INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
14th session
Agenda item 6

92FUND/EXC.14/12
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RECORD OF DECISIONS OF THE FOURTEENTH SESSION OF THE EXECUTIVE COMMITTEE

(held on 15, 16 and 19 October 2001)

Chairman: Mr Gaute Sivertsen (Norway)

Vice-Chairman: Captain Luis Díaz-Monclús (Venezuela)

Opening of the session

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.14/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Algeria	Ireland	Norway
Australia	Japan	Singapore
Canada	Latvia	Vanuatu
France	Marshall Islands	Venezuela
Germany	Netherlands	

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Member States were represented as observers:

Antigua and Barbuda	India	Republic of Korea
Argentina	Italy	Russian Federation
Bahamas	Liberia	Slovenia
Belgium	Malta	Spain
China (Hong Kong Special Administrative Region)	Mauritius	Sri Lanka
	Mexico	Sweden
Cyprus	New Zealand	Trinidad and Tobago
Denmark	Panama	Tunisia
Finland	Philippines	United Arab Emirates
Greece	Poland	United Kingdom

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

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

Cameroon	Turkey

Other States

Malaysia	Peru	Saudi Arabia
Nigeria	Portugal	Syrian Arab Republic

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

Intergovernmental organisations:
1971 Fund
Commission of the European Community

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

3 Incidents involving the 1992 Fund

3.1 Overview

The Executive Committee took note of document 92FUND/EXC.14/2, which contained a summary of the situation in respect of all ten incidents dealt with by the 1992 Fund since the Committee's 10th session, held in October 2000.

3.2 Incident in Germany

3.2.1 It was recalled that on 20 June 1996 crude oil was found to have polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea and that the German authorities had undertaken clean-up operations at sea and on shore. It was also recalled that investigations by the German authorities had revealed that the Russian tanker *Kuzbass* had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. It was noted that

according to the German authorities, analysis of oil samples taken from the ship matched the results of the analyses of samples taken from the polluted coastline.

3.2.2 It was also recalled that in July 1998 the German authorities had brought legal action in the Court of first instance in Flensburg against the owner of the *Kuzbass* and his P & I insurer, the West of England Shipowners Mutual Insurance Association (Luxemburg) (West of England Club), claiming compensation for the cost of the operations for an amount of DM2 610 226 (£830 000). It was further recalled that the 1992 Fund had been notified of the legal actions and had intervened in the proceedings in order to protect its interests.

3.2.3 The Executive Committee took note of developments in respect of this incident contained in document 92FUND/EXC.14/3 and in particular of the pleadings submitted to the Court by the owner of the *Kuzbass* and the West of England Club, in which they had stated that analyses carried out on their behalf showed that, although the oil carried by the *Kuzbass* and the oil found ashore had both originated from Libya, the oil carried by the *Kuzbass* was Brega crude and the polluting oil was not. The Committee noted that the shipowner and the Club had stated that since the *Kuzbass* had been proceeding to the Mediterranean to load a cargo of crude oil, there had been no need to clean the tanks, and that in any event the route followed by the *Kuzbass* was far from the areas where the oil which caused the pollution was alleged to have been discharged into the sea. It was also noted that the German authorities had maintained that there was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass*. It was also noted that the German authorities no longer maintained that the oil pollution was caused by tank cleaning but by the discharge of slops, since there had been a leak between a slop tank and a cargo tank.

3.2.4 The Committee noted that the Court had appointed an expert to consider the evidence as to the origin of the oil and that the expert had concluded that the pollution samples contained without any doubt residues of crude oil typical of those found in tank washings (slops) from oil tankers. It was noted that the expert had also stated that that the oil in question was without doubt Libyan crude, but that it was not possible to identify which particular Libyan crude, and that without having a reference sample from the *Kuzbass'* slop tank it was not possible to establish whether the pollution was caused by that vessel.

3.2.5 It was noted that the Director had studied the original analytical data submitted by the Maritime and Hydrographic Agency, in particular the mass spectrograms of the pollution samples, which in his opinion showed a remarkable match with Libyan Es Sider crude as opposed to Libyan El Brega crude, the latter being the oil transported by the *Kuzbass* on the voyage immediately prior to the alleged pollution offence.

3.2.6 It was also noted that according to the schedule of Libyan crude exports produced by Lloyd's Maritime Information Services, prior to carrying the cargo of El Brega crude to Wilhelmshaven, the *Kuzbass* had carried two cargoes of Es Sider crude and one cargo of Ras Lanuf crude. It was further noted that if the *Kuzbass* had been the source of the pollution, and if this had resulted from the overboard discharge of slops accumulated over several voyages, this could in the Director's view explain why the mass spectrograms of the pollution samples most resembled those of Es Sider.

3.2.7 The Committee noted that on the basis of the evidence presented by the German authorities the Director considered that the pollution was caused by a discharge of crude oil washings resembling Es Sider crude from a tanker and that the *Kuzbass* was the most likely source of the contamination.

3.2.8 It was noted that the Director had held informal discussions with the West of England Club as regards the evidence but that the Club had continued to maintain that the *Kuzbass* was not to blame.

3.2.9 The Executive Committee agreed with the Director that in view of the position taken by the shipowner and the West of England Club, the issues relating to liability would have to be decided by the German Courts.

3.2.10 One delegation noted that the claimant in this case was the German Government which could afford to wait for a court decision. In that delegation's view the situation would have been very different if the claimants had been fishermen who were suffering economic hardship as a result of the delays in settling the issue of liability between the shipowner and the 1992 Fund. If such a situation were to arise, it was the view of that delegation that the 1992 Fund would have to consider paying claims and taking over the legal proceedings.

3.2.11 The Director pointed out that this issue raised an important question of principle, since under Article 4.1(b) of the 1992 Fund Convention claimants had to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund.

3.3 *Nakhodka*

3.3.1 The Executive Committee took note of the developments in respect of this incident contained in document 92FUND/EXC.14/4 (cf 71FUND/A.24/16/5).

Claims for compensation

3.3.2 The Executive Committee noted that as at 10 October 2001 458 claims totalling ¥26 382 million (£145 million) had been settled at ¥18 467 million (£102 million) and that payments made to claimants amounted to ¥16 738 million (£92 million), including the payments made by the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), totalling US$5 million (£4 million). The Committee also noted the situation as regards the assessment of the pending claims, in particular that it was expected that all assessments would be completed by the end of 2001.

Level of payments

3.3.3 The Executive Committee recalled that as a result of developments and as authorised by the governing bodies the Director had decided in January 2001 to increase the level of payments from 70% to 80% of the amount of the damage actually suffered by the individual claimants (documents 92FUND/EXC.11/6, paragraph 4.1.5 and 71FUND/AC.3/ES.6/7, paragraph 3.3.5).

Claims relating to the construction of the causeway

3.3.4 The Committee recalled that the Japan Maritime Disaster Prevention Centre (JMDPC) had submitted claims totalling ¥3 336 million (£18 million) in respect of the costs of the construction and removal of a 175 metre causeway from the shore, which was used to remove the last 380m³ of oil/water mixture from the upturned bow after the on-water operations were stood down.

3.3.5 The Committee recalled that at the June 2001 sessions of the governing bodies several delegations had stated that the shipowner's insurer and the IOPC Funds should make every effort to settle these claims and emphasised the importance of the Funds keeping an open mind about claims of this type. It was also recalled that some delegations had made the point that the high amount of the claims should not influence the way in which they were treated by the Funds, although great care should be exercised in the assessment of such claims. It was further recalled that some delegations had stated that it was important for the Funds not to consider the building of the causeway as unreasonable with the benefit of hindsight, since this could discourage national authorities from taking innovative preventive measures in future cases.

