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OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
8th session
Agenda item 5

92FUND/EXC.8/8
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RECORD OF DECISIONS OF THE EIGHTH SESSION OF THE EXECUTIVE COMMITTEE

(held on 5 and 6 July 2000)

Chairman: Professor L S Chai (Republic of Korea)

Vice-Chairman: Mr J Wren (United Kingdom)

Opening of the session

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.8/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Canada	Latvia	Spain
Denmark	Liberia	Tunisia
France	Marshall Islands	United Kingdom
Germany	Mexico	Venezuela
Greece	Republic of Korea	

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:

Algeria	Finland	Norway
Belgium	Grenada	Panama
China (Hong Kong Special Administrative Region)	Ireland	Philippines
Cyprus	Japan	Sweden
	Netherlands	

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:

Antigua and Barbuda	India	Poland
Fiji	Italy	Trinidad and Tobago
Georgia	Malta	

Other States

Chile	Nigeria	Syrian Arab Republic
Ecuador	Saudi Arabia	Turkey

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)
European Commission (EC)

International non-governmental organisations:

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

3 Erika incident

3.1 The Executive Committee took note of the developments in respect of the *Erika* incident, as contained in documents 92FUND/EXC.8/2 and 92FUND/EXC.8/2/Add.1.

3.2 The French delegation stated that the situation regarding the clean-up operations had greatly improved since the Committee's last session and that many beaches had been surveyed and were open to the public. The French delegation also mentioned that the preparations for the pumping operations had been carried out in a very satisfactory manner. That delegation referred to the in-depth study which had been carried out within the French Ministry of Economy, Finance and Industry into the potential impact of the oil pollution on the tourism sector which could prove very useful to the Committee in taking its decision on the level of payments.

Operations to remove the oil from the wreck

3.3 The Committee noted that the operations to remove the oil from the sunken bow section of the *Erika* had commenced on 3 July 2000, that by 4 July 2000, 1 268 tonnes of oil had been removed

and that the pumping of the oil from both parts of the wreck was expected to be completed in October 2000.

Claims handling

- 3.4 The Executive Committee recalled that in anticipation of a large number of claims the insurer of the *Erika*, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual), and the 1992 Fund had established a Claims Handling Office in Lorient.
- 3.5 The Executive Committee noted the intrusion in the Claims Handling Office in Lorient by some persons on 13 March 2000. It also noted the four persons had forced themselves into the office of the 1992 Fund's experts in Brest on 9 May 2000, that these persons had threatened the staff in that office and that they had presented documents to the media containing threats against the experts and their families.
- 3.6 The French delegation referred to the regrettable incidents mentioned in paragraph 3.5 and stated that the French authorities had taken the necessary steps to prevent similar events in the future.
- 3.7 While understanding the feelings of the people in the area affected by the *Erika* incident, the Executive Committee endorsed the position taken by the Director that attacks, threats or intimidation against the staff at the Claims Handling Office or other persons engaged by the Fund, as well as against their families, were unacceptable and that it would not be possible for the 1992 Fund to maintain the operations in France if such behaviour continued.

Claims for compensation

- 3.8 The Committee noted that as at 30 June 2000 the Claims Handling Office in Lorient had received 1 158 claims for compensation plus 492 supplementary claims and that as of that date the Steamship Mutual had made interim payments to 415 claimants for a total of FFr10 473 923 (£1 million). It was also noted that the Steamship Mutual had authorised interim payments for a further FFr1 311 034 (£130 000) to 262 claimants. It was further noted that the Director had approved the claims in question for the amounts which formed the basis of the payments.

Limitation proceedings

- 3.9 The Committee recalled that, at the request of the shipowner, the Tribunal de Commerce in Nantes had determined the limitation amount applicable to the *Erika* at FFr84 247 733 (£8.4 million).

Maximum amount payable under the 1992 Conventions

- 3.10 The Executive Committee recalled that at its 6th session it had decided that the conversion of 135 million Special Drawing Rights (SDR), the maximum amount payable under the 1992 Fund Convention, into French Francs should be made on the basis of the rates applicable on 15 February 2000, giving 135 million SDR = FFr1 211 966 881 (document 92FUND/EXC.7/5, paragraph 3.3.23).

