



International Oil Pollution
Compensation Funds

Agenda Item 9	IOPC/APR19/9/1	
Date	2 April 2019	
Original	English	
1992 Fund Administrative Council	92AC19/92AES23	●
1992 Fund Executive Committee	92EC72	●
Supplementary Fund Assembly	SAES7	●

RECORD OF DECISIONS OF THE APRIL 2019 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 1 to 2 April 2019)

Governing Body (session)		Chairman	Vice-Chairmen
1992 Fund	Administrative Council (92AC19/ 92AES23)	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Samuel Roger Minkeng (Cameroon)
	Executive Committee (92EC72)	Ambassador Antonio Bandini (Italy)	Captain K.P. Jayakumar (India) (absent)
Supplementary Fund	Assembly (SAES7)	Mr Sung-Bum Kim (Republic of Korea)	Mr Andrew Angel (United Kingdom) (absent) Mr Emre Dinçer (Turkey)

CONTENTS

	Page
Opening of the sessions	3
1 Procedural matters	3
1.1 Adoption of the Agenda	3
1.2 Examination of credentials – Establishment of the Credentials Committee	3
1.2 Examination of credentials – Report of the Credentials Committee	
2 Overview	5
2.1 Report of the Director	5
3 Incidents involving the IOPC Funds	7
3.1 Incidents involving the IOPC Funds	7
3.2 Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i>	7
3.3 Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i>	11
3.4 Incidents involving the IOPC Funds – 1992 Fund: <i>Alfa I</i>	13
3.5 Incidents involving the IOPC Funds – 1992 Fund: <i>Nesa R3</i>	14
3.6 Incidents involving the IOPC Funds – 1992 Fund: <i>Trident Star</i>	15
3.7 Incidents involving the IOPC Funds – 1992 Fund: <i>Agia Zoni II</i>	16
3.8 Incidents involving the IOPC Funds – 1992 Fund: <i>Bow Jubail</i>	18
4 Compensation matters	19
4.1 Agreement on rates for the use of EMSA’s Pollution Response Assets	19
5 Treaty matters	20
5.1 2010 HNS Convention	20
5.2 Review of the 1992 Civil Liability and Fund Conventions	22
6 Financial policies and procedures	22
6.1 Appointment of the External Auditor – 2020 Accounting Year	22
6.2 Appointment of the Chairperson of the joint Audit Body	24
7 Secretariat and administrative matters	25
7.1 Quorum requirement for the 1992 Fund Administrative Council	25
7.2 The European Union General Data Protection Regulation	26
8 Other matters	26
8.1 Any other business	26
9 Adoption of the Record of Decisions	26
ANNEXES	
Annex I	List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
Annex II	1992 Fund Resolution N°7

Opening of the sessions

- 0.1 Prior to opening the sessions of the IOPC Funds' governing bodies, the Chairman of the 1992 Fund Assembly made reference to Circular [IOPC/2019/Circ.2](#), which announced the sad news that Mr Jerry Rysanek, Chairman of the joint Audit Body, had passed away on 30 January 2019.
- 0.2 It was noted that Mr Rysanek had also represented Canada at meetings of the IOPC Funds' governing bodies from 1995, was Chairman of the 1992 Fund Executive Committee (2002–2004) and then Chairman of the 1992 Fund Assembly (2005–2011). The Chairman of the 1992 Fund Assembly expressed that he had had the opportunity to work closely with Mr Rysanek and that he was an extremely valued and exceptional colleague. He stated that Mr Rysanek's passing was a great loss to the organisation, and on behalf of the governing bodies, expressed deep and heartfelt condolences to Mr Rysanek's family. A minute's silence was observed in Mr Rysanek's memory.
- 0.3 Time was set aside later during the sessions for the governing bodies to pay tribute to Mr Rysanek.

Tributes to Mr Jerry Rysanek

- 0.4 The Chairman of the 1992 Fund Assembly paid tribute to Mr Rysanek and recalled that he had succeeded him as Chairman and that Mr Rysanek had presided over difficult situations always with good humour and charm. The Chairman stated that he had attended Mr Rysanek's memorial service in Ottawa, Canada, as a representative of the IOPC Funds Member States and conveyed that the service was a cheerful celebration of Mr Rysanek's life. He shared that Mr Rysanek's passing was a tremendous loss both professionally and personally.
- 0.5 The Director also paid tribute to Mr Rysanek. He referred to him as a highly respected and appreciated person in the international maritime community, not only because of his professional skills but also for his warm personality and sense of humour. The Director pointed out that Mr Rysanek had represented Canada at IOPC Funds' meetings and contributed to the work of the organisation for almost 25 years. He explained that during that time, Mr Rysanek had become a prominent, well-respected, knowledgeable figure among Member States and a great diplomat. He explained that during Mr Rysanek's time as Chairman, the Secretariat had had the pleasure of working with him more closely. He praised his skill as a Chairman and remarked how reassuring it had been for himself as the Director and for his predecessors to have had him seated beside them on the podium as Chairman. The Director explained that from the Secretariat's point of view, he not only provided them with great professional support, but he became a dear friend. The Director also read from a letter from the Secretary-General of the International Maritime Organization (IMO), which also communicated that Mr Rysanek was extremely well-respected by his peers and that he had left a lasting legacy. He concluded by referring to Mr Rysanek as a very special person who will be sorely missed by all who knew him and confirmed that he would be a great loss to the IOPC Funds' family.
- 0.6 The Chairman of the Supplementary Fund Assembly expressed on behalf of all the Supplementary Fund Member States heartfelt condolences to Mr Rysanek's family. He also expressed that from a personal point of view Mr Rysanek had been a mentor and, as someone who had presided over many international meetings, had offered lasting and personal advice as a Chairman. The Chairman of the Supplementary Fund Assembly echoed the sentiments of the Chairman of the 1992 Fund Assembly and Director, in that his passing was a great loss.
- 0.7 The delegation of Canada, members of the joint Audit Body and a number of other Member State representatives expressed their sincere condolences and shared their personal memories of working with Mr Rysanek. In addition, the observer delegation of the International Group of P&I Associations (International Group) spoke on behalf of industry stakeholders, highlighting that Mr Rysanek had contributed greatly to the maritime industry and that his presence will be missed.

- 0.8 Many delegations took the floor to express their deepest condolences for the passing of Mr Rysanek and shared fond memories of their interactions with him. It was noted that all the messages and tributes to Mr Rysanek would be passed on by the Secretariat to his family.
- 0.9 It was also noted that delegations were invited to attend a gathering organised by Transport Canada in the IMO Secretary-General's dining room after the sessions had concluded that day.

1992 Fund Administrative Council

- 0.10 The Chairman of the 1992 Fund Assembly attempted to open the 23rd extraordinary session of the Assembly but, since the quorum required 58 States to be present and only 54 States were present at that time, no quorum was achieved. As a result, in accordance with Resolution N°7, the 19th session of the 1992 Fund Administrative Council was convened to act on behalf of the 1992 Fund Assembly and to deal with the items of the Assembly's agenda^{<1>}.
- 0.11 It was recalled that at its 1st session in May 2003, the 1992 Fund Administrative Council had decided that the Chairman of the 1992 Fund Assembly should *ex officio* be the Chairman of the Administrative Council (document [92FUND/AC.1/A/ES.7/7](#), paragraph 2).

Supplementary Fund Assembly

- 0.12 The Supplementary Fund Assembly Chairman opened the 7th extraordinary session of the Assembly with 20 Member States present at that time.

1992 Fund Executive Committee

- 0.13 The 1992 Fund Executive Committee Chairman opened the 72nd session of the Executive Committee.
- 0.14 The Member States present at the sessions are listed in Annex I, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

1 Procedural matters

1.1	Adoption of the Agenda Document IOPC/APR19/1/1	92AC	92EC	SA
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The 1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document [IOPC/APR19/1/1](#).

1.2	Examination of credentials – Establishment of Credentials Committee Document IOPC/APR19/1/2	92AC	92EC	SA
	Examination of credentials – Report of Credentials Committee Document IOPC/APR19/1/2/1	92AC	92EC	SA

- 1.2.1 The governing bodies took note of the information contained in document [IOPC/APR19/1/2](#).
- 1.2.2 The governing bodies recalled that at its March 2005 session, the 1992 Fund Assembly 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

<1> From this point forward, references to the '19th session of the 1992 Fund Administrative Council' should be taken to read '19th session of the 1992 Fund Administrative Council, acting on behalf of the 23rd extraordinary session of the 1992 Fund Assembly'.

States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.

- 1.2.3 The governing bodies further recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (see documents [92FUND/A.13/25](#), paragraph 7.9 and [SUPPFUND/A.4/21](#), paragraph 7.11).