3.3.6 The Committee noted that meetings had been held in September and October 2001 between the Japanese Government, the IOPC Funds and the UK Club to discuss the technical aspects of the causeway claims in detail. It was further noted that the meetings had also addressed the issue as

to whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds. It was also noted that progress had been made and that further meetings would be held.

3.3.7 One delegation stated that the settlement of the causeway claim was central to reaching an early and satisfactory conclusion to the incident and that it was important that the Funds reached a pragmatic solution without the benefit of hindsight.

3.3.8 The Japanese delegation stated that the Japanese Government would continue its efforts to settle the causeway claim.

Legal actions

3.3.9 The Committee took note of recent developments in respect of legal proceedings set out in paragraphs 4.1 – 4.18 of document 92FUND/EXC.14/4.

Solution of all outstanding issues

3.3.10 The Committee recalled that at the June 2001 sessions of the governing bodies, the Executive Committee had instructed the Director to pursue discussions with the Japanese Government, the shipowner and the UK Club on outstanding claims and issues and to explore the possibilities of reaching a global settlement of all outstanding issues. It was also recalled that the Japanese delegation had stated that if the outstanding issues could be resolved to the satisfaction of all parties concerned this could lead to an early global settlement.

3.3.11 The Committee noted that discussions had been held between the UK Club and the IOPC Funds on the possibilities of reaching a global solution and that these discussions would continue. It was further noted that the Director and the UK Club had agreed that the objectives of any global settlement should be that all admissible claims were paid in full, that the IOPC Funds recovered a reasonable amount of the compensation paid by them and that all litigation would cease.

3.3.12 The Japanese delegation stated that it was premature to authorise the Director to reach a global settlement at this stage, since it was not clear what the basis of a settlement would be. That delegation indicated that any global settlement should relate to the recourse actions.

3.3.13 A number of delegations supported the idea of reaching a global solution and stressed the need for flexibility, pragmatism and transparency. Those delegations agreed that it was premature to authorise the Director to conclude any agreement in this regard or for the Committee to discuss any settlement amounts.

3.3.14 The Director was instructed to continue to explore the possibilities of reaching a settlement of all outstanding issues, including those relating to the various recourse actions.

3.4 *Erika*

3.4.1 Before discussing the documents relating to the *Erika* incident the Chairman stated that the filming and sound recording of the sessions of the Executive Committee were not permitted and all in attendance were requested to respect his ruling.

3.4.2 The Executive Committee took note of the developments in respect of the *Erika* incident as contained in documents 92FUND/EXC.14/5, 92FUND/EXC.14/5/Add.1, 92FUND/EXC.14/5/Add.2 and 92FUND/EXC.14/5/Add.3.

Investigations into the cause of the accident

3.4.3 The Committee took note of the information contained in document 92FUND/EXC.14/5/Add.1 summarising the reports by the Malta Maritime Authority and the French Permanent Commission

of Enquiry into Accidents at Sea on their respective investigations into the cause of the *Erika* incident.

3.4.4 It was noted that both reports confirmed that the vessel was in a very poor condition prior to the accident and that the degree of corrosion of the structural parts of the vessel was a contributory factor.

3.4.5 It was noted that both reports confirmed that all the certification and documentation of the *Erika* was in order. It was also noted that the French Commission's report referred to a letter sent to the Malta Maritime Authority in August 1999 by the ship's classification society after it had conducted an International Safety Management Audit recommending that the International Safety Management Document of Compliance issued to Panship, the managers of the *Erika*, be suspended. It was noted that the Malta Maritime Authority's report stated that the classification society had identified 18 non-conforming practices and the need for four improvements at the end of this audit. It was further noted that the Maltese report stated that after Panship had taken corrective actions, a further audit had been conducted by the classification society in November 1999, and that at the end of this audit, the classification society had confirmed that the company's safety management system satisfied the requirements of the International Safety Management Code.

3.4.6 It was noted that both reports confirmed that there was deterioration of the internal structures in No. 2 starboard ballast tank, and that the French commission's report suggested that this deterioration was due to the fact that the No. 2 starboard tank had originally been designed as a cargo tank and had been converted to a segregated ballast tank in 1993. It was noted that the Maltese report suggested that this conversion had taken place in 1997. It was noted that there appeared to be a history of contamination of oil in No. 2 starboard ballast tank and that the Maltese report stated that following the discovery of oil in that tank in 1996, the classification society had issued instructions for hydrostatic testing of the tank.

3.4.7 It was noted that both reports confirmed that in 1998 oily residues had been found in No. 2 starboard ballast tank and that it was suggested that the steel structures in and around that tank, including the main deck plating, were corroded and generally in poor condition.

3.4.8 It was noted that the vessel had undergone major repairs between June and August 1998. It was also noted that both reports commented that non-destructive testing of welds during these repairs had been minimal and had not included radiographic or ultrasonic testing and that there were discrepancies between the thickness of the steel plating used in the repairs and the thickness indicated in the repair plans.

3.4.9 It was noted that the Maltese report stated that during an annual inspection in November 1999 the classification society surveyor had noted that there was thinning of the deck longitudinal in No. 2 port and starboard ballast tanks and that the surveyor had recommended further inspections and thickness measurements followed by necessary repairs no later than January 2000.

3.4.10 It was noted that, according to the French Commission's report, on the afternoon of 10 December 1999, when the crew had inspected the main deck after the vessel had started experiencing an unexplained list, the level of oil in No. 3 centre cargo tank had dropped significantly and that the No. 2 starboard ballast tank, which had been empty on departure, had been noted to be half full. It was noted that the Maltese report stated that during this inspection, oil had been found in No. 2 starboard ballast tank and that the level of oil in No. 3 cargo tank had decreased.

3.4.11 The Committee noted that the main difference between the reports related to the sequence of events leading to the break up of the ship. It was noted that the French Commission's report stated that the break up had commenced with the fracture of the longitudinal frame between No. 3 cargo tank and No. 2 starboard ballast tank, whereas the Malta Maritime Authority's report

concluded that the sequence had begun with the fracture of the side shell plating in the vicinity of No. 2 starboard ballast tanks.

3.4.12 It was noted that the Malta Maritime Authority's report concluded that it was not possible to determine with certainty the cause of the initial and subsequent failure, and that the surveys carried out by the classification society in 1998 and 1999 had failed to identify and take note of significant areas of local corrosion.

3.4.13 It was also noted that the French Commission concluded that *inter alia* the inadequate repairs carried out on the *Erika* in 1998 were decisive factors in the sequence of events leading to the incident.

3.4.14 The French and the Maltese delegations stated that document 92FUND/EXC.14/5/Add.1, contained accurate summaries of the reports of the investigations. The Maltese delegation pointed out, however, that contrary to what was stated in the document, the ISM audit was only carried out initially on Panship and not on the *Erika*. It was further pointed out by the Maltese delegation that the letter sent by the classification society to the Malta Maritime Authority in August 1999 had been misinterpreted in the French Commission's report. That delegation further stated that subsequent to the ISM Document of Compliance (DOC) audit on Panship, the classification society had conducted a further ISM audit on three other ships managed by Panship. That delegation also pointed out that after the audit on these three ships had been completed, the classification society had conducted another DOC audit of Panship.

3.4.15 In response to a query by one delegation it was noted that the Malta Maritime Authority report did not confirm the French Commission's conclusion that the speed and courses followed by the ship had not been decisive factors in the cause of the disaster. In response to that delegation's question as to why the Malta Maritime Authority had not suspended the ship manager's ISM Document of Compliance it was pointed out that the two reports were produced independently and that therefore they did not comment on each other's findings. The Committee noted the difference of opinion between the French report and the Maltese report with respect to the letter sent by the vessel's classification society to the Malta Maritime Authority.