Other sources of funds

- 3.11 The Executive Committee noted that the French Government had established a procedure under which claimants whose claims had been assessed by the technical experts of the 1992 Fund and the Steamship Mutual and had been approved by the Fund could obtain advance payments from the Banque du développement des petites et moyennes entreprises (Small and Medium Enterprise Development Bank). It was noted that these advances would represent a certain percentage of the amounts approved for the individual claims by the 1992 Fund and the Steamship Mutual, after deduction of any amount received from the Steamship Mutual and the 1992 Fund.

- 3.12 It was noted that the French Government had also introduced a scheme to provide emergency payments in the fishery sector and that this scheme was administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. It was further noted that OFIMER could make payments to claimants of up to FFr200 000 (£20 000) on the basis of its own assessment of the losses.
- 3.13 The Executive Committee expressed its appreciation of the steps taken by the French Government in setting up the procedures administered by the Banque du développement des petites et moyennes entreprises and OFIMER.

Payments by the shipowner's insurer

- 3.14 The Committee noted that up to 31 May 2000 the payments made by the Steamship Mutual were made on an interim basis in appropriate cases. It was also noted that by the end of May 2000 a large number of other claims had been approved by the Steamship Mutual and the 1992 Fund, but since these claimants were not facing particular financial difficulties no interim payments had been made to them. It was further noted that in order to ensure that all claimants whose claims had been approved received compensation, the Steamship Mutual had decided to pay all claimants 50% of the approved amounts of their respective claims and that as a result payments had been made during June 2000 to 93 claimants.
- 3.15 The Executive Committee expressed its appreciation of the position taken by the Steamship Mutual and noted that the Steamship Mutual had confirmed that it was prepared to continue to pay 50% of the approved amounts of any claims until the total payments approached the limitation amount of some FFr84 million.
- 3.16 One delegation expressed the view that while it welcomed the Steamship Mutual's decision to continue making payments at 50%, this decision should not influence the Executive Committee in taking its decision, since the exposure of the insurer was considerably less than that of the 1992 Fund.

Undertakings by Total Fina and the French Government

- 3.17 It was recalled that Total Fina had undertaken not to pursue its claims against the 1992 Fund or against the shipowner's limitation fund relating to the cost of any inspections and operations in respect of the wreck (including removal of the oil), if and to the extent that the presentation of such claims would result in the total amount of the claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR. It was also recalled that Total Fina had made a corresponding undertaking in respect of the cost of the collection and disposal of the oily waste generated by the clean-up operations, of the cost of its participation in the beach clean-up up to a maximum of FFr40 million and of the cost of a publicity campaign to restore the tourist image of the Atlantic coast up to a maximum of FFr30 million.
- 3.18 The Committee recalled that the French Government had undertaken not to pursue claims for compensation against the 1992 Fund or the limitation fund if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. It was also recalled that this undertaking covered all the expenses incurred by the French State in combating the pollution, *inter alia* those expenses falling within the framework of Plan Polmar, as well as all measures which the State might take in different sectors to reduce the consequences of the incident, including any publicity campaigns to this effect. It was further recalled that the French delegation had made the point that the French Government's claims would rank before any claims by Total Fina.

- 3.19 The position taken by Total Fina and the French Government was again welcomed by the Committee, since their decision to stand last in the queue was of considerable assistance in deciding the total level of potential claims.

Decisions by the Committee at previous sessions

- 3.20 The Executive Committee recalled that at its 6th and 7th sessions the Committee had authorised the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by one of the governing bodies of the 1971 Fund or the 1992 Fund, ie their Assemblies or Executive Committees (documents 92FUND/EXC.6/5, paragraph 3.9 and 92FUND/EXC.7/5, paragraph 3.3.11).
- 3.21 It was recalled that in light of the uncertainty as to the total level of the established claims, the Executive Committee had decided at those sessions that the Director's authority to make payments should for the time being remain limited to provisional payments under Internal Regulation 7.9 (documents 92FUND/EXC.6/5, paragraph 3.18 and 92FUND/EXC.7/5, paragraph 3.3.12).
- 3.22 One delegation drew attention to the fact that the Director's authority to make provisional payments under Internal Regulation 7.9 was subject to several restrictions and that it might be appropriate therefore to reconsider that Regulation.

