



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ASSEMBLY  
12th session  
Agenda item 30

92FUND/A.12/28  
19 October 2007  
Original: ENGLISH

## RECORD OF DECISIONS OF THE TWELFTH SESSION OF THE ASSEMBLY

(held from 15 to 19 October 2007)

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

*Opening of the session*

*Procedural matters*

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

The Assembly adopted the Agenda as contained in document 92FUND/A.12/1.

### **2 Election of the Chairman and two Vice-Chairmen**

- 2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

- 2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.

### **3 Examination of credentials**

- 3.1 The Assembly recalled that, at its March 2005 session, it had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman to examine the credentials of delegations of Member States and that the Credentials Committee established by it should also examine the credentials in respect of the Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly. It was recalled that the Assembly had inserted provisions to this effect in the respective Rules of Procedure.



*International non-governmental organisations:*

Comité Maritime International (CMI)  
Conference of Peripheral Maritime Regions (CPMR)  
European Chemical Industry Council (CEFIC)  
International Association of Classification Societies Ltd (IACS)  
International Association of Independent Tanker Owners (INTERTANKO)  
International Chamber of Shipping (ICS)  
International Group of Liquefied Natural Gas Importers (GIIGNL)  
International Group of P&I Clubs  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union of Marine Insurance (IUMI)  
Oil Companies International Marine Forum (OCIMF)

*General review*

**4 Report of the Director**

- 4.1 The Director introduced his report on the activities of the IOPC Funds since the Assembly's 11th session in October 2006, contained in document 92FUND/A.12/3. The Director stated that this was his first report on the activities of the IOPC Funds since taking up office on 1 November 2006.
- 4.2 The Director expressed once again his gratitude and appreciation to the Government of Canada through the delegation of Canada for having hosted the June 2007 meetings of the IOPC Funds in Montreal.
- 4.3 The Director reported that the last 12 months had seen continued growth in 1992 Fund membership and that there were currently 98 Member States, with a further three States for which the Fund Convention would be in force by 30 March 2008. He stated that, after the 1971 Fund Convention had ceased to be in force on 24 May 2002, a number of the former 1971 Fund Member States had ratified the 1992 Fund Convention, and that it was hoped that the remaining eight such States would soon do so. The Director also stated that one further State had ratified the Supplementary Fund Protocol which would increase the number of Contracting States to 21 by 30 March 2008. He indicated that it was likely that a number of other States would also become Members of the 1992 Fund and Supplementary Fund in the near future.
- 4.4 In the framework of the Funds' activities relating to the promotion of 1992 Fund membership, the Director drew the attention of the Assembly to the development of a training package on the submission of claims for compensation which had been used in workshops in Bulgaria, Egypt, Equatorial Guinea, Ghana and Turkey. Two further workshops would be held later in 2007 in Congo and Qatar.
- 4.5 The Director drew attention to the fact that, although the situation had improved considerably in recent years, the failure of a number of Member States to submit oil reports continued to give rise to serious concern.
- 4.6 The Director reported that since the October 2006 sessions of the governing bodies, the 1992 Fund had been notified of one new oil pollution incident which involved the Fund, namely the *Shosei Maru* which had collided with the Korean cargo vessel *Trust Busan* three kilometres off Teshima, in the Seto Inland Sea in Japan on 28 November 2006. About 60 tonnes of heavy fuel oil and bunker diesel oil had escaped into the sea from a damaged cargo tank and the bunker oil tank of the *Shosei Maru*. The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention (CLC) was 4.51 million SDR or ¥820 million (£3.4 million).
- 4.7 The Director further reported that the Japan P&I Club had informed the 1992 Fund that, since the vessel was only engaged in coastal trade, it was not insured through the pooling arrangements of

the International Group of P&I Clubs. The Japan Club had further informed the Fund that the owner of the *Shosei Maru* had not given its written consent for the vessel to be entered into the STOPIA 2006 Agreement and that therefore the ship was not covered by STOPIA 2006. As a consequence, if the total amount of damages were to exceed the limitation amount applicable under the 1992 Civil Liability Convention, the Fund would be liable to pay the difference between the total assessed amount and the CLC limit without being reimbursed by the shipowner or his insurer under STOPIA 2006.

- 4.8 The Director reported that at its February/March 2006 session, the Assembly had established a new working group to develop proposals in respect of non-technical measures and guidelines for States and industry to promote quality shipping for the carriage of oil by sea. The Working Group had held its second and third meetings in March and June 2007 and its discussions had focussed on two main areas: practices within the marine insurance industry to promote quality shipping for the carriage of oil by sea, including the sharing of information within the industry and possible barriers to sharing such information, and practices by Member States to promote quality shipping for the carriage of oil by sea, and more specifically whether these practices could be improved in any way. The Working Group's reports would be considered by the Assembly at this session (documents 92FUND/A.12.23 and 92FUND/A.12/23/1).
- 4.9 The Director pointed out that, as requested by the Assembly, the IOPC Funds had continued to give high priority to the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention). In this connection, the Head of the External Relations and Conference Department had given a series of presentations on different aspects of the HNS Convention at four seminars organised by the European Maritime Safety Agency (EMSA) since October 2006 in Lithuania, Malta, Poland and Portugal as well as at a seminar in Denmark organised by the Danish Maritime Authority.
- 4.10 Looking forward, the Director was pleased to note that despite the fact that the frequency of incidents had reduced over the years, the IOPC Funds still played an important role as illustrated in particular by the 1992 Fund's involvement in the *Solar 1* incident in the Philippines. He stressed that the main priority for the IOPC Funds would continue to be the prompt payment of compensation to victims of oil pollution incidents. He expressed his hope that the Fourth Intersessional Working Group would, in fulfilling its mandate, develop proposals in respect of non-technical measures and guidelines for States and industry to promote quality shipping for the carriage of oil by sea which could, in the longer term, further reduce the occurrence of spills and the number of victims in need of compensation.
- 4.11 One delegation requested the Secretariat to continue to organise HNS workshops as it was of the view that they were a helpful way to convince politicians of the necessity to ratify the HNS Convention.
- 4.12 Some delegations expressed the view that the time had perhaps come for the IOPC Funds to start reviewing their activities given the decline in incidents.
- 4.13 The Assembly expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they had administered the 1992 Fund. It also thanked the lawyers and technical experts who had undertaken work for the 1992 Fund.

#### *Treaty matters*

### **5 Status of the 1992 Fund Convention and the Supplementary Fund Protocol**

- 5.1 The Assembly took note of the information contained in document 92FUND/A.12/4 concerning the ratification situation in respect of the 1992 Fund Convention and the Supplementary Fund Protocol.

- 5.2 It was also noted that at present there were 98 Member States of the 1992 Fund and that three more States would become Members by 30 March 2008.
- 5.3 It was noted that 20 1992 Fund Member States were Members of the Supplementary Fund at the time of the session and that Hungary had ratified the Supplementary Fund Protocol at the same time as the 1992 Fund Convention and would become a Member of the Supplementary Fund in March 2008.
- 5.4 The Assembly considered the information contained in document 92FUND/A.12/4/1 regarding the implementation of the 1992 Civil Liability and Fund Conventions into national law. It was noted that since the October 2006 session the Director, as instructed by the Assembly, had continued to draw the attention of the States which ratified the 1992 Fund Convention to the importance of the implementation of the 1992 Conventions into national law and to offer assistance preparing the necessary legislation. It was also noted that the Director had not received any further responses to his original enquiries, nor had he been informed that any new Member State had not fully implemented the Conventions into national law.
- 5.5 The Assembly instructed the Director to continue his efforts in this regard and to report to the Assembly in respect of any new developments.
- 5.6 One delegation suggested that it might be useful for this issue to be included in the IMO voluntary audit scheme, since IMO was the depositary for these Conventions. Other delegations considered that it might be appropriate for the Secretariat of the Fund to establish such an audit scheme itself. A number of delegations expressed an interest in the idea of an audit scheme. A number of other delegations stated that, whilst they did not object to the Director investigating the matter further, such an exercise should be approached with considerable caution, since the IMO voluntary audit scheme dealt with the implementation of technical conventions, whereas the implementation of the 1992 Conventions involved complex treaty law issues.
- 5.7 The Assembly instructed the Director to have informal discussions of an exploratory nature with the IMO Secretariat on this issue, taking into account the discussion at this session, and to report back to the Assembly with his conclusions as to whether such an audit scheme might be useful and, if so, what the financial implications might be.