1992 Fund Administrative Council Decision

- 1.2.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of the Bahamas, Ghana, Mexico, Sweden and the United Arab Emirates as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

- 1.2.5 The 1992 Fund Executive Committee and the Supplementary Fund Assembly took note of the appointment of the Credentials Committee by the 1992 Fund Administrative Council.

Debate

- 1.2.6 After having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee and the Supplementary Fund, the Credentials Committee reported in document [IOPC/APR19/1/2/1](#) that credentials had been received from 56 Member States, of which all were in order.
- 1.2.7 It was noted that credentials had not yet been submitted by Côte d'Ivoire, Kenya and Palau, but that the Committee expected that this would be rectified by the delegations shortly after the session.

1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly

- 1.2.8 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the April 2019 meeting.

2 Overview

2.1	Report of the Director	92AC		SA
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- 2.1.1 The Director referred to the passing of Mr Jerry Rysanek (Canada) and expressed how sad all Mr Rysanek's friends and colleagues at the Secretariat were when they heard the news. He added that he had attended, together with the Chairman of the 1992 Fund Assembly, the memorial service for Mr Rysanek in Ottawa.

- 2.1.2 The Director stated that this meeting would be exceptionally short and listed the most important decisions that would need to be made. He explained that several things had happened since the meeting had been initially planned, which required a longer debate and important decisions. He mentioned the passing of Mr Rysanek, the developments in the *Prestige* and *Hebei Spirit* incidents, and the submission of the document on the review of the 1992 Civil Liability and Fund Conventions by the Indian delegation, among others. He then gave an oral report on the activities of the IOPC Funds since the October 2018 sessions of the governing bodies, some of which would also be dealt with under specific agenda items.

- 2.1.3 With respect to the *Prestige* incident, the Director referred to the judgment delivered by the Supreme Court in Spain which confirmed that the 1992 Fund would not be liable for pure environmental and moral damages. He reported that the Spanish Court had ordered the 1992 Fund to pay €28 million and that he had held discussions with the French and Spanish Governments to find a solution to this case.
- 2.1.4 When referring to the *Hebei Spirit* incident, the Director reported that the Limitation Court had issued a distribution table in November 2018. He stated that he would be proposing that the 1992 Fund Executive Committee authorise him to make a balancing payment of KRW 22 billion to the Skuld Club. He also informed the governing bodies that he would be requesting authorisation to reach a bilateral agreement with the Government of the Republic of Korea, under which the 1992 Fund would pay the balance available for compensation, i.e. KRW 27 486 198 196, to the Government in exchange for a hold harmless agreement.
- 2.1.5 The Director referred to the *Agia Zoni II* incident and reported that the 1992 Fund had received 335 claims totalling €86.49 million and had paid €10.54 million in compensation. He added that the assessment of claims was ongoing. He also said there had been reports in the Greek media suggesting that the incident was caused by 'intentional acts and omissions and negligence' of specific persons and companies. He stated that the 1992 Fund would inform the Executive Committee when the report on the cause of the incident was officially released.
- 2.1.6 The Director was pleased to report that the 1992 Fund had agreed with the Government of the Sultanate of Oman that the total amount of the losses in relation to the *Nesa R3* incident were OMR 3.5 million. He also reported that all compensation due from the Fund had been paid and thanked the Omani Government for their continued cooperation which had been paramount in resolving this case.
- 2.1.7 The Director reported that in June 2018, the oil and chemical tanker m.t.v. *Bow Jubail* had collided and spilled bunker oil in Rotterdam. He noted that the *Bow Jubail* had carried persistent oil in previous voyages, but that at the time of the incident was in ballast. The Director explained that the shipowner had argued that the incident was covered under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001). However, the Rotterdam District Court had decided that the shipowner had not proved that the tanker did not contain residues of persistent oil at the time of the incident and that therefore the *Bow Jubail* qualified as a ship under the 1992 Civil Liability Convention (1992 CLC). The Director reported that the shipowner had appealed to the Court of Appeal in The Hague.
- 2.1.8 The Director was pleased to report that the Memorandum of Understanding (Mou) relating to the hire rates for the use of the Pollution Response Assets of the European Maritime Safety Agency (EMSA) had been signed by EMSA, the International Group and the IOPC Funds in December 2018.
- 2.1.9 The Director was pleased to report that contributions in the amount of €849 000 had been received from the Islamic Republic of Iran, which had been deposited in the Fund's bank account in Spain. He thanked the Iranian authorities for their assistance in solving this matter.
- 2.1.10 The Director referred to the need for the 1992 Fund Administrative Council to elect a new Chairperson of the Audit Body to take over the leadership of the Audit Body until October 2020. He also informed the Administrative Council that it would be invited to decide whether it wished to appoint a Vice-Chairperson and, if so, to appoint such a Vice-Chairperson.
- 2.1.11 The Director was pleased to announce that, having previously contemplated early retirement, Mr Pillai (Deputy Director) had decided to stay with the Secretariat until his retirement in June 2022.

2.1.12 The Director was also pleased to note that the 2018 Annual Report and the new Environmental damage claims overview brochure had been published in all three working languages. He also informed the governing bodies that updates to the Claims Manual, agreed by the governing bodies in April 2018, had been implemented in the electronic version of the publication, as had subsequent amendments required to the online versions of the Tourism and Fisheries Guidelines. He referred to a leaflet which had been produced, which sets out the amendments made and confirmed that printed versions of the updated publications would be made available at a later date.

2.1.13 The Director also reported that the IOPC Funds' Short Course would take place in London from 17–21 June 2019 and reminded Member States that the deadline for applications was 8 April 2019. He was also pleased to report that, since October 2018, the IOPC Funds had participated in national and regional seminars, workshops, conferences and different events relating to the international liability and compensation regime in a number of countries and had also provided lectures to students of several universities and institutions.

3 **Incidents involving the IOPC Funds**

3.1	Incidents involving the IOPC Funds Document IOPC/APR19/3/1		92EC	SA
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3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document [IOPC/APR19/3/1](#), which contained information on documents for the April 2019 meeting relating to incidents involving the IOPC Funds.

3.1.2 The governing bodies further noted that there are currently no incidents involving the Supplementary Fund.

3.2	Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i> Documents IOPC/APR19/3/2 and IOPC/APR19/3/2/1		92EC	
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3.2.1 The 1992 Fund Executive Committee took note of the information contained in documents [IOPC/APR19/3/2](#) and [IOPC/APR19/3/2/1](#) concerning the *Prestige* incident.

DOCUMENT IOPC/APR19/3/2

3.2.2 The Executive Committee recalled that the compensation amount available for the *Prestige* incident under the 1992 Civil Liability and Fund Conventions was €171.5 million, that some €120.7 million in compensation had already been paid by the 1992 Fund and that a further €28 million of compensation remained available from the 1992 Fund. It was also recalled that, in addition, €22.8 million was available from the amount deposited in the Criminal Court in Corcubión by the shipowner's insurer, the London Steam-Ship Owners' Mutual Insurance Association Ltd. (London P&I Club). It was noted that the 1992 Fund had already levied all the contributions payable in relation to this incident.

3.2.3 It was recalled that the amounts paid in compensation by the 1992 Fund in each country affected were as follows:

- Spain: €114.6 million
- France: €5.8 million
- Portugal: €328 488

Judgment of the Supreme Court in Spain

- 3.2.4 The Committee noted that the Supreme Court in Spain had delivered its judgment on the quantification of the losses on 20 December 2018. It was noted that the total amount awarded was €1 439.08 million (losses €884.98 million + pure environmental and moral damages €554.10 million), as follows:
- The amount awarded to the Spanish State was €1 357.14 million (losses €803.04 million + pure environmental and moral damages €554.10 million).
 - The amount awarded to the French State was the full claimed amount i.e. €67.5 million.
 - The Supreme Court decided to include VAT in the compensation awarded to the Spanish and French States.
 - The amount awarded to individual claimants in Spain and France was €14.44 million.
- 3.2.5 It was also noted that, in addition, the judgment had awarded interest and costs.
- 3.2.6 The Committee further noted that the judgment had clarified that moral and pure environmental damages were not recoverable from the 1992 Fund.
- 3.2.7 It was noted, however, that the judgment had confirmed its previous decision that the London P&I Club was liable for all the damages caused by the incident, including moral and pure environmental damages, up to the limit of its policy of USD 1 000 million.
- 3.2.8 The Committee also noted that the Court in charge of the enforcement of the judgment had ordered the master, shipowner and the London P&I Club to pay the amounts awarded by the Supreme Court. It was also noted that, according to the order, the London P&I Club should pay up to its limit of USD 1 000 million, including the limitation fund, and the 1992 Fund should pay the limit of its liability after deducting the amounts already paid, i.e. €28 million.