Estimates of the total amount of established claims, and consideration of the 1992 Fund's level of payments

- 3.23 The Committee noted that claims for clean-up operations had been received from a number of communes, relating mainly to fixed costs which were not admissible for reimbursement under Plan Polmar and that it was expected that further claims of this type would be presented. It was further noted that it was possible that some communes would present claims against the shipowner/Steamship Mutual and the 1992 Fund also in respect of additional costs, rather than presenting their claims for such costs under Plan Polmar. The Committee noted the Director's view that it was difficult to estimate the total amount of the claims for clean-up which might be presented directly to the 1992 Fund and the Steamship Mutual, but that these claims could be for a total of some FFr200 - 300 million (£20 - 30 million).
- 3.24 The Executive Committee noted that with respect to the fishery and mariculture sector, it was estimated by the 1992 Fund's experts that the total claims for economic losses might be in the region of FFr200 million (£20 million) and that to this should be added claims for publicity campaigns to counteract the negative effects of the incident.
- 3.25 The Committee took note of the result of an extensive study carried out within the French Ministry of Economy, Finance and Industry on the extent of the damage caused by the *Erika* incident on the tourism industry, as summarised by the Director in Annex I to document 92FUND/EXC.8/2/Add.1. It was noted that in the study it was estimated that the total amount of the admissible claims would fall within the range of FFr800 – 1 500 million (£80 – 150 million). The Committee also took note of the comments on the results of the study by the 1992 Fund's experts, L & R Consulting (L & R), as set out in Annex II of that document.
- 3.26 The experts from the French Ministry of Economy, Finance and Industry who had carried out the study, gave an explanation of the methodology applied in the study and the extent of the resources and information used to compile it.
- 3.27 The Committee noted that there was great uncertainty following the *Erika* incident as to the effects of the pollution damage on the tourism sector. The Committee further noted that the study within the French Ministry of Economy, Finance and Industry emphasised the extreme difficulty in predicting with precision the likely performance of the tourism sector during the summer

season of 2000. It was noted that it was mentioned in the report of the study that this uncertainty was reinforced by the media attention and the condition of the beaches as well as the risk associated with the operation to recover the remaining oil from the *Erika*.

- 3.28 The Committee noted that the Director, as well as L & R, was impressed by the depth of the analysis carried out within the French Ministry of Economy, Finance and Industry. It was noted that exhaustive research had been carried out at both the macro economic and micro economic levels, on the basis of *inter alia* detailed statistics relating to the tourism industry.
- 3.29 The United Kingdom delegation agreed that the investigations carried out by the French Government were very impressive but that, as a matter of policy, the Committee should not base decisions on the level of payments entirely on information provided by the Government of the affected country. That delegation suggested, therefore, that the 1992 Fund's experts should be invited to give the Committee their opinion on the French Ministry study.
- 3.30 The 1992 Fund's experts confirmed that they had been impressed by the level of resources mobilised by the French Government and that its results correlated quite closely with those of their own investigations. The 1992 Fund experts emphasised that the situation in France changed daily. They stated that the results of the recent beach inspections in the area had been positive and that the media had conveyed this to the French public. The experts expressed the view that the outcome of the 2000 tourism season might fall closer to the lower range of figures than the higher range estimated by the French Government experts.
- 3.31 The Committee considered that the conclusions of the study carried out within the Ministry provided the best estimate which could be obtained at this stage of the total amount of the potential admissible claims in the tourism sector. However, the Committee shared the concerns expressed in the report of the study and by L & R as to the uncertainty of the estimates. In particular, the Committee noted that the estimates in the report were based on the IOPC Funds' policy and criteria as regards the admissibility of claims for pure economic loss. It was noted that the Director had been advised that the French Courts might take a more extensive approach in their interpretation of the notion of pollution damage.
- 3.32 During the discussions it was emphasised that the 1992 Fund should make all efforts to make compensation available to victims as soon as possible, in order to demonstrate that the regime of compensation established by the 1992 Conventions worked satisfactorily and that there was no need to create any alternative liability scheme. The point was made that the percentage at which claims were paid needed to be meaningful if claimants were to be encouraged to settle their claims out of court. A number of delegations supported this view in particular because it could be counter-productive if the Fund were to fix payment at too low a percentage of established claims.
- 3.33 The Executive Committee recalled that the Assembly had taken the view that - like the 1971 Fund - the 1992 Fund should exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants had to be given equal treatment. The Committee further recalled that the Assembly had expressed the view that it was necessary 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.
- 3.34 The Executive Committee noted that for the purpose of its consideration of the level of the 1992 Fund's payments the claims by Total Fina and the French Government referred to in paragraphs 3.17 and 3.18 above could be disregarded, since these claims would be pursued only if and to the extent that all other claims had been paid in full. The Committee also noted that the estimated higher figures for the clean-up operation claims, the claims in the fishery and mariculture sector and the tourism sector totalled some FFr2 000 million (£200 million), plus the costs of publicity

