INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 10	IOPC/MAY14/**10/1**	
Original: ENGLISH	9 May 2014	
1992 Fund Administrative Council	**92AC12/AES18**	●
1992 Fund Executive Committee	**92EC61**	●
1971 Fund Administrative Council	**71AC32**	●
1992 Fund Working Group 7	**92WG7/3**	●

RECORD OF DECISIONS OF THE MAY 2014 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 6 to 9 May 2014)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Administrative Council **(92AC12/AES18)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco) (Absent)
	Executive Committee **(92EC61)**	Ms Welmoed van der Welde (Netherlands)	Capt. Ibraheem Olugbade (Nigeria)
	Working Group **(92WG7/3)**	Mrs Birgit Sølling Olsen (Denmark)	
1971 Fund	Administrative Council **(71AC32)**	Captain David J F Bruce (Marshall Islands)	Ms Susana Garduño Arana (Mexico)

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ANNEXES

Opening of the sessions

0.1 Before opening the sessions of the governing bodies, the 1992 Fund Assembly Chairman referred to the recent ferry disaster in the Republic of Korea on 16 April 2014. On behalf of all the governing bodies of the IOPC Funds, he expressed his deepest sympathy and heartfelt condolences to the victims of the tragic accident involving the ferry Sewol.

1992 Fund Administrative Council

0.2 The Chairman of the 1992 Fund Assembly attempted to open the 18th extraordinary session of the Assembly at 9:30 and 10:00 but the Assembly failed to achieve a quorum on both occasions. Only the following 52 Member States of the 1992 Fund were present at that time, whereas a quorum required 56 States to be present:

Algeria	Grenada	Philippines
Argentina	Ireland	Poland
Australia	Islamic Republic of Iran	Portugal
Bahamas	Italy	Qatar
Belgium	Japan	Republic of Korea
Cameroon	Kenya	Russian Federation
Canada	Liberia	Singapore
China[<1>]	Malaysia	South Africa
Colombia	Marshall Islands	Spain
Cyprus	Monaco	Sweden
Denmark	Morocco	Tunisia
Ecuador	Namibia	Turkey
Estonia	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Nigeria	Uruguay
Germany	Norway	Venezuela (Bolivarian Republic of)
Ghana	Oman	
Greece	Panama	

0.3 Since the quorum required 56 States to be present and no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 12th session of the 1992 Fund Administrative Council, acting on behalf of the 18th extraordinary session of the 1992 Fund Assembly[<2>].

0.4 It was recalled that, at its first 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).

0.5 The Chairman noted that due to the increasing membership of the 1992 Fund, the required quorum was getting more difficult to achieve which resulted in unnecessary delay in opening the sessions. He suggested that for future sessions, in order to improve efficiency, if the 1992 Fund Assembly could not establish a quorum either at 9.30 or after the opening of the other governing bodies' sessions, the 1992 Fund Assembly Chairman would proceed directly to convening an Administrative Council rather than suspending the session until 10.00.

1992 Fund Executive Committee

0.6 The 1992 Fund Executive Committee Chairman opened the 61st session of the Executive Committee.

<1> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

<2> From this point forward, references to the '12th session of the 1992 Fund Administrative Council' should be taken to read '12th session of the 1992 Fund Administrative Council, acting on behalf of the 18th extraordinary session of the 1992 Fund Assembly'.

1971 Fund Administrative Council

0.7 The 1971 Fund Administrative Council Chairman opened the 32nd session of the Administrative Council.

0.8 The Member States present at the sessions are listed in Annex I, including an indication of States having at any time been Members of the 1971 Fund, 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/MAY14/1/1**	**92AC**	**92EC**	**71AC**	**92WG**

The 1992 Fund Administrative Council, 1992 Fund Executive Committee and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/MAY14/1/1.

1.2

Examination of credentials – Establishment of the Credentials Committee **Document IOPC/MAY14/1/2**	**92AC**	**92EC**		
Examination of credentials – Report of the Credentials Committee **Document IOPC/MAY14/1/2/1**	**92AC**	**92EC**		

1.2.1 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 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.

1992 Fund Administrative Council Decision

1.2.2 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Argentina, Bahamas, Belgium, New Zealand and Poland as members of the Credentials Committee.

1992 Fund Executive Committee

1.2.3 The 1992 Fund Executive Committee took note of the appointment of the Credentials Committee by the 1992 Fund Administrative Council.

Debate

1.2.4 After having examined the credentials of the delegations of the 1992 Fund Member States, and of the delegations of States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/MAY14/1/2/1 that credentials had been received from 57 Member States of the 1992 Fund, including States which were members of the Executive Committee, and that all were in order. The Credentials Committee also reported that that no credentials had yet been received in respect of the United Arab Emirates and Uruguay. The Credentials Committee noted that it expected that this would be rectified by the delegations of the United Arab Emirates and Uruguay shortly after the session.

1.2.5 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the May 2014 sessions.

2 Overview

2.1	**Report of the Director**	**92AC**		**71AC**	

2.1.1 Before reporting on the activities of the IOPC Funds since the October 2013 sessions, the Director introduced Mrs Liliana Monsalve, the new Head of the Claims Department, who had joined the Secretariat in March 2014 following the departure of Mr Matthew Sommerville in November 2013. He also informed the governing bodies that Miss Melina Jeannottat had taken up the position of Translation Administrator (French).

2.1.2 He referred to the agenda for the meeting week ahead and to the items which were particularly likely to require significant discussion and guidance from Member States.

2.1.3 The Director referred to the winding up of the 1971 Fund as being the most important matter on the agenda, the details of which were set out in document IOPC/MAY14/7/1. Having acted on the instructions of the 1971 Fund Administrative Council in October 2013, the Director was pleased to confirm that the *Vistabella* incident had been resolved, the *Aegean Sea* was about to be resolved and that those two cases could therefore be closed.

2.1.4 The Director reported that, as instructed, he had studied the legal and procedural issues relating to the winding up of the 1971 Fund and had submitted two Resolutions for consideration by the 1971 Fund Administrative Council. He noted that the first Resolution (May 2014) contained the decisions by the Administrative Council regarding the procedural requirements necessary for the winding up of the 1971 Fund. The second Resolution (October 2014) contained the Administrative Council's decision to dissolve the 1971 Fund and its legal personality with effect from 31 December 2014. The Director took the opportunity to thank a number of people who had provided invaluable assistance in this task, namely Dr Rosalie Balkin, Professor Dan Sarooshi, Captain David Bruce (Chairman of the 1971 Fund Administrative Council), Mr Gaute Sivertsen (Chairman of the 1992 Fund Assembly) and Mr Alfred Popp (former Chairman of the Consultation Group on the winding up of the 1971 Fund).

2.1.5 The Director also reported that in March 2014 the Gard Club had brought a legal action against the 1971 Fund before the High Court in London requesting the Court to declare that the 1971 Fund had to reimburse the Gard Club in the event the Club had to pay the judgement rendered by the Supreme Court of Venezuela. He noted that the Gard Club had also submitted an application to the High Court in London for a freezing injunction which, if granted, would attempt to prevent reimbursements to contributors. He noted that these recent developments could have implications in the progress being made towards winding up the 1971 Fund in 2014.

2.1.6 Regarding the *Hebei Spirit* incident, the Director recalled that in January 2013 the Limitation Court had issued its decision assessing the losses arising out of the incident at a total of KRW 736 billion. He noted that, under Korean law, the assessment decision by the Limitation Court could be objected to a Court of First Instance and that, in the case of the *Hebei Spirit* incident, some 87 000 claimants had submitted objections to the Limitation Court's decision in the Seosan Court. The Director noted that a decision by the Seosan Court was expected by the end of May 2014. The governing bodies also noted that, in view of the disparity between the amounts claimed in the limitation proceedings and the amount awarded by the Limitation Court, the Director was of the view that it was premature to raise the level of payments since it was not yet known what position would be taken by the Seosan Court. It was noted that the Director was, therefore, recommending that the 1992 Fund Executive Committee maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Club's and 1992 Fund's experts, and that this percentage should be reviewed at the next session of the 1992 Fund Executive Committee.

2.1.7 With respect to the *Prestige* incident, the Director informed the governing bodies that the Audiencia Provincial (Criminal Court) in La Coruña had issued a judgement on 13 November 2013, finding the master, the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain, not criminally liable for damages to the environment. He noted that the Court, therefore, could not award compensation for the losses. He also noted that a number of parties had announced their intention to appeal against the judgement before the Supreme Court.

2.1.8 The Director referred to the work that was continuing in relation to ensuring claimants' preparedness for any new incident that might occur. In this regard, he announced the availability of the Claims Information Pack, which included the new Claims Manual, revised Guidelines for presenting claims in the fisheries, mariculture and fish-processing sector, Guidelines for presenting claims in the tourism sector, and an example claim form. He referred to the additional guidelines and publications which were under development, including draft Guidelines for presenting claims for costs of clean up and preventive measures, which had been submitted for the approval of the 1992 Fund Assembly. He also referred to the document on the assessment of claims by a State which had been submitted by France, Spain and the United Kingdom which he felt would generate an interesting debate.

2.1.9 The Director also announced the availability of the Annual Report 2013 and the publication Incidents involving the IOPC Funds 2013, both in hard copy and on the Funds' website.

2.1.10 On financial matters the governing bodies noted that a new Audit Body would be elected in October 2014 and that, as seven nominations had been received for the six positions available for candidates nominated by 1992 Fund Member States, an election would take place at the October 2014 sessions of the governing bodies. The governing bodies also noted that the one named individual not related to the Organisations (the 'external expert'), with expertise and experience in audit matters, would be elected on the recommendation of the Chairman of the 1992 Fund Assembly.

2.1.11 The Director also recalled that the term of office of the current External Auditor (Comptroller and Auditor General of the United Kingdom, National Audit Office (NAO)), covered the financial years 2011 to 2014 inclusive and that the NAO's responsibility would cease after the presentation of the audit of the 2014 Financial Statements to the Funds' governing bodies in October 2015. He noted that, as a result of the call for nominations, unfortunately no valid nominations or tenders had been received by the deadline of 14 March 2014. He further noted that the Audit Body had made a number of recommendations as to how to proceed and was keen to learn from Member States possible reasons for the lack of response, in order to help guide future processes.

2.1.12 The Director reported that, as decided by the governing bodies in October 2013, he would be providing Member States with a list of expert companies engaged by the IOPC Funds with a list of their skills, as well as with the minimum requirements in terms of qualifications, experience and membership of professional bodies to demonstrate that they were competent, capable and independent as recommended by the External Auditor. The Director also expressed his gratitude to the Audit Body, the International Tanker Owners' Pollution Federation (ITOPF) and the International Group of P&I Associations for their help in the drafting of contracts for experts engaged by the IOPC Funds. He noted that good progress had been made and that the results of that work would be presented for consideration at the October 2014 meetings.

2.1.13 On contribution matters, the Director reminded the governing bodies that 2013 oil reports had been due on 30 April 2014 and expressed his pleasure that the Secretariat had been able to work with Member States to reduce the number of outstanding oil reports last year to 12, down from 38 in 2009. He stated that the Secretariat was working to reduce that number even further this year and encouraged States to do all they could to assist the Secretariat in that regard.

2.1.14 The Director referred to the IOPC Funds' short course which had taken place in November 2013 for the third successful year running. Expressing thanks to the supporters of the course, he confirmed that participants for the 2014 course, which would take place in July, had now been confirmed and that they represented 11 different 1992 Fund Member States.

2.1.15 The Director also referred to a number of outreach activities which had involved the Secretariat since October 2013, including regional workshops on the international liability and compensation regime in Namibia, New Zealand, Sri Lanka and India as well as a workshop on the 2010 HNS Convention in Malaysia. He had also hosted an informal lunch meeting for London-based representatives of States in the Asia/Pacific region in February 2014.

2.1.16 Looking further ahead, the Director stated that the summer of 2014 was likely to be a very busy period for the IOPC Funds as it looked to resolve the remaining outstanding issues relating to the 1971 Fund, to make progress on a number of 1992 Fund incidents and to carry out the instructions of the governing bodies given at their October 2013 sessions. He confirmed that a number of projects were already well underway, including a study of the legal systems of several Member States to determine whether a State can recover VAT paid to a contractor, and the development of a new policy to address the issue of financial loss as a result of incorrect implementation of the Conventions by Member States.

2.1.17 The Director expressed his hope that Member States would not be hit by a new incident during the upcoming period, but assured the governing bodies that the Secretariat would be prepared should such a disaster occur.

Debate

2.1.18 The delegation of Italy informed the governing bodies that, following the workshops held at IMO and elsewhere recently, it was planning a workshop on the 2010 HNS Convention which was expected to take place in early October 2014.

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/MAY14/3/1**		**92EC**	**71AC**	

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council took note of document IOPC/MAY14/3/1, which contained information on documents for the May 2014 meetings relating to incidents involving the IOPC Funds.

3.2

Incidents involving the IOPC Funds – 1971 Fund: ***Vistabella, Aegean Sea, Iliad* and *Plate Princess*** **Document IOPC/MAY14/3/2**			**71AC**	

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/MAY14/3/2 concerning the *Vistabella*, *Aegean Sea*, *Iliad* and *Plate Princess* incidents.

Vistabella

3.2.2 It was recalled that the Court of Appeal in Guadeloupe had rendered a judgement in favour of the 1971 Fund for €1 289 483 plus interest and costs, and that the 1971 Fund had brought summary legal proceedings against the insurer in Trinidad and Tobago to enforce the judgement. It was also recalled that the insurer had opposed the enforcement. It was further recalled that in July 2012 the Court of Appeal in Trinidad and Tobago had decided in favour of the insurer, and that the 1971 Fund had requested leave to appeal against the judgement to the Privy Council.

3.2.3 It was noted that following the instructions given by the 1971 Fund Administrative Council to the Director in October 2013 for the purpose of the winding up of the 1971 Fund, the Director had reached an out-of-court settlement with the insurer where the 1971 Fund had paid £100 000 towards the insurer's costs and that consequently, the appeal before the Privy Council had been withdrawn.

3.2.4 The Administrative Council agreed with the Director's decision to settle the claim by offering the insurer £100 000 towards its costs and noted that this case could therefore be considered closed.

Aegean Sea

3.2.5 It was recalled that in a judgement delivered in July 2012 the Court of First Instance had awarded the last claimant in this case €363 746 but since the claimant had not included the pilot/Spanish Government in the proceedings, the 1971 Fund would only be liable in respect of 50% of the awarded amount, ie €181 873. It was also recalled that the 1971 Fund had appealed against the judgement. It was further recalled that the Spanish State would, under the agreement with the 1971 Fund, pay any amounts awarded by the Courts.

3.2.6 The Administrative Council noted that in a judgement delivered in October 2013, and corrected in November 2013 due to a minor error, the claimant was awarded some €187 000.

3.2.7 It was further noted that in April 2014, the Director had been informed that the Spanish Government would pay the judgement within three weeks, ie before the May 2014 session of the 1971 Fund Administrative Council.

3.2.8 The Director informed the Administrative Council that he had been advised by the 1971 Fund lawyers that the Spanish Government had paid the claimant €163 439.98 on 6 May 2014 and that the outstanding balance would be paid in due course.

3.2.9 The Administrative Council noted that since the last claim involving this incident had been paid, this case could therefore be closed in respect of the 1971 Fund.

Iliad

3.2.10 The 1971 Fund Administrative Council recalled that 527 claims totalling €11 million had been filed in the limitation proceedings, but that the Court-appointed liquidator had assessed the claims at €2 217 755. The Administrative Council noted that all claims were time-barred against the 1971 Fund except for a claim from the shipowner and his insurer (the North of England P&I Club) in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention. At a hearing at the Court of Nafplion in November 2013, the 1971 Fund had supported the shipowner and the North of England P&I Club's objections disputing the claims in their entirety.

3.2.11 The Administrative Council further noted that, following instructions given to the Director by the Administrative Council in March 2013, the Director had approached the North of England P&I Club to discuss a possible out-of-court settlement and made an offer of €250 000 in exchange for the Club's undertaking to release and hold harmless the 1971 Fund from any future claim in respect of the incident.

3.2.12 The Director informed the Administrative Council that he had received a response to his proposal from the North of England P&I Club the previous week. In its response, the P&I Club stated that it was concerned that it was being asked to assume a risk solely to benefit the 1971 Fund in achieving its goal of winding up in advance of finalisation of existing litigation. The P&I Club further stated that in its view it was inappropriate to expect the Club to assume that risk and that a payment of €250 000 would leave it with such a risk. The Director noted that this was, in effect, a rejection of his offer of settlement.

Debate

3.2.13 One delegation stated that the response from the P&I Club appeared to be an invitation to continue negotiations. Several delegations supported continued negotiations although other delegations, while agreeing with further negotiations, pointed out that these could not continue for an indefinite amount of time since that would delay the winding up of the 1971 Fund.

3.2.14 In answer to a question from one delegation regarding the time limit for settlement negotiations, the Director stated that the absolute deadline should be the October 2014 session of the 1971 Fund Administrative Council.

1971 Fund Administrative Council Decision

3.2.15 The 1971 Fund Administrative Council decided to authorise the Director to continue negotiations with the North of England P&I Club but that such negotiations should be terminated at the date of the October 2014 session of the Administrative Council if agreement had not been reached by then. The Director stated that he would inform delegations of the outcome of the discussions at that session.

Plate Princess

3.2.16 The 1971 Fund Administrative Council recalled that in 1997 two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union, presented claims in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess*. It was also recalled that in October 2005, ie eight years after the incident took place, the 1971 Fund had been formally notified as an interested third party of both claims. It was further recalled that in May 2006, the 1971 Fund Administrative Council had decided that both claims were time-barred in respect of the 1971 Fund. It was recalled that judgements had been rendered against the 1971 Fund in both claims.

3.2.17 It was recalled that at its October 2012 session, the 1971 Fund Administrative Council had decided to maintain its previous decisions instructing the Director not to make any payment in respect of this incident and to oppose the enforcement of the judgement.