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

The Assembly took note of the information in document 92FUND/A.12/5 as regards Member States which had provided information on the establishment of an EEZ or designated area under Article 3(a)(ii) of the 1992 Fund Convention.

*Financial matters*

**7 Report on Investments**

- 7.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2006 to June 2007, contained in document 92FUND/A.12/6.
- 7.2 The Assembly noted the number of investments made during the twelve-month period, the number of institutions used by the 1992 Fund for investment purposes, and the amounts invested by the 1992 Fund.
- 7.3 It also noted the financial instruments used during the reporting period and in particular that the 1992 Fund had continued to successfully use Dual Currency Deposits to undertake foreign currency hedging between Pound sterling and a second currency, in this case the Euro, without any costs and with the added benefit of a higher return on the deposit.

- 7.4 The Assembly stated that it would continue to follow the investment activities of the 1992 Fund closely.

## **8 Report of the joint Investment Advisory Body**

- 8.1 The Assembly took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the 1971 Fund and the Supplementary Fund contained in the Annex to document 92FUND/A.12/7.
- 8.2 The Assembly noted that the IAB, as in previous years, had held meetings with representatives of the External Auditor and with the Audit Body.
- 8.3 The Assembly noted with satisfaction that none of the financial institutions used by the Funds for investment purposes was caught up in the recent turmoil in the financial markets, thanks to the Funds' strict and prudent investment criteria.
- 8.4 The Assembly further noted that the IAB had requested that the Exception Report, which sets out information as to when the maximum investment in any one financial institution had exceeded the approved limit and forms part of the 'Report on Investments' presented annually to the governing bodies, should also be submitted by the Secretariat to the IAB at its quarterly meetings.
- 8.5 The Assembly noted that the IAB had reviewed a document on the Funds' finance risks and had made recommendations as appropriate.
- 8.6 The Assembly expressed its gratitude to the members of the joint Investment Advisory Body for their valuable work.

## **9 Financial Statements and Auditor's Report and Opinion**

- 9.1 The Director introduced document 92FUND/A.12/8 containing the Financial Statements of the 1992 Fund for the financial year 2006 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.
- 9.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes III and IV to document 92FUND/A.12/8 and that the External Auditor had provided an unqualified audit opinion on the 2006 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The Assembly also appreciated that the Report went into great depth and detail.
- 9.3 The representative of the External Auditor welcomed the positive way in which the Secretariat had accepted and implemented the recommendations made in the previous year's Report and commended the Fund on providing a responsible and effective standard of financial management and control.
- 9.4 The Assembly noted the recommendations set out in the External Auditor's report.
- 9.5 The representative of the External Auditor recommended that the Secretariat should submit a proposal to the Assembly by its 2008 regular session which seeks the adoption of International Public Sector Accounting Standards (IPSAS) by the Funds in principle from the financial year 2010. In relation to the execution of various in-house projects it was recommended that in future the Secretariat staff time should be included to ensure that full costs of such works can be assessed and monitored. It was further recommended that if the Secretariat were to become responsible for the HNS Fund, a more formal and accurate system of allocation of Secretariat time to such work should be considered, since any such fee would need to be adequately justified to Member States. The External Auditor recommended that the Secretariat continue the implementation of a staff performance management system and that the introduction of such a

system reflects on the Funds' continued openness to adopt and incorporate best practice in all areas of its activities.

- 9.6 The Assembly noted that the External Auditor in his Report had made reference to the previous year's recommendations and in particular audit recommendations made by the External Auditor that the Secretariat prioritise the completion of a risk register with the key risks facing the organisation and that the Secretariat continue its efforts to return outstanding funds due to a contributor that was a dissolved venture between two oil companies.
- 9.7 It was also noted that the Audit Body had continued the recommendations and management issues raised by the External Auditor.
- 9.8 One delegation was of the opinion that, although the inclusion of a summary of the External Auditor's recommendations from the previous year and actions taken by the Secretariat in the Director's Report on the 2006 Financial Statements was welcomed, inclusion of the progress being made on the recommendations made by the External Auditor in his report on the financial year being considered would be useful.
- 9.9 The Director informed the Assembly that steps were being taken to implement all the recommendations made by the External Auditor in his report on the 2006 Financial Statements. As regards the recommendation relating to the risk register, he stated that the Secretariat was fully committed to completing the register as soon as practically possible. Although the recommendation relating to the allocation of Secretariat time to certain projects would in principle be implemented, he was of the view that the application of the recommendation should be practical and flexible.

## **10 Joint Audit Body's Report and approval of Financial Statements**

- 10.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.12/9, containing the joint Audit Body's Report.
- 10.2 In his introduction, Mr Coppolani reminded the Assembly that the Audit Body had been elected in October 2005 and had met three times since the October 2006 sessions of the governing bodies.
- 10.3 Mr Coppolani drew the attention of the Assembly to the fact that the Audit Body had taken the decision this year for its members to attend the regular October sessions on an agreed rota system with only the Chairman and the 'outside expert' attending on a regular basis. It was, however, up to the Assembly to express a view as to whether the attendance of all the members was required, bearing in mind that this would have cost implications.
- 10.4 Mr Coppolani pointed out that in addition to its regular activities, at their October 2006 sessions the Funds' governing bodies had also entrusted the Audit Body with the task of preparing a detailed proposal for a procedure for the appointment of the External Auditor in the future. He explained that this report was the subject of a separate document and would be dealt with under a separate agenda item (cf section 11 below). He pointed out that, in the event that the governing bodies were to agree on the procedure set out in the document, the mandate of the Audit Body would need to be amended to include the organisation of the tender process when the time came as well as a recommendation to the governing bodies as to the choice of the External Auditor.
- 10.5 Mr Coppolani reminded the Assembly that the Audit Body had repeatedly in its annual reports to the October sessions of the governing bodies reiterated its concern regarding the failure of a number of Member States to fulfil their obligations under the respective Fund Convention to submit oil reports. He explained that the issue had been given lengthy consideration by the Audit Body at all three of its meetings since October 2006 and that a document setting out a proposal by the Audit Body would be discussed under agenda item 12 (cf section 13 below).

- 10.6 Mr Coppolani recalled that, in view of its continuing interest in issues related to claims handling, the Audit Body had decided that it would be useful to carry out a study to ascertain the level of satisfaction of claimants. He further recalled that the *N°7 Kwang Min* incident in the Republic of Korea had been chosen as a basis for the trial of a questionnaire and said that the main results had been summarised in the Audit Body's report. He pointed out that, in the Audit Body's view, although the questionnaire had not revealed any unexpected issues, it had been a useful exercise and that it could be worthwhile using a questionnaire, to be designed by an outside expert, on selected incidents in the future at the Secretariat's discretion. He took the opportunity to express the Audit Body's support for the Secretariat's plans to complete the development of the claims handling database system which would generate improved management information.
- 10.7 Mr Coppolani drew attention to the Audit Body's examination of the accounts and thanked the External Auditor for his participation in the Body's deliberations, for having accepted to discuss his audit and for having presented his conclusions to the Audit Body. He expressed the Audit Body's satisfaction with the responses received from the External Auditor that internal control procedures were in place and had been properly applied. Mr Coppolani also referred to the very useful discussions which were held with the joint Investment Advisory Body on an annual basis.
- 10.8 Mr Coppolani reported that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat.
- 10.9 One delegation was of the view that it would be valuable for all members of the Audit Body to attend the October sessions if they so wished, as it was useful for them to exchange views with the members of the Assembly. In addition that delegation was of the opinion that the current mandate of the Audit Body was restrictive and that it would be appropriate to review it in the light of six years' experience. Other delegations expressed the opinion that there should be caution when reviewing the mandate and that the Audit Body itself would be the right body to suggest any amendments to it.
- 10.10 One delegation expressed concern that four new members of the Audit Body would have to be elected in October 2008 and wondered if the Audit Body could be asked to look at different options for overcoming this problem. This concern was not, however, shared by other delegations that took the floor.
- 10.11 In response, Mr Coppolani agreed that the time was right for the Audit Body to review its mandate, whilst reminding delegations that the Audit Body had already carried out additional tasks as requested by the governing bodies. With respect to the participation of all members of the Audit Body at the October sessions, he said that the Audit Body's concern had been one of economy. However, if the governing bodies so wished, all members of the Audit Body could attend the October sessions in the future. Regarding the election of a new Audit Body in October 2008, he did not envisage that the election of four new members would cause any problems, provided that the 'outside expert' with financial expertise was re-elected.
- 10.12 The Assembly noted that the Audit Body would review its mandate and make a proposal to the governing bodies at a future session. In addition it would look at the participation of all Audit Body members in future October sessions, taking into account cost implications.
- 10.13 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the Financial Statements of the 1992 Fund for the financial year 2006.
- 10.14 The Assembly approved the Financial Statements of the 1992 Fund for the financial year 2006.
- 10.15 The Assembly expressed its gratitude for the important work being carried out by the Audit Body. It also noted the Audit Body's expression of gratitude to the Secretariat for its assistance and co-operation.

