



International Oil Pollution  
Compensation Funds

#### Agenda Item 9

Date	31 March 2021	
Original	English	
1992 Fund Assembly	92AES24	●
1992 Fund Executive Committee	92EC75	●
Supplementary Fund Assembly	SAES8	●

## DRAFT

# RECORD OF DECISIONS OF THE MARCH 2021 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 29 to 31 March 2021)

Governing body (session)		Chair	Vice-Chairs
1992 Fund	Assembly (92AES24)	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan)  Mrs Aurenay Aguirre O. Sunza (Mexico)
	Executive Committee (92EC75)	Ms Gillian Grant (Canada)	Mr Kanagalingam Selvarasah (Malaysia)
Supplementary Fund	Assembly (SAES8)	Mr Sungbum Kim (Republic of Korea)	Mr Andrew Angel (United Kingdom)  Mr Emre Dinçer (Turkey)

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*Opening of the sessions*

- 0.1 Prior to the opening of the sessions, the Director welcomed participants to the second remote meeting of the IOPC Funds' governing bodies and referred to document IOPC/MAR21/1/4, which provided information and guidance on the conduct of business for the virtual meeting held via the e-conferencing platform KUDO.
- 0.2 The Chair of the 1992 Fund Assembly recalled that sessions ordinarily took place in the International Maritime Organization (IMO) building in London. However, due to the COVID-19 pandemic and the consequent travel restrictions and conditions which had limited movement and travel to London, the sessions were being held remotely.
- 0.3 The Chairs of the governing bodies sought agreement from the Member States present to suspend Rule 3 of the Rules of Procedure to allow for the sessions of the governing bodies to be held remotely, as proposed in document IOPC/MAR21/1/3. The Chairs of the 1992 Fund Assembly and the Supplementary Fund Assembly also sought agreement on the proposal to interpret Rule 33(a) on the definition of 'Members present', as Member States being registered for the sessions using the online registration system, and listed as participants in the remote sessions, using the virtual meeting platform, as proposed in document IOPC/MAR21/1/3. The Chair of the 1992 Fund Executive Committee noted that the Rules of Procedure of the Executive Committee did not contain a rule on the definition of 'Members present' as contained in Rule 33 of the Rules of Procedure of the 1992 Fund Assembly.

***1992 Fund Assembly***

- 0.4 The Chair of the 1992 Fund Assembly opened the 24th extraordinary session of the Assembly with 74 States which had registered to attend the meeting, 71 States which had submitted credentials, and 63 States present at the time of the opening of the sessions.
- 0.5 He noted the importance of Member States being present during the opening of the 1992 Fund Assembly session in order to achieve quorum.

***Supplementary Fund Assembly***

- 0.6 The Supplementary Fund Assembly Chair opened the 8th extraordinary session of the Assembly with 22 Member States present.

***1992 Fund Executive Committee***

- 0.7 The 1992 Fund Executive Committee Chair opened the 75th session of the Executive Committee with 14 Member States present.
- 0.8 The Member States present at the sessions are listed in Annex I, as are the non-Member States, intergovernmental organisations and international non-governmental organisations, which were represented as observers.

**1 Procedural matters**

1.1	<b>Adoption of the Agenda</b> <b>Document IOPC/MAR21/1/1</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/MAR21/1/1.

1.2	<b>Election of the Chair</b>	<b>92A</b>		
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- 1.2.1 The Chair of the 1992 Fund Assembly, Mr Gaute Sivertsen (Norway), informed the governing bodies that he would be stepping down as Chair at the end of the current session, as he intended to submit his candidacy for the post of the Director in the forthcoming election.

*Farewell to the Chair of the 1992 Fund Assembly*

- 1.2.2 Mr Sivertsen recalled that he had been involved with the IOPC Funds since the 1992 diplomatic conference and has since attended every meeting of the IOPC Funds. He served as Chair of the 1992 Fund Executive Committee in 1999 and 2000 and had enjoyed working with the Funds so much that he had kept the IOPC Funds file as a part of his portfolio throughout his career with the government.
- 1.2.3 Mr Sivertsen expressed that it had been an honour and privilege to serve as Chair of the 1992 Fund Assembly for the last 10 years, which had given him the opportunity to work closely with three Audit Bodies, the Director and Secretariat. He also expressed that he had the pleasure of working with all the Member States.
- 1.2.4 He continued that he hoped to serve the IOPC Funds and Member States in a different role in the future and took the opportunity to thank everyone for their support and trust bestowed upon him in his role as Chair.
- 1.2.5 The Director recalled that Mr Sivertsen had served as Chair of the 1992 Fund Assembly for 10 years and started as Chair at the same time the Director was elected in 2011. The Director expressed that he had been an exceptional Chair and had taken a lot of interest in the activities of the organisation, and had attended Audit Body meetings. On behalf of himself and the Secretariat, the Director thanked Mr Sivertsen for his help, advice and friendship over the years. On a personal note, the Director expressed that Mr Sivertsen had been a good friend, and it had always been a pleasure working together. The Director wished Mr Sivertsen every success in his next project, which would keep him close to the organisation.
- 1.2.6 The Chair of the Supplementary Fund Assembly wished Mr Sivertsen all the best with his future endeavours.
- 1.2.7 Many delegations thanked Mr Sivertsen for presiding over the discussions of the Assembly for the last decade and wished him well in his future projects.

*Election of the Chair of the 1992 Fund Assembly*

- 1.2.8 The Director proceeded to note that the post of the Chair of the Assembly would, therefore, become vacant at the end of this session and that the 1992 Fund Assembly would be invited to elect a new Chair to hold office until the next regular session of the Assembly.
- 1.2.9 The Director reminded the governing bodies of the procedure adopted in April 2015, whereby the Director would preside over this agenda item for the governing bodies (document IOPC/APR15/9/1).

**1992 Fund Assembly decision**

- 1.2.10 The 1992 Fund Assembly elected, by acclamation, Ambassador Antonio Bandini (Italy) to hold office until the next regular session of the Assembly.
- 1.2.11 Ambassador Bandini thanked the 1992 Fund Member States for the confidence shown in him and expressed that it would be an honour to serve as Chair of the 1992 Fund Assembly. He expressed particular thanks to the delegations which had nominated him and stated that he looked forward to

his work as Chair. He acknowledged that his predecessor, Mr Gaute Sivertsen, had done an excellent job as Chair of the 1992 Fund Assembly and had set a very high standard. Ambassador Bandini hoped to do his utmost best to follow Mr Sivertsen's lead and wished him the very best of luck for the future.

1.3	<b>Examination of credentials Documents IOPC/MAR21/1/2 and IOPC/MAR21/1/2/1</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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1.3.1 The governing bodies took note of the information contained in document IOPC/MAR21/1/2.

1.3.2 The governing bodies recalled that at its March 2005 session, the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chair, 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.

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

***1992 Fund Assembly decision***

1.3.4 In accordance with Rule 10 of the Rules of Procedure of the 1992 Fund Assembly and the Supplementary Fund Assembly and Rule 9 of the Rules of Procedure of the 1992 Fund Executive Committee, the 1992 Fund Assembly appointed the delegations of Germany, Japan, Malaysia, Mexico and the Russian Federation as members of the Credentials Committee.

***1992 Fund Executive Committee and Supplementary Fund Assembly***

1.3.5 The 1992 Fund Executive Committee and the Supplementary Fund Assembly took note of the appointment of the Credentials Committee by the 1992 Fund Assembly.

***Interim report of the Credentials Committee***

1.3.6 In order to facilitate the resolution of an issue regarding the credentials of one particular delegation, the Chair of the Credentials Committee, Mr Kanagalingam Selvarasah, presented an interim report of the Credentials Committee on Tuesday, 30 March 2021 (document IOPC/MAR21/1/2/1).

1.3.7 The Chair of the Credentials Committee recalled that during the sessions of the governing bodies in October 2019, the Director had received two letters of credentials for two separate delegations claiming to represent the Bolivarian Republic of Venezuela (Venezuela). One of the letters of credentials had been signed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to IMO and other international organisations headquartered in London, appointed by President Nicolas Maduro); and the other one had been signed by President Juan Guaidó (President of the National Assembly, and President (E) of Venezuela).

1.3.8 The Chair also recalled that on that occasion, the Director had invited Dr Rosalie Balkin AO to provide assistance to the Credentials Committee and had requested the advice of Professor Dan Sarooshi Q.C. The Chair further recalled that the Credentials Committee had recommended that the letter of credentials issued by Ambassador Maneiro should be accepted as the official representatives for the October 2019 sessions of the governing bodies. He added that the recommendation of the Credentials Committee had been accepted by the 1992 Fund Assembly, which had been noted by the 1992 Fund Executive Committee and the Supplementary Fund Assembly.