3.2.18 It was further recalled that in December 2012, the Banco Venezolano de Credito had filed a cheque at Court for BsF 2 844 983, corresponding to the amount of the guarantee issued to cover the limitation fund.

3.2.19 The Administrative Council recalled that the Puerto Miranda Union lawyers had filed pleadings at Court requesting an embargo over the Fund's assets, specifically over the contributions owed to the 1992 Fund by Petróleos de Venezuela SA (PDVSA), Venezuela's State-owned oil company. The Administrative Council also recalled that the 1971 Fund had filed pleadings to oppose the measures requested by the Puerto Miranda Union on the basis that the *Plate Princess* incident related solely to the 1971 Fund, not the 1992 Fund, and that any amounts owed by PDVSA were in respect of monies owed to the 1992 Fund, not the 1971 Fund.

3.2.20 It was further recalled that in February 2013, the Maritime Court of First Instance had accepted the request filed by the Puerto Miranda Union for an embargo over the Fund's assets, and had ordered the embargo of contributions owed by PDVSA to the Fund up to a limit of BsF 412 646 863 (approximately 60 million SDR), which corresponded to the amount awarded against the 1971 Fund, ie BsF 400 628 022 plus execution costs. The Administrative Council recalled that the Court did not specify whether it referred to the 1971 Fund or the 1992 Fund or both.

3.2.21 The Administrative Council also recalled that the Maritime Court of First Instance had also issued an order of embargo of any assets the Fund might have in Venezuela, up to a limit of BsF 921 444 450, ie double the amount awarded against the 1971 Fund plus 30%. The Administrative Council further recalled that in the order, the Court referred expressly to the ratification by Venezuela not only of the 1971 Fund Convention but also of the 1992 Protocol. It was recalled that the 1971 Fund had appealed against this order.

3.2.22 The 1971 Fund Administrative Council noted that, in accordance with the instructions given to the Director by the 1971 Fund Administrative Council in October 2013, the 1971 Fund had discontinued all legal representation and defence in legal proceedings in Venezuela.

3.2.23 It was also noted that in February 2014, the Maritime Court of First Instance in Caracas had issued a request to the courts in the United Kingdom for their assistance in serving the judgements rendered by the Venezuelan Courts in respect of the claim by the Puerto Miranda Union on the IOPC Funds. It was further noted that the request included the order of embargo against assets belonging to the IOPC Funds, but that the request did not specify whether it referred to the 1971 Fund or the 1992 Fund or both. The Administrative Council noted that, as at the May 2014 meeting of the governing bodies, the order had not been served upon the 1971 Fund.

3.2.24 The Administrative Council also noted that the Director had informed the UK Government (Foreign and Commonwealth Office (FCO) and Department for Transport) of the arrest order and had requested the lawyers acting for the FCO to advise whether the Privileges and Immunities available to the 1971 Fund and the 1992 Fund in the Headquarters Agreements with the two Organisations would apply to this order.

Debate

3.2.25 One delegation pointed out that the judgements by the Venezuelan courts appeared to involve the 1992 Fund and that the issue should therefore be brought to the attention of, and be dealt with by, the 1992 Fund.

3.2.26 Another delegation requested that the Director inform the 1992 Fund Administrative Council of the formal response from the FCO with regard to Privileges and Immunities, since privileges and immunities formed the basis on which decisions were taken by the Funds.

3.2.27 The 1971 Fund Administrative Council noted the information provided by the Director and requested him to advise the Administrative Council at its next session of the response of the FCO and to inform the 1992 Fund of its possible involvement arising from the judgements of the Venezuelan courts.

3.3	**Incidents involving the IOPC Funds – 1971 Fund:** ***Nissos Amorgos*** **Documents IOPC/MAY14/3/10, IOPC/MAY14/3/10/1 and IOPC/MAY14/3/10/2**			**71AC**	

3.3.1 The 1971 Fund Administrative Council took note of the information contained in documents IOPC/MAY14/3/10 and IOPC/MAY14/3/10/1 concerning the *Nissos Amorgos* incident.

Limitation of liability

3.3.2 It was recalled that in March 2011, the Maracaibo Criminal Court of Appeal had upheld the judgement of the Maracaibo Criminal Court of First Instance and rejected the shipowner's request to limit his liability. It was further recalled that the Court of Appeal had also decided that it would be for the shipowner and his insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund. It was further recalled that in May 2013 the Supreme Court had upheld the judgement of the Court of Appeal against the Master, the shipowner and the Gard Club.

Claims

3.3.3 The Administrative Council recalled that those persons and organisations (private individuals, companies and State organisations) who had suffered a loss as a result of the pollution had been compensated for their losses by the Gard Club and the 1971 Fund.

3.3.4 It was recalled that the claim by the Bolivarian Republic of Venezuela had been calculated by the use of theoretical models. It was also recalled that the IOPC Funds had consistently taken the view that claims for compensation for damage to the marine environment calculated on the basis of theoretical models were not admissible, that compensation could be granted only if a claimant had suffered a

quantifiable economic loss and that damages of a punitive nature were not admissible. It was further recalled that in respect of the 1971 Fund Convention these claims were time-barred.

Considerations by the 1971 Fund Administrative Council at its October 2013 session

3.3.5 It was recalled that, at its October 2013 session, the 1971 Fund Administrative Council, whilst expressing sympathy for the shipowner and the Club in this case, had decided that the 1971 Fund should not reimburse the Club any payments made as a consequence of the Supreme Court judgement (Criminal section) in respect of the claim by the Bolivarian Republic of Venezuela. It was recalled that the Administrative Council had also decided that the Director should continue his discussions with the Gard Club relating to the accounting position in respect of joint costs. It was noted that the 1971 Fund had made an offer to the Gard Club in settlement of the joint costs for a sum of US$344 090 and that the Gard Club had not accepted the offer.

Legal action by Gard Club against the 1971 Fund in England

3.3.6 The Administrative Council noted that in March 2014, the Gard Club had brought a legal action at the High Court in London against the 1971 Fund. It was noted that in its action the Gard Club maintained that in 1997 the Club and the Fund had entered into a binding agreement, partly orally, partly in writing and partly by conduct, to apply practices, developed pursuant to the Memorandum of Understanding (MoU) signed in 1980 between the 1971 Fund and the International Group of P&I Clubs, to the oil pollution claims arising out of the *Nissos Amorgos* incident. It was also noted that in its action the Club required the Fund to abide by a final reconciliation pursuant to the MoU upon the Club's payment of the amounts awarded to the Bolivarian Republic of Venezuela in the judgement of the Maracaibo Criminal Court of First Instance dated February 2010, confirmed by the Court of Appeal and the Supreme Court, so as to ensure that the total compensation paid by the Club as a result of the incident did not exceed the shipowner/Club's liability limit under the 1969 Civil Liability Convention (1969 CLC).

3.3.7 The Administrative Council noted that the Gard Club had also made an application to the High Court in London seeking a 'freezing injunction' which, if granted, would prevent the 1971 Fund from removing from the jurisdiction any assets belonging to the 1971 Fund up to US$58 million, to ensure that funds remained within the jurisdiction to satisfy the Gard Club's claim in case it was successful.

Immunity

3.3.8 The Administrative Council noted that the 1971 Fund was disputing the jurisdiction of the English courts to hear these matters since, pursuant to the Headquarters Agreement between the UK and the 1971 Fund and the implementing UK Statutory Instrument, the 1971 Fund's property and assets were immune from any form of provisional judicial constraint. The Fund also enjoyed immunity from jurisdiction and execution within the scope of its official activities.

3.3.9 It was noted that in March 2014 the Secretariat informed the FCO of the legal action brought by the Gard Club in the High Court in London and of the application to the Court seeking a 'freezing injunction' and sought the assistance of the FCO in order to assert the immunity of the 1971 Fund from the jurisdiction of the High Court in London. It was further noted that the Director had also written to the FCO to request its assistance so that the High Court in London was aware that under the Headquarters Agreement the 1971 Fund, within the scope of its official activities, had immunity from jurisdiction and execution.

Hearing of the application for a 'freezing injunction'

3.3.10 It was noted that a hearing of the application for a 'freezing injunction' had taken place on 1 May 2014 before the High Court (Commercial Court) of London and that the judgement was expected to be delivered on Wednesday 7 May 2014.

Legal action by the Gard Club against the 1971 Fund in Venezuela

3.3.11 The Administrative Council noted that in March 2014, the Gard Club had also initiated a legal action against the 1971 Fund before the Maritime Court of First Instance in Caracas, requesting the Court to decide that the 1971 Fund was liable to pay to the Bolivarian Republic of Venezuela the amount awarded by the Supreme Court or, in case that the Bolivarian Republic of Venezuela was paid by the Gard Club, that the 1971 Fund should reimburse the Club any amount which exceeded the shipowner's limitation of liability up to the Fund's limit.

3.3.12 The Administrative Council also noted that the Court had issued a request for the Director to attend the Maritime Court in Caracas within a period of between 20 days and five months to answer the legal action, but that the legal action had not yet been served on the 1971 Fund.

Director's considerations

3.3.13 It was noted that the Director sympathised with the situation in which the Gard Club found itself and that, in his view, the decision by the Venezuelan courts denying the shipowner the right to limit its liability was wrong since there were no grounds to hold that the shipowner was not entitled to limit its liability.

3.3.14 It was noted that, in the Director's view, it would be very difficult for the 1971 Fund to agree to pay compensation in excess of the shipowner's limitation amount, since the judgement was not against the 1971 Fund and the 1971 Fund could only pay compensation based on a legal obligation to do so, which did not exist in this case.

3.3.15 It was noted that, in the Director's view, the legal actions by the Gard Club in London and in Venezuela were unfounded since there was no agreement, orally, in writing or by conduct, between the Gard Club and the 1971 Fund under which the Fund undertook to reimburse the Club any monies paid in respect of the claim by the Bolivarian Republic of Venezuela.

3.3.16 It was noted that there was an agreement between the Gard Club and the 1971 Fund to make interim payments in respect of the *Nissos Amorgos* incident, which had been applied to all the claims which had been settled and paid by the Gard Club and the 1971 Fund and that, under this agreement, the Gard Club and the 1971 Fund had paid compensation for some US$24.4 million and that all admissible losses arising from the *Nissos Amorgos* incident had therefore been compensated by the Gard Club and the 1971 Fund.

3.3.17 With respect to the issue of interim payments, it was recalled that in 2011 the Director and the International Group of P&I Associations had requested an opinion from Mr Måns Jacobsson and the late Mr Richard Shaw on the legal basis of the practice of interim payments followed by the P&I Clubs and the IOPC Funds (document IOPC/APR12/10/1, Annex II). It was also recalled that paragraph 5.7 of the opinion stated:

> The decisions as to whether claims are admissible and on the admissible quantum are taken by both the Fund and the shipowner/P&I Club. No payments are therefore made before both compensatory parties are in agreement on these points.

3.3.18 It was noted that in the case of the *Nissos Amorgos* incident, all interim payments made by the Club and Fund had been approved by both parties and that the claim by the Bolivarian Republic of Venezuela was not approved by the 1971 Fund under the interim payment arrangements since it was not admissible for compensation and was time-barred against the 1971 Fund. It was noted that, in the Director's view, the agreement to fund interim payments could not be extended to apply to claims which were not admissible and were time-barred against the 1971 Fund.

3.3.19 It was noted that although the Director had been advised by the 1971 Fund's lawyers in the UK, as well as by Dr Rosalie Balkin and Professor Dan Sarooshi, that the 1971 Fund could rely on the immunity defence provided in the Headquarters Agreement, it was not known whether an English court would accept the 1971 Fund's plea of immunity and declare that it had no jurisdiction to hear the Gard Club's claim or to grant the Gard Club's application for a 'freezing injunction'.

3.3.20 It was noted that the Director intended to contest strongly the action brought by the Gard Club before the High Court against the 1971 Fund and that he had submitted an application requesting the Court to declare that it had no jurisdiction in respect of the Gard Club's claim and its application for a 'freezing injunction'.

3.3.21 In respect of the legal action by the Gard Club against the 1971 Fund in Venezuela, it was noted that, as instructed by the 1971 Fund Administrative Council in October 2013, the 1971 Fund had discontinued its defence before the Venezuelan courts. It was also noted that, in the Director's view, and in accordance with the Administrative Council's instructions to discontinue the defence, it would serve no practical purpose for him to appear before the Venezuelan courts.

Statement by the International Group of P&I Associations

3.3.22 The observer delegation of the International Group of P&I Associations made the following statement:

> There is potentially a degree of duplication in terms of what may be said on document IOPC/MAY14/3/10 on the *Nissos Amorgos* and document IOPC/MAY14/7/1 on the Winding up of the 1971 Fund, but we will try to keep this intervention to the facts pertaining to the *Nissos Amorgos* case itself.
>
> Firstly, delegates will recall that at the October session, in response to the decisions taken by the Administrative Council not to reimburse Gard in the *Nissos Amorgos* and to wind up the 1971 Fund, the International Group delegation reserved its right and the right of the Gard Club to give consideration to any means by which the Club might protect its interests.
>
> In light of both the decisions taken at that meeting and the agenda for this session and the recommendation for the money in the 1971 Fund to be returned to contributors, the Gard Club, with the full support of the International Group, decided that it had no option but to take legal action against the 1971 Fund in order to protect its interests.
>
> As document IOPC/MAY14/3/10 states, the Club is doing so through two claims, one in England and one in Venezuela.
>
> In the English High Court, the Club is seeking a declaration that the 1971 Fund is in breach of an agreement between the Club and the Fund to follow established practices for the funding of interim payments. In Venezuela the Club is seeking a further ruling to determine the financial consequences which flow under the Conventions from the Supreme Court's judgment, essentially seeking clarification that the judgment also applies to the 1971 Fund.
>
> Both the International Group and the Gard Club are of the view that it is very unfortunate that we have got to this stage where the Club felt that it had no option but to start these proceedings.
>
> Mr Chairman, there are a number of points made by the Director in document IOPC/MAY14/3/10 that this delegation strongly disagrees with, and we have made this clear to the Director in meetings that we have had intersessionally including most recently in March this year, for example with regard to the Fund's position on the application of the time bar provisions, the application of the notification procedure in the Convention, the accounting/reconciliation position between the Club and Fund and the application of

the judgments in Venezuela on the Fund. I will just touch on the latter two in this intervention.

In terms of the accounting/reconciliation of costs and compensation between the Club and the Fund, this is the basis of the substantive claim brought by Gard against the Fund in the High Court in London.

Interim payments were made in the *Nissos Amorgos* case by both the Club and the Fund on the basis of an agreement that the Club would pay claims first up to its CLC limit and the Fund would take over the payment of claims thereafter. All amounts paid (under settlements or awards) were then to be reviewed by the paying parties at the end of the case and a balancing payment made if necessary to ensure that each of them bears its correct share of the total.

The Director has reported the existence of an agreement to make interim payments in respect of the *Nissos Amorgos* incident in his Note.

The Fund and the Club have been aware since the outset of this case that reconciliation would be carried out. The Fund has never contested the need for it. The final reconciliation is yet to be carried out but the provisional report which was prepared with the Fund in 2006 confirms that it is concerned with the apportionment of both compensation and costs. Furthermore, the need for and potential impact of this reconciliation procedure were set out in three letters sent by the Club to the Fund Director between 2007 and 2011 and it is understood the Director did not disagree with them. It is unclear to what extent (if at all) they are now disputed.

Yet these facts were ignored and the Fund took the decision last October not to pay the Venezuelan claim and not to reimburse Gard if it was forced to do so.

In terms of the system as a whole, this leaves it open to question how CLC/Fund cases will work in the future if the Fund can ignore agreements with International Group Clubs. This is a very serious issue for the compensation regime in future cases.

In terms of the application of the judgments in Venezuela on the Fund, the reason given by the Fund for the decision at the October 2013 meeting not to reimburse Gard in the *Nissos Amorgos* case was that the 1971 Fund could only pay compensation where there was a legal obligation to do so. In this case it was suggested that no such obligation existed because the judgment issued in Venezuela had not ordered the Fund to pay any specific amount. It is correct that no monetary order was made against the Fund but nevertheless the Venezuelan Court expressly held that the Fund was liable and it ordered that it be notified of the judgment with the evident intention that the Fund should take action in respect of it. As the Fund was officially notified of the action at the outset of the case it is bound by the judgment under Article 7.6 of the Fund Convention.

Further, the Venezuelan Court found the Republic of Venezuela's claim to be a valid claim despite its means of calculation (which it is entitled to do under the 1971 regime, in contrast to the 1992 regime) and it found that the Fund's appeal that it was not a party to the action and the claim was therefore time barred, failed. The Fund is entitled to decide which claims it will settle and to apply its admissibility criteria in doing so but those criteria have no legal relevance in the Court, should the Court decide otherwise.

This delegation fully appreciates that the Fund may disagree with the decisions reached by the Venezuelan court (that the Fund is liable, that the time bar does not apply and that the claim is valid). It also disagrees with the Venezuelan judgments in many respects - not least with its failure to expressly declare the owner's right to limit liability (although the intent that it should not be deprived of that right is evident from the finding of liability

on the part of the Fund). However, that court has decided on the points raised by the Fund and there is no doubt that it is competent to do so.

Hopefully Chairman this information has been useful for delegates in understanding some of the facts surrounding this case and why the Gard Club has taken legal action against the Fund here in England and also in Venezuela.

It is the view of this delegation that there should be a re-evaluation of the Fund's obligations in the *Nissos Amorgos* incident, and that the Fund should instead engage with the Club and with the Republic of Venezuela to follow up on efforts in 2004 to seek a resolution of the Republic's claim.

In the event there is any doubt as to what the Fund's obligations are then those should be determined by the English and the Venezuelan courts. This delegation is deeply disappointed at the evident intention on the part of the Fund to avoid those obligations through the assertion of an immunity defence. It appreciates that the Director had to take provisional steps in the proceedings in short order but notes that it remains open to the Fund to waive any defence it may have to enable such proper determination to take place.