- 10.16 The Director expressed the sincere appreciation of the Secretariat to the Audit Body for its excellent co-operation and for the very useful contribution it made to the work of the Organisations.

## **11 Procedures for the Appointment of the External Auditor**

- 11.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.12/10 submitted by the Audit Body.
- 11.2 Mr Coppolani reminded the Assembly that at their October 2006 sessions, the governing bodies had decided to re-appoint the Comptroller and Auditor General of the United Kingdom as External Auditor for the three Funds for a full term of four years from 1 January 2007, ie to audit the Financial Statements for the years 2007 to 2010. He also reminded the Assembly that it would at its October 2010 sessions either have to elect a new External Auditor or to re-elect the current External Auditor.
- 11.3 Mr Coppolani reminded the Assembly that it was for this reason that the governing bodies had requested the Audit Body at their October 2006 sessions to prepare a proposal for a procedure to be used for the selection and appointment of the IOPC Funds' External Auditor in future years. This proposal was to include the eligibility to tender, tender rules, timing, terms of reference, the factors that the Audit Body thought were essential as well as a proposed framework for the selection process.
- 11.4 He informed the Assembly that, as there would be a significant change in the composition of the Audit Body in 2008, the Audit Body had been conscious of the need to benefit from the experience gained during the early years of the existence of the Audit Body. He explained that the current Body had therefore decided to prepare the relevant documentation regarding the proposed procedure, even though it would not be needed until the term of office of the Funds' current External Auditor had expired with the audit of the 2010 Financial Statements which will be conducted in 2011.
- 11.5 He drew particular attention to the fact that, should the proposed arrangements be approved by the governing bodies, it would be necessary for the mandate of the Audit Body to be amended to include the organisation of the tender process when the time came. He also pointed out that the Audit Body had recommended that it should be instructed by the Assembly to draw up a short list of candidates for interview in London in 2010 and that, in its view, it was essential for reasons of transparency that, in addition to the members of the Audit Body, the Chairpersons of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly should also participate in the interview process.
- 11.6 The Audit Body proposed that, as a result of the interview process, it would make a recommendation to the October 2010 sessions of the governing bodies as to the appointment of a new External Auditor or the re-appointment of the current External Auditor.
- 11.7 During the discussions some delegations expressed the view that, in order to avoid a possible conflict of interest if candidates short-listed for interview were from the same Member States as any of the Chairpersons of the 1992 Fund Assembly, the 1971 Fund Administrative Council or the Supplementary Fund Assembly, the Vice-Chairperson should be invited to attend in their place. Several delegations also expressed the view that all three of the Funds' working languages, ie English, French and Spanish, should be given equal treatment in the selection of the External Auditor. Other issues raised included the length of the mandate of the External Auditor and whether more than one candidate could be proposed by a Member State.
- 11.8 In response to the concerns raised by delegations, the Chairman of the Audit Body responded that the External Auditor must, in accordance with Regulation 14.1 of the Financial Regulations, be the Auditor-General (or officer holding the equivalent title) of a Member State and that therefore there could be only one candidature from each Member State. He also stated that it was the Audit

Body's view that equal treatment should be given to candidates whose working language was one of the Funds' working languages but stressed that the day-to-day working language of the Secretariat was English and that, whatever the language of the External Auditor, he or she must be able to work in English. With respect to the length of the mandate, he stated that the Audit Body had considered that a continuation of the current four-year period was desirable but that the Financial Regulations did not stipulate any specific length. With regard to a potential conflict of interest as mentioned above, he indicated that the members of the Audit Body had felt that it was important that the Audit Body should work in the utmost transparency which is why the three Chairpersons had been included in the selection process.

- 11.9 The Assembly decided that Vice-Chairpersons should be invited to participate in the selection process if there was any potential conflict of interest with the Chairperson being of the same nationality as that of the candidate, but that all members of the Audit Body should attend, whatever their nationality. It also recognised that, while it was important for equal treatment to be given to all three official languages in the selection process, the working language for audit purposes was in practice English.
- 11.10 The Assembly endorsed the Audit Body's proposal and approved the arrangements proposed by the Audit Body regarding the procedure to be used for the selection and appointment of the IOPC Funds' External Auditor in future years as set out in document 92FUND/A.12/10. The Assembly decided to follow the proposed timetable contained at Annex IV to that document.

*Contribution matters*

**12 Report on contributions**

The Assembly took note of the Director's report on contributions contained in document 92FUND/A.12/11.

**13 Submission of oil reports**

- 13.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.12/12. It was noted that, since the document had been issued, three further States had submitted their outstanding oil reports: Madagascar and Tonga, which each had two years of outstanding reports, and Georgia, which had one outstanding report. It was therefore noted that, whilst there were no outstanding reports in respect of the Supplementary Fund, a total of 34 States still had outstanding oil reports for the 1971 and 1992 Funds for the year 2006 and/or previous years: six States in respect of the 1971 Fund and 30 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.
- 13.2 The Assembly noted that those States which had submitted reports for 2006 represented some 98.5% of the expected total contributing oil (cf document 92FUND/A.12/17, Annex I) and that a further six States (Kenya, Morocco, Nigeria, Panama, Russian Federation and Tunisia) which have all submitted reports within the last three years, represented the remaining 1.5%.
- 13.3 The Assembly noted with satisfaction that since the October 2006 sessions of the governing bodies, Albania had submitted all their outstanding reports, ie for ten years. It was also noted that a number of other States with outstanding reports, including Dominica, Panama, Russian Federation, Saint Kitts and Nevis and Saint Vincent and the Grenadines, had indicated their intention to submit their outstanding reports in the near future.
- 13.4 The Assembly noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The Assembly expressed its very serious concern as regards the number of Member States which had not fulfilled their obligations to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.

- 13.5 The Assembly noted the information contained in document 92FUND/A.12/12/1, which reported on the implementation of measures encouraging the submission of oil reports.
- 13.6 The Assembly recalled that the governing bodies, at their October 2005 sessions, had considered the Secretariat's normal procedures for monitoring the submission of oil reports as well as recommendations as to further measures that might encourage States to fulfil their obligations in this regard. It was recalled that the governing bodies had considered a number of measures to encourage States to submit oil reports focussing on either assisting States to submit reports or 'shaming' them into doing so.
- 13.7 The Assembly further recalled that the governing bodies had instructed the Director to proceed only with the measures which had been proposed to assist States to submit oil reports, as listed below:
- (a) The Secretariat could liaise much more closely with the Embassy or High Commission of new 1992 Fund Member States in order to try to prevent problems from arising in the first place. This could include inviting the Embassy or High Commission to inform the Secretariat of an individual who was to be responsible for the procedure for submission of the oil reports, either at the Embassy or High Commission or at a relevant Ministry or agency.
  - (b) All States could be invited to give the Secretariat the contact details of the person, section or agency which in the respective State was responsible for the submission of reports so as to enable the Secretariat to make direct contacts when problems arise.
  - (c) The Secretariat was considering establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context of the HNS Convention. It was conceivable that the reduced administrative work involved in using such a system compared to the present system might assist those States with relatively small administrations in the submission of reports.
  - (d) The governing bodies might wish to consider whether, when electing a Chairman and Vice-Chairmen of various Fund bodies, account should be taken of whether the States whose nationals are considered for election have fulfilled their obligations to submit oil reports.
  - (e) The governing bodies might wish to instruct the Director to invite a few States which have established efficient procedures for compiling the necessary information and submitting the reports to inform the Secretariat of these procedures. The Director could then prepare an information document which could assist other States in setting up such procedures.
- 13.8 It was recalled that the Assembly had decided at its October 2005 session not to take the proposed measure to 'shame' States into submitting oil reports by highlighting States with outstanding reports on the Funds' website and in the Annual Report. However, the Assembly noted that as regards the 1971 Fund, the 1971 Fund Administrative Council had decided at its October 2005 session during its discussion of the winding up of that Fund that the former 1971 Fund Member States with outstanding oil reports should be listed on the IOPC Funds' website (document 71FUND/AC.17/20, paragraph 15.18).
- 13.9 The Assembly recalled that the implementation of the measures referred to in paragraphs 13.7(a), (b) and (d) and 13.8 had been reported to the governing bodies at their October 2006 sessions (cf document 92FUND/A.11/14/1).
- 13.10 With regard to the measure referred to in paragraph 13.7(c), the Assembly noted that the Secretariat was proceeding with the establishment of an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context