Civil proceedings in France

- 3.2.9 The Committee noted that there were 42 legal actions pending before the French courts:
- Twenty-three actions totalling €5.2 million are by claimants who also brought actions in the legal proceedings in Spain and in respect of which there is a final judgment in Spain. It would be expected that these actions should be withdrawn as far as the damages comprising the claims overlap with those included in the judgment by the Spanish Supreme Court.
 - There remain 19 actions totalling €1.2 million pending before French courts.
- 3.2.10 It was also noted that the French courts had rendered judgments awarding some €1.18 million to claimants in France and that the 1992 Fund had paid these claims at 30%.

Director's considerations

- 3.2.11 It was noted that the Supreme Court judgment would not have a financial impact on the 1992 Fund since the judgment recognised that the 1992 Fund's liability was limited to €148.7 million and the losses accepted by the 1992 Fund exceed this amount by far. However, in the Director's view, the Supreme Court judgment constituted a dangerous precedent for other incidents in the future.
- 3.2.12 The Executive Committee also noted the Director's view that the Supreme Court had ignored the admissibility criteria adopted by Member States and made no proper assessment as to their

applicability to the claims. Furthermore, in the Director's view, this approach endangered the uniform application of the International Conventions in all Member States.

- 3.2.13 The Committee further noted that the Supreme Court judgment had awarded €554.10 million for pure environmental damages and moral damages based on 30% of the losses awarded to the Spanish State. In the Director's view, although the judgment had confirmed that the 1992 Fund was not liable for pure environmental and moral damages as the 1992 CLC did not recognise them, the Court had not applied the same principle to the shipowner and the London P&I Club.
- 3.2.14 The Director recalled that the International Conventions clearly provided that compensation for impairment of the environment should be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. He also recalled that the Assembly, in a Resolution in 1980, had decided that compensation could not be paid based on theoretical models.
- 3.2.15 In the Director's view, the Supreme Court seemed to have applied internal law to the shipowner and Club and the International Conventions to the Fund. According to the Director, applying in part the International Conventions and in part national law was a way to circumvent the Conventions.

DOCUMENT IOPC/APR19/3/2/1

Payment to the Court dealing with the enforcement of the judgment

- 3.2.16 The Committee noted that the Court in charge of the enforcement of the judgment had issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. €28 million.
- 3.2.17 It was noted that the Director was of the view that the 1992 Fund should comply with the judgment. It was noted, however, that there were legal proceedings pending in other jurisdictions and that if the 1992 Fund were to pay the full amount available from the 1992 Fund to the Spanish Court, these claimants would not be able to receive compensation from the 1992 Fund. The Committee further noted that the Director therefore recommended that an amount should be kept available to pay compensation to claimants who could receive a judgment in their favour in the future.
- 3.2.18 The Committee noted that the Director considered it prudent for the 1992 Fund to keep €800 000 available to pay the claimants with legal actions pending before the French courts, should they obtain a judgment from the French courts.
- 3.2.19 The Committee also noted that the Director also considered that the 1992 Fund should keep €4 800 available to pay the Portuguese Government, who was not a party to the legal proceedings in Spain.
- 3.2.20 The Committee further noted that the final level of payments would not be confirmed until the legal proceedings in France had been resolved, and the distribution made by the Court had been considered. It was noted that at that time, the Executive Committee would have to decide how to distribute the balance of €800 000 that would not have been used to pay compensation in France and whether €4 800 was due to the Portuguese Government.
- 3.2.21 It was noted that the Director intended to provide the Court dealing with the enforcement of the judgment with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC).

Debate

Statement by the delegation of Spain (original in Spanish)

3.2.22 The delegation of Spain made the following statement:

‘Spain thanks the Secretariat for the update on the information concerning the *Prestige* incident.

This delegation notes the information contained in document IOPC/APR19/3/2.

With regard to the considerations of the Director set out in paragraphs 5.3 to 5.11, which include a series of critical reflections on the judgment, this delegation, as it has stated on previous occasions, believes that such considerations are both inappropriate and unnecessary.

Spain considers that it is not appropriate to criticise from here the decision of the court, and we hope that the Director will simply present his proposal for payment as ordered by the court and, in this way, the case can be closed without the need to continue discussing the content of national judgments.

Spain thanks the Secretariat for the information presented in document [IOPC/APR19/3/2/1](#).

Before commenting on the proposal contained in this document, Spain wishes to make the following general comments:

As explained by the Director in his first consideration (see paragraph 3.2), the solution to this highly complex case should be one that allows the 1992 Fund to pay the balance of €28 million which is available for payment of compensation.

This is precisely the outcome sought by the order handed down by the competent Spanish court to enforce the judgment, which requires the 1992 Fund to pay up to the limit of its liability after deducting amounts already paid, in other words, €28 million.

This delegation notes both the considerations of the Director concerning the principle of equal treatment of claimants, and the distribution proposed by him concerning the quantum payable by the 1992 Fund and the 1992 CLC limitation fund.

In analysing the proposal formulated by the Director of the IOPC Funds, it should be recalled that Spain is a democratic State governed by the rule of law, where the principle of separation of powers is established with full guarantees.

For this reason, it does not fall on this delegation to comment on the way in which the Director of the IOPC Funds proposes to comply with the judgment.

At this stage, the Executive Committee should be aware that it will be the competent court in Spain which determines the form in which the Executive Committee, following the recommendations of the Director, complies or does not comply with the requirements of the order which requires the IOPC Funds to pay the €28 million of compensation outstanding in accordance with the 1992 Fund Convention.’

Intervention by the delegation of France

3.2.23 The delegation of France stated that, with regard to the Director’s considerations in document [IOPC/APR19/3/2](#), in their view, since the Conventions are based on the possibility for claimants to have recourse to national courts in cases of disagreement between claimants and the Fund, it was not desirable nor useful to criticise the courts when the Fund did not agree with the outcome. That

delegation also supported the Director's proposal as set out in paragraph 4 of document [IOPC/APR19/3/2/1](#).

- 3.2.24 A number of delegations that spoke, however, considered that it was appropriate for the Director and the governing bodies of the Fund to defend the principles of the Conventions and therefore to express their views when considering that those principles had not been respected by a national court.
- 3.2.25 In particular, one delegation referred to the fact that the Fund had developed admissibility criteria and policy regarding the non-admissibility of pure environmental and moral damages, which had been discussed on several occasions by the Executive Committee and expressed the view that those principles should always be applied. That delegation also stressed the importance of the principle of the equal treatment of claimants. That delegation considered that without applying these principles, the international regime could not work.
- 3.2.26 One delegation added that although there was no question as to the sovereignty of national courts, the Fund had an obligation to its members to continue to point out the obligations of Member States to which all members were committed when signing to the Conventions.
- 3.2.27 Another delegation expressed concern about the unlimited liability that the Spanish Court had put on the master, the shipowner and the insurer, and enquired as to how these parties intended to deal with this issue.
- 3.2.28 The International Group, in reply to the question raised by one delegation, stated that it was for the claimants to seek to enforce the judgment against the master, shipowner and the insurer. The International Group also expressed their agreement with the Director's considerations and specially agreed that the judgment by the Supreme Court in Spain set a dangerous precedent for the sustainability of the international regime. The International Group also expressed disappointment that the governing bodies had been unable to move forward concerning the issue of the uniform application of the international regime. In their view, future meetings should further consider that important issue.
- 3.2.29 All other delegations that spoke supported the Director's proposal to pay to the Spanish Court €28 million less €800 000 to be kept to pay any judgments by French courts and €4 800 to pay the Portuguese Government to ensure that the principle of equal treatment between claimants was maintained.

1992 Fund Executive Committee Decision

- 3.2.30 The 1992 Fund Executive Committee decided to authorise the Director to pay to the Spanish Court €28 million less:
- (i) €800 000 which should be kept available to pay any judgments by French courts; and
 - (ii) €4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.

3.3	Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i> Documents IOPC/APR19/3/3 and IOPC/APR19/3/3/1		92EC	
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- 3.3.1 The Executive Committee took note of the information contained in documents [IOPC/APR19/3/3](#) and [IOPC/APR19/3/3/1](#), submitted by the Secretariat relating to the *Hebei Spirit* incident.
- 3.3.2 The Executive Committee recalled that all claims had been finalised by either mediation or judgment and that a total of KRW 432.9 billion had been awarded. It also recalled that, nonetheless, the owners of two businesses had filed an application for retrial in the Seosan Court.

- 3.3.3 The Executive Committee further recalled that the total amount available for compensation under the 1992 Fund Convention was KRW 321.6 billion including the amount of KRW 186.8 billion paid by the shipowner's insurer, Assuranceforeningen Skuld (Gjensidig) (Skuld Club).
- 3.3.4 The Committee noted that in November 2018, the Limitation Court in Seosan issued the CLC distribution table for this incident. The Committee also noted that the amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion, which included KRW 139.4 billion of principal and KRW 91.5 billion of interest. It further noted that by December 2018, 38 claimants had objected to the distribution table. The Committee noted that objections were made by 36 of these claimants against the amounts paid by the Skuld Club and may therefore have an impact on the amount of compensation due by the 1992 Fund to the Skuld Club.

