

## **RESOLUTIONS OF THE 1992 FUND**

### **Resolution N°1 - Position of members of the 1971 Fund Secretariat** (June 1996)

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

**NOTING** that the 1971 Fund and the 1992 Fund will be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention,

**RECALLING** operative paragraph 3(a) of Resolution 2 of the International Conference which adopted the 1992 Protocol to the 1971 Fund Convention, concerning the position of personnel employed by the 1971 Fund on the date when the 1971 Fund Convention ceases to be in force,

**RECOGNISING** the need to safeguard the position of the personnel employed by the 1971 Fund when the 1992 Fund establishes its own Secretariat,

**DECLARES** that, when the 1992 Fund establishes its own Secretariat, the personnel employed by the 1971 Fund will, if they so wish, be transferred to the 1992 Fund Secretariat and that they will in such a case receive treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of their employer.

### **Resolution N°2 - Submission of Oil Reports** (June 1996)

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

**AWARE** of the obligations imposed on Member States to submit reports on receipts of contributing oil in accordance with Article 15.2 of the 1992 Fund Convention,

**RECOGNISING** that these reports will be crucial for the functioning of the 1992 Fund, as the levying of contributions is based on these reports,

**NOTING** that these reports will also be essential in determining when the capping provisions of Article 36 ter of the 1992 Fund Convention shall cease to apply,

**RECALLING** that the experience of the 1971 Fund has been that reports do not always reach the Secretariat on time or in the manner laid down in the Internal Regulations, and that some reports are incomplete,

**URGES** Member States to take the necessary steps to ensure that the reports on contributing oil received in their territory are submitted in time, using the prescribed forms, and that the reports contain the particulars prescribed in the 1992 Fund Convention and in the Internal Regulations,

**AND REQUESTS** Member States in which no person is liable to contribute to the 1992 Fund to submit reports certifying that this is the case in respect of the State concerned as prescribed in the Internal Regulations.

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**Resolution N°3 - Admissibility of claims for compensation** (June 1996)

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

**CONSCIOUS** of the need to establish at an early stage the general policy of the 1992 Fund on the admissibility of claims for compensation,

**NOTING** that one of the aims of the international compensation system is to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation,

**NOTING FURTHER** that the definitions of 'pollution damage' and 'preventive measures' in the 1992 Fund Convention which form the basis for the criteria for admissibility are the same as those in the 1971 Fund Convention, except on one point where a modified text was adopted in 1992, in order to codify the interpretation of the definition of 'pollution damage' as decided by the Assembly of the International Oil Pollution Compensation Fund, 1971 (1971 Fund),

**AWARE** of the necessity of ensuring consistency between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims,

**RECALLING** that the 7th Intersessional Working Group established by the Assembly of the 1971 Fund was given the mandate to examine the general criteria for the admissibility of claims for compensation for 'pollution damage' and 'preventive measures' within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto,

**RECALLING FURTHER** that the Assembly of the 1971 Fund endorsed the report of the 7th Intersessional Working Group on the criteria for the admissibility of claims for compensation,

**NOTING ALSO** that the Executive Committee of the 1971 Fund has taken a number of further decisions on the admissibility of claims,

**RESOLVES** that the report of the 7th Intersessional Working Group of the 1971 Fund (as contained in document FUND/A.17/23) shall form the basis of the policy of the 1992 Fund on the criteria for the admissibility of claims,

**DECIDES** that the criteria hitherto laid down by the Executive Committee of the 1971 Fund should be applied by the 1992 Fund in its consideration of the admissibility of claims,

**AFFIRMS** that the 1992 Fund shall endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims.

**Resolution N°4 - Establishment of EEZ or determined area** (June 1996)

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

**NOTING** that Article 3(a)(ii) of the 1992 Fund Convention provides that compensation by the 1992 Fund is payable for pollution damage which occurs in the exclusive economic zone (EEZ) of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured,

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**RECOGNISING** that it will be crucial for the functioning of the 1992 Fund to know whether a Member State has established an EEZ or determined such an area,

**NOTING** that the 1992 Fund will also need to know the extent of an EEZ established or area determined by a Member State, as well as the date of such establishment or determination,

**URGES** States to notify the Secretary-General of the International Maritime Organization, when depositing instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention, of the delimitation of their EEZ or area, if already established or determined,

**AND REQUESTS** Member States which establish an EEZ or determine such an area after the entry into force of the 1992 Fund Convention in respect of those States to notify the Director of the 1992 Fund of the delimitation of their EEZ or determined area, and the date on which it was established or determined.