of the HNS Convention. The Assembly also noted that the Secretariat hoped that a trial version of such a system would be available for demonstration to the governing bodies at their October 2008 sessions, at the latest.

- 13.11 As regards the measure referred to in paragraph 13.7(e), it was recalled that the 1992 Fund Administrative Council, acting on behalf of the Assembly, had noted at its June 2007 session that the Director had prepared an information document which could assist States in setting up procedures for the submission of oil reports (cf documents 92FUND/A.ES.12/4 and 92FUND/AC.3/A/ES.12/14, paragraph 4.1). It was noted that this document is being distributed to States which currently have outstanding oil reports, as well as to new 1992 Fund Member States. It was further noted that, based on the feedback received at the June 2007 session, the Director is preparing a similar document aimed at assisting contributors, rather than governments, to establish procedures for the submission of oil reports.
- 13.12 The Assembly instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 13.13 The Assembly further instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their obligations in this regard.
- 13.14 The Assembly took note of document 92FUND/A.12/12/2 on the submission of oil reports, in which the Audit Body recalled its long-running concern with this issue and reported on the study which it had undertaken with a view to evaluating what could be done to move the issue forward.
- 13.15 In that document, the Audit Body set out its detailed consideration of the treaty law issues involved and its conclusion that to strive for legal solutions would be both a difficult and an undesirable route for the Funds to take. It therefore proposed that the Assembly should take a policy decision that admissible claims submitted by a public authority or agent of the administration of a Member State which was in arrears with the submission of its oil reports could be assessed as normal but that payment of all such claims would be deferred until the reporting deficiency was fully rectified. The Audit Body considered that the adoption of such a policy decision would be consistent with past practice where the Funds had used policy decisions of this type to address and resolve issues not explicitly covered in the Conventions.
- 13.16 The Audit Body emphasised that all legitimate claims made by other victims would be unaffected by the proposal. However, the Audit Body pointed out that, in almost every case, the non-reporting State concerned would also be a substantial claimant for clean up and other major costs following an incident. The Audit Body emphasised that it did not propose any kind of penalty for a State which was in default with respect to its oil reports since full payment of assessed claims would be made once the deficiency was fully rectified.
- 13.17 A number of delegations considered that the proposal was a useful one which was legally sound and which fairly reflected the fundamental principle of a balance between the rights and obligations of a State. Those delegations indicated that the proposal would serve as an incentive to States with outstanding oil reports to submit such reports.
- 13.18 Other delegations were concerned, however, that the notions of 'public authority/administration' and 'substantially in arrears' needed clarification so that the Executive Committee would be able to implement such a policy without extensive debate. Some delegations also questioned whether the proposal was legally sound, pointing out that the 1992 Fund would still be liable to pay admissible claims for damage in such a State and questioning whether the proposal in fact constituted a sanction, which would be outside the scope of the Convention. One delegation also sought clarification as to the effect of the proposal in a case where the total amount of admissible claims exceeded the amount available under the Conventions and the payment of claims therefore had to be pro-rated.

- 13.19 The Assembly expressed its gratitude to the Audit Body for its helpful proposal and invited the Audit Body to refine the proposal in the light of the discussion, with a view to submitting a document on the subject to a future session of the Assembly.

*Secretariat and administrative matters*

**14 Operation of the Secretariat**

- 14.1 The Assembly took note of the information contained in document 92FUND/A.12/13 regarding the operation of the Secretariat.
- 14.2 The Assembly noted that Mr Willem Oosterveen had taken up office as Director of the IOPC Funds on 1 November 2006 and that the previous Director, Mr Måns Jacobsson, had continued to be available until his retirement on 31 December 2006. The Director expressed his gratitude to the Secretariat for its support during his first year in office.
- 14.3 The Assembly noted that Mr Joe Nichols had retired from the post of Deputy Director/Technical Adviser on 17 August 2007. In response to a question by one delegation, the Director explained that, given that the role had been created as a result of the particular circumstances at the time, he was now taking the opportunity to rethink that post. He explained that whilst he considered the role of Technical Advisor very important within the Secretariat, he was unsure whether that post should continue to be combined with that of Deputy Director and wanted to give this matter careful consideration before reaching any conclusions.
- 14.4 It was noted that six posts were vacant in the Professional Category, ie those of Deputy Director/Technical Adviser, Claims Manager, Human Resources Manager, Information Officer and French and Spanish translators. It was also noted that recruitment to the post of Claims Manager would only be made if required due to an increase in workload and that the Director did not intend to fill the vacant posts of in-house translators in the foreseeable future but would continue to use freelance translators. It was further noted that one post was vacant in the General Services category, ie that of Publications Administrator.
- 14.5 The Director informed the Assembly that, as a result of two posts in the External Relations and Conference (ERC) Department becoming vacant in 2007, he had taken the opportunity to review the staff resources in that department. In order to provide better service to the increasing number of Member States and contributors as well as to further develop the Funds' outreach programmes, the Director requested the Assembly to approve the establishment of a new post in the Professional category in the ERC Department.
- 14.6 The Director explained that should the Assembly approve the establishment of the new post, he did not envisage the need for an increase in the administrative budget for 2008 (document 92FUND/A.12/21/Add.1). He proposed instead to use the funds allocated in the draft 2008 administrative budget for the vacant post of Claims Manager which would only be filled should the workload so require. One delegation pointed out, however, that an increase in the budget would in fact be required, were it to become necessary to fill the post of Claims Manager.
- 14.7 One delegation requested a more detailed explanation as to why the new post was required, particularly given the reduction in the number of oil pollution incidents and the fact that the Assembly had already approved 17 professional-level posts within the Organisation.
- 14.8 The Director pointed out that the decline in the frequency of incidents did not necessarily lead to an immediate decline in the work of the Secretariat, in particular not outside the Claims Department. He further pointed out that the ERC Department had a wide range of responsibilities in addition to the running of the meetings, including the processing and checking of oil reports, publications, management of the website and preparations relating to the setting up of the HNS Fund.

- 14.9 The Director reminded the Assembly that it had been established during the early years of the IOPC Funds that the Secretariat would have few members of staff but would hire and manage experts as and when required. He pointed out that in order for the Secretariat to be able to work in this manner it was essential that staff members were skilled and of a sufficient level to manage both internally and externally.
- 14.10 He also pointed out that the two established posts of French and Spanish translators had remained vacant for a number of years since the Secretariat had continued to successfully use freelance translators to carry out the necessary work. He explained however, that these two vacant posts gave a somewhat distorted view of the level of staffing within the ERC Department. He suggested that these two posts could in fact be removed from the structure of the Secretariat should the Assembly consider it necessary to do so.
- 14.11 Several delegations expressed their satisfaction at the reasoning given for the creation of the new post and their confidence in the Director's judgement, stating that the Director would only have put forward a proposal for new staff if he felt there was a compelling need to do so.
- 14.12 The Assembly approved the Director's proposal to establish a new post in the Professional category in the ERC Department.
- 14.13 The Assembly instructed the Director to seriously consider removing the two vacant posts of French and Spanish translators from the ERC Department.
- 14.14 Some delegations considered that there was a need in due course to review the structure of the Secretariat in view of the declining number of incidents.
- 14.15 The Assembly noted with satisfaction that the Secretariat's work on risk management had continued since the October 2006 sessions. It also noted the Director's objective that the work should be completed as soon as practically possible and hopefully by the summer of 2008.
- 14.16 The Assembly recalled the work carried out by the Secretariat towards the establishment of a database of the decisions taken over the years by the governing bodies. It noted that the former Deputy Director/Technical Adviser, Mr Joe Nichols, had begun work on categorising all the decisions and other relevant information, such as court judgements, into the database before his retirement in August 2007 and had by then covered the period 1978-1998. It also noted that in order to maintain the same style, the Director had decided to accept Mr Nichols' kind offer to complete the work. It was further noted that once the work had been completed and proofread, a database interface would be developed to render the database accessible online and that the database would then be kept up to date by the Secretariat after each session of the governing bodies.
- 14.17 The Assembly noted that a new claims handling database was in the process of being developed in-house and that it would assist in the handling of incidents where claimants, governments, experts, etc, make large amounts of data available to the Fund, in that it would provide the Director with useful management information. The Assembly also noted that the database was expected to be available by the end of 2007.