There is one final point that we should make in terms of document IOPC/MAY14/3/10, reference is made to an offer being made by the 1971 Fund to the Club of US$344 090 in payment of the Fund's contribution to the joint costs. This is however only in respect of joint costs and does not cover reimbursement for any compensation. Hence why it has not been accepted to date.

Debate

3.3.23 A discussion of this incident took place in a closed session to which only delegations of States that were Parties to the 1971 Fund Convention at the time of the *Nissos Amorgos* incident, members of the Secretariat, experts, lawyers and members of the Audit Body were invited to attend.

1971 Fund Administrative Council Decisions

3.3.24 The 1971 Fund Administrative Council decided:

(a) that the 1971 Fund should contest vigorously the action brought by the Gard Club before the High Court against the 1971 Fund since the 1971 Fund had immunity and because the claim was unfounded and had no legal basis; and

(b) that the Director should not attend the Maritime Court in Caracas to answer the Gard Club's action.

3.3.25 The 1971 Fund Administrative Council also instructed the Director to approach the Gard Club to try to reach an amicable settlement by the date of the October 2014 session of the Administrative Council within the limit of the amount presently available to the 1971 Fund, but that the Director should not, under any circumstances, take any action that would result in the 1971 Fund waiving its right to immunity from jurisdiction before the UK courts.

Judgement by the High Court in London on a freezing injunction application

3.3.26 The 1971 Fund Administrative Council took note of the information contained in document IOPC/MAY14/3/10/2[<3>].

[<3>] This document was originally issued during the May 2014 sessions of the governing bodies as document IOPC/MAY14/3/WP.1.

3.3.27 The Administrative Council noted that on 7 May 2014 the High Court in London had decided that the Gard P&I Club was entitled to the freezing order relief it had requested against the 1971 Fund in support of its claim in England, but that the Court had also decided not to grant an injunction in support of its claim in Venezuela.

3.3.28 The 1971 Fund Administrative Council noted that Article 5.2 of the Headquarters Agreement between the United Kingdom Government and the 1971 Fund provided:

> The Fund's property and assets wherever situated shall be immune from any form of administrative or provisional judicial constraint, such as requisition, confiscation, expropriation or attachment, except insofar as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to, or operated on behalf of, the Fund.

3.3.29 The 1971 Fund Administrative Council also noted that section 6 of the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979, (the Order) which gave effect to the Headquarters Agreement under UK law provided:

> (1) Within the scope of its official activities the Fund shall have immunity from suit and legal process except:
>
> (a) to the extent that it shall have waived such immunity in a particular case;
> (b) in respect of actions brought against the Fund in accordance with the provisions of the Convention;
> (c) in respect of any contract for the supply of goods or services, and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;
> (d) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Fund or in respect of a motor traffic offence involving such a vehicle;
> (e) in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom;
> (f) in the event of the attachment or, in Scotland, arrestment, pursuant to the order of a court of law, of the salaries, wages or other emoluments owed by the Fund to a staff member;
> (g) in respect of the enforcement of an arbitration award made under Article 23 of the Agreement; and
> (h) in respect of a counter-claim directly connected with proceedings initiated by the Fund.
>
> (2) Paragraph 1 of this Article shall not prevent the taking of such measures as may be permitted by law in relation to the property and assets of the Fund in so far as they may be temporarily necessary in connection with the prevention and investigation of accidents involving motor vehicles belonging to, or operated on behalf of, the Fund.

3.3.30 It was noted that the High Court in London had decided to apply the Order and had held that section 6 of the Order did not have the effect of granting the 1971 Fund a general immunity from freezing injunctions.

3.3.31 It was also noted that the Court had held that the words 'suit and legal process' in section 6 of the Order included freezing injunctions, and that the Judge had therefore found that the effect of the Order was that immunity from freezing injunctions only existed in respect of matters which did not fall within any of the exceptions listed in section 6.1 of the Order.

3.3.32 It was further noted that the Judge had acknowledged that the immunity granted by the Order appeared to be less extensive than under the Headquarters Agreement, but that section 6 of the Order should be applied without regard to the differing text of the Headquarters Agreement. It was further noted that

this was regardless of (in the Judge's words) "whether it meant that the UK would be in breach of its obligations under the HQ Agreement".

Claim by the Gard P&I Club in England

3.3.33 The Administrative Council noted that the Judge had found that Gard P&I Club had a 'good arguable case' that its claim in England fell within the exception from immunity in section 6.1(c) of the Order on the grounds that the alleged funding arrangements amounted to a 'loan' or at least a 'transaction for the provision of finance'.

3.3.34 The Administrative Council also noted that whilst the Judge had held that real issues were likely to arise on the facts, he also considered that the Gard P&I Club had satisfied the 'good arguable case' threshold in respect of its English claim based on the alleged claims-handling agreement with the 1971 Fund.

Claim by the Gard P&I Club in Venezuela

3.3.35 The Administrative Council further noted that the Judge had held that the Venezuelan court proceedings against the 1971 Fund were not a 1971 Fund Convention claim and did not therefore fall within the exception to immunity at section 6.1(b) of the Order for claims brought 'in accordance with the provisions of the 1971 Fund Convention'.

Effect of the freezing injunction

3.3.36 The Administrative Council noted that the effect of the freezing order made by the English High Court was that:

(a) the 1971 Fund, and any persons made aware of the order (including, for example, the 1971 Fund's bankers) may not remove from England or dispose of the 1971 Fund's assets up to the sum of US$58 million (effectively, any of the 1971 Fund's assets); and
(b) the 1971 Fund was not prevented from dealing with its assets in the ordinary course of its business, including making compensation payments under the 1971 Fund Convention and paying its ordinary expenses, or from spending reasonably on legal representation.

3.3.37 The Administrative Council also noted that in the Director's view, in practical terms the judgement would not have an impact on the day to day running of the 1971 Fund until October 2014, as the 1971 Fund could still continue to pay claims, negotiate settlements and pay reasonable legal expenses. However, the injunction, unless it was discharged, would prevent the 1971 Fund from reimbursing any surplus monies to contributors after the October 2014 sessions of the 1971 Fund Administrative Council.

3.3.38 The Administrative Council further noted that it was the Director's intention that the 1971 Fund should appeal against the judgement. He also intended, with the 1971 Fund's legal advisers, to examine the judgement and what implications it might have in relation to the Headquarters Agreement between the United Kingdom Government and the 1971 Fund, with respect to the 1971 Fund, the 1992 Fund and the Supplementary Fund.

Debate

3.3.39 A large number of delegations agreed with the Director that more time was needed to consider the judgement, but that it appeared that there was a discrepancy between the Order and the Headquarters Agreement and that this needed to be discussed with the FCO, as this had serious implications regarding not only the 1971 Fund, but also the 1992 Fund and Supplementary Fund which also had Headquarters Agreements with the UK Government. One delegation stated that the judgement potentially had wider implications for all international bodies based in London which had Headquarters Agreements with the UK Government.

3.3.40 One delegation stated that, in its view, it would be wise to discuss other solutions, including an out-of-court settlement if sufficient funds remained, and that the possibility of bankruptcy could not be discounted.

3.3.41 A large number of delegations stated that in earlier discussion of the *Nissos Amorgos* incident, the 1971 Fund Member States had authorised the Director to appeal in the event that an adverse judgement was rendered against the 1971 Fund. Those delegations also stated that the freezing injunction should not have any impact on the decision to wind up the 1971 Fund which had been taken by the 1971 Fund Administrative Council in full knowledge that the freezing injunction decision was awaited and that it might be adverse to the 1971 Fund.

3.3.42 One delegation stated that the decision to wind up the 1971 Fund was a decision taken by Sovereign States which could not be affected by a national court, and that this was a matter of principle.

3.3.43 One delegation stated that, in its view, there was a possibility that the English Court might order the 1971 Fund to levy contributions. In response, the Director stated that based on advice he had received from the 1971 Fund's legal advisors, no national court could order the 1971 Fund to levy contributions, as this was a matter that could only be decided by the 1971 Fund Administrative Council, under the Convention.

3.3.44 In response to a request for details of the likely timeframe for an appeal, the 1971 Fund's legal advisor stated that it depended on whether leave to appeal was granted by the Judge. If leave to appeal was granted, an appeal needed to be lodged within 14 days, but if leave to appeal was not granted, the 1971 Fund would need to lodge an 'application for permission' within 21 days. He noted that even if it was possible to expedite matters, an outcome would likely take a matter of months not weeks.

Statement by the International Group of P&I Associations

3.3.45 The observer delegation of the International Group of P&I Associations made the following statement:

> Gard and the International Group are pleased at the Judge's decision to grant the injunction sought.
>
> The judgement has confirmed that the immunity granted to the IOPC Funds is subject to a number of exceptions and that the Club has a good arguable case that its claim in England falls within one of those exceptions.
>
> The judgement records that the Fund made clear at Court that it did not accept there was a contract for interim funding in respect of this incident at all.
>
> Gard and the International Group note that the Director has previously expressed the view that an agreement to make interim payments did exist (document IOPC/MAY14/3/10, paragraph 7.6) but that Gard's claim was 'unfounded and has no legal basis' (document IOPC/MAY14/3/10, paragraph 7.13).
>
> Gard and the International Group are pleased the Judge found that Gard's claim that an interim funding agreement existed, which covered both agreed and awarded claims, also met the good arguable case threshold.
>
> Gard and the International Group look forward to the resolution of these issues and maintain their position that the proper course of action is for the Fund to engage in resolving the merits of the claims as this delegation has already requested this week.

1971 Fund Administrative Council Decisions

3.3.46 The 1971 Fund Administrative Council noted the information provided and instructed the Director to:

(a) appeal the decision to grant a freezing injunction;

(b) contact the FCO to discuss the implications, on the 1992 Fund and the Supplementary Fund, of the judgement in which a discrepancy between the Order and the Headquarters Agreement between the UK Government and the 1971 Fund led to the freezing injunction upon the 1971 Fund;

(c) report the implications to the 1992 Fund and Supplementary Fund Assemblies; and

(d) inform the governing bodies of any developments at their October 2014 sessions.

3.4	**Incidents involving the IOPC Funds – 1992 Fund:** ***Prestige*** **Document IOPC/MAY14/3/3**		**92EC**		

3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAY14/3/3 concerning the *Prestige* incident.

Claims by the Spanish Government

3.4.2 The Executive Committee recalled that the Spanish Government had submitted claims for an amount of €984.8 million, which had been assessed by the 1992 Fund at €300.2 million. It was also recalled that two payments had been made to the Spanish Government totalling €115 million, subject to a bank guarantee and an undertaking to pay all claimants in Spain.

3.4.3 It was recalled that the Spanish Government had paid most victims of the spill in Spain but that many claimants that had not reached an agreement with the Spanish Government had submitted civil claims in the criminal proceedings in Spain.

Criminal proceedings

3.4.4 It was noted that the Audiencia Provincial (Criminal Court) in La Coruña had rendered a judgement in November 2013, finding the master, the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain, not criminally liable for damages to the environment. It was noted, however, that the master had been convicted of disobeying the Spanish authorities during the crisis and had been sentenced to nine months in prison although, having already served a period under detention, he would not serve any additional time in prison.

3.4.5 As regards the damages arising out of the incident, the Executive Committee noted that, since there was no criminal liability for damage to the environment, the Criminal Court had decided that it could not award compensation to claimants and that as a consequence, the Court had decided that the limitation fund deposited in Court by the London Club, totalling some €22.8 million, was at the Club's disposal for it to decide on its distribution, subject to any appeal by the parties.

3.4.6 It was noted that as at the May 2014 sessions of the governing bodies, the judgement was being formally notified to the parties and a number of parties had announced their intention to appeal the judgement before the Supreme Court.

Claims by the French Government

3.4.7 It was noted that the French Government's claim totalling €67.5 million had been reassessed at €41 million. It was also noted that a letter explaining the new assessment had been sent to the French Government in February 2014 and that a meeting between the French Government and the Secretariat had taken place in April 2014, where the reassessment had been discussed. It was also noted that further discussions between the French Government and the Secretariat with regard to the assessment would take place.

3.4.8 It was recalled that no payment had been made to the French Government as the Government was 'standing last in the queue'.

Civil proceedings in France

3.4.9 The Executive Committee recalled that actions by 120 claimants remained pending in French courts with claims amounting to a total of €79.1 million and that some 174 French claimants, including various communes, had joined the criminal proceedings in Spain.

3.4.10 The Executive Committee took note of a judgement rendered by the Court of Appeal in Rennes in respect of a claim by a regional authority that the 1992 Fund had assessed at an amount lower than that claimed. It was noted that the Court had awarded the claimant the full claimed amount and that since there was no matter of principle involved the Fund had accepted the judgement.

Legal action by France against the American Bureau of Shipping (ABS)

3.4.11 It was recalled that in April 2010 France had brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of ABS, the classification society that certified the *Prestige*. It was also recalled that the defendants had opposed this action relying on the defence of sovereign immunity.

3.4.12 It was further recalled that the Judge had referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings, before dealing with any other matters.

3.4.13 The Executive Committee noted that in a judgement rendered in March 2014 the Court had decided that ABS was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.

Legal action by the 1992 Fund against ABS

3.4.14 It was recalled that, following the decision of the 1992 Fund Executive Committee at their October 2012 session, the 1992 Fund had brought a recourse action against ABS in the Court of First Instance in Bordeaux. It was also recalled that ABS had submitted points of defence alleging that it was entitled to sovereign immunity. It was further noted that the proceedings in the Bordeaux Court had been stayed pending a final decision in the criminal proceedings in Spain.

Statement by the French delegation concerning ABS

3.4.15 The delegation of France made the following statement (original French):

> France considers that classification societies play an important role in safety of maritime navigation and that they must be held responsible when they issue a class certificate to a ship whose state of corrosion is a determining factor in its sinking. The question of classification societies' immunity from jurisdiction in the case of an oil spill is an important question of principle which must be decided by the courts. That is why the French State has appealed the judgement rendered by the Bordeaux High Court on 19 March 2014.

Debate

3.4.16 One delegation, referring to the judgement by the Criminal Court in Spain deciding that there was no criminal liability in this case, enquired as to the implications for civil liability, especially concerning the civil servant who had taken the decision to take the ship away from the coast. That delegation enquired particularly as to the implications for a possible recourse action.

3.4.17 The Director replied that since the Criminal Court had found no criminal liability, the Criminal Court could not judge on any civil liability arising from the damage. The Director also clarified that, if the Supreme Court were to confirm this judgement, the claimants would have to commence civil proceedings against any party they considered responsible. In other words they would have to commence new proceedings in a civil court.

3.4.18 The Director stated that this outcome showed that a criminal court was not the appropriate forum for dealing with compensation for oil pollution. He also stated that he had spoken with representatives of the Spanish Ministry of Justice to try to persuade them that compensation for pollution damage would be better dealt with by civil courts and that it might be best if Spain changed its current legislation in that respect.

3.4.19 The Director also stated that, as at the May 2014 sessions of the governing bodies, there were no grounds to consider a possible recourse action, since so far there was no criminal liability.

Statement by the French delegation concerning the assessment of the French Government's claim

3.4.20 The delegation of France made the following statement (original French):

> The French delegation thanks the Director of the IOPC Funds for this new assessment of the French State's claim.
>
> However, France informs the Executive Committee that it cannot accept this new assessment because of the questions of principle raised by the assessment methods used by the IOPC Funds' experts, in particular:
>
> - the comparison with the cost of air and naval resources of other States to evaluate the cost of French air and naval resources;
> - the partial inclusion of the fixed costs of resources employed, whereas these resources cannot be divided, and they were diverted from their defence missions for the sole purpose of combating the pollution: the cost of these resources must therefore be borne in full;
> - the retrospective analysis by the IOPC Funds' experts of the effectiveness of the oil recovery operations at sea and the choice of resources employed.
>
> France wishes to recall that the *Prestige* incident resulted in an oil spill without precedent in history in terms of the length of coastline affected by the pollution. While French air and naval resources can deal with pollution confined to a restricted zone, no ship in the world is equipped to deal with dispersed pollution which affects the coasts of several States over several months. The French State cannot be penalised in its compensation because of the exceptional characteristics of the pollution from the *Prestige*.
>
> France also recalls that it is not the prime mission of the French navy to engage in pollution prevention. The air and naval resources deployed may therefore not be perfectly suited to the type of pollution encountered, but the State has an obligation, in an emergency, to intervene with the resources at its disposition to limit as far as possible the impact of the pollution on the French coasts. France therefore rejects the retrospective analysis carried out by the IOPC Funds' experts who consider that the use of other resources would have been more reasonable, as France recalls that such resources were not available at the time.

At the meeting of 17 April 2014 with the Director of the IOPC Funds and his experts, the IOPC Funds agreed to re-examine the part of the claims file of the French State relating to the air and naval resources deployed to combat the pollution.

The discussions between the French State and the IOPC Funds will therefore continue and the French delegation welcomes the continuation of this dialogue.

Debate

3.4.21 The Director, in reply to the statement by the French delegation, stated that the Secretariat was willing to continue a constructive dialogue with the French Government, following the usual assessment procedure. He stated that the meeting in April 2014 with the French Government in Paris had been very useful and stressed that the basis of the assessment was not a comparison between countries but reasonable rates. The Director also stated that the 1992 Fund would continue with the reassessment of the French Government's claim.

3.5

Incidents involving the IOPC Funds – 1992 Fund: ***Volgoneft 139*** **Document IOPC/MAY14/3/4**		**92EC**		

3.5.1 The Executive Committee took note of the information contained in document IOPC/MAY14/3/4 concerning the *Volgoneft 139* incident.

The 'insurance gap'

3.5.2 It was recalled that in June 2012 the Arbitration Court of Saint Petersburg and Leningrad Region had delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million and that, in addition, the Court had awarded some claimants' court fees and expenses totalling RUB 318 969 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

3.5.3 It was also recalled that the Court had decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR (RUB 116.3 million). It was also recalled that, since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR (RUB 174.8 million), there remained an 'insurance gap' of some 1.51 million SDR (RUB 58.5 million). It was further recalled that in the judgement, the Court had decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident as published by the Russian Official Gazette. It was further recalled that this judgement had been confirmed by the Court of Appeal and the Court of Cassation.

