional Claims Clerks in the Claims Department;

- (b) to create a post of Procurement Assistant/Archivist in the Finance and Administration Department;
- (c) to create the posts of Administrative Clerk and Clerk/Secretary in the External Relations and Conference Department; and
- (d) to authorise the Director to determine the grades of the new or remodelled posts in the general service category.

8.22 It was noted that, as a consequence of the creation of these new posts in the general service category, two posts of Secretary approved by the Assembly would cease to exist.

8.23 The Assembly endorsed the 1971 Fund Assembly's approval of the creation of an additional post of secretary if the 1992 Fund Assembly were to decide to introduce Spanish as a working language of the 1992 Fund.

8.24 The Assembly endorsed the 1971 Fund Assembly's view that the Director should engage a consultant to review the Funds' IT requirements.

8.25 The Assembly recognised that, in view of the scale of operation of the 1971 Fund and the 1992 Fund, it was necessary that the Director should be able to authorise a senior staff member to act on his behalf whenever the Director was on mission or otherwise unable to act. The Assembly agreed that there was a need for the general delegation of authority to either the Legal Counsel or the Head of the Claims Department, depending on the circumstances. The Director undertook to submit proposals to the Assembly for consideration at its 3rd session for a formal decision enabling him to authorise one of the two above-mentioned members of the Management Team to act on his behalf when he was unable to do so.

8.26 The Assembly acknowledged that the Director should in general be able to delegate the authority to make decisions to a larger extent than was at present the case. It was agreed that the Head of the Claims Department should be given considerable authority to take decisions in respect of claims, and that the Claims Officers' authority should be extended. The Assembly also agreed that it should be made possible for significant amounts to be paid when the Director was absent from the office. It was noted that the Director would submit proposals on this issue to the October session of the Assembly.

8.27 The Assembly took note of the Director's position in respect of other recommendations of the consultants, as set out in section 5 of document 71FUND/A/ES.4/3/1.

Office Space

8.28 It was recognised that the Secretariat would require significant additional office space as a result of the decisions set out above. It was noted that the Director had discussed the matter with the Secretary-General of the International Maritime Organization (IMO) who had informed the Director that IMO would not be able to provide the additional office space required.

8.29 The Assembly shared the Director's view that it would be most unfortunate if the IOPC Funds could not be given sufficient additional office space to enable the Secretariat to remain in the IMO building. It was emphasised that, if it proved necessary for the Secretariat to relocate outside that building, such a move should be well prepared, taking into account the financial consequences.

8.30 The Director was instructed to continue his discussions with the Secretary-General for the purpose of arriving at a mutually satisfactory solution.

8.31 The United Kingdom delegation stated that it fully recognised the advantages of the Secretariat's remaining in the IMO building, but that the United Kingdom Government would assist the IOPC Funds to secure suitable office accommodation.

Promotions

8.32 The Assembly noted that the 1971 Fund Assembly had authorised the Director to promote one of the Claims Officers, Miss Sally Gregory, to grade P5 and the Assistant Finance Officer, Mrs Pauline Binkhorst-van Romunde, to grade P2, with effect from a date to be decided by the Director.

9 Co-operation agreement with the International Maritime Organization

The Assembly noted that the Agreement for co-operation between the 1992 Fund and IMO had been approved by the IMO Assembly at its session in November 1997 and that the Agreement had been signed by the Secretary General of IMO and the Director in December 1997 (document 92FUND/A/ES.3/8).

10 Introduction of Spanish as a working language

10.1 The Assembly recalled that at its 2nd session, the Spanish delegation had informed the Assembly that it intended to submit a proposal at the Assembly's next session to include Spanish as a working language of the 1992 Fund. It was also recalled that the Assembly had instructed the Director to examine the financial and practical consequences which would result if Spanish were introduced as a working language of the 1992 Fund (document 92FUND/A.2/29, paragraph 31.2).