- 1.3.9 The Chair of the Credentials Committee reported that at the time of the December 2020 sessions of the governing bodies, the Director had again received two letters of credentials for Venezuela. The Director had invited Dr Rosalie Balkin AO to provide her assistance to the Credentials Committee and had requested the advice of Professor Antonios Tzanakopoulos, Associate Professor of Public International Law of the Faculty of Law in the University of Oxford, who provided a legal opinion on this matter.
- 1.3.10 The Credentials Committee had recommended again that the *status quo* should continue and that the letter of credentials issued by Ambassador Maneiro should be accepted at that meeting as the official representatives for the December 2020 sessions of the governing bodies. This recommendation was accepted by the 1992 Fund Assembly (see document IOPC/NOV20/1/2/1).
- 1.3.11 The Chair of the Credentials Committee further reported that the same situation had occurred at the March 2021 sessions of the governing bodies, in that the Director had received letters of credentials from the same two delegations claiming to represent Venezuela. The Director had invited Dr Rosalie Balkin AO to advise the Credentials Committee and had requested Professor Antonios Tzanakopoulos to provide an updated legal opinion on this matter.
- 1.3.12 The Chair of the Credentials Committee further reported that the Credentials Committee had reviewed the new legal opinion provided by Professor Tzanakopoulos. It had been noted that since the last meeting of the IOPC Funds' governing bodies in December 2020, the United Nations General Assembly (UNGA) had continued to maintain the *status quo* regarding the credentials presented by the Maduro Government. It had also been noted that on 1 December 2020, UNGA had decided to accept the credentials submitted by the Maduro representative on behalf of Venezuela.
- 1.3.13 The Credentials Committee was unanimous in its view that it was not the function of the IOPC Funds to decide which was the legitimate government of Venezuela, since it considered that to be a political question to be decided in another forum, namely the political organs of the United Nations (UNGA and the UN Security Council). The Committee concluded that the role of the Credentials Committee and the 1992 Fund Assembly was simply to decide which of the two representatives should be accredited as the official representative of Venezuela at the March 2021 sessions of the Funds' governing bodies and make its recommendation to the 1992 Fund Assembly.
- 1.3.14 In considering this matter and the legal advice provided by Professor Tzanakopoulos on 24 March 2021, the Credentials Committee recommended that the *status quo* should continue and that the letter of credentials of the current delegation of Venezuela issued by Ambassador Maneiro, appointed by President Maduro, should be accepted and that the named individuals therein should be deemed the official representatives for the March 2021 sessions of the governing bodies. The Credentials Committee noted, however, that this position was applicable to the March 2021 meeting of the governing bodies only, and it could be susceptible to change in the coming months depending on future developments.

#### **1992 Fund Assembly decision**

- 1.3.15 The 1992 Fund Assembly took note of the interim report of the Credentials Committee and, based on its recommendation, decided to accept the credentials of the delegation headed by H.E. Mrs Rocío Maneiro as the official representatives of Venezuela at the March 2021 sessions of the governing bodies.

#### **1992 Fund Executive Committee and Supplementary Fund Assembly**

- 1.3.16 The 1992 Fund Executive Committee and the Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly.

*Final report of the Credentials Committee*

1.3.17 The Credentials Committee reported in its final report (document IOPC/MAR21/1/2/2) that it had examined 73 letters of credentials, of which 72 were in order. The Credentials Committee also reported that Bahrain and Tunisia had participated in the sessions but had not yet submitted credentials; this situation was expected to be rectified shortly after the meeting.

1.3.18 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the March 2021 meeting.

1.4	<b>Temporary suspension of Rules of Procedure – Facilitating remote sessions</b> <b>Document IOPC/MAR21/1/3</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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1.4.1 The governing bodies considered the proposals to amend or temporarily suspend Rules of Procedure as contained in document IOPC/MAR21/1/3.

1.4.2 The governing bodies noted that, since certain Rules of Procedure presuppose in-person meetings, such rules would need to be temporarily suspended or amended on an exceptional basis to allow for the March 2021 sessions of the governing bodies to be conducted remotely.

1.4.3 It was also noted that the proposals for amendments to procedures were the same as those approved by the governing bodies at their first remote sessions in December 2020 and were closely aligned to the guidance on remote sessions adopted by IMO.

1.4.4 It was further noted that the Director had made every effort to retain established practices of in-person meetings as was reasonably possible. It was also noted that the Director's priority was for the governing bodies to be able to take the decisions required to ensure the organisations could continue to function properly.

*Intervention by the Russian Federation*

1.4.5 The delegation of the Russian Federation agreed with the proposals outlined by the Director, however, reiterated the point that the proposals would apply to these sessions only, and did not set a precedent for future sessions.

**1992 Fund Assembly and Supplementary Fund Assembly decisions**

1.4.6 The governing bodies decided to:

- (i) temporarily suspend Rule 3 of the Rules of Procedure in relation to the location of the meeting to allow for remote sessions to be held;
- (ii) endorse the proposal that, in accordance with Rule 27/23<sup><1></sup> and in line with established practice, the Secretariat should prepare a draft Record of Decisions to be presented for adoption by the governing bodies on the last day of the virtual meeting; and agreed that the sessions should then remain open for an additional seven working day period from the publication of the consolidated draft Record of Decisions, for delegations to comment on that document by correspondence; and

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The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

- (iii) continue to adopt decisions by consensus during the remote sessions and that if the need for a vote should arise, an alternative voting procedure would need to be adopted.

1.4.7 The governing bodies also noted that:

- (i) while Rule 9/8<sup><2></sup> provides that delegations can register and submit credentials up to the opening day of the sessions, for practical reasons delegations were requested to submit credentials no later than Friday, 12 March 2021; and
- (ii) for the purposes of the March 2021 meeting, 'present' as defined in Rule 33(a) shall be interpreted as being registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform.

### **1992 Fund Executive Committee**

1.4.8 The 1992 Fund Executive Committee noted the decisions made by the 1992 Fund Assembly.

## **2 Overview**

2.1	<b>Report of the Director</b>	<b>92A</b>		<b>SA</b>
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- 2.1.1 The Director gave an oral report on the activities of the IOPC Funds since the December 2020 sessions of the governing bodies, providing some background to the key items on the agenda.
- 2.1.2 In terms of membership, the Director recalled that the 1992 Fund Convention had entered into force in the Republic of Nauru on 23 March 2021 and had brought the number of 1992 Fund Member States to 118 on that date.
- 2.1.3 With respect to compensation matters, the Director gave a brief update and reported that compensation payments made for the *Agia Zoni II* incident totalled EUR 14.87 million.
- 2.1.4 The Director referred to the explosion of the *MT Harcourt* in Nigeria in November 2020. He reported that 31 barrels of crude oil had been spilled, that the owner was a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017). He added that it was unlikely that the losses would exceed the STOPIA limit (SDR 20 million) and that the Fund would be called upon to pay compensation. He also reported that a claim had been filed by 12 riverine communities for approximately USD 28 million against the shipowner and master, in the Federal High Court, Warri, Nigeria, and that no proceedings had yet been commenced against the 1992 Fund.
- 2.1.5 The Director also gave an update on the *Bow Jubail* incident and said that this case was important for the future of the organisation. He reported that the Fund had applied to join the proceedings before the Supreme Court of the Netherlands and was awaiting a response on whether it would be allowed to join.
- 2.1.6 The Director reported that in February 2021 he had been contacted by the Israeli authorities in relation to a mystery spill, which could become a potential new case for the Fund. He added that the Secretariat had been working with the Israeli authorities on this incident which would be presented by the Head of Claims at the meeting.
- 2.1.7 The Director referred to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by

<sup><2></sup> The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee



Sea, 1996 (2010 HNS Protocol). He recalled that the IOPC Funds had been tasked to carry out the necessary work to set up the HNS Fund and make preparations for the first session of the HNS Fund Assembly. He noted that substantial progress had been made so far but that substantial work still remained to be carried out.

