



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ASSEMBLY  
6th extraordinary session  
Agenda item 10

92FUND/A/ES.6/10  
3 May 2002  
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## RECORD OF DECISIONS OF THE SIXTH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 30 April to 3 May 2002)

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

### *Opening of the session*

#### **1 Adoption of the Agenda**

The Assembly adopted the Agenda as contained in document 92FUND/A/ES.6/1.

#### **2 Examination of credentials**

2.1 The following Member States were present:

Algeria	Ireland	Philippines
Antigua and Barbuda	Italy	Poland
Argentina	Japan	Republic of Korea
Australia	Kenya	Russian Federation
Belgium	Latvia	Singapore
Canada	Liberia	Spain
China (Hong Kong Special Administrative Region)	Malta	Sweden
Cyprus	Marshall Islands	United Arab Emirates
Denmark	Mexico	United Kingdom
Finland	Morocco	Uruguay
France	Netherlands	Vanuatu
Germany	Norway	Venezuela
Greece	Oman	
	Panama	

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:

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

Cameroon

Colombia

Turkey

*Other States*

Congo

Iran, Islamic Republic of

Nigeria

Côte d'Ivoire

Malaysia

United States

Ecuador

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

*Intergovernmental organisations:*

International Oil Pollution Compensation Fund 1971

International Maritime Organization (IMO)

European Community

*International non-governmental organisations:*

Baltic and International Maritime Council (BIMCO)

Cristal Limited

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)

Oil Companies International Marine Forum (OCIMF)

### **3 Status of Conventions**

- 3.1 The Assembly took note of the information in document 92FUND/A/ES.6/2 concerning the situation in respect of ratification of the 1992 Fund Convention. It was noted that there were at present 64 Member States of the 1992 Fund, that 12 States had deposited instruments of accession to the Conventions and that the 1992 Fund would have 76 Member States by February 2003.

- 3.2 The Director informed the Assembly that since the document had been issued, Mozambique had deposited an instrument of accession to the 1992 Fund Convention which would take effect on 26 April 2003. He also mentioned that an instrument of accession to the 1992 Fund Convention by the Republic of Congo would be deposited in the near future.

- 3.3 The Director mentioned that once the 1992 Fund Convention had entered into force for the States mentioned in paragraph 3.2, the 1992 Fund would have 78 Member States which was more than the 1971 Fund had ever had.

### **4 Audit procedures**

- 4.1 It was recalled that, at its 6th session in October 2001, the Assembly had decided to establish a joint Audit Body for the 1992 Fund and the 1971 Fund (document 92FUND/A.6/28, paragraph 12.5). The Assembly further recalled that it had decided to postpone the consideration of the composition and mandate of the Audit Body to a later session.

- 4.2 After the Assembly had considered the information set out in document 92FUND/A/ES.6/3, the Chairman submitted a document with a revised proposal for the composition and mandate of the IOPC Funds' Audit Body (document 92FUND/A/ES.6/WP.1).
- 4.3 The Assembly accepted the proposal on the composition and mandate of the Audit Body with some amendments as set out in the Annex.
- 4.4 The Greek delegation stated that it could not agree to members of the Audit Body serving for six years and considered that four years should be the maximum.
- 4.5 The Assembly emphasised that the Audit Body should neither duplicate nor control the work of the External Auditor who should continue to carry out his work with total independence. It was also emphasised that the Audit Body should be advisory and that it should not duplicate the work of the Secretariat or engage in the day-to-day management of the Organisations.
- 4.6 The Assembly decided that the Audit Body should adopt its own Rules of Procedure and that the Chairman of the Audit Body should, in conjunction with his first report to the Assembly, submit the Rules of Procedure for endorsement by the Assembly.
- 4.7 The Assembly also decided that it should be made clear at the time of the election which three members of the first Audit Body to be elected should hold office for three years only.
- 4.8 The Assembly further decided that the costs of travel and subsistence of the members of the Audit Body would be paid on the basis of the 1992 Fund Staff Rules.
- 4.9 It was agreed that paragraph 4 of the "Composition and Mandate of the IOPC Funds' Audit Body" as set out in the Annex made it sufficiently clear that Member States should not give instructions to the Members of the Body.
- 4.10 It was noted that the 1971 Fund Administrative Council, acting on behalf of the 1971 Fund Assembly, had taken decisions corresponding to those set out in paragraphs 4.3 to 4.9 above (document 71FUND/AC.7/A/ES.9/14, paragraphs 5.3 to 5.9).

## **5 Winding up of the 1971 Fund**

- 5.1 The Assembly considered the information in document 92FUND/A/ES.6/4 regarding the administration of the 1971 Fund after 24 May 2002, when the 1971 Fund Convention will cease to be in force.
- 5.2 The Assembly noted that the 1971 Fund Administrative Council had decided at its 7th session that it would continue to administer the 1971 Fund after 24 May 2002 (document 71FUND/AC.7/A/ES.9/14, paragraph 6.7).
- 5.3 The Assembly considered the future involvement of the 1992 Fund in the operation of the 1971 Fund and decided to maintain the existing arrangement whereby the 1992 and 1971 Funds have a joint Secretariat and Director.