Balancing payment to the Skuld Club

- 3.3.5 The Committee recalled that, based on the exchange rate applied by the Limitation Court, the Skuld Club had paid KRW 47.4 billion in excess of its limit (KRW 139.4 billion). The Committee also recalled that the 1992 Fund had made a provisional balancing payment of KRW 22 billion in April 2017 and that, therefore, the amount due to the Skuld Club would be KRW 25.4 billion. The Committee noted, however, that due to the 38 objections to the distribution list, this figure was not final.
- 3.3.6 In view of these circumstances, the Executive Committee noted that the Director had proposed that the Executive Committee authorise him to make an additional payment of KRW 22 billion to the Skuld Club on account of the amount due, setting aside a balance of KRW 3.4 billion to be paid when the legal proceedings have been concluded.

Bilateral agreement between the 1992 Fund and the Government of the Republic of Korea

- 3.3.7 The Executive Committee recalled that the 1992 Fund had paid a total of KRW 107.3 billion in compensation to the Government of the Republic of Korea, of which KRW 67.3 billion was in subrogation at a level of payment of 60% and KRW 40 billion as an advance payment. The Executive Committee also recalled that the 1992 Fund had some KRW 27.5 billion available to pay in compensation when the reconciliation of claims was concluded.
- 3.3.8 The Executive Committee noted that, since the *Hebei Spirit* incident was rapidly reaching its conclusion, the Director and the Government of the Republic of Korea had agreed the terms of a bilateral agreement by which the 1992 Fund would transfer the remaining amount available for compensation to the Government for it to pay all remaining claims in exchange for a hold harmless agreement by the Government.
- 3.3.9 The Committee also noted that, under the terms of this agreement, the 1992 Fund would pay the Government the Fund's balance of compensation, totalling KRW 27 486 198 196, and the Government would ensure that all established claims would be paid in full and would provide the 1992 Fund with a hold harmless agreement.

Debate

Intervention by the delegation of the Republic of Korea

- 3.3.10 The delegation of the Republic of Korea thanked the Director for the efforts made towards a resolution of the incident. That delegation confirmed that the Government of the Republic of Korea was willing to enter into a bilateral agreement and asked the Executive Committee to support the Director's proposal to authorise him to sign such agreement with the Republic of Korea.
- 3.3.11 One delegation, while agreeing in principle with the Director's proposal to enter into a bilateral agreement with the Republic of Korea, asked for clarification as to the legal meaning of the 'hold harmless agreement clause' mentioned in the document. In particular, that delegation asked

whether that would mean that the Government of the Republic of Korea would pay all sums awarded against the 1992 Fund directly to the claimants, or whether the 1992 Fund would be required to pay first and then seek the relevant reimbursement from the Government.

- 3.3.12 The Director confirmed that, if the bilateral agreement was signed, the Government of the Republic of Korea would pay all sums awarded against the 1992 Fund directly.
- 3.3.13 All delegations that took the floor supported the Director's proposal to authorise him to make an additional balancing payment to the Skuld Club and his proposal to enter into a bilateral agreement with the Government of the Republic of Korea.
- 3.3.14 The Director informed the Executive Committee that the Skuld Club had requested to be reimbursed in US dollars rather than Korean won. The Director explained that the 1992 Fund would pay to the Skuld Club the corresponding amount of KRW 22 billion in US dollars at the rate of exchange as at the date of the adoption of the Records of Decisions of this session, i.e. 2 April 2019.
- 3.3.15 The observer delegation of the International Group thanked the Director and the Secretariat, on behalf of the Skuld Club, for their continuous cooperation during this incident and for their efforts to ensure that the Skuld Club was reimbursed promptly for the overpayments made.

1992 Fund Executive Committee Decisions

- 3.3.16 The 1992 Fund Executive Committee decided to authorise the Director to make an additional balancing payment to the Skuld Club totalling KRW 22 billion.
- 3.3.17 The 1992 Fund Executive Committee also authorised the Director to enter into a bilateral agreement with the Government of the Republic of Korea under which the 1992 Fund will pay KRW 27 486 198 196 to the Government of the Republic of Korea in exchange for a hold harmless agreement from the Government.

3.4	Incidents involving the IOPC Funds – 1992 Fund: <i>Alfa I</i> Document IOPC/APR19/3/4		92EC	
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- 3.4.1 The 1992 Fund Executive Committee took note of document [IOPC/APR19/3/4](#) which contained information relating to the *Alfa I* incident.
- 3.4.2 The Executive Committee recalled that since no limitation fund had been established the insurer was liable for the full amount claimed, i.e. for €15.8 million. It also recalled that in February 2018, the Bank of Greece had revoked the insurer's license and placed the company under liquidation for failure to maintain the necessary solvency capital requirements under Greek law. It was further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.
- 3.4.3 The Executive Committee recalled that the 1992 Fund had filed applications for prenotated mortgages against buildings owned by the insurer in an attempt to secure its claim for the return of the 1992 CLC limitation fund amount, but that only the land registry in Thessaloniki had accepted the 1992 Fund's application and granted the registration on two properties owned by the insurer as security for €851 000.

Applications for prenotated mortgages — Thessaloniki

- 3.4.4 It was recalled that in July 2017, the insurer had requested the deletion of the prenotated mortgages recorded on its Thessaloniki properties on the grounds that the first instance judgment of the Court of Piraeus could not be considered a title for the prenotated mortgages since it was issued in 2015. It was noted that in late 2018, the Court had issued a judgment, dismissing the insurer's request.

Applications for prenotated mortgages — Athens

- 3.4.5 It was recalled that in February 2018, the Athens Court of Appeal had dismissed the 1992 Fund's appeal, against the First Instance Court judgment that had dismissed the Fund's application for prenotated mortgages over the insurer's properties in Athens, Koropi, Faliro and Glyfada. It was noted that in November 2018, the Fund had appealed the decision of the Athens Court of Appeal to the Supreme Court and that a date for the hearing was awaited.

Applications for prenotated mortgages — Piraeus

- 3.4.6 It was recalled that following a successful appeal by the 1992 Fund, a prenotated mortgage had been recorded on a property owned by the insurer in Piraeus. The Executive Committee recalled that the insurer had filed a caveat against the judgment which was accepted by the Court but subsequently appealed by the 1992 Fund, and that in July 2018, the Piraeus Court of Appeal had issued its judgment, finding in favour of the 1992 Fund, and accepting the opposite views from those accepted by the Athens Court of Appeal.

Legal considerations

- 3.4.7 The Executive Committee noted that at present, the 1992 Fund faced one adverse judgment from the Athens Court of Appeal denying the 1992 Fund the right to record prenotated mortgages against the insurer's properties and that this had been appealed by the 1992 Fund to the Supreme Court.
- 3.4.8 The Executive Committee further noted that in respect of the judgment in favour of the 1992 Fund from the Piraeus Court of Appeal, the insurer had also appealed that decision to the Supreme Court, and a hearing date had been set for 24 February 2020.
- 3.4.9 It was noted that a recent judgment from the Thessaloniki Court of First Instance had dismissed the insurer's claim, which effectively permitted the registration of the prenotated mortgages on the Thessaloniki properties.
- 3.4.10 It was also noted that the 1992 Fund's lawyers had advised that if the judgment from the Athens Court of Appeal was overturned at the Supreme Court, (and by implication, the Piraeus Court of Appeal was upheld) this would permit the 1992 Fund the right to record prenotated mortgages against the insurer's properties and would raise the 1992 Fund up the list of creditors above other claimants with insurance claims^{<2>}.

1992 Fund Executive Committee

- 3.4.11 The 1992 Fund Executive Committee noted that the Director would report on further developments in this case to future sessions of the Executive Committee.

3.5

Incidents involving the IOPC Funds – 1992 Fund: Nesa R3 Document IOPC/APR19/3/5		92EC	
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- 3.5.1 The 1992 Fund Executive Committee took note of the information contained in document [IOPC/APR19/3/5](#) relating to the *Nesa R3* incident.

<2> At present, as a creditor, the 1992 Fund's claim will rank in order and be paid pro rata with all other insurance claims.