- 2.1.8 With respect to staff matters, the Director reported that he had invited Mr Robert Owen (IT/Office Manager) to join the Management Team to provide advice on IT/office-related matters. The Director stated that he considered that the IT expertise required to maintain business operations while working remotely and the increasing importance of cybersecurity made the IT function crucial in the activities of the organisations and warranted a separate IT department. Against this background, he had decided to include Mr Owen in the Management Team on a permanent basis and appoint him as Head of the IT Department.
- 2.1.9 The Director also made reference to the appointment of the new Director and said that he had presented a document on the possible voting options that would be discussed on the second day of the meeting. The Director added that he was looking forward to the feedback from Member States on this issue.
- 2.1.10 In concluding, the Director thanked the Ambassador of Venezuela for her efforts in facilitating the payment of contributions from Venezuela due to the Fund. He also thanked the delegation from the Russian Federation for their cooperation and stated that he awaited the decision of the Russian Federation authorities regarding the payment of the outstanding contributions that had been written off in October 2017.

### 3 Incidents involving the IOPC Funds

3.1	<b>Incidents involving the IOPC Funds Document IOPC/MAR21/3/1</b>		<b>92EC</b>	<b>SA</b>
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- 3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/MAR21/3/1, which contained information on documents for the March 2021 meeting relating to incidents involving the IOPC Funds.
- 3.1.2 It was noted that, since the December 2020 meeting, the Secretariat had been informed of two new incidents; the *MT Harcourt*, occurring in November 2020 in Nigeria, and the incident in Israel in February 2021, both of which at this stage may or may not involve the 1992 Fund.
- 3.1.3 The governing bodies further noted that there are currently no incidents involving the Supplementary Fund.

3.2	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/MAR21/3/2</b>		<b>92EC</b>	
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- 3.2.1 The 1992 Fund Executive Committee took note of document IOPC/MAR21/3/2 relating to the *Agia Zoni II* incident.

#### *Closure of Claims Submissions Office*

- 3.2.2 It was noted that on 31 December 2020, the Claims Submissions Office (CSO) in Piraeus, Greece, was closed. All claimants with outstanding claims were notified in advance of the closure.

#### *Limitation fund claims evaluation procedure*

- 3.2.3 It was recalled that the limitation fund administrator had concluded the evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing his provisional

assessments totalling EUR 45.45 million based predominantly on a review of the rates charged by claimants.

- 3.2.4 It was also recalled that court hearings took place in 2020 to deal with the eight appeals lodged against the limitation fund administrator's assessments, and the 1992 Fund had filed a subrogated claim against the limitation fund for all payments made by the 1992 Fund which were not part of the limitation proceedings.

*Investigation into the cause of the incident*

- 3.2.5 It was further recalled that the Technical University of Athens had published its report into the cause of the incident and had concluded that the *Agia Zoni II* had sunk after an explosion.
- 3.2.6 The Executive Committee recalled that another investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had concluded that the *Agia Zoni II* sinking had been caused by the opening of the seawater ballast valves, which could only have been done from on board the vessel.
- 3.2.7 The Executive Committee also recalled that the ASNA report considered that the accident was attributed to the deliberate and negligent actions of:
- the shipowner;
  - the general manager of the owning company;
  - the Designated Person Ashore (DPA) of the owning company;
  - the two crew members on board at the time of the incident; and
  - representatives of the salvor/clean-up contracting company.

- 3.2.8 The Executive Committee further recalled that the ASNA report had concluded that the objective was to allow the ship to sink and that it had been pre-planned.

*Impact of the reports on the 1992 Funds payment of compensation to particular claimants*

- 3.2.9 It was recalled that the 1992 Fund's Greek lawyers had advised that the last sentence of Article 4.3 of the 1992 Fund Convention was aimed at protecting the environment and safeguarding that clean-up and preventive measures would be payable at all times.
- 3.2.10 It was further recalled that the 1992 Fund's Greek lawyers had advised that the exercise of the right to claim clean-up expenses under the 1992 Civil Liability and Fund Conventions, by a party in the clean-up business that had intentionally caused the pollution in order to benefit from the right to claim compensation for clean-up services, would be considered an abuse by the Greek courts under the provisions of Greek legislation.
- 3.2.11 The Executive Committee recalled, however, that the 1992 Fund's Greek lawyers had also advised that the burden of proof rested upon the 1992 Fund to prove before the courts deciding on the issue of compensation, that the claimant had intentionally caused the pollution aiming at receiving the clean-up compensation, or showed that the claimant had been condemned by a criminal court to that effect by an unappealable judgment. The Executive Committee also recalled, therefore, that the mere suspicion of such action would not be sufficient to deny payment.

*Recourse actions*

- 3.2.12 The Executive Committee noted that if the claimant was eventually condemned by a criminal court by an unappealable judgment to have intentionally caused the pollution, the 1992 Fund could commence a recourse action under Article 9.2 of the 1992 Fund Convention.

*Claims for compensation*

- 3.2.13 The Executive Committee also noted that the 1992 Fund had received 421 claims amounting to EUR 98.58 million and USD 175 000 and that the 1992 Fund had paid 186 claims amounting to EUR 14.87 million in compensation.

*Civil proceedings*

- 3.2.14 The Executive Committee recalled that in July 2019, the 1992 Fund had been served with legal proceedings filed at the Piraeus Court of First instance by two of the clean-up contractors for the balance of their unpaid claims amounting to EUR 30.26 million and EUR 24.74 million and that in December 2019, the third clean-up contractor also served the 1992 Fund with legal proceedings for its claim of EUR 8.9 million.
- 3.2.15 The Executive Committee also recalled that in September 2020, the 1992 Fund had been served with further legal proceedings for EUR 998 870 by one of the clean-up contractors and for EUR 1.42 million by three other companies involved in clean-up operations. The Executive Committee noted that shortly thereafter, the 1992 Fund was served with further legal proceedings by a number of other companies involved in clean-up operations. In total, the clean-up claims filed against the 1992 Fund amount to EUR 73.01 million.

*Legal proceedings commenced by fisherfolk*

- 3.2.16 The Executive Committee also noted that the 1992 Fund had been served with legal proceedings amounting to EUR 3.35 million from claimants in the fisheries sectors.

*Legal proceedings commenced by claimants in the tourism sector*

- 3.2.17 The Executive Committee further noted that the 1992 Fund had been served with legal proceedings amounting to EUR 4.3 million by claimants in the tourism sector.

*Legal proceedings commenced by the Greek State*

- 3.2.18 The Executive Committee recalled that in July 2020, the 1992 Fund had been served with legal proceedings by the Greek State to protect its rights to compensation.
- 3.2.19 The Executive Committee also recalled that there was a close correlation between the limitation fund administrator's assessments which had recently been published and those of the 1992 Fund. The Executive Committee further recalled that every claimant with a claim against the limitation fund had the right to accept or appeal the provisional assessment by the end of September 2019, and only eight claimants had appealed.

*Director's recommendation*

- 3.2.20 The Executive Committee further recalled that, in the Director's view, since the investigation into the cause of the incident by the Public Prosecutor remained pending, it would not be appropriate to make any further advance payments to the representatives of the salvor/one of the clean-up contracting companies at this time.

*Statement by the delegation of Greece*

## 3.2.21 The delegation of Greece made the following statement:

'Claims for compensation

This delegation would like once again to express the high appreciation of the Greek State for all payments made so far by the 1992 Fund to victims of the *Agia Zoni II* incident, as well as for the ongoing endeavours of the 1992 Fund's experts to assess the rest of claims submitted.

This delegation is also fully aware of the special conditions the Fund's experts experience during the claims' assessment process of each oil pollution incident.

However, taking into account that the prompt payment of compensation to victims of all oil pollution incidents constitutes one of the main principles that govern the operation of the IOPC Funds, Greece would highly appreciate an estimate by your side on the time frame that the *Agia Zoni II* claims' assessment process is expected to conclude.

Furthermore, this delegation would like to express its concern over the impact the recent closure of the local CSO in Piraeus might have on the progress of the claims' assessment process.

Investigation into the cause of the incident

With regard to the course of the investigation into the cause of the *Agia Zoni II*'s sinking, we would like firstly to emphasise that the circumstances and the nature of each case are significant facts that largely affect the whole penal procedural process.

As it has been already stated, the Public Prosecutor has instructed an examining Judge to perform a judicial investigation collecting all the necessary evidence before submitting the file to the Public Prosecutor. The finalisation of this legal procedure is still pending. Once we are informed of the outcome, our Administration will let you know accordingly without delay.

With regard to the investigations concluded by the Technical University of Athens (TUA) and the third Marine Accident Investigation Council (ASNA), the investigative reports constitute part of the legal procedure run by the Public Prosecutor, who has not reached his final conclusion, as he is taking into account all the evidence collected.

In any case, an unappealable judgment would be required, if any persons were to be held to have intentionally or negligently caused the pollution damage.