10.2 The Spanish delegation presented a document submitted by the delegations of Spain, Mexico, Venezuela, Colombia and Uruguay requesting the introduction of Spanish as a working language of the 1992 Fund (document 92FUND/A/ES.3/9/1). The Spanish delegation stated that the introduction of Spanish as a working language was logical, taking into account the growing number of Member States which used the Spanish language and the large number of countries in Latin America which were considering joining the 1992 Fund in the near future. That delegation mentioned that a number of observer delegations (Argentina, Brazil, Chile, Ecuador, Panama and Peru) were in favour of the introduction of Spanish as a working language. The Spanish delegation also stated that, since the Secretariat would need some time to introduce Spanish as a working language in all the activities of the Funds, the co-sponsors of the proposal would accept a gradual introduction of Spanish, starting with interpretation facilities and, at a later stage, translation of the 1992 Fund documentation.

10.3 The Director introduced document 92FUND/A/ES.3/9 containing an examination of the financial and practical consequences of introducing Spanish as a working language of the 1992 Fund. In his presentation the Director stated that the introduction of Spanish as a working language would not result in any practical difficulties from the point of view of interpretation at meetings of the 1992 Fund's Assembly or its subsidiary bodies. The Director stated that the additional interpretation costs for the 1992 Fund in 1999 would amount to some £8 160 and that interpretation in Spanish could be provided at the October 1998 session of the 1992 Fund Assembly.

10.4 The Director stated that, if the Assembly were to decide to introduce Spanish as a working language, a gradual implementation would be necessary as regards translation. The Director proposed that there should be a period of, say, five years during which the documentation translated into Spanish would be developed, starting with certain key documents. The Director mentioned that it would be necessary to recruit an additional secretary, preferably with Spanish as his/her mother tongue, and that this would result in further annual costs of some £25 500. The Director estimated the cost of introducing Spanish as a working language of the 1992 Fund was approximately £92 000 for 1999 and £150 000 per annum when implemented fully.

10.5 Many delegations supported the proposal to introduce Spanish as a working language of the 1992 Fund. It was accepted that, since there were practical problems associated with the implementation of this proposal, this introduction should be carried out gradually. Some delegations, although supporting the proposal, suggested that the pace of the introduction of Spanish as a working language could be linked to the number of Spanish speaking countries ratifying the 1992 Fund Convention. Some other delegations expressed fears that a proliferation of the number of working languages would seriously reduce the efficiency

of the 1992 Fund. Several delegations emphasised that the fact that translations might not be available should not be allowed to prevent the meetings of the 1992 Fund bodies from proceeding.

10.6 The Assembly decided to introduce Spanish as an official language and working language of the 1992 Fund. It was also decided that the introduction of Spanish would be implemented gradually, that interpretation facilities to and from Spanish would be provided as from the Assembly's October 1998 session, and that as regards the translation of documents the decision to introduce Spanish as a working language should be implemented gradually along the lines proposed by the Director in document 92FUND/A/ES.3/9.

10.7 The Assembly amended Rule 29 of the Assembly's Rules of Procedure to read as follows with effect from 1 January 1999:

Rule 29

The official and working languages of the 1992 Fund are English, French and Spanish.

Financial matters

11 Extension of the scope of the audit of the 1992 Fund and related issues

11.1 The Director introduced document 92FUND/A/ES.3/10 regarding the scope of the audit of the 1971 Fund.

11.2 The representative of the External Auditor confirmed that, following discussions with the Chairman and the Director, the External Auditor had proposed to undertake an enhanced ("value for money") audit of the payment of claims and related expenditure of the IOPC Funds in 1997 and 1998, including a review of the operation of the claims office established in Kobe (Japan) to handle claims arising from the *Nakhodka* incident. It was noted that the purpose of the enhanced audit would be to assure Member States that claims were treated equally and in accordance with the Funds' Regulations and established procedures, and that claims and related expenditure were incurred in a cost effective manner, taking into account the Funds' objectives of paying compensation.