3.5.4 It was recalled that in a judgement rendered in October 2013 the Presidium of the Supreme Court had ordered that the judgements of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the 1992 Fund to cover the 'insurance gap' of 1.51 million SDR and had ordered that the case be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point. The Executive Committee took note of the reasons for the decision contained in the judgement by the Presidium of the Supreme Court, which had been published in March 2014.

3.5.5 It was noted that the hearing to reconsider the case at the Arbitration Court of Saint Petersburg and Leningrad Region was scheduled to take place in May 2014.

Claims for compensation and amounts awarded by the Court

3.5.6 It was recalled that, in accordance with the decision of the Executive Committee in April 2013, the 1992 Fund had commenced making payments to claimants and that all private claimants had been paid in full with payments totalling RUB 76 247 634.

3.5.7 It was noted, however, that there still remained the three government agencies to be paid. It was noted that the 1992 Fund had made every effort to pay these claimants but that the Fund was now awaiting a reply from the claimants in order to be able to make the payments having discounted the 'insurance gap'.

Debate

3.5.8 One delegation expressed satisfaction with the judgement by the Presidium of the Supreme Court stating that it would not be in accordance with the International Conventions for the 1992 Fund to cover the 'insurance gap' and that it was very pleased that all private claimants had been paid in full. That delegation also expressed the view that there should be consequences when Contracting States failed to correctly implement the Conventions and that if a Contracting State did not comply with its obligations under the Conventions it should not enjoy the full rights and benefits provided by them. That delegation stated that it was not making a specific proposal in respect of this case but a general comment to be considered in other cases.

3.6

Incidents involving the IOPC Funds – 1992 Fund: ***Hebei Spirit*** **Documents IOPC/MAY14/3/5 and IOPC/MAY14/3/5/1**		**92EC**		

3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAY14/3/5 submitted by the Secretariat and document IOPC/MAY14/3/5/1 submitted by the Republic of Korea, in respect of the *Hebei Spirit* incident.

Claims situation

3.6.2 The Executive Committee noted that as at 6 May 2014, 128 404 individual claims totalling KRW 2 775 billion had been registered. It also noted that 128 392 claims had been assessed at a total of KRW 198.8 billion, out of which 87 175 claims had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 172 billion.

Limitation proceedings

3.6.3 The Executive Committee recalled that 127 483 claims totalling KRW 4 023 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with them. The Executive Committee further recalled that as a matter of Korean law and practice, no further claims could be registered nor could changes be made to the amounts claimed.

3.6.4 The Executive Committee recalled that in January 2013 the Court had rendered a decision regarding the distribution of the *Hebei Spirit* limitation fund, assessing the damages arising out of the *Hebei Spirit* incident at a total of KRW 738 billion and rejecting 64 270 claims.

3.6.5 The Executive Committee recalled that as a consequence of this analysis, the 1992 Fund had appealed the decision of the Limitation Court in respect of 63 163 claims where there were matters of principle involved. The Executive Committee noted that some 70 000 individual claimants had also appealed.

3.6.6 The Executive Committee noted that the Court was considering the appeals and that a decision in the objection proceedings was expected by the end of May 2014.

Legal proceedings against the 1992 Fund

3.6.7 The Executive Committee noted that as at 7 December 2013, which was the six-year anniversary of the date of the incident, 117 504 claimants had filed legal actions against the 1992 Fund in the Seosan Court and had therefore protected their rights against the 1992 Fund. The Executive Committee further

noted that the Court had decided not to progress the separate lawsuits for the time being, since the same claims were being dealt with in the objection proceedings.

Level of payments

3.6.8 The Executive Committee recalled that in June 2008, in view of the uncertainty as to the total amount of the admissible claims, it had decided that the level of payments should be limited to 35% of the amount of the damage actually suffered by the respective claimants as assessed by the Fund. It was also recalled that in subsequent meetings, the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established losses.

3.6.9 The Executive Committee recalled that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was 203 million SDR or KRW 321.6 billion. The Executive Committee noted that, on the basis of the current level of assessed claims (KRW 198.8 billion), it would be possible for the 1992 Fund to raise the level of payments to 100%.

3.6.10 It was noted that, notwithstanding the above, based on the difference between the amount claimed in the limitation proceedings, ie KRW 4 023 billion, and the amount assessed by the Limitation Court, ie KRW 738 billion, and in view of the amount disputed in the proceedings of the Court of First Instance, which was in the region of KRW 1 600 billion, the Director considered that there was still a risk that the Court might increase the amount awarded by the Limitation Court.

3.6.11 The Executive Committee noted that the Director had therefore proposed to maintain the level of payments at 35% since this would continue to provide the 1992 Fund with a reasonable protection against a possible overpayment situation, and that the level of payments should be reviewed at its next session.

Intervention by the Korean delegation

3.6.12 The Executive Committee noted that the Korean Government had submitted document IOPC/MAY14/3/5/1 to draw the Executive Committee's attention to the fact that at the end of May 2014 the Court of Seosan was expected to render its judgement with regard to the admissible amount of the claims arising from the *Hebei Spirit* incident.

3.6.13 It was noted that if the Fund waited for the final judgment before starting to make payments, it would mean that the claimants would have to wait a long time before receiving compensation. Also, the administrative costs that the Government would have to incur to fulfil the requirements of the Special Law would be significant. It was, however, noted that the Korean delegation expected that most of the uncertainties with regard to the total exposure of the Fund in this incident would be resolved by the judgement.

3.6.14 The Korean delegation therefore expressed their expectation of the Executive Committee to increase the level of payments at its next session and requested that the Fund considers the judgement of the Court of First Instance when deciding the level of payments. The Korean delegation also requested that the Fund does not delay the settlement of the remaining claims.

Debate

3.6.15 The delegations which took the floor noted that the 1992 Fund Executive Committee would have to increase the level of payments as soon as possible, however the circumstances in this incident were such that they considered it too risky to increase the level of payments at this point in time. Those delegations stated that the Executive Committee should, in deciding the level of payments, take into account all the information available and not only the decision rendered by the Court of First Instance.

1992 Fund Executive Committee Decision

3.6.16 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the amount of the established losses and to review this decision at the next session of the 1992 Fund Executive Committee.

3.7	**Incidents involving the IOPC Funds – 1992 Fund:** ***Redfferm*** **Document IOPC/MAY14/3/6**		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of document IOPC/MAY14/3/6 which related to the *Redfferm* incident.

3.7.2 It was recalled that in January 2012, the Secretariat was informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank following a transhipment operation from the tanker *MT Concep*. The barge sank spilling an unknown quantity/residue of cargo of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.

3.7.3 It was recalled that at the time of the incident, the barge *Redfferm* was used to tranship LPFO from a sea-going tanker, the *MT Concep*, to a shore-based power plant because of its reduced draft and size compared to the *MT Concep*. It was also noted that no evidence had been submitted of any sea-going voyages undertaken by the barge *Redfferm*.

3.7.4 It was also recalled that a claim was filed in March 2012 against, *inter alia*, the 1992 Fund by 102 communities for US$26.25 million; that in June 2012, the Director and members of the Secretariat visited Nigeria to ascertain further facts of the incident, attempt to meet with the barge owner and visit the affected area; and that in October 2012, preliminary information was provided by the claimants' lawyer detailing the locations of the 102 communities and the numbers of the individuals within the communities affected by the spill.

3.7.5 The 1992 Fund Executive Committee also recalled that in March 2013, the Nigerian Federal Ministry of Transport had established a Marine Board of Inquiry for the *Redfferm* incident, which was attended by the 1992 Fund's Nigerian lawyers who did not participate in the proceedings. The report of the Marine Board of Inquiry was provided to the Secretariat at the April 2013 session of the 1992 Fund Executive Committee.

3.7.6 It was recalled that during the Marine Board of Inquiry, no definitive answer was provided as to what caused the sinking of the barge and that several possibilities had been raised by the witnesses called by the Board including a collision between the tanker and barge, overloading, lack of structural integrity and poor construction. It was also recalled that according to letters of protest prepared by marine cargo surveyors, there was a shortage of delivery between the amount discharged from the *MT Concep* and the amount discharged from the *Redfferm* to the power plant, due to cargo having leaked from the barge's cargo tanks into its flotation compartments.

3.7.7 The Executive Committee also recalled that the barge had undertaken two voyages from the *MT Concep* and was about to load for the last voyage when the incident occurred. The oil remaining on board amounted to approximately 100 tonnes of LPFO and it was this residue that had been spilled.

Reasons for rejection of claims

3.7.8 It was noted that in February 2014, the 1992 Fund wrote to the claimants' representative rejecting the claims submitted for the following reasons:

(a) The barge *Redfferm* was not a 'ship' under Article I.1 of the 1992 Civil Liability Convention;
(b) There were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
(c) A lack of information submitted to prove the claimants' identities and occupations.

The barge Redfferm was not a ship under Article I.1 of the 1992 CLC

3.7.9 It was noted that no evidence of the barge *Redfferm* having been built as a sea-going vessel in accordance with relevant classification regulations had been submitted. Moreover, at the time of the incident, the barge *Redfferm* was only certified for use in the inland waters of Nigeria but not for use at sea, and no evidence had been submitted to show that the barge *Redfferm* was ever used or certified to carry persistent oil at sea.

Large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area

3.7.10 The 1992 Fund Executive Committee noted that a claim had been submitted for more than three boats and three boat engines per claimant, which was excessive and implausible. Furthermore, the Executive Committee also noted that another claim had been submitted for over 6 000 replacement boat engines. It was further noted that no supporting documents had been submitted in support of the claims for damaged boats, nets or engines.

3.7.11 The 1992 Fund Executive Committee also noted that the number of nets, boats and engines claimed per claimant did not reflect the reality of the fishermen working and living within the Lagos lagoon area. The Executive Committee further noted that the claims submitted for the number and value of damaged nets and for the costs of cleaning boats were exaggerated and were not consistent with other contemporary scientific data.

Lack of information submitted to prove the claimants' identities and occupations

3.7.12 It was noted that no information had been submitted to prove the claimants' identities and occupation at the time of the incident, and that the only information submitted was a spreadsheet of names of individuals and their claimed losses. It was also noted that as a consequence, it was not possible for the 1992 Fund to verify the identities of the claimants or to ascertain their occupations at the time of the incident.

Legal proceedings

3.7.13 It was recalled that in March 2012 a claim for US$26.25 million was filed by 102 communities against the owners of *MT Concep*, the owners of *Redfferm*, Thame Shipping Agency Ltd (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

3.7.14 It was also recalled that in February 2013, the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. It was recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.

Director's considerations

3.7.15 The 1992 Fund Executive Committee noted that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent cooperation it had provided to the Secretariat, without which the Secretariat would have faced difficulty in obtaining information about the incident.

3.7.16 The 1992 Fund Executive Committee also noted that since the *Redfferm* was not a 'ship' within the definition of Article I.1 of the 1992 CLC, the 1992 Conventions did not apply to this incident.

3.7.17 The 1992 Fund Executive Committee further noted that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims submitted had been rejected.

3.7.18 It was noted that the legal proceedings in Nigeria were continuing, and that the 1992 Fund would defend its position that the losses claimed had not been proved, before the Nigerian courts.

Intervention by the delegation of Nigeria

3.7.19 The Nigerian delegation thanked the Director and Secretariat for their support with this incident but stated that it had no further comments to make, having already provided information at previous sessions of the 1992 Fund Executive Committee.

Debate

3.7.20 In response to questions from one delegation as to when the incident could be declared closed, the Executive Committee noted that since claims had been filed at the Nigerian court, the matter remained active, and it was therefore not possible to say with certainty how long this matter would take to close.

3.7.21 One delegation stated that it appeared clear that the vessel involved was not a 'ship' pursuant to Article I.1 of the 1992 Fund Convention, but that the final decision rested with the Nigerian courts.

3.7.22 The 1992 Fund Executive Committee noted the information provided and that the Director would continue to monitor the legal proceedings in Nigeria and report the developments to the Executive Committee in the future.

3.8

Incidents involving the IOPC Funds – 1992 Fund: ***JS Amazing*** **Document IOPC/MAY14/3/7**		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of document IOPC/MAY14/3/7 which contained information relating to the *JS Amazing* incident.

3.8.2 It was recalled that in May 2011 the 1992 Fund was informed of an incident which occurred in June 2009 in which the tanker *JS Amazing* spilled an unknown quantity of low pour fuel oil into the Warri River, Delta State, Nigeria.

3.8.3 It was also recalled that in March 2012 the 1992 Fund was provided with the background facts surrounding the incident by the Nigerian Federal Ministry of Transport who had established a Marine Board of Inquiry to carry out an investigation into the cause of the spill, and that in April 2012, the Marine Board of Inquiry had published its report.

Claims for compensation

3.8.4 The Executive Committee recalled that in May 2012 a claim for NGN 30.5 billion was filed against, *inter alia*, the 1992 Fund by 248 communities. It was recalled that the claims submitted comprised claims for damage to fishing gear, loss of earnings from fishing, damage to economic trees and crops, general damage to communities, displacement and ecological damage and damage to ancestral shrines.

Reasons for rejection of claims

3.8.5 The Executive Committee noted that the 1992 Fund's experts had analysed the claims submitted by comparing them to the reports produced following the NOSDRA joint investigation visit with PPMC conducted in 2009, together with other published scientific papers on fishing gear and fishing practices

in the Warri Delta region, and had found in many cases that there were very large discrepancies between the claims submitted and the information available on the type and number of items of fishing gear contaminated by oil.

3.8.6 The Executive Committee also noted that an analysis of the loss of earnings revealed large discrepancies between the claims for lost income submitted and other available data which advised that the typical monthly wage earned was in the region of NGN 5 000, but that the claims submitted were often in many multiples of this figure.

3.8.7 The 1992 Fund Executive Committee noted that for these reasons, the 1992 Fund had rejected the claims in January and February 2014.

Legal proceedings

3.8.8 The Executive Committee recalled that in May 2012, the claim by 248 communities had been filed against the 1992 Fund, the shipowner and the joint liquidators of the South of England P&I Club.

3.8.9 The Executive Committee recalled that in July 2012, the 1992 Fund had applied to strike itself out as a defendant, but had also sought leave to be an intervenor on the basis that primary liability for the first tier of compensation rested with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.

3.8.10 The Executive Committee recalled that in March 2013, upon the claimants' application, the Court had ordered the arrest and detention of the *JS Amazing*, pending the provision of a bank guarantee to cover the claim or the deposit of the sum of NGN 30.5 billion into court. It was also recalled that the vessel was located at Kirikiri jetty and, pending further information, was believed to still be under arrest.

3.8.11 It was noted that in March 2014, the Judge granted the 1992 Fund's application to strike itself out as a defendant and to be replaced as an intervenor.

Director's considerations

3.8.12 The Executive Committee noted that the Director was very grateful for the assistance provided by the Nigerian delegation and the excellent co-operation it had provided to the Secretariat, without which the Secretariat would have faced difficulty obtaining information, given the location of the incident.

3.8.13 The Executive Committee also noted that the lack of specific information submitted did not enable the 1992 Fund to assess the claims submitted positively and, as a consequence, the claims submitted had been rejected.

3.8.14 The Executive Committee further noted that the legal proceedings in Nigeria were still continuing and that the Secretariat would inform the Court of the 1992 Fund's assessment of the claim.

Intervention by the delegation of Nigeria

3.8.15 The Nigerian delegation thanked the Director and the Secretariat for their support with this incident, but stated that they had no further comments to make, having already provided information at previous sessions of the 1992 Fund Executive Committee.

Debate

3.8.16 Several delegations stated that although the aim of the 1992 Fund was to pay compensation to victims of oil spill incidents, this incident highlighted the requirement for Member States to notify the 1992 Fund promptly when an incident occurred, in order to enable the claimants to retain and submit documents, and to assist the Secretariat to subsequently assess the claims.

3.8.17 One delegation stated that the incident provided a number of lessons to learn for Member States, the 1992 Fund and claimants. Several delegations expressed support for the 1992 Fund's decision to reject the claims submitted, due to the lack of supporting information.

3.8.18 The 1992 Fund Executive Committee noted the information provided and that the Director would continue to monitor the legal proceedings in Nigeria and report back to the Executive Committee in the future.

3.9	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/MAY14/3/8**		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of document IOPC/MAY14/3/8 which contained information relating to the *Alfa I* incident.

3.9.2 The 1992 Fund Executive Committee recalled that on 5 March 2012, the tanker *Alfa I* hit the submerged wreck of the *City of Mykonos* while crossing Elefsis Bay near Piraeus, Greece. Shortly thereafter the *Alfa I* listed over onto her starboard side and sank, resulting in the tragic loss of the master's life.

Claims situation

3.9.3 The Executive Committee recalled that in October 2013, the clean-up contractors had filed a claim against the shipowner and the shipowner's insurer before the Court of First Instance in Piraeus for some €16.1 million.

3.9.4 The Executive Committee noted that in February 2014, the 1992 Fund had filed an intervention before the Court to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractors. It was noted that a date was set for October 2014 to hear the clean-up contractor's claim and the 1992 Fund's intervention.

The insurance situation

3.9.5 The 1992 Fund Executive Committee recalled that the Director was of the view that, although in the event that the *Alfa I* was not carrying more than 2 000 tonnes of persistent mineral oil at the time of the incident, the primary liability for any pollution damage caused as a result of the incident under the 1992 Civil Liability Convention rested with the shipowner (Article III.1 of the 1992 CLC). The Executive Committee also recalled that the shipowner would be entitled to limit its liability to 4.51 million SDR (Article V.1(a) of the 1992 CLC), if it established a limitation fund.