- 3.5.2 The Executive Committee recalled that, at its October 2013 session, it had authorised the Director to make payments of compensation in respect of the *Nesa R3* incident and to claim reimbursement from the shipowner.
- 3.5.3 The Committee noted that the excellent working relationship with the Government of the Sultanate of Oman had been paramount to resolving the claims arising from the incident. It also noted that 33 claims had been received by the 1992 Fund and that 28 claims totalling OMR 3 521 366 and BHD 8 419.35 had been paid. It was also noted that the remaining claims had been rejected.
- 3.5.4 The Executive Committee recalled that the shipowner had not responded to the requests from the Omani Government to pay compensation for the damage caused by the *Nesa R3* incident. The Committee also recalled that the shipowner and insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Executive Committee further recalled that the Omani Government had commenced legal proceedings against the shipowner and its insurer in the Court of Muscat and that in February 2016 the 1992 Fund had joined in the legal proceedings.
- 3.5.5 The Executive Committee recalled that, in December 2017, the Court of Muscat rendered a judgment finding that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the 1992 Fund and the Omani Government totalling, respectively, OMR 1 777 113.44 plus BHD 8 419.35 and OMR 4 154 842.80 , i.e. the amounts paid by the 1992 Fund at the time of the judgment and the balance of the amount claimed by the Omani Government.
- 3.5.6 The Executive Committee noted that, following the settlement of the claims, the 1992 Fund had subrogated all claims arising out of the incident, and the Omani Government had agreed to withdraw from Court all claims settled with the 1992 Fund. The Committee also noted that the 1992 Fund intended to continue to pursue recovery of the compensation from the shipowner and insurer of the *Nesa R3*.
- 3.5.7 The Committee further noted that the legal proceedings had progressed slowly, due to the fact that it had been difficult to contact the insurer, who had from the beginning refused to pay compensation. It noted that the Court of Muscat had postponed its hearings several times in an attempt to reach the insurer. It also noted that the Director expected that it would take some time for the 1992 Fund to make progress in the recovery from the insurer.

Debate

- 3.5.8 The Director thanked the Omani Government for the continuous and very efficient cooperation, which was instrumental to the 1992 Fund in making prompt payments of compensation in relation to this incident.
- 3.5.9 The delegation of Oman thanked the Director and the Secretariat for their efforts to successfully resolve the incident.

1992 Fund Executive Committee

- 3.5.10 The 1992 Fund Executive Committee noted with appreciation that compensation had been paid to the Omani Government and that the Director would report any further developments in the legal action to recover the amounts paid from the shipowner and insurer at future sessions of the Committee.

3.6

Incidents involving the IOPC Funds – 1992 Fund: <i>Trident Star</i>			
Document IOPC/APR19/3/6			

92EC

- 3.6.1 The 1992 Fund Executive Committee took note of the information contained in document [IOPC/APR19/3/6](#) concerning the *Trident Star* incident.

- 3.6.2 The Executive Committee recalled that the shipowner of the *Trident Star* was insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is a member of the International Group.
- 3.6.3 It was noted that it was very likely that claims for pollution damage would exceed the 1992 CLC limit applicable to the *Trident Star* and that it was likely, therefore, that the 1992 Fund would be required to pay compensation in respect of this incident. It was recalled, however, that the shipowner was a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 whereby the shipowner will indemnify the 1992 Fund for the difference between the 1992 CLC limit and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million. The Committee noted that it was unlikely that the losses would exceed SDR 20 million.
- 3.6.4 The Executive Committee noted that 21 claims totalling some USD 17 million and RM 31.9 million had been received. It was noted that the Club had so far paid a total of USD 2.5 million in respect of two claims from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal affected by the spill.
- 3.6.5 It was noted that the experts engaged by the Shipowners' Club and the 1992 Fund were reviewing the documentation that the claimants had submitted in support of their claims.
- 3.6.6 It was recalled that nine actions had been filed in the limitation proceedings, and that, given the likelihood that the 1992 Fund would have to pay compensation, the 1992 Fund was intervening in the limitation proceedings in order to protect the Fund's rights.

1992 Fund Executive Committee

- 3.6.7 The 1992 Fund Executive Committee noted that the Director would report any further developments in this case to future sessions of the Executive Committee.

3.7	Incidents involving the IOPC Funds – 1992 Fund: <i>Agia Zoni II</i> Document IOPC/APR19/3/7		92EC	
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- 3.7.1 The 1992 Fund Executive Committee took note of document [IOPC/APR19/3/7](#) containing information relating to the *Agia Zoni II* incident.
- 3.7.2 The Executive Committee recalled that the *Agia Zoni II* sank at 0200 hours on 10 September 2017, south-west of the Atalanti islet, close to Salamina island just outside the northern part of the designated Piraeus anchorage area in the Saronic Gulf.
- 3.7.3 The Executive Committee also recalled that the tanker was loaded with approximately 2 580 metric tons (mt) of oil, bunkers and chemicals and that an estimated 500 tonnes of oil was spilled when the tanker sunk, which contaminated 4 kilometres of the coastline of Salamina island and 20–25 kilometres of the coastline south of Piraeus Port and Athens.
- 3.7.4 It was noted that clean-up operations continued ashore and at the wreck site to clean the seabed of debris with operations scaled down to patrolling once the oil removal operations were completed in December 2017/January 2018, with additional beach material replacement operations continuing through January and February 2018 and at times of heavy weather.
- 3.7.5 It was also noted that the refloated wreck was towed to the salvor's shipyard on Salamina island and was berthed alongside several other vessels, awaiting inspection by the Public Prosecutor.
- 3.7.6 It was further noted that the wreck had been placed under arrest by the Public Prosecutor shortly after it was lifted and the salvor was subsequently appointed as the party holding possession of the vessel on behalf of the authorities.

Investigation into the cause of the incident

- 3.7.7 The Executive Committee noted that in addition to considering the crew's witness statements, and the classification, survey and drydocking arrangements of the vessel, the 1992 Fund had continued to monitor the investigations into the cause of the sinking conducted by the Public Prosecutor, and the Hellenic Bureau for Marine Casualties Investigation (HBMCI) which operated independently from the judicial authorities. No further details of the investigation had been released or made public, and the reports of both investigations were awaited.

Investigation by the Public Prosecutor into the terms of the clean-up contracts

- 3.7.8 The Executive Committee recalled that in July 2018, the 1992 Fund had been informed that the Public Prosecutor was investigating the terms of the granting of the antipollution services agreement to the clean-up contractors, but that no further details had been provided and the 1992 Fund and its lawyers awaited further developments.

Investigation by the Third Marine Accident Investigation Council (ASNA) for the Public Prosecutor

- 3.7.9 The Executive Committee noted that the investigation conducted by the Third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had been concluded and that the 1992 Fund awaited its publication.

Media reports

- 3.7.10 The Executive Committee also noted that various media reports stated that the sinking of the *Agia Zoni II* resulted from the malicious acts of the opening of the sea-ballast valves that resulted in the flooding of the ship's hull leading to a loss of stability and sinking. It further noted that other reports commented adversely on the failure of the crew to broadcast a Mayday distress signal to nearby vessels, and on the shipowner's indifference to the fact that his ship was sinking loaded with oil outside the Port of Piraeus.

Claims for compensation

- 3.7.11 It was noted that the 1992 Fund had received 361 claims amounting to €92.48 million and USD 175 000, and that the 1992 Fund's experts had assessed 219 claims amounting to 60% of the total claims submitted to date. It was also noted that the Fund had paid some €10.8 million in compensation to 70 claimants. It was further noted that the 1992 Fund's experts were continuing to assess a large number of other claims and were seeking further information from many claimants, which, when provided, would enable further assessments to be completed.

*Debate**Intervention by the delegation of Greece*

- 3.7.12 The delegation of Greece stated that the Greek State had submitted its claim totalling €4.86 million to both the 1992 Fund and to the limitation fund and that since the investigation by the Public Prosecutor was still pending, it was premature to speculate on the cause of the incident before the investigations by the Greek authorities were officially concluded.
- 3.7.13 That delegation also stated, that irrespective of the outcome of the investigation, the report of the ASNA was not binding upon the Judge, who would assess it together with other evidence.
- 3.7.14 That delegation further stated that the HBMCI, (whose area of competence and responsibility were independent of criminal or other investigations), had during the technical investigation process, notified EMSA of its decision that the incident did not fall within the definition of a marine casualty according to the applicable legal framework, and thus it would not examine the incident further.

1992 Fund Executive Committee

3.7.15 The 1992 Fund Executive Committee noted that the Director would report on further developments in this incident to future sessions of the Executive Committee.

3.8	Incidents involving the IOPC Funds—1992 Fund: <i>Bow Jubail</i> Document IOPC/APR19/3/8		92EC	
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3.8.1 The 1992 Fund Executive Committee took note of the information contained in document [IOPC/APR19/3/8](#) concerning an incident that might involve the 1992 Fund.

3.8.2 The Executive Committee noted that on 23 June 2018, the oil and chemical tanker *Bow Jubail* had collided with a jetty in a terminal in Rotterdam, the Netherlands, resulting in a spill of bunker oil into the harbour. The Committee also noted that pollution damage claims submitted might be over USD 50 million.