3.4.16 The French delegation pointed out that a criminal investigation was being carried out into the cause of the incident, which might reveal further information.

3.4.17 One delegation asked what conclusion the Director had reached in light of the results of the two investigations. The Director responded that he considered it premature to draw any conclusions in view of the fact that there were both criminal and civil investigations being carried out in France into the cause of the incident.

Conversion into French Francs of the maximum amount payable under the 1992 Fund Convention

3.4.18 The Committee took note of the information contained in document 92FUND/EXC.14/5/Add.2, and in particular recent accusations relating to the Executive Committee's decisions and the Director's actions in respect of the conversion of 135 million Special Drawing Rights (SDR) into French francs.

3.4.19 It was recalled that accusations and threats had been made, mainly by one individual, against staff at the Claims Handling Office in Lorient, against experts engaged by Steamship Mutual and the 1992 Fund and against the Director. The Committee noted with regret that these threats and allegations had been made more or less continually.

3.4.20 The Committee noted that in September 2001 an association for the protection of the sea, 'Keep it Blue', joined by another entity, la Confédération Maritime, had made a complaint to the public prosecutor maintaining that the Director had committed fraud in connection with the decision on

the conversion of the maximum amount payable under the 1992 Fund Convention expressed in SDR into French francs. It was further noted that the Director had been accused of having violated the 1992 Fund Convention by converting the SDR into francs on a date different from that laid down in the Convention and that the Director had personally made the calculation on the basis of a rate chosen by him, ie 15 February 2000, whereas the conversion should have been made using the rate on 4 April 2000, ie on the date when the Assembly had considered the matter, thereby depriving the victims of FFr35 227 130. It was noted that the accusers had requested that the Director should be removed and that the members of the French delegation to the 1992 Fund be dismissed since they had not defended the legitimate interests of the victims, the French State and the taxpayers. It was noted that these accusations had been set out in a press release dated 3 September 2001 and repeated at a press conference held in Nantes on 4 September 2001.

3.4.21 The Committee recalled that the conversion of the maximum amount available for compensation into national currency was governed by Article 4.4(e) of the 1992 Fund Convention, which read:

> The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly as to the first date of payment of compensation.

3.4.22 It was also recalled that a decision of principle on the method to be used for conversion had been taken by the 1992 Fund Assembly at its 2nd session, held in October 1997, in respect of the *Nakhodka* incident (document 92FUND/A.2/29, paragraph 17.2.8):

> The Assembly decided that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was noted that as regards the *Nakhodka* incident, this date was 17 April 1997 and that the rate of exchange at that date (1 SDR = ¥171.589) would result in 135 million SDR equalling ¥23 164 515 000 (£114 million). It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of session.

3.4.23 It was recalled that pursuant to Article 18.9 of the 1992 Fund Convention, the Assembly may establish any temporary or permanent subsidiary body it considers necessary, define its terms of reference, and give it the authority needed to perform the functions entrusted to it.

3.4.24 It was also recalled that in accordance with Article 18.9, the Assembly had decided, at its 2nd session, to create an Executive Committee with *inter alia* the mandate to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director. It was also recalled that Article 18.7 referred to the approval of settlement of claims against the 1992 Fund, decisions on the distribution between claimants of the amount available for compensation and determination of the terms and conditions according to which provisional payments in respect of claims should be made to victims with a view to ensuring that victims were compensated as promptly as possible.

3.4.25 The Executive Committee noted that the Assembly had thus delegated to the Executive Committee the authority to take decisions relating to claims for compensation, and that with regard to the *Erika* incident, the Committee, at its 6th session held in February 2000, had decided upon the date to be used for the conversion of SDR into French francs as follows (document 92FUND/EXC.6/5, paragraphs 3.27 –3.30):

> The Executive Committee noted that, pursuant to Article 4.4(e) of the 1992 Fund Convention, the maximum amount payable under the 1992 Fund Conventions,

> 135 million Special Drawing Rights (SDR), should be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision of the 1992 Fund Assembly as to the first date of payment of compensation.
>
> It was noted that, once the Executive Committee had been established by the Assembly, decisions on payments of compensation would normally be taken by the Committee rather than by the Assembly. The Committee took the view therefore that the reference in Article 4.4(e) to the Assembly should be considered as referring to the Executive Committee.
>
> The Executive Committee decided that, in accordance with the Assembly's decision in the *Nakhodka* case (document 92FUND/A.2/29, paragraph 17.2.8), the conversion of 135 million SDR into French francs should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000.
>
> Since the applicable currency rates would only be available on 17 February 2000, the Executive Committee instructed the Director to make the necessary calculations and report the result to the Committee's 7th session.

3.4.26 It was recalled that at its 6th session, the Executive Committee had authorised the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the *Erika* incident, to the extent that the claim did not give rise to questions of principle which had not been previously decided by the Committee (document 92FUND/EXC.6/5, paragraph 3.9). It was also recalled that in a document submitted to that session, the Director had drawn the Committee's attention to the fact that, should the Committee authorise him to make payments, the Committee would not be able to take any decision as to the date of the first payment (document 92FUND/EXC.6/2, paragraph 8.2). It was further recalled that at that session, the Committee had limited the Director's authority to provisional payments under Internal Regulation 7.9 (document 92FUND/EXC.6/5, paragraph 3.18).

3.4.27 It was recalled that the Director had reported the results of this calculation to the Executive Committee at its 7th session, held from 3 to 6 April 2000, which had given 135 million SDR = FFr1 211 966 811, and that the Committee had endorsed this calculation as noted in the Record of Decisions (document 92FUND/EXC.7/5, paragraph 3.2.23):

> The Executive Committee recalled that it had decided at its 6th session that the conversion of 135 million SDR into French francs should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000 (document 92FUNDEXC.6/5, paragraph 3.2.9). The Committee endorsed the Director's calculation of the conversion on the basis of the rates applicable on that day, giving 135 million SDR = FFr1 211 966 881.

3.4.28 It was recalled that at its 4th extraordinary session, held from 4 to 6 April 2000, the Assembly had taken note of the information given by the Director in document 92FUND/A/ES.4/2 on the *Erika* incident and had decided to levy contributions to the *Erika* Major Claims Fund (document 92FUND/A/ES.4/7, paragraphs 3.1-3.5).

3.4.29 It was also recalled that at its 5th session, held from 23 to 27 October 2000, the Assembly had approved the reports of the Executive Committee on its 5th to 9th sessions (document 92FUND/A.5/28, paragraph 20.2).

3.4.30 The Executive Committee noted the Director's view that the decision which fixed the date which should be used for conversion of SDR into French francs had been taken by the Committee and not by the Director, and that contrary to what was stated in the complaint, the Director had not violated any Convention but had carried out the conversion in accordance with the Committee's instructions using 15 February 2000 as the date of conversion, a purely mathematical calculation. It was noted that, as the Director had pointed out, his actions had been endorsed by the Executive Committee which, acting on the authority of the Assembly, had the power to take this decision. It was also recalled that, as the Director had pointed out, in its decision in the *Nakhodka* case referred to in paragraph 3.4.22 above, the Assembly had explicitly recognised that decisions on the date for conversion would be taken by the Executive Committee and that the Assembly had approved the reports on the Executive Committee's sessions where this issue was considered. The Committee noted the Director's view that therefore its decisions were in conformity with the 1992 Fund Convention, that the Director had acted in accordance with the instructions given to him and that the allegations were totally groundless.