11.3 It was noted that the External Auditor had informed the Director that it was his intention to carry out the extended audit during the period June-August 1998 and that the findings would be reported with the certified Financial Statements for 1997, for consideration by the Assembly at its 3rd session. It was also noted that the External Auditor had estimated that the proposed enhanced audit would result in an additional cost of £25 000.

11.4 The Assembly agreed to the extension of the scope of the audit, as proposed by the External Auditor. It was emphasised that it would be for the External Auditor to select the incident or incidents which should be the subject of an enhanced audit.

12 Supplementary budget

12.1 The Assembly considered the supplementary budget for the administrative expenses of the 1971 Fund and 1992 Fund in 1998, as proposed by the Director in documents 92FUND/A/ES.3/11 and 92FUND/A/ES.3/11/Add.1.

12.2 The Assembly adopted supplementary budget appropriations for 1998 of £251 100 for the joint Secretariat. It was noted that, out of this total, £211 500 related to the increased costs resulting from the implementation in 1998 of the Director's proposals as a result of the review of the Secretariat's working methods, £25 000 related to the cost in 1998 of extending the scope of the audit, and £14 600 in respect of increased costs of the IMO translator financed by the IOPC Funds.

12.3 The Assembly approved the revised budget for 1998, as contained in the Annex to document 92FUND/A/ES.3/11/Add.1, for a total amount of £2 042 920.

12.4 It was noted that the Assembly of the 1971 Fund had decided, at its 4th extraordinary session, to adopt the same supplementary budget appropriations and the same revised budget (document 71FUND/A/ES.4/16, paragraphs 6.2 and 6.3).

12.5 It was noted that, in accordance with the Assembly's decision at its 2nd session and the decision by the 1971 Fund Assembly at its 20th session, these additional costs of running the joint Secretariat for 1998 would be distributed with 60% to be paid by the 1971 Fund and 40% by the 1992 Fund (documents 92FUND/A.2/29, paragraph 24.1 and 71FUND/A.20/30, paragraph 23.1).

Contribution questions

13 Contributor in liquidation

13.1 The Assembly took note of the information contained in document 92FUND/A/ES.3/12 in respect of a contributor in Germany which had gone into liquidation. The Assembly authorised the Director to agree with the liquidator and the new company which had acquired some of the assets of the company in liquidation on a settlement on terms which he considered reasonable.

13.2 The Assembly noted that a Dutch company which had been declared bankrupt would become a debtor to the 1992 Fund if the Fund were to receive a report on contributing oil received by that company in 1996. The Assembly also noted that it appeared that contributions payable to the 1992 Fund did not have preferential status under Dutch law, and that the receiver in the bankruptcy proceedings had informed the Director that it was not expected that there would be any dividend to unsecured creditors. It was further noted that the bankruptcy proceedings were expected to take some considerable time.

14 Interpretation of the notion of 'receiver' in Article 10 of the 1992 Fund Convention

14.1 The Assembly noted the considerations that had taken place within the 1971 Fund on the interpretation of the notion of 'receiver' in the 1971 Fund Convention as set out in paragraphs 2.1-2.3 of document 92FUND/A/ES.3/13.

14.2 The Assembly endorsed the position taken by the 1971 Fund in respect of the interpretation of the notion of 'receiver'.

15 SUMED pipeline

15.1 The Assembly noted a request by the observer delegation of the Arab Republic of Egypt that the 1992 Fund should reconsider whether Article 10.1 of the 1992 Fund Convention would apply to oil passing through the SUMED pipeline.

15.2 The Assembly took note of a document submitted by the Director (document 92FUND/A/ES.3/14/1) containing information on the 1971 Fund Assembly's consideration of this issue and on the relevant discussions at the 1971 Diplomatic Conference.