Applicability of the Conventions

3.8.3 The Committee noted that, at the time of the incident, the *Bow Jubail* was in ballast. It was also noted that the oil spilled was bunker oil, which was persistent. It was further noted that the Rotterdam District Court had decided that the shipowner had not proved that there were no residues left of previous cargoes of persistent oil on board. It was noted that the burden of proof that there were no residues on board laid with the shipowner and that the relevant test would be the one applied by local law, in this case, the law of the Netherlands.

3.8.4 The Committee also noted that if the shipowner could not prove that the *Bow Jubail* had no residues of oil in bulk on board, the 1992 CLC would apply, and that since the total pollution damage would likely exceed the limit that would apply to the ship under the 1992 CLC, both the 1992 Fund Convention and the Supplementary Fund Protocol could apply to this incident.

3.8.5 It was further noted that the ship was insured with the Gard P&I Club and that the limitation amount applicable to the *Bow Jubail*, if the 1992 CLC was to apply, would be SDR 15 991 676, but that the owner of the *Bow Jubail* was a party to the STOPIA 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.

3.8.6 The Executive Committee noted, however, that if the shipowner was successful in proving that there were no such residues on board, the incident would fall under the Bunkers Convention 2001. It was also noted that the liability limit under the Bunkers Convention 2001 would be SDR 14 312 384.

Limitation proceedings

3.8.7 The Committee noted that the shipowner had applied before the Rotterdam District Court to limit its liability in accordance with the Bunkers Convention 2001.

3.8.8 It was also noted, however, that the Court had decided in November 2018 that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident, as provided in Article I(1) of the 1992 CLC, and that therefore the assumption was that the *Bow Jubail* qualified as a ship as defined in the 1992 CLC.

3.8.9 The Committee further noted that the shipowner had appealed to the Court of Appeal in The Hague.

3.8.10 The Committee noted that, if a final judgment of a competent court were to decide that the 1992 Civil Liability and Fund Conventions applied to this incident, the 1992 Fund would pay compensation as required and would be indemnified by the shipowner in accordance with the

provision under STOPIA. It was also noted, however, that if the shipowner were to be successful in proving that there were no such residues on board, the Bunkers Convention 2001 would apply, and the 1992 Fund would not be involved in this case.

Debate

Intervention by the delegation of the Netherlands

- 3.8.11 The delegation of the Netherlands offered its support to the Secretariat in dealing with this case. That delegation stated that although the shipowner had claimed that the ship was in ballast at the time of the incident and that the spill came from a bunker tank, the limitation court had decided in November 2018 that on the basis of the information available to the court at the time, the shipowner had not proved that there were no residues of previous cargos on board the ship at the time of the incident. That delegation stated that in proceedings concerning limitation of liability the burden of proof was on the shipowner. That delegation added that it was not yet clear whether the 1992 Civil Liability and Fund Conventions would apply but if that were to be the case, the claims would go well over the 1992 CLC limit, and therefore the 1992 Fund would have to get involved.
- 3.8.12 Other delegations expressed concern that if the Rotterdam District Court was to decide that the prewash and additional wash the shipowner alleged to have carried out were not sufficient for the ship to be considered free of residues, such ruling might not be compatible with the current commercial practice and could have a considerable impact on the shipping industry.

1992 Fund Executive Committee

- 3.8.13 The 1992 Fund Executive Committee noted that the Director would report any further developments in this case to future sessions of the Committee.

4 Compensation matters

4.1	Agreement on rates for the use of EMSA's Pollution Response Assets Document IOPC/APR19/4/1	92AC		SA
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- 4.1.1 The 1992 Fund Administrative Council noted the information contained in document [IOPC/APR19/4/1](#) relating to the agreement on rates for the use of EMSA's Pollution Response Assets.
- 4.1.2 The 1992 Fund Administrative Council recalled that in April 2017, the 1992 Fund Administrative Council and the Supplementary Fund Assembly had authorised the Director to sign the Memorandum of Understanding (MoU) as defined in document [IOPC/APR17/4/2](#).
- 4.1.3 The 1992 Fund Administrative Council noted that after the Director had been authorised to sign the MoU, it had been considered prudent to also ensure that the terms of the contracts for equipment and vessel hire between EMSA and the private entity (shipowner) who would hire those assets in the event of an incident, were consistent with the proposed terms of the MoU.
- 4.1.4 It was also noted that after extensive discussions, all of the parties were satisfied that the contracts reflected the terms of, and were consistent with, the MoU, and the Director welcomed the progress made in the discussions between the relevant parties.
- 4.1.5 It was further noted that the MoU only applied to EMSA Pollution Response Assets and would not apply to other pollution response assets owned by Member States of the European Union or elsewhere.

- 4.1.6 It was noted that other States might wish to engage with the Secretariat to discuss similar arrangements for the assets contained within their jurisdictions.

Debate

- 4.1.7 The Director thanked the International Group and EMSA for their assistance and cooperation concerning the terms of the contracts for equipment and vessel hire between EMSA and the private entity (shipowner), and also for the work conducted in concluding the formulae agreed with the MoU.
- 4.1.8 One delegation stated such an MoU regarding shared assets served as a good model for many developing countries, and that it was preparing a price index which it hoped to submit at the next session of the governing bodies for consideration.
- 4.1.9 The observer delegation of the International Group expressed its appreciation for the collaborative and cooperative nature displayed between the parties to the MoU and stated that the MoU had already been used by one of the International Group Clubs contracting with EMSA.
- 4.1.10 In response to a question from an observer delegation, the Director responded that the Secretariat was willing to discuss similar arrangements with other Member States and other responders such as equipment providers and that the recent discussions had taken into consideration the contracts between EMSA and the owners of the assets.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 4.1.11 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted that the MoU relating to the agreement on rates for the use of EMSA's Pollution Response Assets had been signed.
- 4.1.12 It was also noted that the Director offered the Secretariat's services to Member States and other companies that would wish to discuss and agree suitable formulae to determine the rates for the use of State-owned or privately-owned response equipment, dispersant and State-contracted response vessels to apply to pollution response assets in advance of an incident.

5 Treaty matters

5.1	2010 HNS Convention Document IOPC/APR19/5/1	92AC		
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- 5.1.1 The 1992 Fund Administrative Council took note of the information contained in document [IOPC/APR19/5/1](#) on the work carried out by the 1992 Fund Secretariat with regard to the tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund).
- 5.1.2 It was noted that since the last sessions of the governing bodies in October/November 2018, there had been no further ratifications or accessions and that four States were currently Contracting States to the 2010 HNS Protocol (Canada, Denmark, Norway and Turkey).
- 5.1.3 It was also noted that the 1992 Fund Secretariat had, since November 2018, focused on updating some of the existing tools developed to support the better understanding of the 2010 HNS Convention, namely the HNS Convention website and the HNS Finder.
- 5.1.4 A presentation of the new website was given. It was noted that having been in place since 2011, the content management system (CMS) that sits behind it was due to be upgraded and that the work had been completed in March 2019. It was noted that the Secretariat had taken this opportunity to identify areas for improvement on the front end of the website and to develop those

areas where possible, in particular, the blog section. It was explained that the purpose of this blog section was to provide a platform for States, industry and other interested parties, to raise questions about the functioning of the HNS Convention and share their experience in terms of practical implementation. It was noted that the new website would be made live within a few days of the meeting.

- 5.1.5 Delegations were encouraged to provide feedback to the Secretariat so further improvements could be made as required.
- 5.1.6 Regarding the HNS Finder, which had also been made available via the website in 2011, it was noted that, despite the fact it had been updated annually, after eight years the possibility of inadvertent omissions or inaccuracies could not be ruled out. To that end, the Secretariat reported that it was working with the relevant technical divisions of IMO, to undertake a full review of the list of substances within the database during the course of 2019. The Secretariat also confirmed its intention to put in place a documented process for future updates to avoid any delays in the implementation of required changes.
- 5.1.7 It was noted that, in October 2018, the 1992 Fund Administrative Council had endorsed the proposal that the Secretariat should continue its work to prepare for the setting up of the HNS Fund and the first session of the HNS Fund Assembly. It was also noted that, as instructed, the Secretariat was preparing an action plan, in consultation with other stakeholders, including IMO and the International Group, setting out the priorities for 2019–2020.