3.4.31 It was noted that on 4 October 2001, the 1992 Fund had issued a press release in France, reproduced in the Annex to document 92FUND/EXC.14/5/Add.2, in response to the accusations referred to in paragraph 3.4.20**.**

3.4.32 It was noted that the Confédération Maritime and 'Keep-it-Blue' had responded to the 1992 Fund's press release maintaining in particular that the decision on the conversion had been taken by the Director, that the Committee did not have the authority to take any decision on the conversion in question, since the Rules of Procedure of the Assembly did not give the Committee such authority, that the work of the Committee should be governed by the Rules of Procedure of the Assembly unless otherwise provided in the Convention, that the Convention expressly provided that the conversion should be made on the basis of the rate of exchange on the date of the Assembly's decision, that the Committee's mandate did not cover such decisions and that the Committee did not have the power to decide that the reference in Article 4.4(e) to the Assembly should be considered as referring to the Committee. It was noted that it had also been argued that the decision was in reality an amendment to the 1992 Fund Convention, which could only be brought about by a Diplomatic Conference convened by IMO. It was further noted that it had been maintained that since the decision on the conversion had been taken by the Assembly in October 2000, and not on 4 April 2000, the resulting loss for the French claimants was FFr132 310 766 and not FFr35 227 130.

3.4.33 It was noted that it was the Director's understanding that the Executive Committee's decision had been taken in order to fix at an early date the amount available for compensation expressed in French francs so as to remove any uncertainty in this regard. It was also noted that any decision as to conversion between currencies could with hindsight be found to be advantageous or detrimental to claimants since the rate of the SDR *vis-à-vis* the French franc varied.

3.4.34 In the discussion of this issue, 25 delegations of the members of the Executive Committee and of other Fund Member States intervened. They endorsed the analysis by the Director set out in paragraph 3.4.30 above and confirmed that the 1992 Fund Executive Committee and the Director had acted in accordance with the 1992 Fund Convention and that the Director had correctly carried out the Committee's instructions.

3.4.35 As regards the groundless allegations that had been made against the Director and the Executive Committee, many delegations deplored such attempts to discredit the Organisation and considered that the matter should be referred to the Assembly.

3.4.36 The Chairman made the following summary of the discussions.

> The decision which fixed the date which should be used as a basis for conversion of SDR into French francs had been taken by the Executive Committee and not by the Director. Contrary to what was stated in the complaint, the Director had

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

3.4.37 The Committee endorsed the Chairman's summary.

3.4.38 The Executive Committee reiterated its serious concerns as regards the threats and allegations made, mainly by one individual, almost continuously against the Head of the Claims Handling Office in Lorient and other staff in the office, against the experts engaged by the Steamship Mutual and the 1992 Fund and against the Director. The Committee stated that such behaviour was unacceptable and seriously hampered the operations of the 1992 Fund in France to the detriment of the legitimate claimants, that it might not be possible for the 1992 Fund to continue to operate in France and that therefore the Fund might have to close the Claims Handling Office in Lorient should this behaviour continue. The Committee expressed the hope that the French judicial authorities would take appropriate steps to enable the Fund to operate in a normal way in France.

3.4.39 It was stated that it was important for the 1992 Fund to continue to address the difficulties encountered in France with dignity and transparency.

Claims situation

3.4.40 The Committee noted the information given on the claims situation as follows:

As at 11 October 2001, 5 637 claims for compensation had been submitted for a total of FFr863 million (£82 million). Of these claims 1 614 (29%) were presented during the period March – October 2001. Some 4 096 claims totalling FFr469 million (£45 million) had been assessed at a total of FFr280 million (£27 million). Assessments had thus been carried out of 73% of the total number of claims received.

Two hundred and eighty-three claims, totalling FFr36 million (£3.4 million), had been rejected. Many of the rejected claims were being reassessed in the light of additional documentation provided by claimants.

Payments for compensation had been made in respect of 2 857 claims for a total of FFr157 million (£15 million). A further 1 541 claims, totalling FFr394 million (£38 million), were either in the process of being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.

There was a significant difference between the various categories of claims as regards the progress made in the claims assessment. In certain categories over 90% of all claims had been assessed and for most categories payments had been made in respect of over 50% of claims. The majority of the claims in these categories had been presented fairly early on. On the other hand, in the tourism sector 61% of the claims had been assessed, but of the 2 703 claims in this sector, 1 068 (ie over 40%) had been presented after March 2001. There was still a delay between the time of approving and the time of paying claims, mainly as a result of claimants not having accepted the approved amounts.

Level of payments

3.4.41 It was recalled that the Executive Committee had decided, at its 13th session held in June 2001, to increase the level of payments from 60% to 80% of the amount of the damage actually suffered by each claimant, as assessed by the 1992 Fund (document 92FUND/EXC.13/7, paragraph 3.2.42).

3.4.42 The Executive Committee took note of a supplementary study which had been carried out in October 2001 within the French Ministry of Economy, Finance and Industry, "the October 2001 study". It also took note of the opinion expressed by the 1992 Fund's experts on this study.

3.4.43 The Committee noted that the October 2001 study confirmed the estimate of FFr500 million (£47 million) of admissible losses from the tourism sector made in the study carried out in June 2001, and that by adding a provision of FFr50 million (£4.7 million) for "out of area claims" and adding an estimate of FFr300 million (£28.3 million) for claims from other sectors outside tourism, the study arrived at a total of FFr850 million (£81 million). It was noted that the study concluded that compensation at 100% was therefore possible with a safety margin of FFr350 million (£33 million).

3.4.44 The Committee noted that the 1992 Fund's experts broadly agreed with the overall estimate of the maximum total tourism losses admissible for compensation at around FFr500 million (£47 million).

3.4.45 The Executive Committee noted that it had again to consider how to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

3.4.46 It was recalled that the claims by Total Fina and the French Government could be disregarded for the purpose of the Executive Committee's consideration of the level of payments, since these claims would be pursued only if and to the extent that all other claims had been paid in full.

3.4.47 It was recalled that admissible claims in the sectors other than tourism had been estimated at some FFr275 - 325 million (£26 - 31 million). It was noted that the Director believed that the estimate in the October 2001 study for the tourism claims of FFr500 million (£47 million) might be on the low side and that he considered that a figure of FFr700 million (£66 million) would be prudent. It was further noted that he took the view that it was advisable to include an amount of FFr100 million (£9.4 million) for losses in the tourism sector during 2001 and that it was necessary to make an additional allowance for marketing campaigns of some FFr100 million (£9.4 million). It was also noted that as had been stated at the Executive Committee's 13th session, the Director believed that it would be prudent to add a general safety margin of FFr200 million (£18.8 million), such that the estimated total admissible claims would then be in the region of FFr1 400 million (£131 million), ie the same figure as the one given by the Director at the Committee's 13th session. It was further noted that, in the light of the remaining uncertainties, the Director proposed that the level of payments should be maintained at 80% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the 1992 Fund and Steamship Mutual.

3.4.48 The French delegation thanked the Director for the document summarising the October 2001 study, which was an accurate reflection of the study's findings. That delegation noted that the Fund's experts had agreed with the conclusions of the study that there was a sufficient safety margin to enable the level of payments to be increased to 100%. Whilst agreeing with the Director's proposal to maintain the level at 80%, the French delegation hoped that it would be possible to move to 100% at the next session of the Executive Committee.

3.4.49 The Executive Committee decided that in the light of the uncertainties that remained as to the level of admissible claims arising out of the *Erika* incident, the level of payments should be maintained at 80% of the amount of the damage actually suffered by the respective claimants as

assessed by the experts engaged by the 1992 Fund and Steamship Mutual. It was also decided that the level of payments should be reviewed at the Committee's 16th session.