campaigns in the fishery and tourism sectors to counteract the negative impact of the incident. The Committee noted the Director's view that if this figure was correct, it would be possible to fix the level of the 1992 Fund's payments at 50% of the proven loss or damage suffered by the individual claimants. The Committee further noted, however, that there were a number of significant uncertainties in these estimates, in particular as regards the claims in the tourism sector, the risk of further pollution as a result of an escape of oil during the pumping operation and the approach taken by the French Courts to the criteria for the admissibility of claims.

- 3.35 All delegations stressed the difficulty of making such a decision in these circumstances. The majority of the delegations expressed their support for the level of the 1992 Fund's payments being fixed at 50%. Certain delegations showed a preference for fixing the level of payments at 40% in view of the uncertainty as to the total amount of the potential claims as outlined above, but they stated that they were prepared to accept a level of 50%.
- 3.36 The point was made that the Governments of the 1992 Fund Member States had an obligation to defend the regime of compensation under the 1992 Conventions. It was stated that the maximum amount of compensation had been fixed by Governments in the abstract, not in relation to a particular incident, and that the inevitable consequence was pro-rating when there was a risk that the total amount of the established claims would exceed the maximum amount of compensation available.
- 3.37 The observer delegation of the Oil Companies International Marine Forum (OCIMF) stated that it had noted the caution exercised by the Executive Committee and the emphasis placed on the importance of equal treatment of claimants. That delegation expressed the view that, whatever decision taken by the Committee, it was important that the 1992 Fund would be able to make prompt payments to claimants and that OCIMF's members, many of whom were contributors to the 1992 Fund, would support the Committee's decision.
- 3.38 In view of the uncertainty as to the total amount of the claims arising from the *Erika* incident, the Executive Committee decided that the payments by the 1992 Fund should for the time being be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee also decided that the level of payments should be reviewed at its 9th session, to be held in October 2000, in the light of further information as to the likely level of the claims.
- 3.39 The French delegation stated that it understood that some delegations had had reservations regarding the continuing uncertainty as to the total amount of potential claims despite the thorough studies carried out by the 1992 Fund's experts and within the Ministry of Economy, Finance and Industry which had reached similar conclusions. The French delegation emphasised that the Committee's decision that the 1992 Fund should make payments at 50% of the established claims constituted an act of solidarity and support for the victims of the *Erika* incident and was an indication of the spirit of the 1992 Fund.
- 3.40 The United Kingdom delegation stated that it would be very useful if the studies by the French Government continued so that its results could assist the Executive Committee in its future considerations of the claims in the tourism sector.
- 3.41 The French delegation stated that the French Government had instigated the study to ascertain the level of damage for its own purposes as well as for those of the 1992 Fund and intended to continue the process for as long as necessary. That delegation confirmed that further information resulting from the study would be made available to the Committee.