## **15 Documents for meetings**

- 15.1 The Assembly took note of the information contained in document 92FUND/A.12/14, submitted by the Director, which dealt with the structure and content of documents for meetings.
- 15.2 It was recalled that at its 3rd session, held in June 2007, the 1992 Fund Administrative Council, acting on behalf of the Assembly, considered a number of options which might improve the usefulness of documents. It was also recalled that the Administrative Council had invited the Secretariat to submit a concrete proposal in the form of a document for consideration at the October 2007 session of the governing bodies, taking into account the discussion at that session (document 92FUND/AC.3/A/ES.12/14, paragraph 11.1.8).

15.3 The Assembly noted the Director's proposal for the following changes to incident-related documents:

- Both the amount and structure of the information currently provided in the summary box would be developed so as to be sufficient to enable the majority of delegates to take a view on the decisions to be taken, with more detailed information available in the body of the document for those that require it. References to paragraph numbers within the document would be provided in the summary to facilitate this and longer documents (eg five pages or more) would have a table of contents. The summary box would be structured in the form of: objective of document, developments/issues, recommendations, as appropriate, depending on the content of the document.
- A standardised summary would be provided at the start of each incident document, giving basic factual information about the incident, similar to that currently provided in Annexes XXII and XXIII of the 2006 Annual Report. An overview of the development of the claims (ie the amounts claimed, assessed and paid) in comparison with the amounts available under the Conventions would also be provided. An example of the proposed information is provided in the Annex to document 92FUND/A.12/14.
- As appropriate, the length of documents would be significantly reduced by simply referring to information which is contained in previous documents or in other sources of information, such as the Annual Report, rather than quoting it verbatim.
- To the extent possible, the text of the documents would also be structured in a standard way so that new information and developments would be easier for delegates to identify.

15.4 The Assembly noted that the Director did not propose to make any changes to other types of documents, ie not incident-related ones, at the current time.

15.5 The Assembly noted the Director's proposal as regards the Records of Decisions as follows:

- The Records of Decisions would be structured so that each topic was presented as follows: Background, Debate, Decision.
- As regards Background, there would be no repetition of information which was contained in the documents but simply a relatively short reference to the location of the background information, eg in the form 'The Executive Committee discussed the Director's proposal to ..., as set out in document ...'. The Records of Decisions would therefore no longer be self-standing, but would have to be read in conjunction with the relevant meeting documents.
- As regards Debate and Decision, the Records of Decisions would only contain the key points from the discussion by the governing bodies and a list of the decisions made.

15.6 The Assembly agreed with the Director's proposals as regards the structure and content of incident-related documents and Records of Decisions as set out in paragraphs 15.3-15.5 above.

15.7 The Assembly also noted the Director's intentions to review the impact of the changes after an appropriate period of time and, at that time, to also give further consideration to the following possibilities:

- Changes to non incident-related documents.
- Providing electronic links in PDF versions of documents in order to facilitate referring to previous documents or to other sources of information.
- Whether the Records of Decisions for the three Funds could be organised in such a way that the repetition between them would be reduced or eliminated.

**16 Amendments to Staff Rules**

The Assembly noted the information contained in document 92FUND/A.12/15 with regard to the 1992 Fund's Staff Rules.

**17 Appointment of members and substitute members of the Appeals Board**

The Assembly learnt with regret of the untimely death of Mr Evans King (Trinidad and Tobago), a former substitute member of the Appeals Board, and requested that the delegation of Trinidad and Tobago extend its sincere condolences to his family.

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 14th session of the Assembly:

Members	Substitute Members
Mr André Legroux (France)	Mr Christos Atalians (Cyprus)
Mr Ichiro Shimizu (Japan)	Ms Roanna Gopaul (Trinidad and Tobago)
Sir Michael Wood (United Kingdom)	Mr Victor José Koyoc Cauich (Mexico)

*Compensation matters*

**18 Reports of the Executive Committee on its 35th – 38th sessions**

18.1 The Chairman of the Executive Committee, Mr John Gillies (Australia), informed the Assembly of the work of the Committee during its 35th - 38th sessions (cf documents 92FUND/EXC.35/2, 92FUND/EXC.36/10, 92FUND/EXC.37/9 and 92FUND/EXC.38/12).

18.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman, the Vice-Chairman and its members for their work.

**19 Election of members of the Executive Committee**

In accordance with 1992 Fund Resolution N°5, the Assembly elected the following States as members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Germany	Australia
India	Bahamas
Italy	Denmark
Japan	Gabon
Netherlands	Lithuania
Republic of Korea	Malaysia
United Kingdom	Qatar
	Venezuela

**20 Technical Guidelines for assessing fisheries sector claims**

20.1 The Assembly recalled that at its 3rd session, held in June 2007, the Administrative Council, acting on behalf of the Assembly, had approved the Technical Guidelines for assessing fisheries sector claims (cf documents 92FUND/A/ES.12/7 and 92FUND/A/ES.12/7/Add.1), which were intended to assist the 1992 Fund's worldwide network of fishery experts in assessing claims. It also recalled that the Council had instructed the Secretariat to publish this as a Fund document. It further recalled that the Council had also instructed the Secretariat to develop a simplified version

of the Guidelines for claimants, which should be compatible with the experts' version (document 92FUND/AC.3/A/ES.12/14, paragraph 7.11)

- 20.2 The Assembly noted that the Secretariat had made some minor editorial changes to the text approved by the Assembly and that the document was being translated into French and Spanish.
- 20.3 The Assembly further noted that the Director had engaged a fishery specialist who had worked for the Funds in the past to prepare a simplified version of the Guidelines which would be compatible with the experts' version and at the same time easily understandable by claimants in the subsistence fisheries sector.
- 20.4 The Assembly noted that the Director expected the final draft of the claimants' version of the Guidelines to be ready for submission to the Assembly at its next session in March 2008.

*Budgetary matters*

**21 Transfer within the 2007 budget**

The Assembly authorised the Director to make any necessary transfer to Chapter IV (Meetings), within the 2007 budget, from Chapter VI (Unforeseen expenditure) to cover the cost that may exceed the amount that can be transferred under Financial Regulation 6.3.

**22 Sharing of joint administrative costs between the 1992 Fund, the 1971 Fund and the Supplementary Fund**

- 22.1 It was recalled that at their March 2005 sessions, the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund had decided that the distribution of the costs of running the joint Secretariat should be made on the basis of the 1971 Fund and the Supplementary Fund paying a flat management fee to the 1992 Fund.
- 22.2 It was recalled that it had been decided that the management fees payable by the 1971 Fund and the Supplementary Fund should be reviewed annually in view of changes of the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of these Funds.
- 22.3 The Assembly approved the Director's proposal that the 1971 Fund and the Supplementary Fund should pay flat management fees of £210 000 and £50 000 respectively to the 1992 Fund for the financial year 2008 (document 92FUND/A.12/20).
- 22.4 It was noted that the Administrative Council of the 1971 Fund and the Assembly of the Supplementary Fund had agreed, at their 22nd session and 3rd session respectively, to the distribution of joint administrative costs proposed by the Director.