### **Resolution N°5 - Establishment of the Executive Committee** (October 1997)

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

**NOTING** that the Assembly may, in accordance with Article 18.9 of the 1992 Fund Convention, establish any temporary or permanent subsidiary body it considers to be necessary, define its terms of reference and give it the authority needed to perform the functions entrusted to it,

**NOTING FURTHER** that, in accordance with that Article, the Assembly shall, when appointing the members of such a subsidiary body, endeavour to secure an equitable geographical distribution of members and to ensure that the Member States, in respect of which the largest quantities of contributing oil are received, are appropriately represented,

**RECALLING** the decision of the Assembly at its 1st session that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation and the decision by the Assembly at its 1st extraordinary session that this body should be known as the Executive Committee,

**HEREBY CREATES** an Executive Committee which shall be established at the first session of the Assembly after the number of 1992 Fund Member States has reached 25,

**DECIDES** that the Executive Committee shall be composed of 15 Member States elected by the Assembly to hold office until the end of the next regular session of the Assembly, and that a member may not serve on the Executive Committee for more than two consecutive terms, except to the extent necessary to comply with the eligibility requirements,

**FURTHER DECIDES** that the election of the Executive Committee should be governed in the following provisions:

- (a) Seven Executive Committee members shall first be elected from among the eleven Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year.
- (b) Eight members shall then be elected from among the other Member States.
- (c) A Member State which was eligible but was not elected under sub-paragraph (a) shall not be eligible for any remaining seat on the Committee.

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- (d) The Assembly shall, when electing the members of the Committee, secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets. The Assembly may also take into account the extent to which a particular State has fulfilled its obligation to submit reports on receipts of contributing oil, in accordance with Article 15 of the 1992 Fund Convention.
- (e) Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.
- (f) Except to the extent that may be necessary to comply with the requirement set out under (a) above, no State may serve on the Executive Committee for more than two consecutive terms. However, if a State eligible under (a) declares before the election that it might not be able to attend the Committee's sessions, the Assembly may elect in its place another State from among the eleven States eligible under (a), even if the latter State has served for two consecutive terms.

**ADOPTS** the following mandate for the Executive Committee:

The functions of the Executive Committee shall be:

- 1 to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director;
- 2 to consider new issues of principle and general policy questions relating to claims for compensation as they arise (and not in the abstract) and procedures for handling incidents involving the 1992 Fund;
- 3 to extend, to the extent it considers appropriate, the Director's authority to make final settlement of claims arising out of a given incident beyond that vested in him in accordance with the Internal Regulations;
- 4 to give the Director such instructions in respect of the handling of claims for compensation as may be required; and
- 5 to make such recommendations to the Assembly, for example on questions of principle of great importance, as the Executive Committee may deem appropriate.

**Resolution N°6 - Resolution on the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990 and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 OPRC (HNS) Protocol (October 2001)**

**THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992,**

**NOTING** that the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 ("OPRC") came into force in 1995, and that 59 States have ratified or acceded to the Convention,

**ALSO NOTING** that the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 OPRC (HNS) Protocol will not come into force until 12 months after ratification by not less than 15 States,

**NOTING FURTHER** that no States are yet party to the 2000 OPRC (HNS) Protocol,

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**RECOGNIZING** the need for some States to identify existing resources that could form part of the resources needed to implement the 1990 OPRC and 2000 OPRC (HNS) Protocol,

**RECOGNIZING FURTHER** that some States may not have all the resources needed to effectively implement the OPRC and 2000 OPRC (HNS) Protocol,

**BELIEVING** it is desirable for coastal States to have in place effective measures and co-operative arrangements to deal with oil spill incidents wherever they may occur,

**FURTHER BELIEVING** that wider and speedy implementation of both the 1990 OPRC and the 2000 OPRC (HNS) Protocol would benefit potential victims of oil spills and the IOPC Fund in helping to minimize the environmental and financial impact of oil spills,

1. **URGES** all Contracting States to the 1992 Fund Protocol that have not yet done so to ratify, or to accede to, the 1990 OPRC;
2. **ENCOURAGES** States Parties to the OPRC to also become party to the 2000 OPRC (HNS) Protocol, with the aim of promoting speedy implementation;
3. **FURTHER ENCOURAGES** States not parties to the 1990 OPRC to put in place effective contingency plans for oil pollution prevention and response to the best of their abilities.

**1992 Fund Resolution N°7 – Creation of Administrative Council** (October 2002)

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

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

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

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

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

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

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

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

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

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- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved.
- 2 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
  - (a) to perform such functions as are allocated to the Assembly under the 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
  - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
  - (c) to give instructions to the Director concerning the administration of the 1992 Fund;
  - (d) to supervise the proper execution of the Convention and of its own decisions;
- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
  - (a) 1992 Fund Member States;
  - (b) other States which would be invited to attend sessions of the Assembly as observers; and
  - (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and
- 5 **FURTHER DECIDES** :
  - (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
  - (b) that at least 25 Member States shall constitute a quorum for the meetings of the Administrative Council;
  - (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
  - (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
  - (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.