Moreover, as it can be deduced from the legal interpretation of the last sentence of Article 4.3 of the 1992 Fund Convention, the 1992 Fund would not be entitled to invoke contributory negligence on the part of a claimant as grounds for exoneration from paying compensation with regard to preventive measures.

Nevertheless, should a party be unappealably condemned to have caused the pollution damage, the legal possibility would still exist for the 1992 Fund to commence a recourse action.'

3.2.22 In response to the questions raised by the delegation of Greece, the Director stated that the claims assessments were well advanced, as evidenced by the figures provided in the document, which also showed that the clean-up claims constituted a large proportion of the total claims submitted and were still being resolved.

- 3.2.23 The Director also stated that the closure of the CSO had no impact on the speed of assessment of claims which were still ongoing, with good progress continuing to be made. Finally, the Director further stated that the facts of the incident were unusual, and the results of the Public Prosecutor's investigations were awaited.

#### **1992 Fund Executive Committee**

- 3.2.24 The 1992 Fund Executive Committee noted the statement made by the Greek delegation and the Director's comments. It was also noted that the Director would continue to monitor this matter and would report the latest developments to the 1992 Fund Executive Committee at its next session.

3.3	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Document IOPC/MAR21/3/3</b>		<b>92EC</b>	
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- 3.3.1 The Executive Committee took note of the information contained in document IOPC/MAR21/3/3 relating to the *Bow Jubail* incident.

- 3.3.2 The Committee recalled that on 23 June 2018, the oil and chemical tanker *Bow Jubail* had collided with a jetty in the Port of Rotterdam, the Kingdom of the Netherlands. It was recalled that, as a consequence of the collision, a leak had occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour, with the ensuing pollution affecting vessels in the vicinity, quays and other property, and wildlife.

#### *Applicability of the Conventions*

- 3.3.3 It was recalled that Article I(1) of the 1992 Civil Liability Convention (CLC) defined 'ship' as: 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard'.
- 3.3.4 It was also recalled that although at the time of the incident, the *Bow Jubail* was in ballast, on the voyage prior to the incident, the *Bow Jubail* had carried 'oil' as referred to in the 1992 CLC. It was recalled, however, that the shipowner had stated that the tanks were clean of oil cargo residues at the time of the incident. It was further recalled that the burden of proof that there were no residues on board lay with the shipowner and that the relevant test would be the one applied by local law, in this case, the law of the Netherlands.
- 3.3.5 The Committee recalled that if the shipowner could not prove that the *Bow Jubail* had no residues of oil in bulk on board, the 1992 CLC would apply and that in that case, since the total pollution damage was likely to exceed the limit that would apply to the ship under the 1992 CLC, the 1992 Fund Convention could apply to this incident. It was noted, however, that it was unlikely that the Supplementary Fund Protocol applied as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.
- 3.3.6 It was recalled that the *Bow Jubail* was insured with Gard P&I (Bermuda) Ltd, and that the limitation amount applicable to the *Bow Jubail* if the 1992 CLC were to apply, would be SDR 15 991 676. It was also recalled, however, that the owner of the *Bow Jubail* was a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.
- 3.3.7 It was further recalled, however, that if the shipowner was successful in proving that there were no such residues on board, the incident would fall under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) and, therefore, the limitation

amount (SDR 14 312 384) under the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96) would apply.

*Limitation proceedings*

- 3.3.8 It was recalled that in its judgment of 27 October 2020, the Court of Appeal in The Hague had confirmed the decision of the Rotterdam District Court that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident. It was recalled that, according to that judgment, the Bunkers Convention 2001 did not apply and the limitation of the shipowner's liability would be governed by the 1992 CLC, not the LLMC 76/96.
- 3.3.9 It was recalled that the shipowner had appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands.

*Proceedings before the Supreme Court*

- 3.3.10 It was noted that the 1992 Fund had applied to the Supreme Court requesting the Court to rule, first, that it may intervene as a party, or alternatively that it may be admitted as an interested party in the proceedings, and in the further alternative, that it may intervene as a party on the shipowner's behalf (joinder) in the appeal in cassation.
- 3.3.11 It was also noted that several claimants had submitted allegations to the Fund's application.
- 3.3.12 It was recalled that the Fund's lawyers in the Netherlands had advised that it will be for the Court to decide whether to allow the 1992 Fund to join the proceedings. It was recalled that the Supreme Court would examine whether the outcome of the proceedings might have an impact on the position of the 1992 Fund and whether the 1992 Fund should be allowed to join the proceedings at this stage under the procedural laws of the Netherlands.

*Claims for compensation*

- 3.3.13 The Executive Committee noted that there was some indication that the claimed amount might be over EUR 80 million.
- 3.3.14 It was noted that the Fund had been contacted by a few potential claimants, including a refinery located in the Port of Rotterdam, expressing their intention of submitting claims against the Fund if the 1992 CLC were to apply to this incident.

*Time bar*

- 3.3.15 The Executive Committee recalled that under the 1992 CLC, rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). It was also recalled that, in respect of the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or their insurer (Article 6). It was further recalled that both Conventions also provided that in no case shall legal actions be brought after six years from the date of the incident.
- 3.3.16 It was noted that the decision of the Supreme Court was not expected before late 2021. It was recalled that if the Supreme Court was to uphold the decision of the Court of Appeal and find that the *Bow Jubail* is a ship as defined under the 1992 CLC, both the 1992 CLC and Fund Convention, together with the Supplementary Fund Protocol, would apply to this incident. The Executive Committee noted that,

as the three-year anniversary of the incident was fast approaching, some claimants were beginning to consult the 1992 Fund's lawyers about how best to protect their compensation rights against the Fund.

*Intervention by the delegation of the Netherlands*

- 3.3.17 The delegation of the Netherlands thanked the Secretariat for the information provided in document IOPC/MAR21/3/3. The delegation noted that the 1992 Fund had applied to join the proceedings at the Supreme Court and reminded the Executive Committee that the matter was now before the courts. That delegation also stated that they had been in close contact with the Secretariat on developments in this case and will remain to do so in the future.

**1992 Fund Executive Committee**

- 3.3.18 The 1992 Fund Executive Committee noted that the Director would continue to monitor this incident and would report the latest developments to the 1992 Fund Executive Committee at its next session.

3.4	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>MT Harcourt</i> Document IOPC/MAR21/3/4/Rev.1</b>		<b>92EC</b>	
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- 3.4.1 The Executive Committee took note of document IOPC/MAR21/3/4/Rev.1 relating to this new incident.

*Background information*

- 3.4.2 The Executive Committee noted that on 2 November 2020, an explosion occurred within a ballast tank of the oil storage tanker *MT Harcourt* (26 218 GT) moored at the Elcrest Terminal in the Gbetiokun oil field, near Koko, Delta State, Nigeria. It was also noted that the tanker was loading crude oil into cargo tanks, and after discharging free water from the slops tanks to shore, a loud explosion was heard, and smoke was seen emanating from the water ballast tank manhole covers on both the port and starboard sides.
- 3.4.3 The Executive Committee further noted that cargo and slops disposal operations were suspended immediately, and all crew were mustered and accounted for. There were no injuries or other casualties.
- 3.4.4 The Executive Committee noted that approximately 31 barrels of crude oil was lost from the cargo tank into the water ballast tank, out of which a small quantity spilled overboard. This oil was immediately contained by the Terminal, placing booms around the vessel and across the entrance to the small channel where the ship lay, followed by clean-up of all the oil from the water.
- 3.4.5 The Executive Committee also noted that the P&I Club's surveyors had been mobilised and attended on board for the duration of the cargo discharge operations to other vessels, and were assisted by naval architects in London who modelled and monitored vessel stability while the cargo was discharged safely in stages to various barges and other vessels in the same management.
- 3.4.6 The Executive Committee further noted that the clean-up operation was organised by the Terminal who used their own barges and crew, and that the Club's surveyors monitored the boom placement and were satisfied that the clean-up operation was ultimately wholly successful.

*Applicability of the Conventions*

- 3.4.7 It was further noted that Nigeria is Party to the 1992 CLC and the 1992 Fund Convention and that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was SDR 203 million.

- 3.4.8 The Executive Committee noted that since the *MT Harcourt* is 26 218 GT units of tonnage, the limitation amount applicable under the 1992 CLC is SDR 17.9 million.
- 3.4.9 The Executive Committee also noted that the owner of the *MT Harcourt* was a party to STOPIA 2006 (as amended 2017), whereby the limitation amount applicable to the tanker is increased, on a voluntary basis to SDR 20 million.
- 3.4.10 The Executive Committee further noted that it appeared unlikely that the amount of compensation payable in respect of this incident would exceed the STOPIA 2006 limit of SDR 20 million and as a result, it was very unlikely that the 1992 Fund would be called upon to pay compensation.