Investigations into the cause of the incident

- 3.42 The Committee took note of the developments in the investigations into the cause of the incident and instructed the Director to continue his investigations into this matter.

Court proceedings

- 3.43 The Committee took note of the developments in the various court proceedings.
- 3.44 The Committee noted that actions had been brought in four courts in France (Tribunaux de Commerce in Nantes, Vannes, La Roche sur Yon and Lorient) against *inter alia* RINA SpA and Registro Italiano Navale (documents 92FUND/EXC.8/2, paragraphs 14.1.1 - 14.1.3 and 92FUND/EXC.8/2/Add.1, paragraphs 8.2 - 8.3) requesting the Courts to hold the defendants liable for the damage arising from the incident.
- 3.45 The Committee noted that RINA SpA and Registro Italiano Navale had brought legal action in the Court of Syracuse (Augusta section) (Italy) against *inter alia* the 1992 Fund. It was noted that RINA SpA and Registro Italiano Navale had requested that the Court should declare that they were not liable for the sinking of the *Erika* and for the pollution of the French coast, or for any other consequence of the incident whatsoever. It was noted that the plaintiffs had maintained that the Italian Courts were competent in accordance with Article 5.3 of the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters.
- 3.46 The Executive Committee noted the Director's view that the 1992 Fund should as a matter of policy consider whether to take recourse action against any particular defendant only when the investigations into the cause of the incident had been completed, and that he had therefore decided that it was premature to consider any recourse action in the *Erika* case at this stage.
- 3.47 The Committee noted the Director's view that it would in any event be more natural if any action relating to the eventual liability of RINA SpA and Registro Italiano Navale were heard in the French Courts. It was also noted that in order to protect the 1992 Fund's position, the Director had therefore filed legal actions against RINA SpA and Registro Italiano Navale in the Tribunal de Commerce in Vannes, the Tribunal de Commerce in La Roche sur Yon and the Tribunal de Commerce in Lorient, requesting the Courts to join the 1992 Fund in the proceedings commenced by the Conseil Général de Morbihan and others. It was further noted that the 1992 Fund had requested that the Courts should suspend the proceedings until the results of the various investigations into the cause of the incident had been completed. It was noted that the Director had emphasised that the 1992 Fund's actions were of a conservatory nature and that the Fund reserved its right to present at a later stage claims against the two defendants for reimbursement of any amounts which the Fund might have paid under the 1992 Conventions to victims of oil pollution damage and that the Fund had also reserved its right to take similar actions against any other party who might be liable in the light of the results of the investigations into the cause of the incident.
- 3.48 The Italian observer delegation took the view that it would not be appropriate to comment on the contents of document 92FUND/EXC.8/2, paragraphs 14.1.3, 14.2 and 14.2.2 and 92FUND/EXC.8/2/Add.1, paragraph 9 while legal proceedings were pending. Nevertheless that delegation drew the attention of the Committee to the fact that the Registro Italiano Navale (RINA) had acted in the *Erika* case as the certifying registry in accordance with an agreement with the Maltese authorities. The Italian delegation requested that the 1992 Fund should note this information in the light of the actions taken by the Director against RINA before French Tribunals.
- 3.49 The Executive Committee endorsed the Director's position and the steps taken by him to protect the 1992 Fund's interests, in particular the actions taken against RINA SpA and Registro Italiano Navale.

Action against Total Fina outside the 1992 Conventions

- 3.50 The Director brought to the attention of the Executive Committee the legal proceedings brought recently by a commune against the Group Total Fina in the Tribunal de Commerce de Saint

Nazaire on the ground that the product carried by *Erika* was to be considered as waste and that Total Fina should therefore be liable for any damage caused by this product. The Director stated that, since this action fell outside the scope of the 1992 Conventions, he did not consider that the 1992 Fund should intervene in the proceedings. He mentioned that he intended nevertheless to follow these proceedings.