Claims for reduction in tourism tax revenue

3.4.50 The Committee considered the admissibility of claims submitted by four communes for reduction in revenues from tourism tax (taxe de séjour), namely Locmariaquer (FFr47 612.05), Longeville sur Mer (FFr85 816), La Faute sur Mer (FFr39 542) and Les Sables d'Olonne (FFr110 781).

3.4.51 It was noted that tourism tax was levied by communes that were recognised tourism resorts and destinations, and that the level of the tax was fixed annually by the commune on the basis of a fixed amount per visitor per night of stay, the amount varying dependent on the type of accommodation. It was also noted that it was understood that the levy was not charged in respect of business visitors. It was further noted that the revenue from the tourism tax was used by the commune to support costs of activities and services which were related to levels of tourism in the commune, *inter alia* beach cleaning, rubbish collection, information and local tourism offices.

3.4.52 It was noted that an initial examination of the claims showed that the decrease in tourism tax revenue from 1999 to 2000 in these four communes fell within a range of 9-16%, broadly comparable with the estimated level of decrease in tourism economic activity in 2000 in the areas affected by the *Erika* incident.

3.4.53 The Committee noted that the question had arisen as to whether claims for reduction in tourism tax revenue were admissible for compensation. The Committee took note of decisions taken by the 1971 Fund Executive Committee in previous cases as regards the admissibility of similar claims.

3.4.54 It was recalled that in the *Tanio* case (France 1980), the 1971 Fund Executive Committee had rejected a claim from a commune for loss of tax revenue due to a reduction in the income of businessmen as a result of the incident on the ground that it might be very difficult for a public authority to prove that a loss of tax revenue had actually occurred as a direct result of a pollution incident. It was also recalled that that Committee had considered that the documentation submitted in support of this claim was insufficient (documents FUND/EXC.10/5, paragraph 3.3.5 and FUND/EXC.10/WP.1, paragraph 2.3).

3.4.55 It was recalled that in the context of the *Haven* incident (Italy, 1991), the city of Cannes (France) had submitted a claim which, *inter alia*, related to loss of income resulting from a reduction of tourism during 1991, namely: professional tax, tax on casinos, tax on individual tourists, additional tax on registration and tax on various entertainments. It was noted that the 1971 Fund Executive Committee had taken the view that the city had not shown that the alleged loss of tax revenue from tourism resulted from the *Haven* incident and that, for this reason, that Committee had considered that this claim should be rejected (document FUND/EXC.35/10, paragraph 3.2.18).

3.4.56 It was also recalled that in the context of the *Haven* incident a claim relating to alleged loss of tourist tax resulting from a reduction in tourist activity had been submitted by the commune of Lavandou in France. It was noted that the 1971 Fund Executive Committee had considered that the commune had not shown that the alleged loss was caused by the *Haven* incident and that this claim should therefore be rejected (document FUND/EXC.35/10, paragraph 3.2.19).

3.4.57 It was recalled that in connection with the consideration of the claims referred to in paragraphs 3.4.55 and 3.4.56 above, the French observer delegation had expressed the view that the rejection of these claims could only be justified by the fact that the losses in respect of which the city of Cannes and the commune of Lavandou claimed compensation could not be accepted, on the basis of the supporting documents, as losses caused by contamination, ie that the losses resulted from a reduction in tourism significantly greater than the normal fluctuation from one

year to another. It was also recalled that that delegation had made the point that, if this was not the reason for rejection, the rejection was at variance with the position taken by the 1971 Fund in previous cases, and that it had been maintained by that delegation that communes which depended only on beach tourism and which could not offset the losses of taxes on tourism by other income would suffer an economic loss which should be compensated if there was a reasonable proximity between the contamination and loss (document FUND/EXC.35/10, paragraph 3.2.20).

3.4.58 As regards the claims submitted by the French municipalities in the *Erika* case, it was noted that the Director took the view that, contrary to the case in respect of the claims rejected in the *Tanio* and *Haven* cases, it was clear that the reduction in tourism tax revenue was largely a result of the reduction in tourism caused by the *Erika* incident. It was further noted that the Director considered therefore that there was a reasonable degree of proximity between the reduction in tourism tax revenue and the *Erika* incident and that for this reason the Director took the view that these claims should be considered admissible in principle.

3.4.59 The Committee noted the Director's view that, if it were to agree with the Director's approach, it would be necessary for the purpose of assessing the quantum of the loss to consider to what extent the reduction was greater than normal fluctuations in tourism tax revenue from one year to another and to take into account also any potential savings made by the communes as a result of the decrease in the number of tourists.

3.4.60 A number of delegations expressed the view that the circumstances relating to the claims by the communes for loss of revenue from tourism tax arising from the *Erika* incident were different to those examined in previous cases, and that there was a sufficient degree of proximity between the losses suffered by the communes and the contamination. Those delegations agreed with the Director that the claims were admissible in principle.

3.4.61 A number of other delegations expressed general reservations concerning the acceptance of claims relating to a reduction in tax revenues. It was pointed out that whilst the tourism taxes in question were levied to cover certain specific expenses related to tourism, other countries would rely on their general taxation system or on VAT to cover expenses of this kind. Those delegations pointed out that different taxation systems could give rise to different treatment between Member States.

3.4.62 Some delegations expressed concerns that, in assessing claims in respect of losses due to reduction in revenue from tourism tax, it would be difficult to determine any potential savings that might have resulted from a downturn in tourism.

3.4.63 The Executive Committee decided to postpone its decision on the admissibility of the claims for reduction in tourism tax revenue to its 16th session.

3.4.64 The French delegation urged the Committee to give the claims further consideration since these claims represented a special situation in that the communes had suffered genuine economic losses and had no other means of recovering those losses. That delegation considered that the claims met all of the IOPC Fund's criteria on admissibility.

Claims for reduction in airport tax revenue

3.4.65 The Committee considered a claim for FFr336 739 (£32 000) submitted by the Chambre de Commerce et d'Industrie of Morbihan, which operated the airport of Lorient Lann Bihoué, for reduction in the revenue from airport taxes during 2000. It was noted that the airport tax was levied at FFr42.06 per passenger, and that it was maintained that there was a reduction of 8 007 passengers during 2000 compared to 1999.

3.4.66 It was noted that historical records had shown that the number of passengers at the airport varied by over 5% from one year to another, compared to a decrease of 3% from 1999 to 2000. It was

also noted that Lorient airport was a domestic airport for which tourist passengers were of only limited importance.

3.4.67 It was noted that for these reasons, the Director had considered that it had not been shown that the reduction in passengers from 1999 to 2000 and the ensuing reduction in airport tax revenue were caused by the *Erika* incident, and that he had proposed therefore that the claim should be rejected.

3.4.68 The Committee agreed with the Director's view and decided that the claim for reduction in airport tax revenue should be rejected.

Claim by a taxi boat owner

3.4.69 The Executive Committee took note of the information concerning the claim submitted by a taxi boat owner set out in section 8.3 of document 92FUND/EXC.14/5/Add.3.

Expression of gratitude

3.4.70 The Executive Committee expressed its gratitude to the Head of the Claims Handling Office in Lorient, to the staff at the Office and to the experts and lawyers working for the 1992 Fund in France, sometimes under difficult circumstances.

3.5 *Al Jaziah 1*

3.5.1 The Executive Committee took note of the developments in respect of the *Al Jaziah 1* incident, as contained in document 92FUND/EXC.14/6.

3.5.2 The Executive Committee noted that claims in respect of clean-up costs totalling US$1.3 million (£920 000) had been submitted to the IOPC Funds by two local oil companies that had been engaged in the clean-up response. It was also noted that these claims had been provisionally assessed at US$461 000 (£330 000) pending further details from the claimants. The Committee further noted that one of the oil companies had submitted a further claim for US$98 000 (£68 000).