15.3 The Egyptian observer delegation introduced document 92FUND/A/ES.3/14 which had been submitted with the objective of clarifying SUMED's activities and the nature of the crude oil transportation through its pipeline. The Egyptian delegation stated that Egypt wanted to become a Member of the 1992 Fund but needed to clarify a misunderstanding. The delegation explained that, as a result of a decision to establish new refineries in Egypt, within seven to ten years Egypt would start importing crude oil and that the receivers of that oil would pay contributions to the 1992 Fund. This delegation also stated that, if oil passing through the SUMED pipeline had to pay contributions to the 1992 Fund, the price for the transport

of oil through the pipeline would increase and, as a result, the oil industry might find it more economical to transport the oil around the Cape of Good Hope, thus increasing the risk of oil pollution incidents. This delegation made the point that this would increase the amounts of compensation that the 1992 Fund would have to pay to victims of oil pollution. This delegation pointed out that SUMED was fully insured, both offshore and onshore and alongside the pipeline, and that SUMED was unique since no other similar pipeline existed in the world.

15.4 The Egyptian delegation proposed that the Assembly should consider accepting Egypt as a Member of the 1992 Fund on the basis that the oil passing through the SUMED pipeline would not be subject to contributions and that the right to receive compensation from the 1992 Fund would be waived in respect of incidents relating to the SUMED pipeline

15.5 The Egyptian delegation stated that it did not request a decision by the Assembly at the present session but that it intended to request that the Assembly should consider the matter at its next session.

15.6 The Chairman thanked the Egyptian delegation for its clear presentation of the proposal and invited delegations to reconsider the issue.

Compensation matters

16 **Incidents involving the 1992 Fund**

16.1 **Incident in Germany**

16.1.1 It was recalled that on 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea, that the German authorities had undertaken clean-up operations at sea and onshore, and that the cost of these operations had been indicated at some DM2.6 million (£900 000). It was also recalled that investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996 and that analysis of oil samples taken from the ship matched the results of the analysis of samples taken from the polluted coastline.

16.1.2 The German delegation stated that the German authorities would in the very near future take legal action against the owner of the *Kuzbass* and his insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg), and that they would notify the 1992 Fund of such legal action to allow the 1992 Fund to intervene as a party to the proceedings.

16.2 **Nakhodka incident**

16.2.1 It was recalled that the 1971 Fund Executive Committee and the 1992 Fund Assembly had at previous sessions decided to limit the payments to be made by the two Organisations to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts employed by the Funds and the shipowner and his insurer at the time when the payment is made (documents 71FUND/EXC.52/11, paragraph 3.7.14 and 92FUND/A/ES.2/6, paragraph 3.1.16). It was noted that the 1971 Fund Executive Committee had decided, at its 58th session, to maintain the 60% limit of the 1971 Fund's payments.

16.2.2 In the light of the uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Assembly decided to maintain the 60% limit of the 1992 Fund payments

16.3 **Osung N°3 incident**

16.3.1 The Assembly took note of the information on the *Osung N°3* incident contained in section 4 of document 92FUND/A/ES.3/15.

16.3.2 It was recalled that the Executive Committee had decided, at its 54th session, that the payments in respect of the *Osung N°3* incident should for the time being be limited to 25% of the established claims (documents 71FUND/EXC.54/10, paragraph 3.5.7).

16.3.3 It was recalled that, at its 2nd session, the Assembly had considered whether the 1992 Fund should pay claimants in Japan the balance of 75%, and then present subrogated claims against the 1971 Fund if and when the 1971 Fund's payments were increased beyond the 25% limit. It was further recalled that the Assembly had decided that it would be appropriate for the 1992 Fund to intervene at that stage, as a State for which the 1992 Fund had entered into force had thereby ensured that victims of oil pollution damage in that State had the benefit of a higher maximum amount of compensation than that provided by the 1971 Fund Convention. It was also recalled that the Assembly had therefore authorised the Director to pay the balance of the established claims relating to damage in Japan (document 92FUND/A.2/29, paragraph 17.3.6).