**23 Budget for 2008 and assessment of contributions to the General Fund**

- 23.1 The Assembly considered the draft 2008 budget for the administrative expenses of the 1992 Fund, the 1971 Fund and the Supplementary Fund and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in documents 92FUND/A.12/21 and 92FUND/A.12/21/Add.1.
- 23.2 The Assembly adopted the budget for 2008 for the administrative expenses for the joint Secretariat for a total of £3 646 000 (including external audit fees for the three Funds), as reproduced in Annex I to this document.
- 23.3 The Assembly decided to maintain the working capital of the 1992 Fund at £22 million.

- 23.4 The Assembly renewed its authorisation to the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.
- 23.5 The Assembly noted the Director's estimate of £30 000 for expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention.
- 23.6 The Assembly decided to levy contributions to the General Fund for a total of £3.0 million, with the entire levy due for payment by 1 March 2008.
- 23.7 It was noted that the contributions referred to in paragraph 22.6 would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2008	
			Levy £	Estimated levy per tonne £
General Fund	2007	1 497 231 062	3 000 000	0.0020037

## **24 Assessment of contributions to Major Claims Funds**

- 24.1 The Director introduced document 92FUND/A.12/22 in which he proposed that the 1992 Fund should not levy any 2007 contributions to Major Claims Funds.
- 24.2 The Assembly decided that there should be no levy of 2007 contributions in respect of the *Erika* Major Claims Fund and the *Prestige* Major Claims Fund.

*Developments regarding the international compensation regime*

## **25 Report of the 4th intersessional Working Group**

- 25.1 The reports of the fourth intersessional Working Group's second and third meetings, held in March and June 2007 respectively (documents 92FUND/A.12/23 and 92FUND/A.12/23/1), were presented by the Group's Chairperson, Mrs Birgit Sølling Olsen (Denmark).
- 25.2 Mrs Olsen took the opportunity to thank the participants of the Working Group both from governments and industry for their contributions to the debates at the meetings. She also reminded Member States of the mandate given to the Working Group by the Assembly, as set out in paragraph 3 of document 92FUND/A.12/23/1, and of the time frame within which the Assembly had instructed the Group to complete its work, namely by the end of 2008.
- 25.3 Taking this deadline into account, Mrs Olsen pointed out that the March 2008 meeting of the Working Group was likely to be the last opportunity to consider any outstanding issues covered by the mandate and invited any Member States or observers wishing to raise such issues to submit their proposals well in advance of that meeting.
- 25.4 The Assembly thanked Mrs Olsen for her report on the Working Group's second and third meetings and expressed its appreciation for the way in which she dealt with the difficult discussions during the Group's meetings.

## **26 STOPIA 2006 and TOPIA 2006**

- 26.1 It was recalled that at its June 2007 session, the Administrative Council, acting on behalf of the Assembly, had discussed the operational aspects of STOPIA 2006 and TOPIA 2006 on the basis of a document (92FUND/A/ES.12/13) submitted by one delegation, suggesting that clarification

- be sought as to whether a better guarantee of compensation under these agreements could be provided, for example by amending STOPIA 2006 and TOPIA 2006. It was also recalled that the Council had instructed the Director to investigate the issue further and report to the Assembly at its next session.
- 26.2 The Assembly noted that the Director had held discussions with the International Group of P&I Clubs. The Assembly also noted the information contained in document 92FUND/A.12/24, which set out the numbers of ships entered and not entered in STOPIA 2006 and TOPIA 2006 and the results of the investigation by the Director.
- 26.3 The Assembly noted that the International Group had stressed the importance of the definition of 'Relevant Ship', being the core definition of STOPIA 2006 and TOPIA 2006. It was noted that according to that definition, a ship could only be a 'Relevant Ship' under the agreements if it was reinsured through the pooling arrangements of the International Group. It was also noted that the underlying rationale was that if a ship was not reinsured through the pooling arrangements of the International Group, it was not contributing to the costs of operating this Pool and, therefore, should not have the benefit of being protected by the Pool and the underlying reinsurance.
- 26.4 It was noted that the Memorandum of Understanding (MOU) between the International Group of P&I Clubs and the 1992 Fund and Supplementary Fund provided for automatic entry of a 'Relevant Ship' in the respective agreements, but expressly recognised the right of the shipowner to decline to participate in the agreements, or to withdraw from them. It was also noted that in the view of the International Group, this was a fundamental right of the shipowner and any attempt to compel participation would be unsustainable, particularly from a competition law perspective, also bearing in mind the significant general competition law issues arising in relation to the operation of the International Group.
- 26.5 The Assembly noted that, in conclusion, the International Group had not considered any amendments to STOPIA 2006 and/or TOPIA 2006 or the MOU necessary or desirable. It also noted that, in the view of the International Group, should the possibility of non-entry be deleted from the agreements, owners not wishing to be party to the agreements would simply give an immediate notice of cesser of entry which would make such deletion a rather pointless exercise. It was noted that the International Group failed therefore to see how the suggested amendment would in any way strengthen the operability of STOPIA 2006 and TOPIA 2006.
- 26.6 The Assembly noted the Director's view that, from the perspective of the shipping and insurance industry, it seemed logical that ships which were not contributing to the pooling arrangements should not benefit from those arrangements and that it might cause problems from a competition law point of view to require all shipowners entered with a P&I Club belonging to the International Group to be a party to STOPIA 2006 and/or TOPIA 2006.
- 26.7 The Assembly noted the Director's view that there was, however, also the perspective of the international community, which had a legitimate interest to ensure that as many ships as possible were covered by international arrangements aimed at ensuring an equitable sharing of the burden of the international compensation regime between the shipping industry and the oil receiving industry, such as STOPIA 2006 and TOPIA 2006. It was noted that from that perspective it was unfortunate that a significant number of ships was not covered in practice, and that apparently the International Group of P&I Clubs did not see a possibility of making sure that all of these ships would indeed be entered into STOPIA 2006 and TOPIA 2006. The Assembly noted that this illustrated, in full recognition however of the commendable efforts made by the International Group, the inherent weaknesses of any voluntary regime.
- 26.8 The Assembly noted the Director's view that the only way to ensure the greatest possible coverage of STOPIA 2006 and TOPIA 2006 would, however, be for all P&I Clubs belonging to the International Group to compel all tanker owners entered with those Clubs to be a party to these agreements. It was noted that this solution, if possible at all, might raise serious issues of competition law and would certainly not have the support of the International Group of P&I Clubs

and that to pursue this might even endanger the availability of the protection which existed under the present agreements.

- 26.9 The Assembly noted the Director's view that, in the present situation, and given the fact that the great majority of tanker tonnage was actually entered in STOPIA 2006 and TOPIA 2006, it would not be advisable at this stage to try to re-open STOPIA 2006 and/or TOPIA 2006 and the MOU. It also noted, however, the Director's view that it was very important for the International Group to continue, and indeed strengthen, its efforts to urge all shipowners entered with their member Clubs to become party to the agreements and that the Director intended to regularly monitor, with the International Group, the situation and any progress made, with a view to enhancing the coverage of STOPIA 2006 and TOPIA 2006, and report to the governing bodies of the 1992 Fund and the Supplementary Fund at future sessions.
- 26.10 The observer delegation of the International Group of P&I Clubs stated that if the Clubs were to try to force their members to enter into the agreements, this could well have the effect of forcing some of them to seek their liability insurance outside the International Group, and that this could have inherent negative consequences in relation to ship safety standards and loss prevention. The delegation also stated that the Clubs belonging to the International Group would continue to encourage non 'Relevant Ship' owners to become party to the agreements, and that they would continue to report to the Director, in accordance with the MOU, the numbers of ships entered and not entered into the agreements.
- 26.11 The delegation which had requested a clarification in respect of the agreements thanked the Director for his report and analysis, as well as the International Group for the explanations provided. That delegation expressed the hope that more shipowners would become party to the agreements in the near future.
- 26.12 The Assembly agreed with the Director's analysis and welcomed his intention to regularly monitor the situation and to report to the governing bodies of the 1992 Fund and the Supplementary Fund at future sessions.