*Insurance details*

- 3.4.11 It was noted that the *MT Harcourt* was insured with the West of England P&I Club, part of the International Group of P&I Associations (International Group).

*Claims for compensation*

- 3.4.12 It was also noted that in February 2021, a claimant representing 12 riverine communities in the Benin river, served legal proceedings upon the shipowner and ship's master, claiming compensation for damage to the creeks, mangroves, fish breeding grounds, drinking water and means of livelihood of the fisherfolk within the communities.
- 3.4.13 The Executive Committee noted that the claim amounted to NGN 11.98 billion (approximately USD 28 million), but to date, little evidence had been provided in support of the claim.

*Intervention by the delegation of Nigeria*

- 3.4.14 The delegation of Nigeria stated that it appreciated the account of the incident, which was a true reflection of the events but was unable to comment further as the incident was being dealt with by the Nigerian courts.

**1992 Fund Executive Committee**

- 3.4.15 The 1992 Fund Executive Committee noted that the Director would continue to monitor the incident and would report any developments at the next session of the governing bodies.

3.5	<b>Incidents involving the IOPC Funds — 1992 Fund:</b> <b>Incident in Israel</b> <b>Document IOPC/MAR21/3/5</b>		<b>92EC</b>	
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/MAR21/3/5 relating to this incident.
- 3.5.2 The Executive Committee also noted that on 19 February 2021, the Government of Israel contacted the 1992 Fund requesting assistance with a mystery spill, which resulted in tar balls being washed up along the Israeli coastline. However, the source of the spill was not identified at that time.
- 3.5.3 The Executive Committee further noted that the Israeli Government believed that sometime between 1 and 2 February 2021, an oil spill incident occurred within the offshore waters of the Israel exclusive economic zone (EEZ), approximately 130 kilometres off the Israeli coastline, to the west-north-west. The Israeli authorities were investigating the cause of the spill, by identifying vessels within the vicinity of the spill location.



- 3.5.4 It was noted that on 17 February, tar balls of a substance reported to be crude oil began to wash up along the Israeli coastline, ranging in severity from medium-heavy pollution to very light dispersed tar balls. The pollution affected the entire coastline to varying degrees.
- 3.5.5 It was also noted that the Israeli Marine Environment Protection Division responded under their National Contingency Plan and took control of the overall response to the spill, utilising the local authorities, which were in charge of organising the response on the beaches. A company was tasked to remove the oil waste for disposal.
- 3.5.6 It was further noted that clean-up operations commenced, and by 16 March, it was estimated that 60% of the affected coastline had been cleaned by first responders, utilising municipal authorities, nature and parks authority and comprising government personnel and volunteers, numbering between 7 000–12 000 per day, organised and monitored by an Israeli non-governmental organisation and the local authorities. A two-week fishing ban was enacted within areas of the affected coastline.

*Discussions between the Israeli authorities and the 1992 Fund*

- 3.5.7 The Executive Committee also noted that on 19 February 2021, the Israeli authorities had contacted the 1992 Fund to seek assistance and guidance regarding the source of the spill, which was at that time unknown.
- 3.5.8 The Executive Committee further noted that during the initial discussions, the Director had stated that if it was not possible to identify the source of the pollution, a number of criteria were required before the 1992 Fund could class the incident as a 'mystery spill'; such criteria included the need for the 'oil' as defined within Article I(5) of the 1992 CLC identified as causing the pollution, and for it to be from a 'ship', as defined within Article I(I) of the 1992 CLC.

*Investigation into the cause of the incident by the Israeli authorities*

- 3.5.9 It was noted that the Israeli authorities began their search to identify the source of the oil spill and examined Automatic Identification System (AIS) data and satellite imagery, which indicated that in their opinion, the vessel responsible for the spill was the *MT Emerald* (62 247 GT), a Panamanian-flagged tanker, registered in the Marshall Islands, and which was initially believed to be owned by an Iranian company.
- 3.5.10 It was further noted that in the belief that the oil spill emanated from the *MT Emerald*, the Israeli authorities examined satellite and historical AIS data for the recent voyages of that vessel which revealed the vessel had loaded crude oil at Kharg island (Iran) on 17 January 2021 and appeared to be fully laden with 112 000 tons of cargo. The vessel's AIS was turned off as the vessel entered the Egyptian EEZ, which only appeared again after 23 hours and 230 nautical miles to the north, in the vicinity of the Cypriot EEZ and offshore Syria (Latakia).
- 3.5.11 The Executive Committee noted that on 2 February 2021, the *MT Emerald* was located in the Israeli EEZ around 130 kilometres from the Israeli shoreline and on 5 February 2021, a large oil spill was identified by satellite images provided by European Maritime Safety Agency (EMSA), and the National Oceanic and Atmospheric Administration (NOAA) of the United States of America.
- 3.5.12 The Executive Committee also noted that in the view of the Israeli authorities, the spill occurred in the EEZ waters of Israel sometime between the 1 and 2 February 2021, and that analysis of AIS data suggested that there were no other tankers within a 50 nautical mile radius from 1 to 5 February other than the *MT Emerald*.
- 3.5.13 The Executive Committee further noted that after a period of ship-to-ship (STS) operations with another vessel between 3 and 14 of February, the *MT Emerald* returned to Iran.

- 3.5.14 It was noted that on 17 February 2021, tar balls washed up along all Israeli coastline in a storm of 4-metre wave height and strong winds of up to 35–50 knots; tar balls in different amount and locations, kept being washed ashore until 21 March 2021.
- 3.5.15 It was also noted that the Israeli authorities stated that there was no other source of crude oil in the Israeli EEZ nor any land pipeline which could be a possible source of crude oil in the location indicated, but that investigations were ongoing into the cause of the incident and had not yet been concluded.
- 3.5.16 It was further noted that the Israeli authorities had collected samples of the oil spilled, which had been analysed by the Israeli Institute for Energy and Environment and by the University of Jerusalem, and which appeared to indicate that the oil spilled was crude oil.

*Claims for compensation*

- 3.5.17 The Executive Committee noted that the Israeli authorities had not yet established their claim for the clean-up operation costs but that an initial budget of ILS 45 million had been allocated for direct cleaning efforts of the municipalities, which did not include losses from other consequences of the incident such as the two-week fishing ban.

INVESTIGATIONS INTO THE INCIDENT CONDUCTED BY THE 1992 FUND

*Analysis of the oil spilled*

- 3.5.18 It was noted that the 1992 Fund had instructed technical experts to travel to Israel to collect samples for analysis. However, due to the COVID-19 pandemic and the difficulty of travelling overseas during this time, travel arrangements and the collection of oil samples were delayed, and the results of the sample testing were not yet ready.

*Details of the vessel*

- 3.5.19 It was also noted that the 1992 Fund had been informed that the *MT Emerald* was, up until 23 December 2020, owned by a Libyan company but was then sold to a company registered in the Marshall Islands, Oryx Shipping Ltd., said to be owned by a Syrian family based in Greece. The 1992 Fund had requested its Greek lawyers to investigate further, and details were awaited.

*Details of the insurance*

- 3.5.20 It was further noted that until 23 December 2020, the tanker was insured by the West of England P&I Club, but P&I cover was withdrawn on that date following the vessel's sale. It was not known with which insurance company the insurance cover had been placed.

*Contact with the delegation of the Islamic Republic of Iran by the 1992 Fund*

- 3.5.21 The Executive Committee noted that the Director had informed the Iranian delegation of the new potential incident involving the 1992 Fund, given the allegations that the tanker belonged to an Iranian company and was carrying oil from Iran.

*Applicability of the Conventions*

- 3.5.22 The Executive Committee also noted that Israel was a Party to the 1992 CLC and the 1992 Fund Convention, but the question as to whether the 1992 CLC and Fund Convention applied would have to be examined on the basis of the evidence available, in the light of the definition of 'ship' and 'oil' contained in the 1992 CLC.