3.9.6 The Executive Committee further recalled that there was a contradiction between the terms of the insurance policy and the blue card presented to the Greek State by the shipowner's insurer, Aigaion Insurance Company, because the insurance policy was limited to some €2 million with an express warranty that only non-persistent mineral oils would be covered, whereas the blue card stated that an insurance policy was in place which complied with Article VII of the 1992 CLC "where and when applicable".

3.9.7 It was noted that in view of the contradiction between the insurance policy and the blue card, and because the insurance policy was subject to English law and jurisdiction, the 1992 Fund had instructed a barrister to advise on the legal implications under English law of the warranty contained within the insurance policy.

The conclusions of the 1992 Fund's legal advisor

3.9.8 It was noted that in the view of the Fund's legal advisor, the insurer was liable for the full limit of liability under the 1992 CLC, namely 4.51 million SDR because it was the insurer under Article VII.8 of the 1992 CLC; it caused a certificate to be issued by the Greek authorities, attesting that insurance

was in force in accordance with the provisions of the Convention; and it did not matter that compulsory insurance was not obligatory in accordance with Article VII.1 of the 1992 CLC.

3.9.9 It was noted that in the view of the Fund's legal advisor, the insurer's liability arose regardless of the apparent contradiction between the certificate and the insurance policy and that there were sound justifications for holding an insurer liable in circumstances where its own conduct had led directly to a certificate being issued under Article VII.2 of the 1992 CLC, even if that certificate has been issued incorrectly.

3.9.10 It was also noted that the Fund's legal advisor considered that the 1992 CLC restricted the ability of the insurer to use defences which it might otherwise have been entitled to invoke, in proceedings brought by the owner against it. Specifically, he was of the view that this prevented the insurer from relying on the warranty contained within the insurance policy.

3.9.11 It was noted that the Fund's legal advisor was of the view that the insurer would not be able to limit its liability to €2 million.

Intervention by the delegation of Greece

3.9.12 The delegation of Greece made the following statement:

> First of all, I would like to express our great appreciation to the Director and the Secretariat for the produced document.
>
> Madam Chair, allow me to note that this delegation, consecutively with our interventions during the discussions for this incident, has provided the Executive Committee with detailed information, based on evidence given by the Hellenic Customs, ELPE Refineries and the shipowner, regarding the quantity and the quality of the oil the tanker *Alfa I* was carrying at the time of her sinking. Apart from our interventions during the previous meetings of the Executive Committee, please underline that the accurate number of carrying cargo and bunker fuel is extensively reported in the document IOPC/APR13/3/9/1 submitted by Greece.
>
> Moreover, I would like to note that the penal investigation of the incident by the prosecutor of Athens is still in progress and the hearing of the case at the Civil Court of Piraeus has been set for October 2014.
>
> This delegation is fully committed to keep the Executive Committee informed about any latest development regarding this incident, at our future meetings.

Debate

3.9.13 One delegation, whose views were supported by two other delegations, stated that it was clear that the Greek Government had issued a certificate based on the blue card presented by the insurer in respect of the Bunkers Convention and the 1992 CLC, and that in its view, the insurer should cover up to the 1992 CLC limit. That delegation also stated that the insurance policy between the shipowner and the insurer was simply a contract between two parties, with no consequence to the rights of third parties, including the 1992 Fund.

3.9.14 That delegation also stated that at the recent meeting of the IMO Legal Committee, it had been decided that the guidelines relating to insurance providers which had previously been issued to Member States regarding the adoption of Bunker Certificates, were to be extended to the presentation of blue cards issued by insurers for certificates for the 1992 CLC, 2010 HNS Convention and Wreck Removal Convention.

3.9.15 Another delegation stated that the incident presented interesting questions regarding the issue of insurance certificates based on blue cards provided by insurers. That delegation stated that it shared

the views of the Director, as expressed by the 1992 Fund's legal advisor, and that under the specific facts in this case the insurer should not escape liability up to the 1992 CLC limit.

3.9.16 The Greek delegation stated that in the view of the Greek Government, the ship was fully insured under the 1992 CLC and the evidence was clear that the insurer had submitted the blue card in order to receive certificates under the 1992 CLC.

3.10	**Incidents involving the IOPC Funds – 1992 Fund:** ***Nesa R3*** **Document IOPC/MAY14/3/9**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAY14/3/9.

3.10.2 The Executive Committee recalled that on 19 June 2013 the 856 GT tanker *Nesa R3*, carrying 840 tonnes of bitumen, sank off the Port Sultan Qaboos, Muscat, Oman. The pollution affected 40 kilometres of the coast of Oman. Tragically the master of the *Nesa R3* lost his life while trying to save his vessel.

3.10.3 The Executive Committee recalled that the *Nesa R3* had been carrying less that 2 000 tonnes of persistent oil as cargo and, as such, was not required to maintain insurance. Notwithstanding this, the owners of the *Nesa R3* had taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka. However, the insurer had declared that the insurance policy would not cover this incident.

3.10.4 The 1992 Fund Executive Committee recalled that at its October 2013 session they had authorised the Director to make payments of compensation in respect of admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

3.10.5 The Executive Committee recalled that two claims for clean-up related activities, totalling OMR 508 133 had been received. The Executive Committee noted that these claims were being assessed by the experts engaged by the 1992 Fund. The Executive Committee also noted that further claims were expected for at sea and onshore clean-up operations as well as for surveys of the wreck and for economic losses in the fisheries and tourism sectors, together with any other related expenses.

3.10.6 The Executive Committee noted that the shipowner had not yet responded to requests from the Omani Government to pay compensation for the pollution damage caused by the incident.

3.10.7 The Executive Committee further noted that the Omani Government had informed the 1992 Fund that it had commenced legal proceedings against the shipowner in the Court of Muscat and that the next hearing of the Court was expected in late May 2014.

3.10.8 The Executive Committee noted that under Article 4.4(e) of the 1992 Fund Convention, the total amount available for compensation for an incident shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

3.10.9 The Executive Committee noted that, based on the value of the Omani Rial in respect of the SDR on the date of the adoption of the Record of Decisions of the October 2013 sessions of the 1992 Fund's governing bodies, ie 25 October 2013 (1 SDR = OMR 0.59521), the total amount available for compensation under the 1992 Civil Liability and Fund Conventions for this incident was OMR 120 827 630.

Intervention by the delegation of Oman

3.10.10 The Omani delegation thanked the 1992 Fund for its assistance. It stated that the Omani Government intended to maintain the same level of cooperation with the 1992 Fund and that it would endeavour to wrap up the pending issues arising out of the incident in the near future.

1992 Fund Executive Committee Decision

3.10.11 The 1992 Fund Executive Committee decided to approve the calculation of the total amount available for compensation under the 1992 Civil Liability and Fund Conventions for this incident at OMR 120 827 630 (£189 million) based on the value of the Omani Rial in respect of the SDR on the date of the adoption of the Record of Decisions of the October 2013 sessions of the 1992 Fund's governing bodies, ie 25 October 2013.

4 Compensation matters

4.1

Guidelines for presenting claims for clean up and preventive measures **Document IOPC/MAY14/4/1**	**92AC**			
Assessment of the claim of a State in case of a disaster **Document IOPC/MAY14/4/2**	**92AC**			

Information for claimants – Guidelines for presenting claims for clean up and preventive measures – Document IOPC/MAY14/4/1, submitted by the Secretariat

4.1.1 The 1992 Fund Administrative Council noted that the new Claims Information Pack had been made available in March 2014 and that any future guidelines adopted by the 1992 Fund Assembly for the submission of claims in specific sectors would be added to this package as they became available.

4.1.2 It was noted that since the October 2013 sessions of the governing bodies a set of guidelines to assist States with the submission of claims for clean up and preventive measures had been developed. The Administrative Council noted the information contained in document IOPC/MAY14/4/1 and the draft Guidelines which were contained in the Annex to that document and which were presented to the Administrative Council for its consideration and approval.

4.1.3 It was pointed out that in developing the draft Guidelines, the aim of the Secretariat had been to ensure that they were compatible with the Claims Manual and specifically aimed at governments as well as clean-up operators. The Administrative Council noted that the draft Guidelines included information relating to the types of clean-up claims which would be admissible and the costs which would be covered in the event of an incident. The draft Guidelines also contained lists of the information required in support of the different types of claim, including those for personnel costs and equipment hire etc. It was noted that detailed examples and spreadsheets were provided showing possible acceptable methods for calculating claims for various response equipment.

Assessment of the claim of a State in case of a disaster – Document IOPC/MAY14/4/2, submitted by France, Spain and the United Kingdom

4.1.4 The French delegation presented document IOPC/MAY14/4/2 as follows (original French):

> Document IOPC/MAY14/4/2 on "Assessment of the claim of a State in case of a disaster" seeks to share with other States the experience gained by France, the United Kingdom and Spain on the subject of compiling a claims file following a pollution incident.
>
> This document, which presents various approaches to the calculation of personnel costs or costs of air and naval resources, demonstrates the diversity of legal and accounting rules applicable in each State.
>
> At the last session of the IOPC Funds, France raised the need for equal treatment of States in the event of an incident. The IOPC Funds cannot demand more evidence from one State compared to others.
>
> However, uniform treatment of States' compensation claims which seeks to compare costs between States and which does not take into account the specific budgetary and accounting

characteristics of each State would be discriminatory. Only compensation of States on the basis of the real cost of the resources employed to combat the pollution can guarantee equal treatment of States in the event of an oil spill. It is therefore up to the IOPC Funds to adapt to the accounting rules of the affected State to assess its loss.

In this document, France, the United Kingdom and Spain propose the adoption of several rules for assessment of the losses of an affected State in order to facilitate dialogue with the IOPC Funds in the event of an incident (see paragraph 6 of the document).

France, the United Kingdom and Spain do not ask that the assessment of the loss should be adapted to each State. However, the three States are requesting the IOPC Funds to take into account the context of each State and the particular nature of each incident and not to apply uniform methods of calculation based on theoretical models disconnected with reality.

France wishes to remind all delegations that the proposals set out in this document will have no impact on the compensation of the French State in the *Prestige* case. The compensation ceilings set out in the Conventions are, indeed, too low to allow compensation of the French State, which is ranked last in the list of beneficiaries of the IOPC Funds compensation.

Lastly, France wishes to clarify an important point. The aircraft and ships deployed by the French navy in the event of a pollution incident are not the most modern crafts designed for warfare, but rather aircraft and patrol vessels designed to assess the situation in the zone, report and inform the authorities.

4.1.5 The delegation of the United Kingdom emphasised that the 1992 Fund should always take into consideration in their assessment the national rules of the affected States.

4.1.6 The delegations of France, Spain and United Kingdom made the following proposals for consideration by the Administrative Council:

(i) If a disaster occurs, the affected State must inform the IOPC Funds as soon as possible of the methods used to calculate its damage and the types of evidence it intends to submit in support of its claim;

(ii) If the IOPC Funds want to obtain more evidence, it must request it from the affected State when the cleaning operations are still underway to allow the State to collect such evidence;

(iii) The IOPC Funds must take into account the administrative and budgetary specificities of each State and must not ask an affected State to line up with the practices of other States;

(iv) The IOPC Funds must undertake the assessment of the damage of the affected State as soon as possible, even if it puts itself last on the list of beneficiaries for the compensation;

(v) The IOPC Funds must use the data and information tools available at the time of the disaster to evaluate the decisions taken by the authorities. The measures which proved to be ineffective but which were deemed necessary by the authorities must be compensated; and

(vi) The IOPC Funds must indemnify the States according to the rates they have been able to negotiate with private companies and not according to tariffs which are applied without any emergency.

Statement by the Director

4.1.7 The Director thanked France, Spain and the United Kingdom for document IOPC/MAY14/4/2. He was pleased to note that the position expressed in that document followed closely the position set out in the draft Guidelines. He suggested that in fact the majority of the proposals made by the co-authors of the document were already covered in the draft Guidelines and made the following comments in respect of each proposal.

(i) Prompt submission of information in anticipation of a claim is of paramount importance. This issue is covered in section 3 of the draft Guidelines.

(ii) It is very difficult to know at the beginning of an incident which information will be required to assess the claim. However, the Guidelines address this issue in section 7.3 of the document, where extensive lists of supporting information are provided for the claimants' reference.

(iii) The 1992 Fund already considers the specific circumstances of a State when assessing the admissibility of a claim, and it endeavours to assess each claim on its own merits.

(iv) The issue of the prompt assessment of damages of the affected State, even if the latter has agreed to 'stand last in the queue' for compensation, is addressed in section 6.3 of the Guidelines.

(v) The 1992 Fund always assesses claims on the basis of the data and information tools available at the time the measure was taken by the authorities. However, the second part of the proposal in paragraph 6.1 (v) of document IOPC/MAY14/4/2, if approved, would heavily restrict the 1992 Fund's ability to assess claims based on their reasonableness, in accordance with the International Conventions; and

(vi) The 1992 Fund had always accepted that, in the initial phases of the response to an incident, decisions in respect of operations, particularly at sea, may be taken under emergency circumstances. However, once the emergency has been addressed and the incident enters into a project-management phase, the Fund expects the government to review the measures to be undertaken and re-negotiate the corresponding costs accordingly.

Debate

4.1.8 Before opening the debate, the Chairman proposed that the clean up Guidelines would not be considered for approval at this session since a number of issues that would impact on the Claims Manual and consequently on the clean up Guidelines, would be considered at the October 2014 session of the 1992 Fund Assembly. This would also allow delegations to have time to consider the Guidelines and to provide comments to the Secretariat. The Chairman therefore proposed that the Administrative Council would not approve the Guidelines for publication in their current format nor decide upon the proposals set out in document IOPC/MAY14/4/2 at this stage.

4.1.9 All delegations who spoke thanked the Secretariat for the draft Guidelines and welcomed the effort of the Secretariat to present a clear and detailed document. The delegations also thanked the three States which submitted the document for having shared their knowledge and experience with regard to responding to a major oil spill.

4.1.10 The majority of the delegations who took the floor, whilst agreeing in general terms with the proposals in document IOPC/MAY14/4/2, raised various concerns, in particular with regard to the concept of 'emergency', the possibility of fraud and the fact that the language of some of the proposals was too prescriptive and would therefore excessively limit the ability of the 1992 Fund to assess the reasonableness of the claims.

4.1.11 Many delegations also considered that more time was needed to review in depth both the draft Guidelines and the proposal made by the three States. Those delegations therefore welcomed the Chairman's proposal to postpone any decision to a later session of the 1992 Fund Assembly.

4.1.12 The delegation of Norway thanked the Director for the draft Guidelines, which that delegation considered would provide good assistance to States and clean-up operators. That delegation also clarified that the comments from Norway quoted in document IOPC/MAY14/4/2 did not refer to oil pollution claims under the international regime, but to the national schemes and regulations for environmental pollution. That delegation noted that in that document, there was no mention of the test of reasonableness and that in its view, to be accepted by the Fund, each claim should be found to be reasonable.

4.1.13 The delegation of Spain noted that the differences between the Guidelines and the proposals made in document IOPC/MAY14/4/2 were limited to the specific part of the Guidelines referring to which costs are covered and, fundamentally, the use of aircraft, vessels and equipment and that therefore discussions could be conducted between the three co-authors and the Secretariat with the aim of finding a mutually agreeable text before the next session of the 1992 Fund Assembly.

4.1.14 Some delegations noted that, if the proposals were agreed as they were and incorporated into the Guidelines, the resulting amended text would be in contradiction with the Conventions and the Claims Manual and in general with the principles of reasonableness and admissibility agreed by Member States.

4.1.15 Several delegations expressed their interest in the document of the three States, unreservedly supporting all the proposals contained in it. Some delegations considered it to be very practical. One delegation suggested that the general considerations at the beginning of the document could be included verbatim in the guidelines.

4.1.16 The observer delegation of the International Group of P&I Associations noted that, since the Guidelines were aimed at responders submitting claims under the international regime of compensation, the draft Guidelines could be expanded to cover more information on the role of the shipowner and its insurers. That delegation expressed its concern about the reference made in the Guidelines to the SCOPIC rates, since these rates had been developed specifically for salvage operations, and therefore took into account the risks inherent to these operations. That delegation suggested that the inclusion of the SCOPIC rates in the Guidelines might encourage inflated claims. That delegation also suggested a number of amendments to be made and offered to cooperate to the Secretariat on the further drafting of the Guidelines.

4.1.17 The observer delegation of the International Tanker Owners Pollution Federation (ITOPF) pointed out that the SCOPIC rates would not normally be used in the assessment of claims, since the preferred method was always to assess a claim based on the actual costs. That delegation informed the Administrative Council that they also had a number of comments and suggestions for amendments of the text of the draft Guidelines and that they would be happy to share these comments with the Secretariat intersessionally.

Statement by the delegation of France

4.1.18 The delegation of France took the floor to respond to the questions and comments raised by the other delegations and to comment on the Guidelines (original French):

> The French delegation thanks the IOPC Funds Secretariat for this document and wishes to make several observations.
>
> In paragraphs 3.6, 7.2.3 and 7.2.5, it is indicated that IOPC Funds experts are present to 'monitor' clean-up operations. France recalls that the CLC and IOPC Funds Conventions do not contemplate the loss of sovereignty of States and the monitoring of the latter by the IOPC Funds. France therefore requests the replacement of this term by that of 'advise'.
>
> France does not share the analysis by the IOPC Funds concerning the use of air and naval resources to tackle pollution presented in section 5 of the document.

Indeed, the IOPC Funds cannot retrospectively challenge the 'reasonable' character of a State's decisions in response to the crisis. The resources employed are chosen on the basis of specific need in terms of availability and capacity. At sea, long-range deep-sea resources may be necessary, although their cost may be higher than light coastal resources.

A similarity with civil resources cannot be justified, as their availability and responsiveness are not comparable, and the charges for ad hoc contracting in an emergency are not precisely known. Likewise, the cost of air and naval resources belonging to one State cannot be compared to those of other countries.