Debate

- 5.1.8 A number of delegations congratulated the Secretariat on the new website and expressed appreciation for its efforts in providing useful and updated information to States and industry, in particular through the website, HNS Finder and publications.
- 5.1.9 The delegation of Canada informed the 1992 Fund Administrative Council that it used the data from the HNS Finder for its own electronic reporting system which it had recently developed. That delegation also informed the Administrative Council that it had submitted a document to the 106th session of the IMO Legal Committee (LEG 106/3/1) which included information on its work on domestic implementation of the 2010 HNS Convention. It also reported that, in accordance with Article 5 of the 2010 HNS Convention, Canada had submitted to the Secretary-General of IMO, a declaration excluding certain ships from the application of the Convention. That delegation encouraged other States considering ratification of the Convention to also take advantage of Article 5 to exclude such ships if the issue was proving to be an obstacle to ratification in those States, as it had been for Canada. The delegation of Canada offered to assist States by sharing its own experience of implementing the Convention or demonstrating its reporting system. Finally, that delegation stated that it had been encouraged to hear the progress of States at the Legal Committee meeting and hoped that it would continue.
- 5.1.10 The delegation of the United Arab Emirates informed the governing bodies that it was preparing to host a regional workshop, in cooperation with IMO and the IOPC Funds, on a number of IMO liability conventions, including the 2010 HNS Convention. It reported that the workshop was expected to be held in the last quarter of the year and that States from the region would be invited to participate.
- 5.1.11 Another delegation stated that it had noted the intention of IMO to organise such workshops and that it welcomed such initiatives.
- 5.1.12 One delegation suggested that, in addition to the workshops, it would be helpful to States if some of the administrative tasks identified in document [IOPC/APR19/5/1](#) relating to the preparations for the entry into force of the Convention and the first session of the HNS Fund Assembly were to be

undertaken by the Secretariat soon. In response, the Director explained that the Secretariat would certainly continue to work on the list of items and would be engaging with interested parties to make sure that everything was fully prepared in time. However, since the timeline for entry into force was quite extended, with 2023 having been mentioned as a possibility for entry into force, he pointed out that some time could be taken to develop those items. The Director pointed out that in the meantime, the Secretariat would continue to be available to assist States.

- 5.1.13 The observer delegation of IMO expressed its appreciation to the IOPC Funds for its cooperation and continued engagement with States on HNS matters and thanked the United Arab Emirates for offering to host the upcoming workshop later in 2019.

1992 Fund Administrative Council

- 5.1.14 The 1992 Fund Administrative Council noted that the Secretariat would continue its work to prepare for the setting up of the HNS Fund and would report on further developments at its next session.

5.2	Review of the 1992 Civil Liability and Fund Conventions Document IOPC/APR19/5/2	92AC		
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- 5.2.1 The Chairman of the 1992 Fund Administrative Council referred to document [IOPC/APR19/5/2](#), submitted by India, which contained a proposal for a review of the 1992 Civil Liability and Fund Conventions.

- 5.2.2 He stated that the document presented some interesting points which India had raised in previous meetings and which deserved due consideration. However, since the delegation of India was not present at the meeting to introduce the document, the Chairman proposed that the matter be deferred to the next session of the 1992 Fund Assembly in October 2019 to provide India with the opportunity to fully introduce the document and enable the Assembly to hold an informed discussion on the issues raised.

1992 Fund Administrative Council Decision

- 5.2.3 The 1992 Fund Administrative Council decided to defer discussion of this item until the next session.

6 Financial policies and procedures

6.1	Appointment of the External Auditor – 2020 Accounting Year Document IOPC/APR19/6/1	92AC		SA
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- 6.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document [IOPC/APR19/6/1](#), presented on behalf of the Audit Body by its external expert, Mr Michael Knight.

- 6.1.2 The governing bodies recalled that the current term of the existing External Auditor, BDO International (BDO), covers the financial years 2016–2019. The governing bodies were invited to consider three options with regards to the selection process for the appointment of the External Auditor for the period following the current Auditor's term of office. The options presented were as follows:

- Option 1: a full tender process, similar to that undertaken in 2015 inviting both national auditors and commercial firms to pitch for a fixed term, currently four years;
- Option 2: a formal review of the current Auditor, BDO, by the Audit Body to include an assessment of their performance to date and their proposals for a further term, including fees.

Following this review, the Audit Body would either recommend reappointment for a further term or that a full tender process be undertaken; and

- Option 3: a straightforward reappointment given BDO's satisfactory performance to date and their willingness to serve for a second term.

6.1.3 The governing bodies noted that the Audit Body recommended option 2, which proposed that the Audit Body conduct a formal review of BDO's performance, to be scheduled for June 2019, with a view to bringing a recommendation to the October 2019 sessions of the governing bodies, either to reappoint BDO for a further term or to conduct a tender process if the outcome of the review is unsatisfactory. It was also noted that the Audit Body had recommended this option having taken into account:

- (i) that the current External Auditor had only recently been appointed and was providing a good service;
- (ii) that this approach was consistent with best practice;
- (iii) the circumstances prevailing in the Secretariat;
- (iv) that it delivered value for money; and
- (v) that this option allowed alternatives to be pursued should there not be a satisfactory outcome to the recommended approach.

6.1.4 The governing bodies were invited to consider the above recommendation and instruct the Audit Body as to the way forward in discharging its mandate regarding the selection process for the External Auditor.

Debate

6.1.5 A number of delegations thanked the Audit Body for its work and expressed support for the recommendation made by the Audit Body to conduct a formal review of the current External Auditor, as described in option 2.

6.1.6 One delegation proposed that the Audit Body develop clear rules for the appointment of the External Auditor, if possible, before the end of the External Auditor's term of office. Several delegations also agreed with this proposal.

6.1.7 The Audit Body stated that it would report on the formal review of the current External Auditor and make a recommendation to the governing bodies at their October 2019 sessions. It also stated that it would propose clear rules on how to conduct the selection of future External Auditors.

1992 Fund Administrative Council and Supplementary Fund Assembly Decisions

6.1.8 The 1992 Fund Administrative Council and Supplementary Fund Assembly requested the Audit Body to:

- (a) conduct a formal review of the current External Auditor, BDO, including an assessment of their performance and their proposals for a further term, including fees; and
- (b) following the review, to make a recommendation to the governing bodies at their October 2019 sessions as to whether the current External Auditor should be reappointed for a further term or whether a full tender process should be undertaken.

6.2	Appointment of the Chairperson of the joint Audit Body Document IOPC/APR19/6/2	92AC		SA
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- 6.2.1 The governing bodies took note of the information contained in document [IOPC/APR19/6/2](#). The governing bodies recalled that at the October 2017 sessions of the governing bodies, the 1992 Fund Assembly had elected six members of the joint Audit Body for a period of three years and reappointed Mr Michael Knight as the external expert.
- 6.2.2 It was noted that with the sad passing of the Chairman of the Audit Body it had become necessary to decide whether the Audit Body should continue to discharge its mandate with five members and the external expert, and also who should be the next Chairperson until the election of the next Audit Body at the 2020 regular sessions of the governing bodies.
- 6.2.3 The governing bodies were invited to consider the creation of the post of Vice-Chairperson to deputise in the Chairperson's absence. It was noted that creating the post of Vice-Chairperson would involve amending the Composition and Mandate of the joint Audit Body and updating Annex II to Financial Regulation 13 of the 1992 Fund and Supplementary Fund. The governing bodies were also invited to consider the financial implications of appointing one of the Audit Body members as Vice-Chairperson and approving any proposed honorarium.
- 6.2.4 The Chairman of the 1992 Fund Administrative Council, in consultation with the Chairman of the Supplementary Fund Assembly, proposed that Mr Makoto Harunari (Japan) be appointed Chairperson of the Audit Body. He also proposed that Mrs Birgit Sjølling Olsen (Denmark) be appointed Vice-Chairperson of the Audit Body if the Administrative Council were to decide to create this post.

1992 Fund Administrative Council Decisions

- 6.2.5 The 1992 Fund Administrative Council decided to allow the joint Audit Body to operate with five elected members and the external expert for the remainder of the three-year term, thereby bringing the composition of the joint Audit Body from seven to six.
- 6.2.6 The Administrative Council appointed Mr Makoto Harunari as Chairperson of the joint Audit Body.
- 6.2.7 The Administrative Council created the post of Vice-Chairperson to serve as Chairperson in the Chairperson's absence.
- 6.2.8 The Administrative Council appointed Mrs Birgit Sjølling Olsen as Vice-Chairperson of the joint Audit Body.
- 6.2.9 The Administrative Council also decided to amend the Composition and Mandate of the joint Audit Body, as contained in the Annex to document [IOPC/APR19/6/2](#) and noted that Annex II to Financial Regulation 13 of the 1992 Fund would have to be updated accordingly.
- 6.2.10 The Administrative Council approved the honorarium of the Vice-Chairperson proposed in paragraph 2.10 of document [IOPC/APR19/6/2](#).