- 3.5.23 The Executive Committee further noted that for the 1992 international Conventions to apply, the authorities would have to establish that the oil spilled was crude oil and not fuel oil. In addition, the authorities would have to establish that the origin of the crude oil found on the coastline could not have originated from any other source such as a pipeline, refinery or oil tank, and that its origin must have been a passing oil tanker.
- 3.5.24 It was noted that, at present, pending the outcome of the analysis of the samples collected by the 1992 Fund experts, it was not known what substance was spilled or from where the oil originated.
- 3.5.25 It was also noted that no limitation proceedings had been established, and no legal proceedings had been commenced.
- 3.5.26 It was further noted that the Director had informed the Israeli authorities that the 1992 Fund was ready to assist them in the difficult situation caused by the oil spill from an unknown source.
- 3.5.27 It was also noted that the results of the oil sampling undertaken by the 1992 Fund's technical experts were awaited and it was presently not possible to state with certainty whether the Conventions applied and, if so, which vessel had caused the incident. Consequently, it was not yet clear whether the 1992 Fund would be involved in the incident.
- 3.5.28 The Director stated that he particularly wished to thank the delegation of Israel whose assistance had been invaluable in gaining access for the 1992 Fund's technical experts to collect samples, the results of which were awaited, and that it was important that if the samples were found to be crude oil from a tanker, that Israel be afforded the protection being a Member State of the 1992 Fund.

#### *Debate*

##### *Intervention by the delegation of Israel*

- 3.5.29 The Israeli delegation stated that it was grateful for the assistance provided by the 1992 Fund and that since the tar balls had hit the entirety of the 170-kilometre-long coastline, it estimated the incident involved a spill of somewhere between ten and hundreds of tons of oil, which had generated approximately 1 000 tons of oily waste products.
- 3.5.30 The delegation also stated that the incident had lasted for 30 days between 17 February and 17 March 2021, but that there were still small amounts of tar balls being washed up along the coastline. That delegation further stated that two laboratories had tested the oil and found it to be crude oil, but that it also had full faith in the findings of the laboratory employed by the 1992 Fund as it was certain that the oil was crude oil.
- 3.5.31 The delegation stated that there was no other possible source of the oil in the vicinity of 70 kilometres from the Israeli coastline within the Israeli EEZ, and that it was estimated that the oil had travelled for some 17 days before hitting the coastline. The delegation also stated that while the evidence of the source of the spill was circumstantial, it was very strongly circumstantial.

##### *Statement by the delegation of Greece*

- 3.5.32 The Greek delegation made the following statement:

'The Greek State has been in close cooperation with the Israeli authorities in relation to the incident in Israel.

As far as the *MT Emerald* is concerned, first and foremost, it needs to be stressed that the said ship was never under the flag of Greece nor managed from Greece.

With regard to the ownership of the *MT Emerald* our delegation would like to inform that the company 'Oryx Shipping Ltd.', based in the Marshall Islands, was initially granted by the Greek State with a license to establish a branch office in Greece in May 2019.

However, the company did not fulfil its obligations prescribed under national law and thus the said license ceased to be in force, as declared by a relevant Ministerial Decision issued in February 2020.

In accordance with our national registration, the legal effect of this Decision is that the original license is considered to have never been granted to the said company.'

*Statement by the delegation of the Islamic Republic of Iran*

3.5.33 The delegation of the Islamic Republic of Iran made the following statement:

'As a Member State of the 1992 Fund and the International Maritime Organization (IMO), the Government of the Islamic Republic of Iran has always served as a committed and responsible State with regard to the requirements of international maritime treaties, as verified by the Iranian effective presence and participation in the technical committees and meetings of IMO, and efficient activity in the related fields of interest, as well as close and constructive interaction and liaison with IMO and the IOPC Funds' Secretariat in various aspects.

A crucial marine environment convention addressing ships is the International Convention for the Prevention of Pollution from Ships (MARPOL), and the Islamic Republic of Iran has been among pioneer Parties thereto, meticulously implementing and enforcing its provisions on board vessels, submitting timely reports, similar to other major conventions such as the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), and thus tolerating no violation of the relevant technical requirements and obligations through appropriate sanctions of the violators.

Despite the above-mentioned facts, questionable allegations have been announced regarding an oil spill near Israeli coasts, involving the vessel *MT Emerald*, registered in the Marshall Islands and operating under the Panamanian Flag. Any connection and association of the so-called vessel to the Islamic Republic of Iran is unfathomable and groundless, and the Government of the Islamic Republic of Iran thus strongly believes that:

- 1) Under the mechanisms stipulated in the convention on the establishment of the 1992 Fund, as well as its working regulations and relevant guidelines, it is irrelevant, irrational and illegal to raise serious allegations and accusations, such as environmental sabotage through causing intentional oil spills, at such an international forum with an absolutely technical and specialised mission and duty regarding damages and compensation resulting from oil spills and their consequences. Any mention of issues of that sort at such forums is therefore unacceptable and should be avoided;
- 2) Oil spills are inevitable accidents that may still occur anywhere around the world, due to numerous reasons that are generally accidental and attributed to deficiencies on board ships or resulting from maritime accidents, or else because of violations from international regulations and requirements, such as the MARPOL Convention. The rationale for the establishment of the 1992 Fund actually arises from such inevitability of oil spills; and
- 3) It must be emphasised that according to the loading documents of *MT Emerald*, or other available evidence pertaining to this pollution case, the vessel was not loaded

at any of the Iranian ports. Moreover, the origin of the oil products loaded on an oil tanker or her port of loading, located whether in Iran or any other State, can bear no relevance to the occurrence of an oil spill whatsoever, due to intentional or accidental causes. There is no doubt that in case of an oil spill, it is the governments of the ship's Flag State, owner or master that should be held accountable, not the government or company that supplied the oil cargo involved in the spill.

This delegation would like to conclude by strongly rejecting any involvement in the mentioned oil spill, believing such allegations and accusations to be solely made under certain political intentions, without sufficient evidential and logical grounds.

Any such groundless accusations and abuse of membership at technical international organisations, such as the IOPC Funds, should be avoided and prevented in the future, as empty allegations of this sort have no credibility or value among nations and states of the world, and will serve no purpose. It is the firm belief of this delegation that international forums such as the IOPC Funds or IMO should not be exploited for raising political issues, and the understanding that the oil spill case involving *MT Emerald* cannot be attributed to the Islamic Republic of Iran. It seems that its linkage to this Member State of the IOPC Funds or any attempt to do so, is political rather than technical, and this delegation is thus of the opinion that political issues shall not be addressed at technical forums such as the IOPC Funds.'

*Statement by the delegation of Panama*

3.5.34 The delegation of Panama made the following statement (original in Spanish):

'With regard to the document concerning the incident in Israel, the Republic of Panama, as the responsible Flag State, which faithfully fulfils its international obligations and always complies with the guidelines which ensure protection and conservation of the marine environment, is always ready to address any incident and claim that is duly substantiated on clear and objective evidence, and not on speculations without the legal or technical basis required in an impartial investigation.

In this regard, Panama can address any claim, as long as it results from a serious investigation, with conclusive and indisputable evidence. We, therefore, consider that it is necessary to take into account the whole scenario of the incident, the rules on the limitation of responsibilities for the transport of cargoes, and all the actors involved in the incident.'

3.5.35 In response to that statement, the Director thanked the delegation and stated that as the incident was still under investigation, he had not yet discussed the incident with the Panamanian authorities, but if necessary, would do so, following the results of the tests of the samples which had been obtained and which were awaited.

3.5.36 Another delegation expressed its support for the Secretariat and trusted that it would investigate the incident in a careful and neutral manner.

**1992 Fund Executive Committee**

3.5.37 The Executive Committee thanked the States which had taken the floor for: providing information on the status of the owner; as well as on the status of the investigations into the source of the oil spill; underlining the need to investigate the facts of the incident on a technical rather than a political basis; and recognising that the investigation was still in its early stages with significant information as yet unknown.

3.5.38 The 1992 Fund Executive Committee also noted that the Director would monitor developments and report the outcome of the analysis of the spilled oil at a future session. Compensation matters

**4 Compensation matters**

4.1	<b>Compensation matters</b>	<b>92A</b>		<b>SA</b>
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The governing bodies noted that no items were raised under this agenda item.

**5 Treaty matters**

5.1	<b>2010 HNS Convention Document IOPC/MAR21/5/1</b>	<b>92A</b>		
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- 5.1.1 The 1992 Fund Assembly took note of the information contained in document IOPC/MAR21/5/1 submitted by the Secretariat with regard to the tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund).

*Status of the 2010 HNS Protocol*

- 5.1.2 It was noted that, since the December 2020 session of the 1992 Fund Assembly, no State had deposited an instrument of ratification or accession to the 2010 HNS Protocol with the Secretary-General of IMO and that, therefore, at the time of the session, there were five Contracting States to the Protocol, namely, Canada, Denmark, Norway, South Africa and Turkey.