Furthermore, the resources that a State makes available to manage the crisis are no longer available to carry out their normal defence mission. The totality of their costs for the days of their mobilisation must therefore be eligible for compensation, the more so because it is not possible to separate costs which, in a ship or aircraft, relate to its military purpose and those which relate to its anti-pollution deployment. France therefore requests the deletion of the second example in paragraph 5.11.

Lastly, France is surprised to see in paragraph 5.11 a table showing a method of calculating the costs of an anti-pollution vessel which had been sharply criticised at the last session, in particular by the British delegation. France also requests the deletion of that table which imposes a theoretical method of calculation which is divorced from reality.

In paragraph 5.15, it is indicated that claims for compensation relating to shoreline clean-up should be based on prices and wages charged locally and that the experts should compare them with commercial rates.

France considers that this paragraph is too restrictive as it only takes into account situations in which the State engages private companies to clean up the shoreline. In France, municipal staff, armed forces personnel or public employees are usually used to clean up beaches. Wages and the cost of using state vehicles are therefore calculated according to fixed scales, which cannot be compared to commercial charges. The French delegation therefore requests the addition of a paragraph to take account of the situation of a State using its own resources.

France signals its agreement to work with P&I Clubs and the IOPC Funds to improve the Guidelines.

Statement by the observer delegation of ISCO

4.1.19 The observer delegation of ISCO made the following statement:

Staff changes have been mentioned in relation to the difficulty in presenting claims. There is also the question of reasonableness/proportionality. In this connection, ISCO is now offering a new approach to incident response.

This new approach comprises a repository of knowledge supportive of a knowledge-only contingency plan based on the physiochemical parameters which control the fate and effects of releases, which determine prevention and response, and which by their incident-specific values predict incident-specific fates and effects, thus enabling incident-specific prevention and response to be cost-effective.

Thus on completion of this approach, coastal states will have access to a repository of knowledge secure against staff-changes and a contingency plan from which even fresh staff will be able to prepare and execute incident-specific-plans which will enable predictions made, decisions taken, accredited contractors employed, results obtained, and costs incurred to be reported to the IOPC Funds in fully documented form and to IMO for enhancement of the shared repository of knowledge.

A paper justifying this approach will be available for MEPC 67 and a shorter version in relation to claims-settlement will be available for the October 2014 meeting of the IOPC Funds.

4.1.20 The Director thanked the co-authors of document IOPC/MAY14/4/2 and all the delegations who took the floor for their valuable feedback. In particular, he thanked France, Spain and the United Kingdom for providing information on personnel rates. He noted that such information could be used as the basis for establishing agreed rates with those member States in advance of a spill, as suggested in paragraph 8.2 of the draft Guidelines. The Director further welcomed the offer of cooperation by France, the International Group of P&I Associations and ITOPF to work on the draft Guidelines.

4.1.21 The Director further proposed to the Administrative Council that, in view of the already heavy agenda of the October 2014 meetings of the Governing bodies, the Administrative Council might wish to consider postponing the review of the draft Guidelines to the spring 2015 session of the 1992 Fund Assembly.

1992 Fund Administrative Council Decision

4.1.22 The 1992 Fund Administrative Council noted the intention of the Director to revise the draft Guidelines in view of the comments and suggestions made during the discussion and taking into account any further comments that might be provided intersessionally. The Administrative Council also noted that a number of matters which would be discussed during the October 2014 meetings might also have an impact on the text of the Guidelines and should also be taken into consideration when finalising the draft text.

4.1.23 The Administrative Council agreed that the revised draft Guidelines should be further discussed by the 1992 Fund Assembly during the spring 2015 meetings of the governing bodies.

5 Financial policies and procedures

5.1	**Appointment of the External Auditor** **Document IOPC/MAY14/5/1**	**92AC**		**71AC**	

5.1.1 The governing bodies took note of document IOPC/MAY14/5/1, submitted by the Audit Body, on the appointment of the External Auditor which was presented by Mr Michael Knight, external expert on the joint Audit Body.

5.1.2 Mr Knight reminded the governing bodies that the term of office of the current External Auditor would expire following the audit of the IOPC Funds' Financial Statements for the 2014 calendar year. He noted that section 2 of the document summarised the considerations of the governing bodies at their October 2013 sessions and recalled that during those sessions it had been noted that the vacancy for the position of External Auditor would be filled by way of competitive tender following nominations from 1992 Fund Member States. He also recalled that the process would be managed by the Audit Body under the terms of its mandate with a view to making a recommendation to the October 2014 sessions of the governing bodies and that the timetable for the tender process reflected the desire to effect a smooth transition of responsibilities to the new External Auditor prior to the audit of the 2015 Financial Statements.

5.1.3 The governing bodies noted that no valid nominations for the position of External Auditor had been received either by the original deadline of 31 January 2014 or, indeed, by the extended deadline of 14 March 2014. Mr Knight reported that at its April 2014 meeting the Audit Body had discussed this matter and it was keen to learn from Member States the possible reasons for the lack of response.

5.1.4 Mr Knight also reported that the Audit Body had considered the way forward given the need to ensure that the position of External Auditor to audit the Financial Statements for the years 2015 to 2018 inclusive (or for any such other period as decided by the governing bodies) was not left vacant.

5.1.5 Mr Knight noted that the proposals in section 4 of the document reflected the Audit Body's view that a repeat of the tender process under the existing Financial Regulations might not yield a result and that it was therefore desirable to extend the criteria for eligibility as External Auditor. He noted the Audit Body's view that there was inadequate time to conduct a tender process such that a new External Auditor could be appointed in October 2014 and that, accordingly, the Audit Body was recommending that the current External Auditor, the Comptroller and Auditor General of the United Kingdom (National Audit Office) be re-appointed for one further year. He noted that the Audit Body was also recommending a change to Financial Regulation 14.1 of all three Funds in October 2014 to extend eligibility for the position of External Auditor to commercial firms. He stated that the proposed change would not, however, preclude nominations of the Auditor-General (or officer holding the equivalent title) of 1992 Fund Member States being made as at present.

5.1.6 Mr Knight said that the Audit Body was proposing that these recommendations should be put to the October 2014 sessions of the governing bodies, together with a proposal that the Audit Body be instructed to conduct a new competitive tender process for the audit of the 2016 Financial Statements in accordance with its Composition and Mandate. He noted that, in addition, the Audit Body was proposing to draw up a list of six to ten commercial firms with international representation who would also be invited to tender for the appointment. Mr Knight also noted that, in framing these recommendations, the Audit Body had considered cost implications.

5.1.7 Mr Knight concluded by saying that the Audit Body would welcome comments from Member States as to the possible reasons why the attempts to hold tenders had been unsuccessful as this would help guide future tender processes. He also welcomed any observations from the governing bodies regarding the recommendations set out in paragraph 4.9 of the document.

Debate

5.1.8 In response to the Audit Body's request for reasons as to why the attempts to hold tenders had been unsuccessful, one delegation reported that its National Auditor had indicated that its existing workload and limited resources did not allow it to take on the audit of the IOPC Funds, although a positive response could not be ruled out in the future. That delegation stated that the travel costs had not been a deterrent in putting forward its nomination although it suggested that the use of video-conferencing could be considered for some meetings for which travel to London was not essential. Another delegation stated that it had not consulted its National Auditor but it was of the view that national reporting restrictions would prevent it from tendering for the position of External Auditor of the IOPC Funds and that this might be an obstacle for other States. A further delegation reported that it had also reported the vacancy to its National Auditor and had attempted to stimulate interest in the role but a nomination had not been forthcoming. That delegation suggested that it might try again to prompt a nomination. Two further delegations reported that they had informed their National Auditors of the vacancy but that nominations had not resulted, again possibly due to their current workload.

5.1.9 Several delegations indicated that they agreed with the reappointment of the current External Auditor for one more year. Most delegations that spoke supported the Audit Body's view that changes needed to be made to the Financial Regulations to allow for commercial firms to tender for the appointment as External Auditor, in addition to the Auditor-General of a 1992 Fund Member State. However, one delegation requested the Secretariat to examine why the current restriction to National Auditors was in place and what the practice was in other international organisations, and to report back to the governing bodies. Another delegation asked if the position was also opened to commercial auditors whether priority would be given to National Auditors. It felt that consideration should be given to this by the Audit Body. That delegation also felt that the Audit Body should undertake one final attempt to recruit a National Auditor.

5.1.10 Several delegations expressed concern that the cost of the external audit might increase if commercial firms were allowed to tender for the position. One delegation also highlighted the need for strict criteria in respect of qualifications and financial stability to be in place if commercial firms were to be considered.

5.1.11 The 1992 Fund Administrative Council and 1971 Fund Administrative Council considered the following recommendations, in advance of taking decisions on them at the October 2014 sessions:

(i) that the Comptroller and Auditor General of the United Kingdom (National Audit Office) be appointed to serve as External Auditor of the IOPC Funds for an additional year, ie to audit the Financial Statements for the year 2015 and present the Report on the Financial Statements to the governing bodies in October 2016;

(ii) that the Auditor General (or officer holding the equivalent title) of 1992 Fund Member States could be nominated by 1992 Fund Member States to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(iii) that, in addition, commercial firms with the requisite capabilities could also be nominated by 1992 Fund Member States to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(iv) furthermore, that the commercial firms with international representation identified by the Audit Body could also be invited to tender for the appointment of External Auditor to audit the Financial Statements commencing with the 2016 financial year;

(v) that the governing bodies at their October 2014 sessions approve an amendment to Financial Regulation 14.1 of the 1992 Fund, the Supplementary Fund and the 1971 Fund Administrative Council respectively to allow for the appointment of commercial firms; and

(vi) that, in accordance with its Composition and Mandate, the Audit Body be instructed to conduct a competitive tender process for the selection of the External Auditor to conduct the audits of the Financial Statements for 2016-2019 (or for any such other period as may be decided by the governing bodies).

5.2	**Appointment of members of the fifth Audit Body** **Document IOPC/MAY14/5/2**	**92AC**		**71AC**	

5.2.1 The governing bodies took note of the information contained in document IOPC/MAY14/5/2.

5.2.2 The governing bodies noted that the term of office of the current Audit Body would expire at the October 2014 sessions of the governing bodies and that an election of the members for a new term of office would take place at the same sessions. The governing bodies further noted that three members of the current Audit Body had already served two terms of office and were therefore not eligible to serve a third term whereas the remaining two members were eligible to serve a second term of three years.

5.2.3 The governing bodies also noted that, in response to a circular from the Director calling for nominations, seven nominations, including two from those members who had only served one term, had been received from 1992 Fund Member States for the six available positions. The nominations received from 1992 Fund Member States by the deadline were as follows:

Mr John Gillies (Australia)	Nominated by Australia (for a second term)
Mr Eugène Ngango Ebandjo (Cameroon)	Nominated by Cameroon
Mr Jerry Rysanek (Canada)	Nominated by Canada
Vice-Admiral (Rt) Giancarlo Olimbo (Italy)	Nominated by Italy (for a second term)
Mr Makoto Harunari (Japan)	Nominated by Japan
Mr José Luis Herrera Vaca (Mexico)	Nominated by Mexico
Mr Håkan Rustand (Sweden)	Nominated by Sweden

5.2.4 The governing bodies noted that, as there were only six vacancies for the named individuals nominated by 1992 Fund Member States, an election would therefore take place at the October 2014 sessions of the governing bodies. In accordance with the Rules of Procedure of the 1992 Fund Assembly, the election of members of the Audit Body would be by secret ballot.

5.2.5 The governing bodies also noted that, in accordance with the Composition and Mandate of the Audit Body, the member not related to the Organisations ('external expert'), with expertise and experience in financial matters, was elected on the recommendation of the Chairman of the 1992 Fund Assembly and that the term of office of the 'external expert' was for three years, twice renewable. They further noted that Mr Michael Knight (United Kingdom) had been appointed as external expert for a first term by the 1992 Fund Assembly at its October 2011 session and that the Chairman of the 1992 Fund Assembly had indicated to the Director that he would be recommending that Mr Knight be appointed by the 1992 Fund Assembly at its October 2014 session to serve a second term of three years.

Debate

5.2.6 The governing bodies expressed appreciation to the Member States which had nominated candidates for membership of the Audit Body. They noted that the high number of candidates was a positive development which reflected the important role played by the Audit Body.

6 Secretariat and administrative matters

6.1

Relocation of the IOPC Funds' offices **Document IOPC/MAY14/6/1**	**92AC**			

6.1.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/MAY14/6/1 which provided an update on the developments in respect of the relocation of the IOPC Funds' offices since the October 2013 meetings of the governing bodies.

6.1.2 The Administrative Council recalled that, at the time of the October 2013 meetings of the governing bodies, the lease on the IOPC Funds' current premises at Portland House had been due to expire in March 2015. It also recalled that, under the Headquarters Agreement between the United Kingdom and the 1992 Fund, the UK Government had undertaken to assist the 1992 Fund in the acquisition of premises by gift, purchase or lease or in the hire of premises at such time as they might be needed. It also recalled that, whilst the preference of the UK Government would be to relocate the IOPC Funds' offices to the IMO Headquarters or within Government-held estate, given that any lease would be taken out by the 1992 Fund, it was agreed that a private landlord option could also be explored. The Administrative Council also recalled that the UK Government would continue to pay a percentage of the rent of privately-rented accommodation, but this would be no higher than the amount that the UK Government currently contributed. The Administrative Council further recalled the UK Government's expectation that the floor space of any new premises would be substantially smaller than that at Portland House.

6.1.3 The Administrative Council recalled that the Director had been informed that IMO could not accommodate the IOPC Funds' Secretariat, that the UK Government would not provide a contribution towards relocation expenses as it had done in 2000 and that the Director's intention was to move from individual offices for all staff members to a mix of cellular offices and open plan, thereby ensuring that less office space would be required.

6.1.4 The Administrative Council noted that the Director had engaged consultants (Deloitte Real Estate) to undertake a workplace analysis and that the workplace requirements, based on established posts and additional staff to administer the HNS Fund, had been identified through interviews and workshop sessions with members of the IOPC Funds' Secretariat. Three space requirement options had been identified as set out in section 3 of the document. The Administrative Council further noted that, based on the three options, the consultants had recommended that the IOPC Funds' property search should be based on a net internal area of between 650 and 696 square meters (7 000 and 7 500 square feet)

(Option C in the document) which would represent a 36% reduction on the current office space in Portland House.

6.1.5 The Administrative Council noted that the Director had been informed by the landlord of Portland House in January 2014 that the proposed redevelopment of Portland House had been pushed back to 2016 and that the landlord was hoping to enter into lease renewal discussions with tenants within Portland House. It was noted that the new lease would expire in March 2018 with a lease break clause whereby the landlord and tenant would be entitled to terminate the lease from June 2016. The Administrative Council also noted that the UK Government had confirmed that it had no objection to the 1992 Fund extending the lease, provided that there would be no additional cost to the UK Government.

6.1.6 The Administrative Council noted the observations made by the consultants as set out in section 4 of the document. It also noted that, as reported in October 2013, it was not possible to give a clear estimate of the costs that would arise from a relocation since this would depend on the requirement for any refurbishment of the new premises, additional furniture and equipment. It noted, however, that the indicative budget which had been provided by the consultants for a mid-range standard fit out and based on Option C amounted to some £850 000.

6.1.7 The Administrative Council noted that the Director was of the view that it would be in the 1992 Fund's best interests to extend the current lease for Portland House until March 2018 with a lease break clause from June 2016 as this new lease would provide additional time for the Secretariat to find suitable premises.

6.1.8 The Administrative Council noted that the Director also intended to continue to work closely with the UK Government so that any recommendation he made to the governing bodies had the full endorsement of the host Member State.

6.1.9 The Administrative Council further noted that the Director accepted that the current size of the Secretariat's offices was larger than its requirements and that he intended to follow the consultant's recommendation to choose Option C, ie 699 square meters (7 521 square feet). This option, which provided the possibility to accommodate 36 staff members, including four additional posts should the HNS Fund Assembly request the 1992 Fund Secretariat to administer the HNS Fund, and represented a 36% reduction on the current office space in Portland House.

6.1.10 The Administrative Council noted that the Director further proposed to fund the relocation through budget appropriations in 2014, 2015 and 2016 of £250 000 each year and that he would make a proposal for approval by the 1992 Fund Assembly at its October 2014 session.

Debate

6.1.11 All delegations who took the floor endorsed the Director's view that it was in the best interests of the 1992 Fund to enter into a new lease with the current landlord to March 2018 with a lease break from June 2016.

6.1.12 One delegation, whilst stating that it supported the proposal to enter into a new lease with the current landlord, requested further clarification in relation to the Director's proposal to fund the future relocation costs through budget appropriation in 2014, 2015 and 2016 as well as its relation to the £850 000 fit-out cost. That delegation also requested a breakdown of the estimated cost of the relocation. In response the Director stated that it was his intention to spread the overall cost of relocation over a three-year period in order not to burden contributors. Expenses had been incurred against the budget appropriation approved for 2014 and further costs would be incurred in 2014 in respect of the lease extension for the current offices. The Director added that he would submit a detailed proposal to the October 2014 session of the 1992 Fund Assembly in relation to his proposal on relocation costs.

6.1.13 Some delegations felt that it was premature to include a provision for additional personnel that might be required for administering any future HNS Fund. However the overwhelming majority of delegations who took the floor were in favour of ensuring flexibility with regards to future space planning and agreed with the Director's proposal to plan for office space of some 699 square meters (7 500 square feet).

1992 Fund Administrative Council Decision

6.1.14 The 1992 Fund Administrative Council authorised the Director to enter into a new lease with the current landlord to extend the lease to March 2018 with a lease break from June 2016. It was noted that the Director would make a proposal for approval by the 1992 Fund Assembly at its October 2014 session to fund relocation costs through budget appropriations in 2014, 2015 and 2016.

6.2	**Information Services** **Document IOPC/MAY14/6/2**	**92AC**		**71AC**	

6.2.1 The 1992 Fund Administrative Council and 1971 Fund Administrative Council noted the information contained in document IOPC/MAY14/6/2, and in particular the new features which had been added to the IOPC Funds' website since October 2013.