Criticism of the 1992 Fund

- 3.51 The Committee noted that in connection with the *Erika* incident the 1992 Fund and the international compensation regime had become subject to great interest from the media in France. It was also noted that the Fund and the international regime had been exposed to severe criticism in France, both in the media and elsewhere. It was noted that it had been stated that the total amount of compensation of 135 million SDR (FFr1 200 million) fixed in the 1992 Conventions was unacceptably low and that the Fund should take steps to ensure that more money was available. The Committee noted that it had been maintained that it was unacceptable that early claimants had their payments pro-rated and that the problem of equal treatment of early and late claimants was for the 1992 Fund to solve. It was further noted that the Fund's policy of requiring claimants to substantiate their losses by supporting documents or other evidence had also been criticised.
- 3.52 The Director informed the Committee that in his contacts with the media and representatives of the public and private sectors he had explained the main features of the international regime based on the 1992 Conventions. He mentioned that he had stated that the 1992 Conventions had been agreed between a number of States, including France, that the Conventions had been approved by the Assemblée Nationale and the Senate and that they formed part of French domestic law. He stated that he had made the point that the maximum amount available had been decided by Governments when the Conventions were adopted and that the 1992 Fund had no legal possibility of increasing this amount for the *Erika* incident. It was noted that he had pointed out the 1992 Fund's legal obligation to ensure that, to the extent possible, all claimants were treated equally and that, if the total amount of all established claims exceeded the total amount available for compensation, all claimants would have to receive the same percentage of the approved amounts of their respective claims. The Director mentioned that he had referred to the fact that pro-rating had been made in a number of previous cases in various incidents by the 1971 Fund and, most recently, by the 1992 Fund in the *Nakhodka* case. He also mentioned that he had emphasised that the policy of the 1992 Fund had been laid down by the representatives of the Governments of Member States. The Committee noted that the Director had also explained that the criteria for the admissibility of claims had been determined by the representatives of the Governments of Member States, including the requirement that claimants should substantiate their losses by the production of supporting documents and other evidence.
- 3.53 The Committee noted that an ad-hoc Committee ('Mission d'information') set up by the French Senate had recently published a report which was very positive in respect of the international compensation regime based on the 1992 Conventions, but which made proposals for certain amendments to improve the regime.
- 3.54 The Director informed the Committee that in order to improve contacts with the French media the 1992 Fund had engaged a French public relations consultant.
- 3.55 The Executive Committee endorsed the position taken by the Director in his contacts with the media and public and private representatives. The Committee emphasised the importance of the 1992 Fund's establishing good contacts with the media.

4 **Any other business**

4.1 **Nakhodka incident**

- 4.1.1 The Executive Committee took note of the developments in respect of the *Nakhodka* incident, as contained in document 92FUND/EXC.8/3.

Situation as regards payments of compensation

- 4.1.2 It was noted that as at 30 June 2000 payments totalling ¥13 645 million (£78 million) had been made by the 1971 and 1992 Funds, the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club). It was noted that of this amount, ¥3 383 million (£20 million) had been paid by the 1992 Fund after the Executive Committee's 7th session held in April 2000.
- 4.1.3 The Executive Committee recalled that at its 7th session it had increased the level of the 1992 Fund's payments from 60% to 70% of the amount of the damage actually suffered by the respective claimants (document 92FUND/EXC.7/5, paragraph 3.1.12). The Committee further recalled that the Administrative Council of the 1971 Fund had taken the corresponding decision on the level of the 1971 Fund's payments at its 1st session (document 71FUND/AC.1/EXC.63/11, paragraph 3.6.12).
- 4.1.4 The Director informed the Committee that, as a result of the decision to increase the level of payments, the 1992 Fund had paid ¥1 354 million (£8.4 million) to the Japan Marine Disaster Prevention Centre, fishermen from nine fishery associations, seven Prefectures, six electricity companies, 197 claimants in the tourism sector and some other claimants.