## **6 Financing of Diplomatic Conference to consider a draft Protocol to supplement the 1992 Fund Convention**

- 6.1 The Assembly recalled that at its 6th session in October 2001 it had approved the text of a draft Protocol to supplement the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) and that the Protocol would establish a Supplementary Fund for compensation. It was noted that the Director had, as instructed, submitted the draft Protocol to the Secretary-General of IMO requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

- 6.2 The Assembly took note of the information set out in document 92FUND/A/ES.6/5, in particular that the IMO Council and Assembly had at their November 2001 sessions approved the holding of a Diplomatic Conference to adopt such a Protocol, provided that this Conference should not result in any costs to IMO. It was also noted that the estimated cost of the Diplomatic Conference was £56 500, corresponding to the additional costs to be incurred by IMO.
- 6.3 The Assembly noted that the draft Protocol had been considered by the IMO Legal Committee at its sixth session, held from 22 – 26 April 2002. It was also noted that in view of the fact that the draft Protocol had been extensively discussed by the 1992 Fund Members, the Legal Committee had felt that it was not necessary to discuss it article by article. It was further noted that the Committee had approved the draft text and concluded that the draft Protocol was ready for submission to a Diplomatic Conference and that it had good prospects both for adoption by the Conference and subsequent implementation by States.
- 6.4 The Director informed the Assembly that the Diplomatic Conference had been provisionally scheduled from 12 - 16 May 2003, subject to the issue of financing the Conference being resolved.
- 6.5 The Assembly considered a request by the Governments of Australia, Canada, Denmark, Finland, Ireland, New Zealand, Norway and Sweden that the Conference should be financed by a loan provided by the 1992 Fund, to be reimbursed by the Supplementary Fund upon the entry into force of the Protocol establishing that Fund (document 92FUND/A/ES.6/5).
- 6.6 One delegation wondered which law would govern the proposed loan agreement. That delegation also queried whether it was legally possible to enter into a loan agreement with an entity (ie the proposed Supplementary Fund), which could not exist until the Protocol referred to in paragraph 6.1 had entered into force. That delegation further questioned whether the 1992 Fund had the power to grant such loans, since the functions of the Fund were limited to those set out in Article 2 of the 1992 Fund Convention and that Article did not authorise the Fund to grant loans.
- 6.7 A number of delegations supported the proposal that the 1992 Fund should make available to IMO the funds necessary to finance the Conference.
- 6.8 Several delegations drew attention to the fact that the 1971 Fund and 1992 Fund had previously made funds available under similar circumstances, eg for the financing of the preparations of the entry into force of the 1992 Fund Convention and of the preparations for the entry into force of the HNS Convention. The point was made that the Assembly by granting this loan would send an important message that the international community had taken steps to solve an important problem. It was suggested that it was in the power of sovereign States to agree to take such a step. It was emphasised that the amount in question was very low and that the timely adoption of the Protocol was in the interests of all Member States. Several delegations referred to the fact that since it was likely that the States which would become parties to the proposed Protocol were attending this session of the 1992 Assembly, a decision to make funds available to finance the Diplomatic Conference would be made on the understanding that the funds would be repaid to the 1992 Fund when the Protocol had entered into force.
- 6.9 A number of delegations suggested that it might be appropriate for the Diplomatic Conference to adopt a Resolution to the effect that the Supplementary Fund should reimburse the 1992 Fund for the costs of the Conference. It was further suggested that the Resolution should also address the issue of reimbursement of the costs of the preparatory work and the initial costs of setting up the Supplementary Fund.
- 6.10 It was suggested that it was not appropriate to use the concept of loan in this situation.
- 6.11 The Assembly decided to make available to IMO the funds necessary to finance the Diplomatic Conference, estimated by IMO at £56 500, on the understanding that the amount paid to IMO would be reimbursed, with interest, to the 1992 Fund by the Supplementary Fund when the Protocol establishing that Fund had entered into force.

- 6.12 The Director was instructed to report the Assembly's decision to the IMO Council at its June 2002 session.

**7 European Commission proposal for a Directive on environmental liability**

7.1 The Assembly took note of the information in document 92FUND/A/ES.6/6 regarding a proposal by the Commission of the European Communities for a Directive on Environmental Liability with regard to the prevention and remedying of environmental damage. It was noted that the proposed Directive would not apply to environmental damage or any imminent threat of such damage from an incident in respect of which liability or compensation was regulated by *inter alia* the 1992 Civil Liability Convention and the 1992 Fund Convention.

7.2 It was noted that the proposed Directive would be considered by the European Parliament and Council and therefore was still subject to change.

7.3 The Assembly renewed its instruction to the Director to make such representations on behalf of the 1992 Fund to the European Commission as he deemed necessary in connection with the ongoing process within the European Union.

**8 Appointment of Deputy Director**

The Assembly noted that the Director had appointed Mr Joseph Nichols as Deputy Director/Technical Adviser and took note of the job description issued by the Director for this post as set out in document 92FUND/A/ES.6/7. It was also noted that the Director had appointed Mr José Maura as Head of the Claims Department.