*Recent developments*

- 5.1.3 It was noted that after the full review undertaken in 2019–2020, the HNS Finder had continued to be updated to take into account changes in the codes and lists referred to in the HNS Convention. It was reported that the latest update had been completed in March 2021 and incorporated the changes to the list following the IMO circular MEPC.2/Circ.26 (Tripartite agreements), the International Maritime Dangerous Goods (IMDG) Code amendment 40-20 as well as the Resolution MEPC.318(74) containing a number of amendments to Chapters 1, 15, 16, 17, 18, 19 and 21 of the International Bulk Chemical (IBC) Code, which became effective on 1 January 2021.
- 5.1.4 With regard to the administrative tasks related to the handling of claims for compensation, the 1992 Fund Assembly noted that the informal group set up to work on the preparation of a draft HNS Claims Manual, namely Cedre, the International Chamber of Shipping (ICS), the International Group of P&I Associations (International Group), ITOPF and IMO, had been able to meet on two occasions, in November 2020 and February 2021. It was noted that the group had agreed to split its work into thematic sub-groups to examine the technical and legal aspects specific to the HNS Convention and develop suggestions for possible draft texts. It was further noted that once the group of experts had prepared a draft of the technical manual, it was the intention of the Secretariat to use it as a basis for discussion and that it would be made available for comment, further development and improvement from any interested delegations before its consideration by the first HNS Fund Assembly.
- 5.1.5 Finally, the 1992 Fund Assembly noted that since online seminars and workshops had been more frequently made available worldwide in recent times, the Secretariat had been able to take part in some remote activities about the liability and compensation regime, including the HNS Convention whenever possible. In particular, in March 2021, an online seminar on the HNS Convention was organised by the Universidad del Salvador de Argentina and with the participation of 11 other universities from most Latin American States. In addition, it was noted that an online training session was organised by the European Maritime Safety Agency (EMSA) for the benefit of the maritime administration of Georgia, in November 2020.

*Debate*

- 5.1.6 The delegation of Canada, as a Contracting State to the 2010 HNS Convention, thanked the Secretariat for the work carried out so far to facilitate the setting up of the HNS Fund, while recognising that there was still much work to be done. That delegation took the opportunity to refer to Article 45 of the 2010 HNS Convention, which provides that all States Parties must submit annual reports on HNS contributing cargo received. In that respect, it noted that the Circular providing details of the data reported by States Parties in 2019, that should have been published by IMO, had not yet been issued due to some delays in reporting. That delegation insisted on the importance of that information being provided by Contracting States on an annual basis, both for meeting the entry into force conditions of the Convention as well as ensuring the sharing of the financial burden after entry into force. That delegation took the opportunity to offer its assistance to any State on the matter of HNS reporting. It also stated that it looked forward to being joined as a Contracting State to the Convention by other States in due course, particularly by those receiving large volumes of contributing cargo.
- 5.1.7 The delegation of France provided an update on its progress on the implementation of the 2010 HNS Convention. It stated that it had already adopted and published two pieces of legislation in May 2020, setting out the reporting obligations of those entities receiving HNS in France, as well as the methods by which they should submit their reports. That delegation added that it was now preparing its ratifying legislation and that for that next phase, coordination with other States was indeed crucial. It also noted that its administration was receiving questions from potential contributors regarding the definition of 'receiver' in the Convention and that further clarification on this matter would be helpful.
- 5.1.8 The delegation of Germany indicated that the implementation bill was in discussion in Parliament and that it could be adopted in August 2021, allowing for HNS reporting to begin and the ratification process to be completed sometime in 2022. That delegation added that to ensure a level playing field among all States Parties, a coordinated ratification process was necessary, in particular with the Netherlands and Belgium, but also with France and others.
- 5.1.9 The delegation of the Netherlands informed the 1992 Fund Assembly that data on HNS had been gathered since 2018 to facilitate the identification of receivers in the Netherlands. It also indicated that domestic implementation of the HNS Convention was underway and confirmed that the whole process was done in close coordination with Belgium and Germany.
- 5.1.10 The delegation of Belgium confirmed that it was also cooperating closely with the neighbouring countries and making progress towards domestic implementation of the Convention and invited other States to join that effort.
- 5.1.11 The delegation of Estonia informed the 1992 Fund Assembly that its instrument of ratification of the 2010 HNS Protocol was due to be sent to IMO in May 2021.
- 5.1.12 The delegation of Cameroon expressed its interest in the HNS Convention as part of its ongoing efforts to minimise the risks of incidents involving HNS in Cameroon. However, it requested assistance from the IOPC Funds or IMO to better understand the reporting and financial implications involved in becoming Party to this Convention. The Director responded in confirming that the IOPC Funds' Secretariat, together with IMO, would be able to provide support and invited the delegation to contact the Secretariat to discuss the matter further.
- 5.1.13 The observer delegation of IMO took the floor to confirm that technical assistance could be made available from IMO under its Integrated Technical Cooperation Programme if required. In particular, IMO in good cooperation with the IOPC Funds' Secretariat and the International Group of P&I Associations could organise a national or regional workshop on the IMO liability and compensation conventions which would have a prominent focus on the 2010 HNS Convention.

- 5.1.14 The observer delegation of the International Group informed the 1992 Fund Assembly that a number of shipping organisations (International Group, ICS, BIMCO and the European Community Shipowners' Associations (ECSA)) had collectively reached out to the European Chemical Industry Council (CEFIC) to work together with the chemical industry to improve their understanding of the Convention and its practical implications. That delegation stressed the fact that all sides of the industry should be cooperating on this very important matter and expressed the hope that it would have a positive and reassuring impact on States considering accession to that instrument.
- 5.1.15 The Chair expressed his appreciation to the delegations who provided an update, as it showed that the HNS Convention was getting closer to entry into force.

### ***1992 Fund Assembly***

- 5.1.16 The 1992 Fund Assembly noted the information presented and welcomed the developments reported. It also noted that the Secretariat would continue to regularly provide details to the Assembly on the progress towards the entry into force of the 2010 HNS Convention.

## **6 Financial policies and procedures**

6.1	<b>Amendments to the Internal Regulations Document IOPC/MAR21/6/1</b>	<b>92A</b>		<b>SA</b>
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### ***1992 Fund Assembly and Supplementary Fund Assembly decision***

In light of recent staff changes, the 1992 Fund Assembly and Supplementary Fund Assembly decided to amend 1992 Fund Internal Regulation 12 and Supplementary Fund Internal Regulation 12, relating to the delegation of authority. The amended Regulations are set out at Annex II.

6.2	<b>Amendments to the Financial Regulations Document IOPC/MAR21/6/2</b>	<b>92A</b>		<b>SA</b>
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### ***1992 Fund Assembly and Supplementary Fund Assembly decision***

In light of recent staff changes, the 1992 Fund Assembly and Supplementary Fund Assembly decided to amend 1992 Fund and Supplementary Fund Financial Regulations 9 relating to the management of monies. The amended Regulations are set out at Annex III.

## **7 Secretariat and administrative matters**

7.1	<b>Secretariat matters Document IOPC/MAR21/7/1</b>	<b>92A</b>		<b>SA</b>
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- 7.1.1 The governing bodies took note of the information contained in document IOPC/MAR21/7/1 regarding the operation of the Secretariat.

### ***Management Team***

- 7.1.2 The governing bodies recalled that at its December 2020 sessions, the Director had informed the Assembly that following the departure of the Legal Counsel and considering the Information Technology (IT) expertise required in order to maintain business operations while working remotely throughout the COVID-19 crisis, the Director had invited Mr Robert Owen, IT/Office Manager to attend Management Team meetings to provide key advice on IT/office-related matters. The governing bodies further recalled that, at that time, the Assembly was informed that the Director would examine whether the IT/Office Manager should continue its role within the Management Team on a permanent basis and would inform the 1992 Fund Assembly at its next session in 2021.



- 7.1.3 The governing bodies noted the Director's decision to make Mr Robert Owen a permanent member of the Management Team. The governing bodies further noted that in recognition of the fact that Mr Owen was now a member of the Management Team, the Director had decided to reflect this change in the post title and, therefore, noted that the title of 'IT/Office Manager' had changed to 'Head, Information Technology'.