Legal actions

- 4.1.5 The Executive Committee recalled that the IOPC Funds had brought legal actions in the Fukui District Court against the shipowner, (Prisco Traffic Ltd), its parent company Primorsk Shipping Corporation (Primorsk), the shipowner's P & I insurer (the UK Club) and the Russian Maritime Register of Shipping.
- 4.1.6 The Executive Committee noted that the shipowner and the UK Club had from the outset been represented by the same lawyer in Japan who had signed all settlement agreements with claimants on behalf of both the shipowner and the UK Club. It was noted that this lawyer was also representing both the shipowner and the UK Club in their actions against the 1971 and 1992 Funds. The Committee further noted that the lawyer had informed the Fukui District Court that he was not authorised to receive service of writs on behalf of the shipowner. The Director informed the Committee that service of the shipowner in *Nakhodka* in the Russian Federation could take some 18 months. The Committee noted that a similar problem relating to the service of writs would arise in respect of Primorsk in *Nakhodka* and the Russian Maritime Register of Shipping in St Petersburg. It was noted that the Court had fixed the first hearing for 19 September 2001.

Investigations into the cause of the incident

- 4.1.7 The Executive Committee noted that the Director was continuing his investigations into the cause of the incident in co-operation with the Japanese authorities.

4.2 **Al Jaziah 1 incident**

- 4.2.1 The Executive Committee took note of the developments in respect of the *Al Jaziah 1* incident, as contained in document 92FUND/EXC.8/4.

- 4.2.2 The Executive Committee noted that claims for compensation were expected in respect of the cost of clean-up at sea and on shore as well as the cost of the oil removal operations. It was further noted that it was not possible at this stage to make an estimate of the total amount of the claims.

Definition of 'ship'

- 4.2.3 The Executive Committee noted that the *Al Jaziah 1* was reportedly some 40 years old, and that it was believed that it had been built in the Netherlands. The Committee further noted that the vessel had a rudder and propeller, but that it did not carry even basic navigation equipment. The Committee also noted that the design of the vessel was of the type approved by the Dutch Small Ship Inspectorate as an 'inland waters motor tankship' and that at the time of the incident the vessel was operating in open seas unmodified in any material way from the original design, a characteristic feature of which was a very low forecastle. It was also noted that it was not known whether the vessel had been converted for carriage of oil.
- 4.2.4 The Executive Committee noted that the *Al Jaziah 1* had an expired hull insurance with the Saudi Arabian Insurance Company LTD.EC, which covered trading in 'the Persian Gulf, Gulf of Oman, Indian Ocean, East African Coast and Red Sea', and that it was reported that the *Al Jaziah 1* had frequently been used by the Abu Dhabi National Oil Company to transport fuel oil in the region.
- 4.2.5 It was generally considered that a craft fell within the concept of 'seagoing ship or other seaborne craft' if it was actually operating at sea. The Committee took the view therefore that the *Al Jaziah 1* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention.

Applicability of the 1971 and the 1992 Fund Conventions

- 4.2.6 The Committee recalled that the United Arab Emirates was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention as well as to the 1992 Civil Liability Convention and the 1992 Fund Convention, having not denounced the former two Conventions. It was also noted that the 1971 Fund Convention had been incorporated in the law of the Emirates by a Federal Decree of 1983 and the 1992 Fund Convention by a Federal Decree of 1997, and that the former decree had not been repealed and was still in force. It was also recalled that the 1992 Fund Convention did not contain any provisions governing the simultaneous application of these four instruments after the expiry of the transitional period on 15 May 1998.
- 4.2.7 A number of delegations stated that since the Committee had already decided that the *Al Jaziah 1* fell within the definition of 'ship' for the purposes of the two sets of Conventions, and since the United Arab Emirates was a Party to all four Conventions, both sets of Conventions would apply to pollution damage arising from this incident in the United Arab Emirates.
- 4.2.8 It was noted that the *Al Jaziah 1* had held a certificate of provisional registration issued by the Registry of Honduras, and that Honduras was a Party to the 1969 Civil Liability Convention, but not to the 1992 Civil Liability Convention. The Committee took the view 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 (cf Article 30.4(b) of the Vienna Convention on the Law of Treaties).
- 4.2.9 Two delegations raised the issue of the liability of the Fund if the ship operated illegally, or if the flag State and the State where the ship was loaded did not ensure that the ship had insurance under the 1969 and 1992 Civil Liability Conventions. The Director pointed out that since it was unlikely that the *Al Jaziah 1* was capable of carrying more than 2 000 tonnes of oil as cargo, there was no compulsory insurance requirement under Article VII.1 of the Civil Liability Conventions, and that it was irrelevant for the applicability of the Fund Conventions whether or not a ship was operated illegally.