16.3.4 It was noted that the 1971 Fund Executive Committee had, at its 58th session, authorised the Director to increase the 1971 Fund payments from 25% to 75% of the established claims, provided that certain conditions were fulfilled (document 71FUND/EXC.58/15, paragraph 3.5.12).

16.4 Incident in the United Kingdom

The Assembly took note of the information contained in section 5 of document 92FUND/A/ES.3/15.

16.5 Santa Anna incident

16.5.1 The Assembly took note of the information concerning the *Santa Anna* incident as set out in section 6 of document 92FUND/A/ES.3/15.

16.5.2 The Assembly noted that the Director intended to examine further the applicability of the 1992 Conventions to this case and to report his findings to the Assembly at its October 1998 session.

16.6 Barrington incident

The Assembly took note of an incident involving the unladen Australian tanker *Barrington* (21 718 GT) which had occurred off Brisbane (Australia) on 27 April 1998. It was noted that since only some 16 tonnes of bunker oil had been spilled, it was unlikely that the 1992 Fund would become involved.

17 Claims Manual

17.1 The Assembly recalled that the present edition of the Claims Manual (5th edition), published in December 1996, had been issued jointly by the 1971 Fund and the 1992 Fund, and dealt with the situation during the transitional period which would expire on 15 May 1998.

17.2 It was noted that, from 16 May 1998, an incident would - apart from in exceptional cases - fall within the scope of either the 1971 Fund Convention or the 1992 Fund Convention, and that claimants in one particular State would be able to claim compensation pursuant to only one of these Conventions. The Assembly shared the Director's view that, to simplify matters for claimants, there should be two Claims Manuals, one for claimants in 1971 Fund Member States and one for claimants in 1992 Fund Member States.

17.3 The Assembly noted that developments in certain aspects of the IOPC Fund's policy on the admissibility of claims in the tourism sector had been reflected in the revised draft of the Claims Manual submitted to the Assembly.

17.4 The revised text of the 1992 Fund's Claims Manual, as contained in the Annex to document 92FUND/A/ES.3/16, was adopted by the Assembly. The Assembly authorised the Director to make minor editorial amendments to the text, if necessary.

18 Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention to floating storage units (FSUs) and floating production storage and offloading units (FPSOs)

18.1 The Assembly considered the question of whether or not the 1992 Civil Liability Convention and the 1992 Fund Convention applied to floating storage units (FSUs) and floating production, storage and offloading units (FPSOs) on the basis of document 92FUND/A/ES.3/17 submitted by the Director.

18.2 The Assembly noted that the definition of "ship" in the 1992 Civil Liability Convention was identical to that in the 1984 Protocol to the 1969 Civil Liability Convention. It was also noted that the issue of the applicability of the 1984 Protocols to FSUs and FPSOs had not been discussed at the 1984 Conference and that the considerations of the Conference had been focussed on unladen tankers and combination carriers. The Assembly took note of the Director's view that it would not be possible therefore to make any assumption as to whether the authors of what became the 1992 Protocols had intended that the definition of "ship" should cover FSUs and FPSOs and that in this situation it was necessary to interpret the wording of this definition.

18.3 The Committee noted the Director's conclusions that it was very doubtful whether FSUs and FPSOs could be regarded as falling within the definition of "ship" laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee also noted the Director's opinion that, at least in most cases, FSUs and FPSOs would not be covered by that definition and that, in view of the great variety of types of FSUs and FPSOs which existed, the Director believed that it was not possible to take a definite position on this point in the abstract but that the issue would have to be addressed by the competent bodies of the 1992 Fund when a particular case arose, in the light of the circumstances of that case.

18.4 During the discussion, a number of views were expressed in this regard. Several delegations agreed with the Director's analysis.