6.2.2 The governing bodies noted the Secretariat's proposal to introduce more detailed online country profiles to the existing membership page of the website and a presentation was given of the proposed profile template. The type of information which would be included in the profiles was explained and feedback was requested from Member States on the suggestion that copies of the relevant national legislation could be included in the profiles should the State provide consent for the Secretariat to do so. It was noted that these documents would be made available in their original language, unless the State were in a position to provide them in English, French and/or Spanish.

6.2.3 The Secretariat thanked the delegations of Australia and Turkey for agreeing to be the subject of the two example country profiles which were presented to the governing bodies. The Secretariat also thanked the two delegations for the valuable comments which they had provided in respect of the proposed template for country profiles in advance of the meetings.

Debate

6.2.4 Several delegations expressed appreciation for the improvements made to the IOPC Funds' website in recent months, for the comprehensive information provided on the website and for its user-friendly interface.

6.2.5 All delegations who spoke confirmed their support for the proposal to introduce more detailed country profiles to the website and for the inclusion of copies of or links to national legislation implementing the 1992 Conventions. Some delegations pointed out, however, that copies of legislation could easily become outdated and suggested that text should appear within the profile page advising users to contact the relevant State directly to ensure they had the most accurate information.

6.2.6 The delegation of Turkey took the opportunity to underline how useful it found the IOPC Funds' website and stated how pleased it was to see the example profile of Turkey. That delegation suggested that further improvements could be made to the profile template and proposed that consideration be given to including any publications which Member States had translated into languages other than the three official working languages of the IOPC Funds. That delegation advised that it would, for example, be pleased to provide the Secretariat with a copy of the 1992 Fund's Claims Manual in Turkish.

6.2.7 The delegation of Australia also thanked the Secretariat for giving it the opportunity to see Australia's profile in advance of the meetings. That delegation informed the governing bodies of a number of comments which it had provided to the Secretariat, including the suggestion that national legislation could be difficult to interpret in isolation, given that, as was the case with Australia, the implementing legislation relating to the 1992 Conventions was dependent on that of other maritime legislation. That delegation also suggested that the existing spreadsheet on the website of the IMO listing the status of Conventions for each State was sufficient and that it may be unnecessary for the IOPC Funds to list Conventions outside the international compensation regime to which each State was Party.

6.2.8 One delegation supported this view and added its support for the inclusion of national legislation in the country profiles, referring to the IMO theme for World Maritime Day 2014, namely 'IMO conventions: effective implementation'. That delegation suggested that the availability of national legislation could provide inspiration to other States as to how to implement the Conventions into their own national law. That delegation informed the governing bodies that it had translated all its maritime legislation into English. Another delegation agreed that the provision of national legislation via the website was desirable, but expressed doubt over whether it could provide English translations.

Statement by the delegation of France

6.2.9 The delegation of France made the following statement (original French):

> The French delegation wishes to inform the 1992 Fund Administrative Council of the recent adoption in French law of several texts in application of the CLC/IOPC Funds Conventions intended to improve procedures for compensating victims in the event of an incident. These take into account the experience drawn from many oil spills which have affected French coasts. In order to assist new States Parties in implementing these Conventions, France is in favour of the various legislations of Member States adopted in application of the CLC/IOPC Funds Conventions being made available online via the IOPC Funds' website.
>
> Conversely, France wishes to be informed when judgements concerning it are made available online. We discover, indeed, that the judgement delivered in March by the Bordeaux High Court on the litigation between the French State and the classification society ABS in the *Prestige* case was uploaded without our being informed in advance, even though the IOPC Funds were not party to the proceedings.

6.2.10 In response, the Director stated that the practice of the IOPC Funds was to publish judgements which were in the public domain and which related to incidents involving the IOPC Funds. He pointed out that since the 1992 Fund had commenced action in Bordeaux against ABS in the *Prestige* incident, the judgement in question was indeed of interest to the 1992 Fund. He apologised if the judgement in question was not, as he had understood, in the public domain and agreed to clarify that point with the State directly and, if required, remove the judgement from the website.

6.2.11 The French delegation indicated that the judgments did not fall within the public domain. France was not opposed to the uploading of judgments concerning it, but simply wished to be informed in advance.

1992 Fund Administrative Council and 1971 Fund Administrative Council Decision

6.2.12 The governing bodies supported the proposal for the introduction of more detailed country profiles into the website. In respect of the inclusion of links to or copies of national legislation implementing the 1992 Civil Liability and Fund Conventions and, where relevant, the Supplementary Fund Protocol, the governing bodies confirmed that this would be useful, but advised the Secretariat to include appropriate language encouraging users to contact a State directly to ensure they access the most accurate information.

7 Treaty matters

7.1	**Winding up of the 1971 Fund** **Document IOPC/MAY14/7/1**			**71AC**	

7.1.1 The 1971 Fund Administrative Council took note of the information contained in documents IOPC/MAY14/7/1 and IOPC/MAY14/7/WP.1. It recalled that the 1971 Fund Convention had ceased to be in force on 24 May 2002 and did not apply to incidents occurring after that date, but that this did not, however, in itself result in the winding up of the 1971 Fund. It noted that, under Article 44 of the Convention, the 1971 Fund still continued to meet its obligations in respect of the incidents which occurred before the Convention had ceased to be in force and that the 1971 Fund Administrative Council was required to take appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among contributors.

7.1.2 The Administrative Council recalled that, at its October 2013 session, it had taken a number of decisions with a view to deciding to dissolve the 1971 Fund at its October 2014 session and had instructed the Director, in consultation with the Chairman of the 1971 Fund Administrative Council, to resolve as many of the outstanding issues as possible and to study the legal and procedural issues relating to the winding up of the 1971 Fund further in consultation with the Legal Affairs and External Relations Division of IMO.

7.1.3 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund, as set out in sections 2-4 of document IOPC/MAY14/7/1.

7.1.4 With respect to pending incidents, the Administrative Council recalled that the five outstanding incidents involving the 1971 Fund (*Vistabella*, *Aegean Sea*, *Iliad*, *Nissos Amorgos* and *Plate Princess*) had been discussed earlier and that the outcome of these discussions and any decisions taken had been reported under the agenda item 'Incidents involving the IOPC Funds'.

7.1.5 In respect of two contributors in the Russian Federation in arrears for an amount of approximately £43 000 plus interest, the Administrative Council noted that the Director had raised the concern expressed by the 1971 Fund Administrative Council with the Permanent Delegation of the Russian Federation to IMO and that in March 2014 he had also met with the Deputy Director of the Ministry of Transport of the Russian Federation and requested his help in resolving this issue. It also noted that, at the meeting, the Deputy Director of the Ministry of Transport had stated that he would do his utmost to resolve this issue and would revert before the May 2014 sessions of the governing bodies.

7.1.6 With respect to the legal aspects of the winding up of the 1971 Fund, the Administrative Council noted that, in accordance with the instructions received from the 1971 Fund Administrative Council in October 2013, the Director had engaged Dr Rosalie Balkin (former Assistant Secretary-General and Director of Legal Affairs and External Relations of IMO) and Professor Dan Sarooshi (a practising barrister and Professor of Public International Law at the University of Oxford, with extensive experience in litigation involving governments and international organisations) to study the legal and procedural issues relating to the winding up of the 1971 Fund in close cooperation with the Secretariat.

7.1.7 The Administrative Council noted that several meetings had taken place between the Secretariat, Dr Balkin and Professor Sarooshi and that texts of two draft 1971 Fund Administrative Council Resolutions relating to the procedural aspects of the winding up of the 1971 Fund had been prepared. It noted that the first draft Resolution (May 2014 Resolution, set out in document IOPC/MAY14/7/WP.1, Annex I) set out the steps that needed to be taken during 2014 and was for consideration and adoption at the May 2014 session of the 1971 Fund Administrative Council. It further noted that the second draft Resolution (October 2014 Resolution, set out in document IOPC/MAY14/7/WP.1, Annex II) set out the actual decision to dissolve the 1971 Fund and was for discussion in May 2014 and for adoption in October 2014. The October 2014 Resolution established that the dissolution of the 1971 Fund was to take effect on 31 December 2014.

7.1.8 The Administrative Council also noted that a meeting had taken place with the International Group of P&I Associations (International Group) and the Gard Club in March 2014 where the Director had informed the International Group and the Gard Club of the steps being taken towards the winding up of the 1971 Fund. In addition to the Director, this meeting had also been attended by Captain David Bruce (Chairman of the 1971 Fund Administrative Council), Mr Alfred Popp (Chairman of the Consultation Group on the winding up of the 1971 Fund) and Mr Gaute Sivertsen (Chairman of the 1992 Fund Assembly).

7.1.9 The Administrative Council noted that, out of the five outstanding incidents involving the 1971 Fund, the *Vistabella* and the *Aegean Sea* had now been resolved in respect of the 1971 Fund. It also recalled that the Director had received clear instructions in respect of the *Plate Princess* incident and he had acted on them. The Administrative Council noted, therefore, that these three incidents were now deemed to be closed by the 1971 Fund.

7.1.10 The Administrative Council noted that the two unresolved incidents were the *Iliad* and the *Nissos Amorgos* and that in both cases offers had been made to the North of England P&I Club and the Gard Club, respectively. In both cases the Clubs had not agreed with the proposal made by the Director.

7.1.11 The Administrative Council recalled that that the legal actions brought by the Gard Club in the United Kingdom and in Venezuela against the 1971 Fund in respect of the *Nissos Amorgos* incident had been discussed under the agenda item 'Incidents involving the IOPC Funds' and that the decisions taken in that regard had been reported in paragraphs 3.3.24 and 3.3.25.

7.1.12 The 1971 Fund Administrative Council noted the Director's view that it would have to take a decision at this session as to whether it wished to continue and wind up the 1971 Fund in 2014 or whether it wished to delay the winding up until the legal proceedings were finalised or an agreement with the P&I Clubs was reached.

7.1.13 It further noted that if the Administrative Council were to decide to continue and wind up the 1971 Fund in 2014, there would be legal proceedings pending in a number of countries (Greece, the United Kingdom and the Bolivarian Republic of Venezuela) which were unlikely to have ended before the dissolution of the 1971 Fund took place on 31 December 2014.

7.1.14 It also noted that the 1971 Fund currently had some £4.6 million available in the General Fund and the two Major Claims Funds. It further noted that the legal defence of the 1971 Fund before the UK courts would require substantial expenditure on lawyers and barristers and that it was likely that any decision by the High Court on the 1971 Fund's immunity defence would be appealed by the party who lost the argument and that it was possible that the case might even reach the Supreme Court.

7.1.15 The Administrative Council noted the Director's view that it was, however, difficult to estimate how long the amount available in the General Fund and the two Major Claims Funds would last but if litigation continued it was likely that the 1971 Fund would have to levy contributions to operate beyond summer 2015.

7.1.16 The Administrative Council also noted the Director's view that if the Administrative Council were to decide to delay the winding up until all these legal proceedings had been finalised or an agreement with the P&I Clubs had been reached, it was very likely that it would have to decide to levy additional contributions since the legal defence of the 1971 Fund before the courts was likely to be very expensive.

Statement by the International Group of P&I Associations

7.1.17 The observer delegation of the International Group of P&I Associations made the following statement:

> This delegation has already explained the basis of the legal proceedings brought by the Gard Club against the 1971 Fund and we will try not to repeat those here in this intervention.
>
> The Director has set out in document IOPC/MAY14/7/1 in more detail the Director's considerations and the Fund's position in response and it is in that context that we will comment with regard to the outstanding cases involving International Group Clubs.
>
> In relation to the *Nissos Amorgos* case, the Director has indicated that the Fund has immunity from the claims brought by the Gard Club under the Headquarters Agreement between the UK Government and the 1971 Fund.
>
> This delegation does not agree that such immunity is legally available in this instance because the Fund's immunity in the UK is subject to a number of exceptions and therefore does not apply either to claims related to the provision of finance or to claims brought in accordance with the provisions of the Convention.
>
> Any attempt to avoid the Club's claim in this way, even if theoretically possible, is hard to reconcile with the relationship of cooperation between the Group and the Fund which led to the funding procedures, and which has enabled the compensation regime to function as intended, at least to date.
>
> Clearly there are serious implications for the existing relationship and cooperation between the Fund and the International Group going ahead, and the Gard Club and the Group remain concerned that the decision to wind up the 1971 Fund will leave the Club alone in facing a large liability which properly falls to be dealt with under the Conventions.
> This is not how the system was intended to work.
>
> Furthermore, this delegation fundamentally disagrees with the Director's view in paragraph 5.4 of document IOPC/MAY14/7/1 that "these legal actions by the Gard Club are unfounded as there is no agreement, orally, in writing or by conduct, between the Gard Club and the 1971 Fund under which the Fund undertook to reimburse the Club any monies paid in respect of the claim by the Bolivarian Republic of Venezuela".
>
> The agreement that is referred to with regard to reconciliation of costs does not relate just to the claim by the Republic of Venezuela. That agreement is in reference to all claims paid and this is quite clear from the provisional report that was prepared in 2006, which does not differentiate between claims by the Republic of Venezuela and other claims.
>
> We do therefore fundamentally disagree with the Director's position in this regard.
>
> It is also unclear from the Director's paper whether the actual existence of such an agreement is in question or whether the applicability of the agreement to the claim by the Republic of Venezuela is in question.
>
> There can of course be no doubt that there is an agreement in place, its terms and purpose are the same as in many other major incidents and are summarised in the 2012 study into interim payments from Mr Jacobsson and the late Mr Shaw which was commissioned jointly by the Fund and the International Group. Those forms of agreement have of course also been discussed extensively within the Fund's working group that was considering the matter of the funding of interim payments.

If the previously agreed procedures and practices can however no longer be relied upon and the Fund intends to seek to use its immunity to avoid what has been agreed, then this could result in fundamental changes as to how the Clubs in the International Group approach CLC/Fund cases in the future. Any such changes are, unfortunately, likely to be to the detriment of the system and may result in claimants not receiving compensation on a prompt basis. That is in nobody's interest.

Turning to section 3 of document IOPC/MAY14/7/1 which concerns the *Iliad* case, paragraph 3.5 rightly states that, at the March meeting this year with the Director, the International Group informed the meeting that the *Iliad* and *Nissos Amorgos* cases were linked due to the pooling arrangements in place in the International Group.

We have seen no efforts to deal with both cases with this in mind. We were informed by the Fund Director at the meeting in March that this was a matter for the International Group

We repeat what we have said before in this regard, namely that there is a relationship between the pending 1971 Fund cases that involve International Group Clubs, and the outcome on any one of these could have an impact on each of the remaining cases. It is therefore a matter for the Fund as well as the International Group, and this has been made clear by this delegation in previous papers and interventions.

Mr Chairman, as we have also said before and as I am sure is clear, this delegation strongly opposes the winding up of the 1971 Fund on the basis that there remain outstanding cases. This delegation believes that it is wholly premature to continue with this action.

As this delegation stated in the discussion on the *Nissos Amorgos*, this delegation is of the view that there should be a re-evaluation of the Fund's obligations in the *Nissos Amorgos* incident, and the Fund Secretariat should instead engage with the Club and with the Republic of Venezuela to follow up on efforts in 2004 to seek a resolution of the Republic's claim.

This delegation has deep concerns for the system as a whole going ahead if the Administrative Council proceeds now with the winding up of the 1971 Fund in the timeframe *proposed* and returns the money in the 1971 Fund to contributors whilst there remain outstanding cases.

Debate

7.1.18 A discussion on this item of the agenda then took place in a closed session to which only delegations of States that had been Party to the 1971 Fund Convention, members of the Secretariat, experts, lawyers and members of the Audit Body were invited to attend.

7.1.19 When the full plenary session of the 1971 Fund Administrative Council re-opened, the Chairman of the Administrative Council reported that, due to the litigation taking place, a closed session of the Administrative Council consisting of States having at any time been Members of the 1971 Fund had taken place to consider the actions requested by the Director in document IOPC/MAY14/7/1.

1971 Fund Administrative Council Decisions

7.1.20 The 1971 Fund Administrative Council decided to confirm its intention to dissolve the 1971 Fund at its October 2014 session.

7.1.21 The 1971 Fund Administrative Council adopted the May 2014 Resolution on the Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) as set out at Annex II.

7.1.22 The 1971 Fund Administrative Council considered the October 2014 Resolution on the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) as set out in document IOPC/MAY14/7/WP.1, Annex II. The Administrative Council instructed the Director to submit the new draft, as set out in Annex III, to the October 2014 session of the 1971 Fund Administrative Council.

Clarification and intervention following the outcome of the closed session

7.1.23 For the benefit of those delegates who had not been present during the closed session, the Director reported the amendments that had been made to the October 2014 Resolution. The new draft is at Annex III.

7.1.24 The delegation of Panama asked whether contributors in Panama would have to contribute towards any expense incurred in the *Nissos Amorgos* and *Plate Princess* incidents. The Director replied that since Panama became a Party to the 1971 Fund Convention after these incidents took place, the contributors in Panama would not have to contribute towards them.

Statement by the delegation of Venezuela

7.1.25 The delegation of the Bolivarian Republic of Venezuela made the following statement (original Spanish) in the closed session and repeated again in the open session:

> This delegation reserves its position in respect of the winding up of the 1971 Fund, which particularly concerns us as we have an outstanding incident, that of the *Plate Princess*, in connection with which the IOPC Funds have been duly notified of the executive order of embargo against both the 1971 Fund and the 1992 Fund, in accordance with the transitional provisions in Articles 36 and subsequent articles of the 1992 Fund Protocol, to enforce the judgement duly delivered by the Venezuelan Courts, given that at the time when the executive embargo order was issued, the Fund still had legal representation in the Venezuelan Courts.

7.2	**HNS Convention and HNS Protocol** **Document IOPC/MAY14/7/2**	**92AC**			

7.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/MAY14/7/2 on the update of the work carried out by the Secretariat to set up the Hazardous and Noxious Substances Fund (HNS Fund).