3.5.3 The Committee noted that the Federal Environment Agency (FEA) had submitted a claim for Dhs 2 million (£380 000) in respect of operations undertaken by a local salvage company to stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Free Port. It was further noted that this claim had been settled for the amount claimed in May 2001.

3.5.4 The Executive Committee noted that claims for US$40 000 (£28 400) and Dhs 47 000 (£9 200) had also been submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated. It was further noted that these claims had been settled in May 2001 in the amounts at US$ 29 000 (£20 358) and Dhs 47 000 (£9 200) respectively.

Zeinab

3.5.5 The Executive Committee took note of the developments in respect of the *Zeinab* incident, as contained in document 92FUND/EXC.14/6.

3.5.6 The Committee noted that on 14 April 2001, the Georgian-registered vessel *Zeinab*, suspected of smuggling oil from Iraq, had been arrested by the multi-national Interception Forces. The Committee further noted that the vessel was being escorted to a holding area in international waters when the vessel had lost its stability about 16 miles from the Dubai coastline and sank in 25 metres of water. It was further noted that the vessel was reported to have been carrying a cargo of 1 500 tonnes of fuel oil, of which it was estimated that some 400 tonnes was spilled at the time of the incident. It was also noted that some 1 100 tonnes of cargo had remained in the unbreached tanks and that this cargo had been successfully removed from the sunken vessel

without further significant spillage of oil. The Committee noted that it appeared that the *Zeinab* had not been entered with any classification society and had not been covered by any liability insurance.

Definition of 'ship'

3.5.7 The Executive Committee recalled that at its 13th session in June 2001 it had decided that, since the *Zeinab* was actually carrying oil in bulk as cargo at the time of the incident, it should be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention. It was further recalled that the *Zeinab* was clearly capable of carrying oil in bulk as cargo, and had been frequently used for carrying oil in the region. It was recalled that the Committee had considered that it would be difficult to argue that it was not a ship for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention. It was further recalled that the Committee had therefore taken the view that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 92FUND/EXC.13/7, paragraph 3.4.6).

3.5.8 The Committee also recalled that at its 5th session in June 2001 the 1971 Fund Administrative Council had also decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 71FUND/AC.5/ES.8/10, paragraph 5.6.6).

Applicability of the Conventions

3.5.9 The Executive Committee recalled that at its 13th session, the Committee had decided that since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, which had been implemented into national law, both sets of Conventions applied to the incident (document 92FUND/EXC.13/7, paragraph 3.4.8).

3.5.10 The Committee further recalled that at its 5th session the 1971 Fund Administrative Council had also decided that both sets of Conventions applied to the *Zeinab* incident, but that the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's liability (document 71FUND/AC.5/A/ES.8/10, paragraphs 5.6.8 and 5.6.9).

Distribution of liabilities between the 1971 and 1992 Funds

3.5.11 The Committee recalled that the 1992 Fund Executive Committee and the 1971 Fund Administrative Council had decided that the liabilities arising out of the *Zeinab* incident should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis (documents 92FUND/EXC.13/7, paragraph 3.4.11 and 71FUND/AC.5/A/ES.8/10, paragraph 5.6.11).

Claims for compensation

3.5.12 The Executive Committee noted that the Dubai Ports Authority had submitted claims totalling US$480 000 (£343 000) in respect of costs of preventive measures and clean-up. It was also noted that further claims were expected.

Settlement of claims

3.5.13 The Executive Committee recalled that at the June 2001 sessions of the governing bodies of the IOPC Funds one delegation had referred to Article 4.2(a) of the 1971 and 1992 Fund Conventions under which the Funds were exonerated from paying compensation for pollution damage resulting from *inter alia* an act of war or hostilities. That delegation expressed the view that this defence was worth exploring more closely.

3.5.14 It was recalled that some delegations had considered that the multi-national interception forces were merely carrying out policing duties to ensure that sanctions imposed by the United Nations Security Council were respected. It was also recalled that those delegations had considered that even if the sinking of the *Zeinab* had been due to a deliberate act, this would be a matter for a possible recourse action by the Fund rather than constituting a defence under Article 4.2(a).

3.5.15 It was also recalled that the United Arab Emirates delegation had stated that the area in question was no longer under war and that observation of the United Nations Resolutions had no bearing on the right to compensation for oil pollution damage.

3.5.16 It was further recalled that a number of delegations had expressed concerns about authorising the Director to settle claims until the exact circumstances surrounding the sinking of the *Zeinab* were known.

3.5.17 It was recalled that the 1992 Fund Executive Committee and the 1971 Fund Administrative Council had at their June 2001 sessions decided that in view of the reservations expressed by a number of delegations it was premature to authorise the Director to settle claims for compensation arising from the incident and that the matter should be given further consideration at their October 2001 sessions (documents 92FUND/EXC.13/7, paragraph 3.4.20 and 71FUND/AC.5/A/ES.8/10 , paragraph 5.6.20).

Recent developments

3.5.18 The Committee noted that the Funds' lawyers had been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting copies of documents recovered from the *Zeinab*. It was further noted that in response to that request the US Navy had provided copies of the Certificates of Ownership and Navigation issued by the Georgian Maritime Administration and a brief report by the Boarding Officer of the US Navy. It was also noted that the Certificate of Ownership dated 7 June 2000 gave the name of the owner and an address of his representative in Dubai. The Committee further noted that the Certificate of Registration, also issued on 7 June 2000, indicated that the *Zeinab* was a cargo vessel of 2 178 GT and that no IMO number was given on the Certificate.

3.5.19 The Committee noted that the Boarding Officer had stated in his report *inter alia* that measurements and soundings of upper tanks had indicated that there was 1 300 tonnes of fuel oil onboard. It was noted that it is was also stated that the boarding team had not been able to access the lower tanks due to the sounding tubes being welded shut. It was further noted that the boarding team had estimated that had the lower tanks been full, the total quantity of oil on board would have been about 3 000 tonnes. It was also noted that the boarding team had found old fuel receipts indicating that up to 3000 tonnes of oil had been loaded and discharged on previous occasions and that on the basis of this the boarding team had decided to divert the vessel.

3.5.20 The Committee noted that the Funds' technical expert had also been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting information regarding the sequence of events leading up to the sinking of the vessel. It was noted that no progress had been made in obtaining such details. It was also noted that the Funds' lawyers were trying to obtain information from the United Arab Emirates Ministry of Foreign Affairs and Ministry of Interior.

3.5.21 The Executive Committee noted that the Funds' expert had recently reviewed a video taken by an observer on the United States Navy arresting vessel of the *Zeinab* sinking and an underwater video of the sunken vessel taken by divers who assisted in the oil removal operations.

3.5.22 The Committee noted that the underwater video showed clearly that the majority of the tank openings had been removed, which would have allowed seawater to flow directly into the tanks thereby decreasing the vessel's overall freeboard. It was further noted that the Funds' expert had considered that under the prevailing conditions of 2 metre waves, this would have been sufficient

to contribute to the ingress of water into the tanks. It was also noted that since the vessel was not equipped with pumps capable of removing large volumes of seawater, the loss of freeboard could have resulted in the flooding of the machinery spaces and the forepeak, which would have been sufficient to sink the vessel. The Committee noted that according to the expert the videos did not show any structural deformation or collision damage.