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

- 27.1 The Assembly recalled that, in a Resolution of the 1996 Diplomatic Conference which had adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. It was also recalled that at its 1st session, the Assembly had instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.
- 27.2 The Assembly noted that, since the October 2006 session of the Assembly, one further State (Lithuania) had ratified the HNS Convention, bringing the total number of States which have ratified the Convention to nine, ie Angola, Cyprus, Lithuania, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga.
- 27.3 The Assembly also recalled that Article 43 of the HNS Convention required a State, when submitting an instrument of ratification and annually thereafter until the Convention enters into force for that State, to submit information on the total quantities of contributing cargo received in respect of each account and sector to the Secretary-General of IMO. It was noted that, as at 8 October 2007, only two of the States (Cyprus and Slovenia) that have ratified the Convention had submitted such information. It was also noted that two further States (Morocco and the Russian Federation) had contacted the Secretariat to request assistance in submitting their reports.

27.4 It was recalled that at the 12th extraordinary session of the Assembly, held in June 2007, documents on the following topics had been submitted:

- Annual contributions to the LNG Account
- Definition of 'receiver'
- Depositing instruments of ratification without accompanying contributing cargo reports
- A common ratification date for the HNS Convention

27.5 The Assembly considered the following documents that had been submitted as a result of the discussions at the previous session:

92FUND/A.12/25/1 - Report of the Correspondence Group on annual contributions to the LNG Account - Submitted by Norway

92FUND/A.12/25/2 - Implementation of the Definition of 'Receiver' in Article 1.4(a) of the HNS Convention - Submitted by Canada, Denmark, France, Germany, the Netherlands, Norway, Sweden and the United Kingdom

92FUND/A.12/25/3 - Depositing instruments of ratification without accompanying contributing cargo reports and common ratification of the HNS Convention - Submitted by Canada, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden and the United Kingdom

27.6 The Assembly also considered the following document submitted by the Chairman of the 1992 Fund Assembly:

92FUND/A.12/25/4 - Future work on the HNS Convention - Submitted by the Chairman

27.7 The Chairman invited States to structure their responses by indicating whether or not in their opinion acceptable solutions had been found in respect of the key issues, ie:

- Annual contributions to the LNG Account
- Definition of 'receiver'
- Depositing instruments of ratification without accompanying contributing cargo reports
- A common ratification date for the HNS Convention (optional).

27.8 The Chairman then invited States to indicate clearly whether or not they were in favour of continuing work on the HNS Convention within the IOPC Funds. He made the point that continuing the work required States to express their support for finding solutions to the problems that had been identified and to make a commitment to contribute actively to such work. He also called on States which had already ratified the Convention to share their experiences in this regard.

27.9 All States which spoke expressed their strong support in principle for the HNS Convention, based on a system of shared liability, and indicated their wish that work towards resolving the problems should continue.

27.10 As regards the key issues, a number of States indicated that acceptable solutions to one or more of the key issues either had been or could be found within the current text of the HNS Convention, with a few of these States being of the view that all of the issues could be resolved by the time of the first Assembly of the HNS Fund. However, the majority of States indicated that, in their view, at least one of the key issues could not be resolved satisfactorily within the current text of the

Convention and that, as a result, the Convention would never be ratified by a sufficient number of States for it to enter into force. Specific difficulties relating to packaged HNS were also raised during the debate.

- 27.11 During the discussion, reference was made to the importance of completing any further work within a short timescale, in order that the HNS Convention could enter into force as soon as possible. One delegation stated that, in its view, States which were members of the European Union were bound by a Council Decision to ratify the Convention. Other delegations also noted the importance of taking into account the impact of any proposals on those States that had already ratified the Convention and, particularly in respect of the LNG issue, of their impact on developing countries
- 27.12 Many States expressed their support for the development of a protocol to the Convention which would provide legally binding solutions to the key issues. However, a number of these States expressed their serious concern that it would prove very difficult to restrict such a protocol to the small number of key issues that had been identified and that a wholesale revision of the Convention would be extremely undesirable.
- 27.13 Many States agreed that work should continue within the IOPC Funds although a few other States cautioned that the proper place for such work was within IMO's Legal Committee rather than within the IOPC Funds. As regards the proper place for the development of a protocol, reference was made to a number of protocols which had been developed initially within the IOPC Funds before being transferred to IMO's Legal Committee and then to a Diplomatic Conference, ie the 1992 Civil Liability and Fund Protocols, the 2000 Protocol to the 1971 Fund Convention and the 2003 Supplementary Fund Protocol.
- 27.14 One observer delegation stated that any solution to these issues should not impact directly or indirectly on shipowners' liability under the first tier.
- 27.15 The Assembly discussed the establishment of a Working Group ('the HNS Focus Group') to carry out such work, on the basis of a working paper submitted by the Chairman containing draft Terms of Reference for such a Group (document 92FUND/A.12/WP.1).
- 27.16 The Assembly decided to establish the HNS Focus Group with the aim of facilitating the entry into force of the HNS Convention and with the Terms of Reference set out in Annex II. The Assembly further decided that the Chairman of the Group would be Mr Alfred Popp QC (Canada).
- 27.17 It was decided that the HNS Focus Group would operate in a transparent way. The Secretariat has therefore established practical arrangements for correspondence within the Group as follows: Any representative of a governmental or non-governmental delegation that has the right to participate in the 1992 Fund Assembly who wishes to participate in the HNS Focus Group correspondence group should email [hnsfocusgroup@iopcfund.org](mailto:hnsfocusgroup@iopcfund.org). All submissions to the HNS Focus Group will be circulated via email and will also be accessible via the following website address: [www.hnsconvention.org/en/theconvention.html](http://www.hnsconvention.org/en/theconvention.html).
- 27.18 The Chairman noted that the representative of IMO had made it very clear that the IMO Secretariat was willing to co-operate with the Secretariat of the IOPC Funds in any way in order to facilitate a successful outcome to the work. That representative also made the point that both the 1992 Fund Assembly and the IMO Legal Committee should ensure that each body was kept fully informed of any developments.
- 27.19 In this regard, the Assembly noted that the Secretariat had submitted a document (IMO document LEG 93/6/1) bringing the recent developments in respect of the HNS Convention to the attention of the IMO Legal Committee at its next session, which would be held in Panama from 22-26 October. It was also noted that the outcome of the discussions in the 1992 Fund Assembly would be reported to the Legal Committee by a representative of the IOPC Funds Secretariat.

*Other matters***28 Future sessions**

- 28.1 The Assembly recalled that at its 3rd session in June 2007, the 1992 Fund Administrative Council, acting on behalf of the Assembly, had decided to accept the kind invitation of the Government of Monaco and hold sessions of the IOPC Funds' governing bodies in Monaco during the week commencing 10 March 2008 (cf document 92FUND/AC.3/A/ES.12/14, paragraph 11.2.5). The Assembly noted the information contained in document 92FUND/A.12/26 relating to the arrangements for those meetings.
- 28.2 The delegation of Monaco informed the Assembly that the conference centre where the March sessions would be held was very close to a number of hotels. He stated that the Government of Monaco had negotiated preferential rates with two of these hotels and had provisionally reserved a number of rooms. He explained that a website would be set up to enable delegates to reserve these rooms directly and pointed out that the nearest airport to Monaco was Nice.
- 28.3 The delegation of Monaco informed the Assembly that a leaflet drafted in collaboration with the Secretariat would be issued nearer the time and that it would contain a list of alternative hotels and additional information relating to the meetings which could be of use to delegates. That delegation invited delegates requiring further information relating to any aspects of the meetings in March to contact them.
- 28.4 The Assembly thanked the Government of Monaco again for its kind invitation to hold the March 2008 meetings in Monaco and also for the information provided at this session.
- 28.5 The Assembly decided to hold its next regular session during the week of 13 October 2008. It was noted that tentative arrangements had also been made for meetings of the IOPC Funds in London during the week of 23 June 2008.