- 4.2.10 A number of delegations expressed the view that any decision regarding the distribution of liabilities between the 1971 and 1992 Funds should be deferred until the October 2000 sessions of the 1992 Fund Executive Committee and the 1971 Fund Executive Committee/Administrative Council. The Director was instructed to give the matter further consideration with a view to making a proposal at these sessions.
- 4.2.11 The Committee decided that the Director should inform the authorities of the United Arab Emirates that, in the view of the 1992 Fund, the 1971 and 1992 Fund Conventions applied to the *Al Jaziah 1* incident.
- 4.3 Slops incident
- 4.3.1 The Executive Committee took note of the information in respect of the *Slops* incident, as contained in document 92FUND/EXC.8/5.
- 4.3.2 The Committee noted that the *Slops*, which was registered with the Piraeus Ships Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo, but that in 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. The Committee further noted that it had been indicated that the purpose of the sealing of the engine and the removal of the propeller was to convert the status of the craft from a ship to a floating oily waste receiving and processing facility, and that since the conversion, the *Slops* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit, the end product being sold as low-grade fuel.
- 4.3.3 The Committee considered whether the craft fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 4.3.4 The Executive Committee recalled that the 1992 Fund Assembly had decided at its 4th session that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they are carrying oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated (document 92FUND/A.4/32, paragraph 24.3). The Committee noted that this decision had been taken on the basis of the conclusion of the Second Intersessional Working Group which had been set up by the Assembly to study this issue.
- 4.3.5 The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was in the Director's view no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board as cargo or as bunkers (document 92FUND/A.4/21, paragraph 8.4.2).
- 4.3.6 A number of delegations expressed the view that since the *Slops* was not engaged in the carriage of oil in bulk as cargo it could not be regarded as a 'ship' for the purpose of the 1992 Conventions. One delegation pointed out that this was supported by the fact that the Greek authorities had exempted the craft from the need to carry liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.
- 4.3.7 The Greek delegation expressed the view that the Committee, in taking its decision in respect of the *Slops*, should take into account its decisions in the *Al Jaziah 1* case, and that in that delegation's view it could be argued that there were stronger reasons to consider the *Slops* as a 'ship' for the purpose of the 1992 Conventions than the *Al Jaziah 1*.

4.3.8 The Committee decided that, for the reasons set out in paragraphs 4.3.5 and 4.3.6, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

4.4 Relocation of the IOPC Funds' offices

The Executive Committee noted that the IOPC Funds' offices had been relocated to the new premises in Portland House, Stag Place, London SW1E 5PN, during the weekend of 17 - 18 June 2000.

4.5 Status of Conventions

The Executive Committee took note of the information in document 92FUND/EXC.8/7 regarding the status of the 1971 and 1992 Fund Conventions. It was noted that the 1992 Fund Convention had entered into force for 44 States, that a further 15 States had deposited instruments of accession and that consequently the 1992 Fund would have 59 Members by June 2001. It was also noted that 41 States were still Parties to the 1971 Fund Convention, that 11 of these States had deposited instruments of denunciation and that the 1971 Fund would have 30 Members by June 2001.

4.6 Claims Manual

The Director informed that Committee that the English version of the 1992 Fund's Claims Manual (June 1998) was running out of stock, that the Director intended to issue a revised version in which small editorial amendments had been made to bring the Claims Manual up to date, and that the Director intended to insert a reservation in respect of the applicability of the 1992 Conventions to unladen tankers in view of the conclusions of the Second Intersessional Working Group on this matter.

5 Adoption of the Record of Decisions

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