3.5.23 It was recalled that at its 1st session in October 1998, the 1992 Fund Executive Committee had considered the applicability of the 1992 Conventions to the *Milad 1* incident (document 92FUND/EXC.1/8). It was further recalled that this vessel had been intercepted by a United States Coast Guard contingent of the multi-national maritime interception forces in international waters some 25 nautical miles north-east of Bahrain. It was also recalled that the vessel, which was carrying 1500 tonnes of mixed diesel/crude oil, was found by the Coast Guard to have a crack in its hull, allowing seawater to enter a ballast tank. It was further recalled that throughout the consideration of the *Milad 1* incident neither the issue of the circumstances which gave rise to the crack in the vessel's hull nor that of whether the interception could be invoked as a defence under Article 4.2(a) of the 1992 Fund Convention had been raised.

3.5.24 In respect of the *Zeinab* incident, a number of delegations, including those that had previously expressed reservations, stated that in the light of the new information obtained by the Director they no longer took the view that this incident could be considered as an "an act of war, hostilities, civil war or insurrection".

3.5.25 One delegation pointed out that the defence provided in Article 4.2(a) of the Fund Convention was also available to the shipowner under the 1992 Civil Liability Convention and that if the 1992 Fund were to invoke the defence this might send the wrong message to the owner of the *Zeinab*.

3.5.26 The Executive Committee agreed with the Director that the interception by the multi-national maritime interception forces in respect of the *Zeinab* incident could not be considered as "an act of war, hostilities, civil war or insurrection", and that the 1992 Fund should therefore not invoke the defence provided in Article 4.2(a). The Committee agreed with the Director that if, in light of his subsequent investigations, it transpired that the sinking of the *Zeinab* had been a deliberate act, this might be a matter for a possible recourse action by the Funds.

3.5.27 The Committee decided to authorise the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the *Zeinab* incident to the extent that the claims did not give rise to questions of principle which had not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

3.6 *Natuna Sea*

3.6.1 The Executive Committee took note of the information contained in document 92FUND/EXC.9/9 (cf 71/FUND/A.23/14/13) concerning the *Natuna Sea* incident, which occurred on 3 October 2000 in the Singapore Strait off Batu Behanti (Indonesia).

3.6.2 The Committee noted that the vessel had been carrying a cargo of 70 000 tonnes of Nile Blend crude oil at the time of the incident, that an estimated 7 000 tonnes of crude oil had been spilled as a result of the grounding and that the vessel had been lightened of its remaining cargo and refloated on 12 October 2000 without significant further spillage. It was also noted that the oil had affected Indonesia, Malaysia and Singapore.

Applicability of the Conventions

3.6.3 It was noted that Singapore was Party to the 1992 Civil Liability Convention and to the 1992 Fund Convention, that Indonesia was Party to the 1992 Civil Liability Convention but not Party to the 1992 Fund Convention and that Malaysia was Party to the 1969 Civil Liability Convention

and the 1971 Fund Convention but not the 1992 Conventions. The Committee noted that as a consequence of two different regimes being applicable to the incident, the shipowner might be required to establish two limitation funds, one in Malaysia and one in Singapore or Indonesia. The Committee also noted that the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention was approximately 22.4 million SDR (£17 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.4 million).

Claims for compensation

3.6.4 The Executive Committee recalled that at their October 2000 sessions the 1992 Fund Executive Committee and the 1971 Fund Administrative Council had authorised the Director to make final settlements on behalf of the 1992 Fund and the 1971 Fund of all claims arising out of the *Natuna Sea* incident to the extent that claims did not give rise to questions of principle which had not been decided by any of the governing bodies of the 1971 Fund or 1992 Fund.

3.6.5 The delegation of Singapore informed the Committee that MPA, Singapore would submit further documentation concerning the claim by MPA shortly.

Likelihood of involvement of the 1971 Fund and 1992 Fund

3.6.6 The Committee noted that all claims for oil pollution damage in Malaysia had been settled at a total of some £462 000. It was further noted that the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention was estimated at £5.4 million. It was also noted that the 1971 Fund would therefore not be called upon to make any payments in respect of compensation or indemnification under Article 5.1 of the 1971 Fund Convention.

3.6.7 The Executive Committee noted that the claims submitted in Singapore totalled US$10.3 million and S$4.75 million (£9.1 million) and that the claims submitted in Indonesia totalled Rp 2 181 000 million (£127 million).

3.6.8 The Committee noted that there was therefore a possibility that the total admissible claims for pollution damage in Singapore and Indonesia would exceed the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention and that the 1992 Fund might be called upon to make payments in respect of pollution damage in Singapore.

3.6.9 One delegation drew attention to the uniqueness of the *Natuna Sea* incident, which might require the shipowner to establish two limitation funds, one in respect of the 1969 Civil Liability Convention and the other in respect of the 1992 Civil Liability Convention.

3.6.10 The Director agreed that the establishment of two limitations funds could have given rise to complications, but that in view of the fact that the claims for pollution damage in Malaysia had been settled for relatively small amounts, it was unlikely that the shipowner would need to establish a limitation fund under the 1969 Civil Liability Convention.

3.6.11 On a question of the legal implications for the 1992 Fund as regards the claims for pollution damage in Indonesia, the Director stated that if the Indonesian claims were to be settled for significant amounts it was likely that the 1992 Fund would be required to make payments in respect of pollution damage in Singapore.

3.7 *Baltic Carrier*

3.7.1 The Executive Committee noted that the *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, had been carrying some 30 000 tonnes of heavy fuel oil when on 29 March 2001 it collided with the *Tern* (20 362 GT), a sugar-laden bulk carrier registered in Cyprus, some 30 miles north-east of Rostock (Germany). It was further noted that the collision had caused a hole approximately $20m^2$ in one of *Baltic Carrier's* cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.

Clean-up operations in Denmark

3.7.2 The Committee noted that the Danish Coast Guard had responded to the spill with seven of its oil response vessels and that the Swedish and German authorities despatched three and two response vessels respectively, under the terms of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention).

3.7.3 The Executive Committee further noted that specialised oil spill response equipment for the shore-based activities had been supplied from Danish emergency stocks, by the Swedish emergency services and from a Danish response equipment manufacturer.

Claims for compensation for oil pollution in Denmark and Sweden

3.7.4 The Executive Committee recalled that at its 13th session it had decided to authorise the Director to make final settlement on behalf of the 1992 Fund of all claims for pollution damage in Sweden and Denmark arising from the *Baltic Carrier* (document 92FUND/EXC.13/7, paragraph 3.3.19).

3.7.5 The Committee noted that as at 28 September 2001 55 claims in respect of property damage and economic losses in the fishing and mariculture sectors had been submitted totalling Dkr 28.9 million (£2.4 million). It was further noted that claims had been submitted by three fish farms for Dkr 26.5 million (£2.3 million). It was also noted that the floating cages of three fish farms had been oiled and that at the time of the oiling the fish farms had been in the process of being stocked with young trout, which were to be reared for the production of roe for sale to Japan.

3.7.6 The Executive Committee noted that it was not yet possible to make an evaluation of the total amount of the claims for compensation and consequently it was not known whether the limitation amount applicable to the *Baltic Carrier* of Dkr 118 million (£9.5 million) would be exceeded and whether the 1992 Fund would be called upon to pay compensation.

3.7.7 The Danish delegation expressed the view that the total claims were likely to exceed the limitation amount applicable to the *Baltic Carrier* under the 1992 Civil Liability Convention and that the 1992 Fund would probably be required to make some payments.

3.7.8 The Committee recalled that at its 13th session the Swedish observer delegation had stated that oil thought to have originated from the *Baltic Carrier* had been found on the south-west coast of Sweden and that clean-up operations had been undertaken to remove the oil. It was also recalled that that delegation had further stated that the analysis of the oil had not yet been completed, but that if the polluting oil matched the oil from the *Baltic Carrier*, the Swedish Coast Guard and local authorities intended to file claims in respect of clean-up operations. The Committee noted that the Director had not received any further information as regards any claim in respect of clean-up operations in Sweden.