7.2.2 The Administrative Council noted that in October 2013, 26 States and observer organisations agreed to establish an informal Correspondence Group to maintain the momentum for the HNS Protocol's entry into force. This group was composed of Australia, Belgium, Canada, Denmark, Germany, Greece, Grenada, Estonia, Fiji, Finland, France, India, Iran, Italy, Japan, Malaysia, Netherlands, New Zealand, Norway, Poland, Qatar, Singapore, Spain, Sweden, Turkey, United Kingdom, European Commission, IMO, International Spill Control Organisation and the World LP Gas Association. It was also noted that François Marier (Canada) had been appointed coordinator of the informal Correspondence Group.

7.2.3 The Administrative Council also noted that, at the 101st session of the IMO Legal Committee held from 28 April to 2 May 2014, Canada, together with other States, proposed to formally reinstate the HNS Correspondence Group in order to provide a more formal forum for discussion and information sharing. The proposal was adopted and François Marier (Canada) was confirmed as coordinator of the Group. It was noted that the Correspondence Group would report progress facilitating the Protocol's entry into force to the Legal Committee at its next session in 2015. The Administrative Council further noted that the HNS blog created by the 1992 Fund Secretariat had been approved to be used as the main tool to facilitate the Correspondence Group's communication.

7.2.4 The Administrative Council noted that the HNS Finder had been updated three times since its establishment in 2011, incorporating changes in IMO codes and circulars, where relevant. It was also noted that the HNS Finder had been updated with an additional functionality enabling users to swiftly cross-check substances.

7.2.5 The Administrative Council noted that, as part of an ongoing engagement and awareness-raising effort, the Secretariat, jointly with IMO, had delivered a training workshop on the HNS Convention at the request of the Malaysian Marine Department in Port Klang, Malaysia in November 2013. The workshop was specifically designed to assist the Malaysian Government in preparing the ratification of the 2010 HNS Protocol and was also attended by delegates from Indonesia and Singapore.

7.2.6 It was noted that as at 7 May 2014, no State had deposited an instrument of ratification or accession to the 2010 HNS Protocol.

Debate

7.2.7 The delegation from IMO thanked the 1992 Fund Secretariat for the update given and added that the establishment of the Correspondence Group was welcomed by the Legal Committee during its 101st session. IMO also reported that Canada had informed the Legal Committee of their efforts to implement the HNS Protocol, and that the Committee had confirmed, with regards to a submission by Germany, that State Parties could not make provisions in their domestic law so that shipowners from non-State Parties would have unlimited liability. The delegation further added that the Legal Committee had encouraged States to consider ratifying the 2010 Protocol in line with the IMO Secretary-General's strong call for its early entry into force in his opening remarks.

8 1992 Fund seventh intersessional Working Group (Definition of 'ship') – third meeting

The 1992 Fund seventh intersessional Working Group held its third meeting on 8 May 2014. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2014.

9 Other matters

9.1	**Any other business**	**92AC**		**71AC**	

Plate Princess incident

9.1.1 At the request of the 1971 Fund Administrative Council, the Director informed the 1992 Fund Administrative Council of the debate which had taken place in the 1971 Fund Administrative Council earlier in the week (see paragraph 3.2.27). The 1992 Fund Administrative Council noted that in February 2014, the Maritime Court of First Instance in Caracas had issued a request to the courts in the United Kingdom for their assistance in serving the judgement rendered by the Venezuelan courts in respect of the claim by the Puerto Miranda Union on the IOPC Funds. It was further noted that the request included the order of embargo against assets belonging to the IOPC Funds, but that the request did not specify whether it referred to the 1971 Fund or the 1992 Fund or both. The Administrative Council noted that, as at 8 May 2014, the order had not been served upon the 1971 Fund.

9.1.2 The 1992 Fund Administrative Council also noted that the Director had informed the UK Government (Foreign and Commonwealth Office (FCO) and Department for Transport) of the arrest order and had requested the FCO to advise whether the Privileges and Immunities available to the 1971 Fund and the 1992 Fund in the Headquarters Agreements with the two Organisations would apply to this order.

9.1.3 The 1992 Fund Administrative Council took note of the information provided by the Director.

Nissos Amorgos incident

9.1.4 At the request of the 1971 Fund Administrative Council, the Director informed the 1992 Fund Administrative Council of the debate which had taken place in the 1971 Fund Administrative Council in respect of the freezing injunction which had been granted by the High Court in London to the Gard P&I Club in respect of the *Nissos Amorgos* incident and the possible implications that this judgement might have for the 1992 Fund and the Supplementary Fund (see paragraph 3.3.46(b)).

9.1.5 The 1992 Fund Administrative Council noted that the High Court had decided to apply section 6 of the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979, (the 'Order') which gave effect to the 1971 Fund Headquarters Agreement under UK law rather than Article 5 (2) of the 1971 Fund Headquarters Agreement between the United Kingdom Government and the 1971 Fund and had held that section 6 of the Order did not have the effect of granting the 1971 Fund a general immunity from freezing injunctions.

9.1.6 The 1992 Fund Administrative Council noted that the same discrepancy between section 6(2) of the Order and Article 5(2) of the 1971 Fund Headquarters Agreement existed in the 1992 Fund Headquarters Agreement. The Director noted, however, that the International Oil Pollution Compensation Fund (Immunities and Privileges) Order relating to the Supplementary Fund which would give effect to the Supplementary Fund Headquarters Agreement between the United Kingdom Government and the Supplementary Fund had not yet been enacted in UK legislation.

9.1.7 The 1992 Fund Administrative Council noted that the 1971 Fund Administrative Council had instructed the Director to contact the FCO to discuss the implications on the 1992 Fund and the Supplementary Fund of the freezing injunction judgement upon the 1971 Fund, to report on the implications to the 1992 Fund and Supplementary Fund Assemblies and to revert to the governing bodies at their October 2014 sessions.

9.1.8 The 1992 Fund Administrative Council took note of the information provided by the Director.

10 Adoption of the Record of Decisions

1992 Fund Administrative Council, 1992 Fund Executive Committee and 1971 Fund Administrative Council Decision

The draft Record of Decisions of the May 2014 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/MAY14/10/WP.1 and IOPC/MAY14/10/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee	1971 Fund Administrative Council
1	Algeria	●		●
2	Angola	●	●	
3	Argentina	●		
4	Australia	●	●	●
5	Bahamas	●		●
6	Belgium	●		●
7	Cameroon	●		●
8	Canada	●		●
9	China[<1>]	●		●
10	Colombia	●		●
11	Côte d'Ivoire			●
12	Cyprus	●		●
13	Denmark	●		●
14	Ecuador	●		
15	Estonia	●		●
16	Finland	●	●	●
17	France	●		●
18	Germany	●		●
19	Ghana	●		●
20	Greece	●		●
21	Grenada	●	●	
22	Indonesia			●
23	Ireland	●		●
24	Islamic Republic of Iran	●		
25	Italy	●	●	●
26	Japan	●	●	●
27	Kenya	●		●
28	Liberia	●	●	●
29	Malaysia	●	●	●
30	Marshall Islands	●		●
31	Mexico	●		●
32	Monaco	●		●
33	Morocco	●		●
34	Namibia	●		
35	Netherlands	●	●	●
36	New Zealand	●		●
37	Nigeria	●	●	●
38	Norway	●		●
39	Oman	●		●

[<1>] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

40	Panama	●		●
41	Papua New Guinea	●		●
42	Philippines	●		
43	Poland	●	●	●
44	Portugal	●		●
45	Qatar	●		●
46	Republic of Korea	●	●	●
47	Russian Federation	●		●
48	Singapore	●	●	
49	South Africa	●		
50	Spain	●		●
51	Sweden	●		●
52	Tunisia	●	●	●
53	Turkey	●		
54	United Arab Emirates	●		●
55	United Kingdom	●	●	●
56	Uruguay	●		
57	Vanuatu	●		●
58	Venezuela (Bolivarian Republic of)	●		●

1.2 States represented as observers

		1992 Fund	**1971 Fund**
1	Côte d'Ivoire	●	
2	Indonesia	●	
3	Peru	●	●
4	Saudi Arabia	●	●
5	Thailand	●	

1.3 Intergovernmental organisations

		1992 Fund	**1971 Fund**
1	International Maritime Organization (IMO)	●	●

1.4 International non-governmental organisations

		1992 Fund	1971 Fund
1	BIMCO	●	●
2	Comité Maritime International (CMI)	●	●
3	International Association of Classification Societies Ltd (IACS)	●	
4	International Chamber of Shipping (ICS)	●	●
5	International Group of P&I Associations	●	●
6	International Spill Control Organization (ISCO)	●	
7	International Tanker Owners Pollution Federation Ltd (ITOPF)	●	●
8	Oil Companies International Marine Forum (OCIMF)	●	●
9	World Liquid Petroleum Gas Association (WLPGA)	●	

* * *

ANNEX II

1971 Fund Resolution N°17 – Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) (May 2014)

(Adopted at May 2014 session of the 1971 Fund Administrative Council)

THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (1971 FUND),

RECALLING the adoption on 18 December 1971 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (hereinafter the "1971 Fund Convention") at an International Conference convened by the Intergovernmental Maritime Consultative Organization at the Palais des Congress, Brussels and the subsequent establishment on 16 October, 1978 of the International Oil Pollution Compensation Fund (hereinafter the "1971 Fund"),

RECALLING FURTHER that, pursuant to Article 2(a) of the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the 1971 Fund Convention had ceased to be in force as from 24 May 2002,

BEARING IN MIND that this did not result in the dissolution of the 1971 Fund,

RECALLING Resolution N°10 of the Assembly of the 1971 Fund (October 1996) whereby, as from the date of the establishment of the Secretariat of the International Oil Pollution Compensation Fund, 1992 (hereinafter "the 1992 Fund Secretariat"), the 1971 Fund including all secretariat functions, has been administered by the 1992 Fund Secretariat,

RECALLING FURTHER Resolution N°13 of the Assembly of the 1971 Fund (May 1998) whereby the Director of the 1992 Fund was designated *ex officio* as the Director of the 1971 Fund,

TAKING INTO ACCOUNT Resolution N°13 of the Assembly of the 1971 Fund (May 1998), as amended by Resolution N°15 of the Assembly of the 1971 Fund (May 2002), which created the 1971 Fund Administrative Council and authorised it to perform the functions allocated to the Assembly under the 1971 Fund Convention, including the taking of appropriate measures to complete the winding up of the 1971 Fund and the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund,

BEARING IN MIND the obligations contained in Article 44(1) and (2) of the 1971 Fund Convention, in the event that the 1971 Fund Convention ceased to be in force,

MINDFUL of the decision of the 1971 Fund Administrative Council at its thirty-first session in October 2013 to wind up the 1971 Fund as soon as possible,

NOTING that all former 1971 Fund Member States have fulfilled their obligations under the 1971 Fund Convention, including the submission of oil reports,

COGNISANT of the absence of any provisions in the 1971 Fund Convention providing for the process for the dissolution of the 1971 Fund,

RECOGNISING the need for the 1971 Fund to be dissolved in an orderly and open process,

TAKING INTO ACCOUNT the establishment by the 1971 Fund Administrative Council at its twenty-ninth session (October 2012) of a Consultation Group to facilitate the process of winding up the 1971 Fund,

NOTING the recommendation of the Consultation Group that the 1971 Fund Administrative Council was empowered under the 1971 Fund Convention to decide to dissolve the 1971 Fund as a legal person,

RECOGNISING ACCORDINGLY that the 1971 Fund Administrative Council is the appropriate body to establish procedures for the dissolution of the 1971 Fund,

MINDFUL that the Consultation Group was of the view that the decision to dissolve the 1971 Fund should be formalised in a written document and that the best way to do this would be for the 1971 Fund Administrative Council to adopt a resolution to dissolve the 1971 Fund,

MINDFUL ALSO of the intention of the 1971 Fund Administrative Council at its thirty-first session (October 2013) to decide to dissolve the 1971 Fund at its October 2014 session,

CONSIDERING Resolution N°13 of the Assembly of the 1971 Fund (May 1998) concerning the absence of any quorum requirement for participation in sessions of the 1971 Fund Administrative Council,

NOTING that, pursuant to Resolution N°13, as amended by Resolution N°15, the decisions of the 1971 Fund Administrative Council should be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting,

NOTING ALSO that the Consultation Group took the view that, since Resolution N°13 already provided that no credentials were required but that States invited to a session of the 1971 Fund Administrative Council shall inform the Director of the person or persons who will attend (notification), the 1971 Fund Administrative Council should maintain the rule that notifications to the Director of the person or persons who will attend were sufficient,

CONSIDERING IT DESIRABLE to ensure the participation by as many former Member States of the 1971 Fund Convention as possible in the decision to dissolve the 1971 Fund,

MINDFUL of the decision of the 1971 Fund Administrative Council at its thirty-first session (October 2013) instructing the Director to study the legal and procedural issues relating to the dissolution of the 1971 Fund,

1 Agrees that the procedures as set out in this Resolution be adopted in connection with the dissolution of the 1971 Fund;

2 Strongly encourages as many former Member States of the 1971 Fund as possible to participate in any decision to dissolve the 1971 Fund;

3 To this end instructs the Director to issue an invitation to all former Member States of the 1971 Fund to participate in the 33rd session of the 1971 Fund Administrative Council to be held in October 2014 when the decision to dissolve the 1971 Fund is intended to be taken by adoption of a resolution;

4 Agrees that the voting, notifications and quorum procedures as specified in Resolution N°13, as amended by Resolution N°15, shall be applied;

5 Decides that the 1971 Fund has taken all reasonable steps to meet its obligations under Article 44(1) of the 1971 Fund Convention,

6 Decides that any surplus monies in the Major Claims Funds shall be reimbursed in accordance with Regulations 4.4 and 4.5 of the 1971 Fund's Financial Regulations. After the decision to dissolve the 1971 Fund is taken on 24 October 2014, reimbursement shall be made by

15 December 2014 on a *pro rata* basis directly to the contributors who have made contributions to these Major Claims Funds; and

7 Further decides that any surplus monies in the General Fund shall be reimbursed in accordance with the decision of the 1971 Fund Administrative Council at its fifteenth session (October 2004). After the decision to dissolve the 1971 Fund is taken on 24 October 2014, reimbursement shall be made directly to the contributors to the General Fund on a *pro rata* basis by 15 December 2014.

* * *

ANNEX III

1971 Fund Resolution N°18 – Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) (October 2014)

[New draft as a result of May 2014 session of the 1971 Fund Administrative Council]

THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (1971 FUND),

RECALLING the adoption on 18 December 1971 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter the "1971 Fund Convention") at an International Conference convened by the Intergovernmental Maritime Consultative Organization at the Palais des Congress, Brussels and the subsequent establishment on 16 October, 1978 of the International Oil Pollution Compensation Fund (hereinafter the "1971 Fund")

RECALLING FURTHER that, pursuant to Article 2(a) of the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the 1971 Fund Convention had ceased to be in force as from 24 May 2002,

BEARING IN MIND that this did not result in the dissolution of the 1971 Fund,

RECALLING Resolution N°10 of the Assembly of the 1971 Fund (October 1996) whereby, as from the date of the establishment of the Secretariat of the International Oil Pollution Compensation Fund, 1992 (hereinafter "the 1992 Fund Secretariat"), the 1971 Fund, including all secretariat functions, has been administered by the 1992 Fund Secretariat,

RECALLING FURTHER Resolution N°13 of the Assembly of the 1971 Fund (May 1998) whereby the Director of the 1992 Fund was designated ex officio as the Director of the 1971 Fund,

TAKING INTO ACCOUNT Resolution N°13 of the Assembly of the 1971 Fund (May 1998), as amended by Resolution N°15 of the Assembly of the 1971 Fund (May 2002), which created the 1971 Fund Administrative Council and authorised it to perform the functions allocated to the Assembly under the 1971 Fund Convention, including the taking of appropriate measures to complete the winding up of the 1971 Fund and the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund,

NOTING that all former 1971 Fund Member States have fulfilled their obligations under the 1971 Fund Convention, including the submission of oil reports,

BEARING IN MIND the obligations contained in Article 44(1) and (2) of the 1971 Fund Convention, in the event that the 1971 Fund Convention ceased to be in force,

CONSIDERING that the 1971 Fund has now met its obligations under Article 44(1) and (2),

CONSIDERING FURTHER that there is no longer any need for the 1971 Fund to exist as a legal person pursuant to Article 44(3) of the 1971 Fund Convention,

MINDFUL of the decision of the 1971 Fund Administrative Council at its thirty-first session in October 2013 to wind up the 1971 Fund as soon as possible,

RECALLING the procedures for dissolution of the 1971 Fund adopted by the 1971 Fund Administrative Council by Resolution N° 17 at its thirty-second session (May 2014), Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) (May 2014),

1 Resolves that, with effect from the expiry of the last day of the financial year 2014 (31 December 2014), the 1971 Fund shall be dissolved and its legal personality shall cease to exist;

2 Agrees that the Director shall inform all States having at any time been Members of the 1971 Fund, as well as the Secretary-General of the International Maritime Organization (IMO) in his capacity as Depositary of the 1971 Fund Convention, and all other relevant organisations, as well as the Government of the United Kingdom of Great Britain and Northern Ireland of the dissolution of the 1971 Fund, with effect from the expiry of the last day of the financial year 2014 (31 December 2014);

3 Agrees that any monies not distributed to contributors in accordance with Article 44 by 15 December 2014 shall be given to the World Maritime University, the International Maritime Law Institute and the International Maritime Safety, Security and Environment Academy equally;

4 Requests the External Auditor to carry out a final audit of the 1971 Fund for the 2014 financial year;

5 Decides to request the Secretary-General of IMO to convene a meeting of all former Member States of the 1971 Fund to approve the Financial Statements of the 1971 Fund for the 2014 financial year;

6 Requests that States having at any time been Members of the 1971 Fund be informed of the approval of the Financial Statements of the 1971 Fund for the 2014 financial year; and

7 Decides to transfer full title to the archives of the 1971 Fund to the 1992 Fund.