**1992 Fund Resolution N°8 on the interpretation and application of the 1992 Civil liability Convention and the 1992 Fund Convention** (May 2003)

**THE ADMINISTRATIVE COUNCIL, ACTING ON BEHALF OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992**, set up under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention),

**NOTING** that the States Parties to the 1992 Fund Convention are also parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention),

**RECALLING** that the 1992 Conventions were adopted in order to create uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

**CONSIDERING** that it is crucial for the proper and equitable functioning of the regime established by these Conventions that they are implemented and applied uniformly in all States Parties,

**CONVINCED** of the importance that claimants for oil pollution damage are given equal treatment as regards compensation in all States Parties,

**MINDFUL** that, under Article 235, paragraph 3, of the United Nations Convention on the Law of the Sea 1982, States shall co-operate in the implementation of existing international law and the further development of international law relating to the liability for and assessment of damage caused by pollution of the marine environment,

**RECOGNISING** that, under Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties 1969, for the purpose of the interpretation of treaties there shall be taken into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,

**DRAWING ATTENTION** to the fact that the Assembly, the Executive Committee and the Administrative Council of the International Oil Pollution Compensation Fund 1992 (1992 Fund) and the governing bodies of its predecessor, the International Oil Pollution Compensation Fund 1971 (1971 Fund), composed of representatives of Governments of the States Parties to the respective Conventions, have taken a number of important decisions on the interpretation of the 1992 Conventions and the preceding 1969 and 1971 Conventions and their application, which are published in the Records of Decisions of the sessions of these bodies <sup><1></sup>, for the purpose of ensuring equal treatment of all those who claim compensation for oil pollution damage in States Parties,

**EMPHASISING** that it is vital that these decisions are given due consideration when the national courts in the States Parties take decisions on the interpretation and application of the 1992 Conventions,

**CONSIDERS** that the courts of the States Parties to the 1992 Conventions should take into account the decisions by the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of these Conventions.

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<sup><1></sup> IOPC Funds' website: [www.iopcfund.org](http://www.iopcfund.org)

**1992 Fund Resolution N°9 on the Appointment of the IOPC Funds' Director – Term of service**  
(October 2004)

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

**RECALLING** Article 18 of the 1992 Fund Convention,

**NOTING** that the Assembly has appointed Directors for five-year terms with provision for renewal for such further periods as may be determined by the Assembly.

**CONSIDERING** the desirability of establishing a more specific term of office for future Directors,

**CONSIDERING ALSO** the normal practice within the United Nations agencies and subsidiary bodies, and especially the International Maritime Organization precedents.

**CONSIDERING FURTHER** Section IV, Regulations 17 and 18, of the 1992 Fund's Staff Regulations,

**DECIDES** that:

- 1 Future IOPC Fund Directors shall be appointed for an initial term of five years.
- 2 The appointment may be renewed by the Assembly for one additional term of up to five years.
- 3 A further extension of the Director's term of office may be decided by the Assembly in view of exceptional circumstances.
- 4 This resolution shall be referenced by footnote to Rule 55 of the Rules of Procedure of the Assembly.

**Resolution N°10 - Joint Secretariat** (March 2005)

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

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

**THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003** (Supplementary Fund),

**NOTING** that the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 entered into force on 3 March 2005, thereby establishing the Supplementary Fund,

**AWARE** that since the establishment of the 1992 Fund in 1996, the 1971 Fund and the 1992 Fund have been administered by a joint Secretariat headed by a single Director,

**RECALLING** that from 1996 to 1998 the Secretariat of the 1971 Fund administered the 1992 Fund, whereas since 1998 the Secretariat of the 1992 Fund has served as Secretariat of the 1971 Fund also,

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**RECOGNISING** the benefits of the present arrangement,

**BELIEVING** that a similar arrangement in respect of the Supplementary Fund would be beneficial,

**CONSIDERING** that the 1992 Fund, the 1971 Fund and the Supplementary Fund should be administered by one Secretariat headed by a single Director,

**TAKING THE VIEW** that the most appropriate arrangement would be for the Secretariat of the 1992 Fund to function as the Secretariat not only of the 1971 Fund but also of the Supplementary Fund and that the Director of the 1992 Fund, in addition to being *ex officio* Director of the 1971 Fund, should also be *ex officio* Director of the Supplementary Fund.

**DECIDE**

1. The Secretariat of the 1992 Fund shall as hitherto administer the 1971 Fund and shall also administer the Supplementary Fund.
  2. The Director of the 1992 Fund shall continue *ex officio* to be Director of the 1971 Fund and shall also *ex officio* be Director of the Supplementary Fund.
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