Supplementary Fund Assembly

- 6.2.11 The Supplementary Fund Assembly took note of the decisions taken by the 1992 Fund Administrative Council.
- 6.2.12 The Supplementary Fund Assembly also noted the amendment made to the Composition and Mandate of the joint Audit Body, as contained in the Annex to document [IOPC/APR19/6/2](#), and further noted that Annex II to Financial Regulation 13 of the Supplementary Fund would have to be updated accordingly.

Statement by the Chairperson of the Audit Body

- 6.2.13 Mr Harunari thanked the Chairman of the 1992 Fund Administrative Council for nominating him to be Chairperson of the Audit Body and expressed his sincere gratitude to the governing bodies for his appointment. He also thanked the governing bodies for creating the position of Vice-Chairperson and for appointing Mrs Birgit Sjølling Olsen to that position, which he considered would provide stability to the sixth Audit Body.
- 6.2.14 Mr Harunari expressed that the Audit Body members remained very sad indeed without the former Chairperson, Mr Rysanek, but noted that they had a duty nevertheless to carry out the mandate given to the Audit Body by the governing bodies. With this in mind, he reassured the governing bodies that the Audit Body would focus on its task and confirmed his own commitment to working even harder to contribute to the sixth Audit Body and to the IOPC Funds.

7 Secretariat and administrative matters

7.1	Quorum requirement for the 1992 Fund Administrative Council Document IOPC/APR19/7/1	92AC		
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- 7.1.1 The 1992 Fund Administrative Council took note of document [IOPC/APR19/7/1](#) relating to the proposal to amend the quorum requirement for the 1992 Fund Administrative Council.
- 7.1.2 It was noted that, in October 2018, the Supplementary Fund Assembly had decided to adopt Resolution N°4 establishing a Supplementary Fund Administrative Council with a quorum requirement of one-third of Member States. It was also noted that it had been suggested that 1992 Fund Resolution N°7 which establishes a 1992 Fund Administrative Council, should also be reviewed for consistency.
- 7.1.3 It was recalled that when the draft Resolution to establish the 1992 Fund Administrative Council had been discussed in 2002, there had been different views as to the quorum requirement, with some delegations suggesting that there should be at least 25 to 30 Member States present and others proposing a quorum requirement of one quarter or one-third of the Member States present. It was also recalled that, based on a compromise proposal, the Assembly had agreed on a quorum requirement of 25 Member States and the text of Resolution N°7 had been adopted accordingly.
- 7.1.4 The 1992 Fund Administrative Council noted that the number of Member States had increased since 2002 when there had been 71 States Parties to the 1992 Fund Convention. It was also noted that at the time of the April 2019 session there were 116 States Parties to the Convention. The Administrative Council further noted the view expressed by the Director that, while this growth in membership increased the likelihood that the 1992 Fund Administrative Council would be required to convene, it could be considered that the membership would be underrepresented if the Administrative Council were held with the existing minimum attendance requirement (i.e. 25 Member States).
- 7.1.5 The 1992 Fund Administrative Council noted the proposal of the Director to amend the current quorum requirement of the 1992 Administrative Council to one-third of Member States present. It also noted that, in the Director's view, the proposed quorum should still be safely achieved, taking into account the recent attendance figures of the Member States.

Debate

- 7.1.6 Several delegations spoke in support of the Director's proposal to amend the current quorum requirement of the 1992 Fund Administrative Council to one-third of Member States, and to amend the 1992 Fund Resolution N°7 accordingly.

1992 Fund Administrative Council Decision

- 7.1.7 The 1992 Fund Administrative Council decided to amend the quorum requirement for the 1992 Fund Administrative Council to one-third of Member States and amended 1992 Fund Resolution N°7 accordingly. The amended Resolution is set out at Annex II.

7.2	The European Union General Data Protection Regulation Document IOPC/APR19/7/2	92AC		SA
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- 7.2.1 The 1992 Fund Administrative Council took note of document [IOPC/APR19/7/2](#) relating to an update on the application of the General Data Protection Regulations (GDPR) and Directive 2016/680 (Directive) to the IOPC Funds.

- 7.2.2 It was noted that the Director had approached the Representative of the European Commission seeking to clarify the position of the 1992 Fund and Supplementary Fund in connection with the GDPR and the Directive. The Director had received a response in February 2019 stating that the application of GDPR and the Directive to the IOPC Funds depended on the privileges and immunities applicable under the Headquarters Agreement.

- 7.2.3 It was also noted that the Director would discuss this issue with the Government of the United Kingdom to determine to what extent the GDPR and the Directive applied to the Funds or whether they were exempt. It was further noted that the Director would keep the governing bodies informed of the developments relating to this issue.

1992 Fund Administrative Council and the Supplementary Fund Assembly

- 7.2.4 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information provided.

8 Other matters

8.1	Any other business	92AC	92EC	SA
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No other items were raised under this agenda item.

9 Adoption of the Record of Decisions**1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly Decision**

The draft Record of Decisions of the April 2019 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/APR19/9/WP.1 and IOPC/APR19/9/WP.1/1, was adopted, subject to certain amendments.

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ANNEX I

1.1 Member States present at the sessions

		1992 Fund Administrative Council	1992 Fund Executive Committee	Supplementary Fund Assembly
1	Algeria	•		
2	Angola	•		
3	Argentina	•		
4	Australia	•		•
5	Bahamas	•		
6	Belgium	•		•
7	Bulgaria	•		
8	Cambodia	•		
9	Cameroon	•		
10	Canada	•		•
11	China ^{<1>}	•	•	
12	Colombia	•		
13	Côte d'Ivoire	•		
14	Croatia	•		•
15	Cyprus	•		
16	Denmark	•		•
17	Ecuador	•		
18	Finland	•		•
19	France	•	•	•
20	Georgia	•	•	
21	Germany	•		•
22	Ghana	•		
23	Greece	•		•
24	Iran (the Islamic Republic of)	•		
25	Italy	•	•	•
26	Jamaica	•	•	

^{<1>} The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.
IOPC/APR19/9/1, Annex I, page 1

		1992 Fund Administrative Council	1992 Fund Executive Committee	Supplementary Fund Assembly
27	Japan	•	•	•
28	Kenya	•		
29	Liberia	•		
30	Luxembourg	•		
31	Malaysia	•		
32	Malta	•		
33	Marshall Islands	•		
34	Mexico	•	•	
35	Morocco	•		•
36	Netherlands	•		•
37	New Zealand	•		•
38	Nigeria	•		
39	Norway	•		•
40	Oman	•		
41	Palau	•		
42	Panama	•		
43	Philippines	•		
44	Portugal	•		•
45	Republic of Korea	•		•
46	Russian Federation	•		
47	Saint Kitts and Nevis	•		
48	Singapore	•	•	
49	South Africa	•	•	
50	Spain	•	•	•
51	Sri Lanka	•	•	
52	Sweden	•		•
53	Thailand	•		
54	Trinidad and Tobago	•		
55	Turkey	•	•	•

		1992 Fund Administrative Council	1992 Fund Executive Committee	Supplementary Fund Assembly
56	United Arab Emirates	•	•	
57	United Kingdom	•	•	•
58	Uruguay	•		
59	Venezuela (Bolivarian Republic of)	•		

1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Indonesia	•	•
2	Peru	•	•
3	Saudi Arabia	•	•

1.3 Intergovernmental organisations

		1992 Fund	Supplementary Fund
4	European Commission	•	•
5	International Maritime Organization (IMO)	•	•

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	BIMCO	•	•
2	Cedre	•	•
3	Comité Maritime International (CMI)	•	•
4	International Association of Classification Societies Ltd (IACS)	•	•
5	International Chamber of Shipping (ICS)	•	•
6	International Group of P&I Associations	•	•
7	International Spill Control Organization (ISCO)	•	•
8	INTERTANKO	•	•
9	ITOPF	•	•
10	Oil Companies International Marine Forum (OCIMF)	•	•
11	World LPG Association (WLPGA)	•	•

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ANNEX II

Resolution N°7 – Creation of an Administrative Council (October 2002) as amended by the 1992 Fund Administrative Council in April 2019^{<1>}

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund)

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 11 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions,

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved;
- 2 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
 - (a) to perform such functions as are allocated to the Assembly under the 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
 - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
 - (c) to give instructions to the Director concerning the administration of the 1992 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;
- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

^{<1>} Operative paragraph 5(b) of the Resolution was amended by the 1992 Fund Administrative Council at its 19th session, acting on behalf of the 23rd extraordinary session of the 1992 Fund Assembly, held in April 2019, to read with effect from 2 April 2019.

4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:

- (a) 1992 Fund Member States;
- (b) other States which would be invited to attend sessions of the Assembly as observers; and
- (c) (intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and

5 **FURTHER DECIDES:**

- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
 - (b) that at least one-third of Member States shall constitute a quorum for the meetings of the Administrative Council;
 - (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
 - (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
 - (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.
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