**29 Any other business**

- 29.1 The Assembly took note of document 92FUND/A.12/27 submitted by the delegation of Singapore on the establishment of rates for the deployment of oil spill response resources.
- 29.2 The Assembly noted that the Maritime and Port Authority of Singapore (MPA) and the International Tanker Owners Pollution Federation Limited (ITOPF) had signed a Memorandum of Understanding (MOU) on oil spill response resources on 24 September 2007<sup><2></sup>, which was supported by the IOPC Funds and the International Group of P&I Clubs.
- 29.3 It was noted that the MOU established a schedule of rates, endorsed by ITOPF, for oil spill response resources deployed under the direction of the MPA in response to pollution incidents involving vessels entered in the International Group of P&I Clubs. It was also noted that the MOU covered the oil spill response craft and equipment, including booms, oil skimmers, oil storage barges, dispersant spray systems and rapid response equipment of MPA and its supporting oil spill response agencies.
- 29.4 The Assembly noted that with the establishment of a pre-agreed schedule of rates in Singapore, the MOU sought to:
- (a) bolster resource owners' confidence that they will receive fair and timely compensation when they deploy their craft and equipment to assist in any oil spill clean-up operations;
  - (b) increase resource owners' commitment to respond to oil spill clean-up efforts promptly and efficiently; and

---

<sup><2></sup>A copy of the MOU is available on MPA's website at <http://www.mpa.gov.sg>.

- (c) expedite claims settlement between resource owners and P&I Clubs in the event of an oil pollution incident.
- 29.5 It was noted that the development of the MOU represented part of MPA's on-going pro-active efforts to ensure that speedy action was taken in all cases to mitigate environmental and economic losses from oil spill incidents.
- 29.6 The Assembly noted that the MOU had taken effect from 1 October 2007, that it would be in force for three years and that it would be reviewed in 2009.
- 29.7 The observer delegation of ITOPF stated that the establishment of arrangements on pre-agreed rates was in accordance with the requirement for co-operation between governments and industry provided by the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention).
- 29.8 The Assembly noted that, with the presentation of document 92FUND/A.12/27, the delegation of Singapore wished to encourage other Member States to establish similar arrangements on pre-agreed rates, and decided to endorse this initiative.

**30 Adoption of the Record of Decisions**

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.12/WP.2, was adopted, subject to certain amendments.

\* \* \*

## ANNEX I

## 2008 ADMINISTRATIVE BUDGET FOR 1992 FUND

STATEMENT OF EXPENDITURE		Actual 2006 expenditure for 1992 Fund		2006 budget appropriations for 1992 Fund		2007 budget appropriations for 1992 Fund		2008 budget appropriations for 1992 Fund	
		£		£		£		£	
<b>SECRETARIAT</b>									
<b>I</b>	<b>Personnel</b>								
(a)	Salaries	1 377 018		1 385 300		1 433 650		1 485 034	
(b)	Separation and recruitment	142 272		142 272		35 000		35 000	
(c)	Staff benefits, allowances and training	479 031		558 928		573 700		632 666	
	<b>Sub-total</b>		<b>1 998 321</b>		<b>2 086 500</b>		<b>2 042 350</b>		<b>2 152 700</b>
<b>II</b>	<b>General Services</b>								
(a)	Rent of office accommodation (including service charges and rates)	260 585		287 400		280 400		316 300	
(b)	Office machines, including maintenance	56 352		110 000		110 000		80 000	
(c)	Furniture and other office equipment	6 879		17 500		17 500		15 000	
(d)	Office stationery and supplies	15 140		22 000		22 000		22 000	
(e)	Communications (courier, telephone, postage, e-mail/internet)	50 287		68 000		68 000		73 000	
(f)	Other supplies and services	39 795		47 500		37 500		37 500	
(g)	Representation (hospitality)	19 412		25 000		25 000		25 000	
(h)	Public Information	87 553		180 000		180 000		180 000	
	<b>Sub-total</b>		<b>536 003</b>		<b>757 400</b>		<b>740 400</b>		<b>748 800</b>
<b>III</b>	<b>Meetings</b>								
	Sessions of the 1992, Supplementary and 1971 Fund Governing Bodies and Intersessional Working Groups		176 638		176 638		200 000		175 000
<b>IV</b>	<b>Travel</b>								
	Conferences, seminars and missions		143 991		145 000		160 000		150 000
<b>V</b>	<b>Miscellaneous expenditure</b>								
(a)	External audit fees for IOPC Funds	60 500		60 500		60 500		62 000	
(b)	Consultants' fees	219 312		219 312		180 000		150 000	
(c)	Audit Body	116 420		116 420		110 000		110 000	
(d)	Investment Advisory Bodies	37 500		37 500		37 500		37 500	
	<b>Sub-total</b>		<b>433 732</b>		<b>433 732</b>		<b>388 000</b>		<b>359 500</b>
<b>VI</b>	<b>Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)</b>								
			-		2 630		60 000		60 000
<b>Total Expenditure I-VI</b>			<b>3 288 685</b>		<b>3 601 900</b>		<b>3 590 750</b>		<b>3 646 000</b>
<b>Total Expenditure I-VI excluding External Audit fees for IOPC Funds</b>							<b>3 530 250</b>		<b>3 584 000</b>
<b>VII</b>	<b>Due from 71Fund</b>								
	Management fee payable to 1992 Fund by 1971 Fund		275 000		275 000		(275 000)		(210 000)
<b>VIII</b>	<b>Due from Supplementary Fund</b>								
	Management fee payable to 1992 Fund by Supplementary Fund		70 000		70 000		(70 000)		(50 000)
<b>1992 Fund Budget Appropriation excluding External audit fee for IOPC Funds</b>							<b>3 185 250</b>		<b>3 324 000</b>
<b>1992 Fund Budget Appropriation including External audit fee for 1992 Fund only</b>							<b>3 232 250</b>		<b>3 372 500</b>

\* \* \*

## ANNEX II

### Terms of Reference of the HNS Focus Group

- 1.1 Recognizing that, over many years, a large number of States have consistently expressed, both in the 1992 Fund and IMO as well as in other international or regional organisations, their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability, the 1992 Fund Assembly has decided to establish a Working Group ("the HNS Focus Group") with the aim of facilitating the rapid entry into force of the HNS Convention.
- 1.2 The HNS Focus Group shall have the following mandate:
  - (a) to examine the underlying causes of the issues which have been identified as inhibiting the entry into force of the HNS Convention, ie:
    - (i) Contributions to the LNG Account,
    - (ii) The concept of 'receiver', and
    - (iii) Non-submission of contributing cargo reports, on ratification of the Convention and annually thereafter;
  - (b) to examine any issues of an administrative ("house-keeping") nature as identified by the Secretariat which would facilitate the operation of the HNS Convention;
  - (c) to identify and develop legally-binding solutions to these issues, taking into account *inter alia* the impact on developing countries, in the form of a draft protocol to the HNS Convention;
  - (d) to complete its work as quickly as possible in order to facilitate the rapid entry into force of the HNS Convention.
- 1.3 The HNS Focus Group shall not embark on a wholesale revision of the HNS Convention but shall confine its work solely to the issues and solutions set out in paragraph 1.2 (a), (b) and (c).
- 1.4 The HNS Focus Group shall aim to complete its work according to the following timetable:
  - (a) interested delegations shall submit concrete policy proposals accompanied by draft treaty text to the Secretariat by 18 January 2008, at the latest;
  - (b) based on these proposals, the Chairman of the Group, in conjunction with the Secretariat, shall develop a draft text of a protocol to the HNS Convention for circulation to delegations by 15 February 2008;
  - (c) the Group shall meet in March 2008 and, if required, again in June 2008 in order to:
    - (i) consider the draft text of the protocol; and
    - (ii) make recommendations to the Assembly upon the completion of its work, ideally at an extraordinary session of the Assembly to be held in June 2008.
- 1.5 The Chairman of the HNS Focus Group, in conjunction with the Secretariat, will work closely with the IMO Secretariat in order to ensure that the draft protocol is in compliance with international treaty law, taking due account of the interests of those States that have already ratified the Convention or are at an advanced stage in so doing.
- 1.6 If approved by the Assembly, the draft protocol will be submitted for consideration by IMO's Legal Committee, ideally at its October 2008 session, with a view to the holding of a Diplomatic Conference as soon as possible.

- 1.7 The HNS Focus Group shall work intersessionally and shall be open to all governmental and non-governmental delegations that have the right to participate in the 1992 Fund Assembly. IMO, in particular, is strongly encouraged to participate actively in the Group. The Group shall follow the Rules of Procedure of the Assembly so far as they are applicable.
  - 1.8 The 1992 Fund will organise meetings of the HNS Focus Group on the understanding that all expenses incurred will be repaid by the HNS Fund, once it is established, with interest.
-