Oil pollution in Rostock and Ventspils

3.7.9 The Committee recalled that some oil spilled from the *Baltic Carrier* had entered the forepeak tank of the *Tern* immediately following the collision. It was recalled that on the day of the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern's* forepeak tank. It was recalled that during the latter vessel's stay in Rostock a small oil spill occurred during attempts to clean the bow and remove the oil from the forepeak. It was noted that clean-up operations had been undertaken by a local fire brigade at a cost of DM 600 (£200). It was also noted that the German authorities did not intend to carry out an investigation into the events leading to the spill or to make any claim for compensation.

3.7.10 It was recalled that after about 800 tonnes of the *Tern's* cargo of sugar had been redistributed to trim the vessel by the stern Class' approval was obtained for the vessel to proceed with a tug escort to its discharge port of Ventspils (Latvia).

3.7.11 It was recalled that whilst the *Tern* had been discharging its cargo in Ventspils a further spillage of *Baltic Carrier* oil had occurred, and that a local contractor had been engaged by the shipowner's insurer, Assuranceforeningen Gard (Gard Club), to undertake clean-up operations in Ventspils and to remove the remaining *Baltic Carrier* oil from the forepeak tank.

3.7.12 It was noted that the Gard Club had received claims for pollution damage from the Ventspils Port Authority as well as from the owner of the terminal alongside which the spill occurred, the Marine Environment Organisation, a yacht harbour, fishermen and the owners of other vessels that were in the port at the time. It was noted that the Gard Club intended to settle the oil pollution claims on best possible terms, without consulting the 1992 Fund. It was noted that the Fund would not be bound by any settlements made by the Club.

3.7.13 It was recalled that at its 13th session the Executive Committee had considered the question as to whether the spills in Rostock and Ventspils of *Baltic Carrier* oil from the *Tern*, which was a bulk carrier and therefore not a 'ship' for the purpose of the 1992 Civil Liability Convention, fell within the scope of application of the 1992 Conventions or, in other words, how far the liability of the ship originally carrying the oil reached.

3.7.14 The Committee recalled that it had decided at its 13th session that it was premature to make a decision on the scope of application of the 1992 Conventions beyond the pollution damage that had occurred as a result of the oil spill which took place at the location of the collision and that a decision on the question of whether the Conventions applied also to the spills in Rostock and Ventspils should be deferred to the next session. It was recalled that the Committee had instructed the Director to carry out further investigations into the chain of events that led to the spills in Rostock and Ventspils (document 92FUND/EXC.13/7, paragraph 3.3.29).

3.7.15 As regards the spill in Rostock, the Committee noted that the costs for clean-up were insignificant, that the German authorities would not present any claim for compensation and that the question of whether the spill of *Baltic Carrier* oil from the *Tern* in Rostock was covered by the 1992 Conventions was academic. It was also noted that the German authorities would not be carrying out any investigation into the circumstances surrounding the spill in Rostock. The Committee therefore decided not to give the matter any further consideration.

3.7.16 As regards the spill of *Baltic Carrier* oil from the *Tern* in Ventspils the Committee noted that the Director had recently received further details regarding the circumstances surrounding that incident, but that he had not had time to examine the information.

3.7.17 The Latvian delegation stated that the authorities in Latvia were still conducting their investigations into the cause of the incident in Ventspils and requested the Committee to defer making a decision as to whether this incident was covered by the 1992 Conventions until these investigations had been completed.

3.7.18 The Committee instructed the Director to continue his investigations recognising that if all claims arising from the oil spill in Ventspils were settled by the shipowner without any involvement of the 1992 Fund, the question of the applicability of the 1992 Conventions might also become academic.

3.8 *Slops*

3.8.1 The Executive Committee recalled that, at its 8th session held in June 2000, it had decided that the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

3.8.2 The Committee further recalled that a claimant who had been unable to obtain compensation from the owner of the *Slops* had maintained that the vessel fell within the definition of 'ship' and requested that his claim be submitted to binding arbitration in accordance with Internal Regulation 7.3 of the 1992 Fund. The Committee recalled that it had rejected this request at its 12th session in January 2001.

3.8.3 The Committee noted that it was the understanding of the Director that the claimant might take legal action against the 1992 Fund.

3.9 *Mary Anne*

3.9.1 The Executive Committee noted that the shipowner's insurer (Terra Nova Insurance Company Limited) had settled claims in respect of oil removal and clean-up for approximately £1.8 million and that the insurer had informed the Fund that there were no other claims arising from the incident.

3.9.2 The Committee recalled that the insurer had maintained that the shipowner was in breach of the insurance policy and had indicated that it might request the shipowner and the 1992 Fund to reimburse it the amounts paid in compensation. The Committee further recalled that at its 9th session held in October 2000 it had endorsed the Director's opinion that any claim by Terra Nova for reimbursement on the grounds of the shipowner having been in breach of the insurance policy had to be made against the shipowner, since the total amount of the claims paid fell well below the limitation amount applicable to the shipowner. It was also recalled that at that session the Committee had noted that the legal situation might be more complicated as regards claims that had not yet been paid.

3.9.3 The Committee noted that the 1992 Fund had recently received a claim for PPs1.8 million (£24 000) from a lawyer in the Philippines representing a chemical supplier who had provided a quantity of dispersants to the shipowner for use in the clean-up operations. It was noted that the shipowner was insolvent and that Terra Nova had refused to settle the claim.

3.9.4 The Committee recalled that under Article 4.1(b) of the 1992 Fund Convention claimants had to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund.

3.9.5 A number of delegations stated that the requirement laid down in Article 4.1(b) was important point of principle and that the claimant in question should be required to seek recompense from either the shipowner or his insurer.

3.9.6 One delegation, whilst agreeing with this view, considered that it was important for the 1992 Fund to follow the events and that if the claimant were to experience difficulties in pursuing the claim the Fund should be prepared to give assistance.

3.9.7 The Committee decided that the claimant should be informed that he should pursue his claim against the shipowner and/or Terra Nova.

3.10 *Dolly*

3.10.1 The Executive Committee took note of the information in respect of the *Dolly* incident set out in document 92FUND/EXC.14/11.

3.10.2 It was recalled that the *Dolly* had sunk in 20 metres of water in Robert Bay (Martinique) carrying some 200 tonnes of bitumen.

3.10.3 The Executive Committee noted that the methods proposed for the elimination of the threat of pollution by bitumen by three international salvage companies on the request of the French authorities had been examined by the 1992 Fund's experts. The Committee further noted that the

proposal favoured by the Fund's experts would involve refloating the wreck, removing the cargo and scuttling the ship in deep water and that whilst the French authorities also favoured refloating prior to removal of the cargo, they proposed to cut up the wreck on shore instead of scuttling at sea.

3.10.4 The Committee further noted that in July 2001 the Director had informed the French Government of the Fund's expert's opinion and had stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.

3.10.5 The French delegation indicated that the authorities were in the process of seeking international tenders in respect of the proposed measures. That delegation also stated that the French Government had sought advice from the Fund's experts on the operations to benefit from the Fund's technical expertise on these matters. The French Government would then take its decision and submit a claim for compensation in due course in accordance with the usual procedures.

4 Future sessions

4.1 The Executive Committee decided to hold its 15th session on 19 October 2001.

4.2 The Committee decided that it may hold further sessions during the weeks of 11 February, 29 April and 1 July 2002, if required.

4.3 It was decided that the Committee would hold its normal autumn session during the week of 14 October 2002.

5 Any other business

No items were raised under this agenda item.

6 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.14/WP.1, was adopted, subject to certain amendments.