18.5 One delegation expressed the view that when considering this issue one should take account of both the definition of "oil" in Article I.5 of the 1992 Civil Liability Convention and the definition of "ship" in Article I.1. That delegation drew attention to the fact that Article I.5 made reference to oil "whether carried onboard a ship or as cargo or in the bunkers of such a ship". Several delegations agreed that the definitions of "ship" and "oil" as contained in Article I of the 1992 Civil Liability Convention excluded FSUs and FPSOs from the scope of application of the 1992 Conventions.

18.6 One delegation stated that FPSOs would be operating around the coasts of its country in the near future and that FPSOs would be carrying oil to ports within its State. That delegation was of the view that a decision in respect of this matter was required so that the operators would know the extent of their liabilities. Another delegation stated that a number of FPSOs were operating in the waters of its country, that the structures were required to move off station to avoid severe weather conditions, and that it was important that the operators and the Government concerned knew whether or not the 1992 Conventions applied to FPSOs, so that appropriate insurance cover could be taken out.

18.7 One delegation stated that, if such craft carried oil into a port of a Member State, it would seem to be contributing oil as defined in Article 10(i)(a) of the 1992 Fund Convention. If there was no coverage by the 1992 Fund for spills from such craft, that delegation questioned whether contributions should be paid.

18.8 Some delegations mentioned that FSUs and FPSOs were not registered as ships, nor were they required to comply with SOLAS or other IMO regulations.

18.9 The Assembly took the view that FSUs and FPSOs did not normally fall within the scope of application of the 1992 Conventions but that it was possible that some structures of this type might fall within the scope of these Conventions in particular circumstances.

18.10 The Assembly considered that this issue should be studied further. It decided that an informal working group led by the United Kingdom delegation would examine the matter, in co-operation with the IOPC Funds Secretariat. The Assembly invited Member States and interested parties to present their views on the subject to the Secretariat by 31 July 1998. It was agreed that the informal working group would then consider the matter and report to the Assembly at its session in October 1998.

Treaty questions

19 Status of the 1992 Fund Convention

19.1 The Assembly took note of the information contained in document 92FUND/A/ES.3/18 on the status of the 1992 Fund Convention.

19.2 The Italian delegation informed the Assembly that in February 1998 the Italian Government had submitted a Bill to Parliament proposing ratification of the 1992 Protocols. A number of other States indicated that their consideration of the 1992 Protocols was in an advanced stage.

19.3 The Director invited observer delegations to keep the Secretariat informed of progress made in their respective States towards accession to the 1992 Fund Protocol.

20 Certificates of insurance after 15 May 1998

20.1 The Assembly noted that the question of the recognition of certificates of insurance issued under the 1969 Civil Liability Convention or the 1992 Civil Liability Convention after 15 May 1998 had been discussed at the 77th session of the Legal Committee of the International Maritime Organization.

20.2 The Director informed the Assembly that the Legal Committee had adopted a circular, which was reproduced in the Annex to document 92FUND/A/ES.3/19/Add.1. It was noted that the circular contained certain recommendations, viz that States Parties to the 1969 Civil Liability Convention should, where legally possible under their national law, accept certificates issued by States Parties to the 1992 Civil Liability Convention as proof that a ship had insurance cover as required by the 1969 Civil Liability Convention, and that States Parties to the 1969 Civil Liability Convention should continue the established practice of issuing 1969 Civil Liability Convention certificates to ships not registered in a State Party to the 1969 Civil Liability Convention and of accepting such certificates issued by other States Parties to the 1969 Convention.

Other matters

21 Any other business

Assisting the 1971 Fund in its operation from 16 May 1998

The Assembly decided that it was not necessary to consider document 92FUND/A/ES.4/20 on assisting the 1971 Fund in its operation from 16 May 1998, since the 1971 Fund Assembly had not made any requests to the 1992 Fund for assistance.

22 Adoption of the Record of Decisions of the 3rd extraordinary session

The draft Record of Decisions, as contained in document 92FUND/A/ES.3/WP.1, was adopted, subject to some amendments.