**9 Any other business**

**9.1 Grant of observer status**

9.1.1 The Assembly considered a request for observer status by the Conference of Peripheral Maritime Regions (CPMR) (document 92FUND/A/ES.6/8).

9.1.2 One delegation considered that it could be said that CPMR was not of a truly international character since it was a European organisation. That delegation mentioned that within IMO the usual procedure in such a case was to grant observer status on a provisional basis for a couple of years.

9.1.3 Another delegation suggested that in future requests for the grant of observer status should be considered in detail by a small working group as was the normal practice within IMO. It was decided to consider whether to use this procedure for any future requests for such status. It was agreed that this issue would be included in the agenda for the 7th session of the Assembly.

9.1.4 The Assembly decided to grant observer status to CPMR on a provisional basis and that the status of CPMR would be re-examined at a later session.

**9.2 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention)**

9.2.1 The Assembly took note of the information in document 92FUND/A/ES.6/9 relating to the proposed system for identifying and reporting contributing cargo under the HNS Convention.

9.2.2 It was recalled that the Assembly had, at its 6th session held in October 2001, instructed the Director to develop a system in the form of a website or CD-Rom to assist States and potential contributors in the identification and reporting of contributing cargo under the HNS Convention.

9.2.3 The Assembly noted with appreciation that the 1992 Fund Secretariat had developed, with the assistance of IT consultants, a non-functioning prototype of a system to identify and report

contributing cargo and that this prototype was demonstrated during the week of the Assembly session. It was noted that the Director intended to develop a functioning prototype thereafter, taking account of any comments which may be submitted on the non-functioning prototype. It was also noted that the functioning prototype, which would permit the processing of sample data based on a trial database of 100 substances, was expected to be available for demonstration during the July 2002 meetings of the IOPC Funds' bodies. It was further noted that in the light of further observations the final system, incorporating a database of all substances qualifying as hazardous and noxious substances (HNS), would be developed during the remainder of 2002 and would be demonstrated to delegations at the earliest opportunity.

9.2.4 One delegation pointed out that the IMO Legal Committee's correspondence group had experienced difficulty in identifying contributing cargo and that such identification was crucial for the implementation for the HNS Convention. That delegation encouraged any State which might be considering ratifying that Convention to attend the demonstration of the prototype.

9.2.5 The Director informed the Assembly that the IMO Legal Committee had approved a document containing a short overview of the HNS Convention which was to be published on IMO's website. He stated that, after consultation with IMO, he intended to publish the overview on the IOPC Funds' website as well.

### 9.3 Submission of documents

9.3.1 The Canadian delegation expressed its concern at the late submission of some documents and mentioned that it was difficult for delegations to participate fully in the Assembly's discussions if documents were received very late. That delegation pointed out that it would be helpful if documents were submitted more than two weeks in advance of sessions as currently required. The delegation suggested that it could explore the issue further with other interested delegations before the October 2002 Assembly session.

9.3.2 Another delegation pointed out that for IMO a general six to seven week deadline applied for submission of documents, but that at the level of the Council or Assembly documents could be submitted up to 24 hours in advance of the sessions.

9.3.3 The Director invited delegations to inform him in advance if they were planning to submit documents late, to assist in the planning of the translation services.

9.3.4 It was suggested that it might be useful to present documents well in advance of the sessions even if this meant producing a short addendum later. It was also suggested that a checklist containing all documents which had been issued would be useful so that delegations would be aware of all documents submitted.

9.3.5 The Chairman invited delegations to contact the Canadian delegation if they had ideas or suggestions in respect of the submission of documents.

9.3.6 The Director stated that the Secretariat was considering ways of improving document production and would welcome delegates' input. He pointed out that the use of information technology had been very helpful in speeding up document distribution.

9.3.7 As proposed by one delegation, the Assembly invited the Director to include circulars, resolutions and the 1992 Conventions on the website, if this was not already the case.

### 9.4 Security implications of public meetings

9.4.1 One delegation suggested that, in the light of the attack on the *Erika* Claims Handling Office in Lorient and the threats made against the Director and staff of the IOPC Fund, and the situation in general following the events of 11 September 2001, the Fund should re-examine its policy of holding meetings in public. That delegation suggested that the Director should carry out a study

comparing the Fund's rules on this matter with the rules of other organisations, to be presented to the Assembly at its October session.

- 9.4.2 The Director agreed to carry out such a study but pointed out that the reason for holding public meetings was to ensure transparency of the Fund's operations.

**10 Adoption of the Record of Decisions**

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A/ES.6/WP.3, was adopted, subject to certain amendments.

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## ANNEX

### COMPOSITION AND MANDATE OF THE IOPC FUNDS' AUDIT BODY

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

- 9** The Chairman of the Audit Body shall report on its work to each regular session of the Assemblies.
  - 10** Every three years the functioning of the Audit Body and its mandate shall be reviewed by the Assemblies on the basis of an evaluation report from the Chairman of the Audit Body.
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