*New department structure of the organisations*

- 7.1.4 The governing bodies noted that the IT and office management functions currently fell within the Finance and Administration Department of the Secretariat and took note of the organisational chart showing the incumbents within the current structure (Annex I of document IOPC/MAR21/7/1).
- 7.1.5 The governing bodies noted the Director's comments regarding the strategic importance and business-critical role of IT now and in the future and noted the Director's intention, therefore, to separate the IT and office management functions from the Finance and Administration Department, which would result in a separate IT Department with responsibility for office management, within the structure of the Secretariat.
- 7.1.6 The governing bodies further noted the Director's intention to appoint Mr Owen as Head of the IT Department at his current P5 grade and the posts of IT Officer and IT/Office Administrator as well as the vacant post of Office Manager would report to the Head of the IT Department.
- 7.1.7 The governing bodies noted that the Director's intended change to the departmental structure would mean that the Secretariat would be divided into four departments, namely: the Claims Department; the Finance and Administration Department; the External Relations and Conference Department; and the newly created IT Department, and that this would be in addition to the Director's Office, which is outside the departmental structure.
- 7.1.8 The governing bodies further noted that it was the Director's intention for the new departmental structure to be effective from 1 April 2021. The governing bodies took note of the organisational chart showing the incumbents within the new structure effective 1 April 2021. The amended organisational chart is set out in Annex IV.
- 7.1.9 The governing bodies also noted the Director's intention to review the classification of the post of 'Head, Information Technology' as per standard practice to reflect the additional tasks and responsibilities and that the Director would report the outcome of the classification of the post to the 1992 Fund Assembly in November 2021.
- 7.1.10 The governing bodies further noted that Mr Ranjit Pillai would, as Head of the Finance and Administration Department, continue to be Deputy Director and responsible for Finance and Human Resource functions until he retires in June 2022, and that the succession to the post of Head, Finance and Administration Department would be undertaken by the next Director.

*Debate*

- 7.1.11 One delegation raised the matter of the number of vacancies shown in the organisation's organigram and whether these posts were to be filled. The Director, in response, stated that he had no intention of filling the vacant posts, and of these posts, only that of Claims Manager was budgeted for. He added that the posts were retained should there be a need to recruit for the posts at a future date.

***1992 Fund Assembly and Supplementary Fund Assembly***

- 7.1.12 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in the document and congratulated Mr Owen on his new role, and wished him all the best.

7.2	<b>Information services</b> <b>Document IOPC/MAR21/7/2</b>	<b>92A</b>		<b>SA</b>
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- 7.2.1 The governing bodies noted the information contained in document IOPC/MAR21/7/2 regarding remote activities and training events organised by or involving the Secretariat.
- 7.2.2 It was noted that since demand for such remote services had inevitably increased following the global COVID-19 pandemic and restrictions on gatherings and travel had continued into 2021, the Secretariat had begun to deliver remote training and information events and was also planning to run the 2021 Short Course as an online event. Furthermore, it was exploring whether the Induction Course could also be provided online.
- 7.2.3 It was noted that the Secretariat had contributed to a number of webinars since the December 2020 sessions of the governing bodies, including events organised by the GI WACAF project, EMSA and the Ministry of Environment, Quebec, Canada and that the Secretariat was available to work together with any States that may consider it useful to organise similar online activities. It was further noted that, since it had not been possible to host any of the annual visits from universities and other educational institutions, the Secretariat had opted to maintain its support for interested students by providing online seminars on request.
- 7.2.4 The governing bodies noted that the Secretariat was also developing a series of short webinars, which would be open to a wide audience, covering the key areas which form the bases of the IOPC Funds and the work of the organisations, such as claims handling or oil reporting and contributions. It was noted that further information on dates and joining instructions would be announced after the March 2021 meeting of the governing bodies.

#### *Short Course*

- 7.2.5 It was recalled that the 2020 Short Course, which was due to be held from 8–12 June, was unfortunately cancelled as a result of the COVID-19 pandemic (circular IOPC/2020/Circ.8).
- 7.2.6 It was also recalled that the Secretariat had previously concluded that it would not be practical to provide remote access to additional participants of the IOPC Funds' annual Short Course while it took place in parallel as a physical course with participants in London. It was noted, however, that since ongoing restrictions were likely to prevent the physical presence of any participants in London in June 2021, the Secretariat had considered the practicalities and, in consultation with the supporting partners of the course, had decided to offer an adapted, fully remote version of the course this year on a trial basis.
- 7.2.7 The governing bodies noted the practical information relating to the remote Short Course as set out in document IOPC/MAR21/7/2. In particular, it was noted that the course would take place in June 2021 and that the application process would remain the same as for the in-person Short Course, whereby nominations of participants should come directly from governments of Member States and should be accompanied by a completed nomination form and candidate's brief curriculum vitae. It was noted that spaces would be allocated on a first come, first served basis and that the course would be open to a maximum number of 15 participants.
- 7.2.8 It was also noted that a circular would be issued shortly after the March 2021 sessions of the governing bodies, confirming the dates and programme of the remote course and containing the nomination form and further details on how to apply.

#### *Induction Course*

- 7.2.9 It was noted that the Secretariat was also considering whether the annual Induction Course for meeting delegates could be delivered as a fully remote event if required and continues to investigate

ways in which it could ensure remote users would be able to benefit from the Induction Course in the same way as local participants.

#### *Annual Report*

- 7.2.10 The Director took the opportunity to inform the governing bodies that the 2020 Annual Report of the IOPC Funds had recently been published and was available to download or request in hard copy via the publications section of the IOPC Funds' website.

#### *Debate*

- 7.2.11 One delegation thanked the Secretariat for the work undertaken to adapt the induction course and the short course in order to deliver them remotely. That delegation noted that the remote delivery of these courses would be carried out on a trial basis and expressed hope that such virtual training opportunities would continue to be offered after the restrictions on travel as a result of the global pandemic were eased. That delegation highlighted the particular value of such remote activities for those Member States that were least able to travel to London and commented on the usefulness of both the physical and virtual training services offered by the Secretariat.

#### **1992 Fund Assembly and Supplementary Fund Assembly**

- 7.2.12 The governing bodies welcomed the information provided and thanked the Secretariat for its efforts to ensure information and training opportunities are accessible remotely.

7.3	<b>Appointment of the Director – Procedures Document IOPC/MAR21/7/3</b>	<b>92A</b>		<b>SA</b>
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- 7.3.1 The governing bodies noted that the post of Director would become vacant on 31 December 2021 on the expiry of the current Director's term of office and that the 1992 Fund Assembly will, therefore, be invited at its 26th session in November 2021, to appoint a new Director who will, *ex officio*, also be Director of the Supplementary Fund.
- 7.3.2 It was noted that, in the event that in November 2021 the sessions of the governing bodies are held in person, as usual, the appointment of the Director could take place by a secret ballot held in person, in a private meeting, overseen by two scrutineers appointed by the 1992 Fund Assembly, in line with the Funds' established practice. It was recalled that this practice was followed in 2005 and 2011, and it was noted that in the Director's view, to the extent possible, the same procedures should be applied to the appointment of the new Director in November 2021.
- 7.3.3 The governing bodies also noted, however, that due to the ongoing COVID-19 pandemic, the November 2021 meeting of the IOPC Funds' governing bodies may be held at least partly, if not fully, remotely and that in that case, the usual ballot procedure applicable for the appointment of the Director would need to be adapted accordingly on an exceptional basis.
- 7.3.4 The governing bodies noted the information contained in document IOPC/MAR21/7/3, which sets out the established practice for the appointment of the new Director in detail as well as four possible options for alternative ballot procedures that could be considered by the governing bodies in the event that the November 2021 meeting is held remotely. The four alternative options presented in the document are to elect the Director:
- (a) exclusively via an online voting system;
  - (b) exclusively by postal voting;
  - (c) via a hybrid solution that offers both voting in-person at the meeting or online voting; or

(d) via a hybrid option that offers both voting in-person at the meeting or postal voting.

7.3.5 The details of each option were described in the document and the governing bodies noted in particular:

- under option (a) that the online voting process would be similar to that followed for the election of the members of the joint Audit Body in December 2020 and that it would be organised to take place during the meeting by the third-party provider, UK Engage;
- under option (b), that Member States could opt to send their vote by post in advance of the meeting once all nominated candidates have been announced;
- under option (c), that Member States would need to confirm at the opening of the session whether they wish to cast their vote in person or online and that for those Member States wishing to cast their votes in person, voting would be conducted by secret ballot during the meeting in line with the established practice;
- under option (d), that Member States could opt to either vote in-person at the meeting or send their vote by post in advance of the meeting once all nominated candidates have been announced.

7.3.6 The advantages and disadvantages of each of these four options were presented in the document, and the 1992 Fund Assembly was invited to note the information and provide feedback.

7.3.7 One particular requirement that was highlighted in the document was for one or more further ballots to take place in the event that no candidate obtains a two-thirds majority in the first ballot. It was noted that the established practice of holding multiple ballots if required would be particularly difficult when using a postal voting system and that a possible solution could be to hold one ballot in which voters rank the candidates in order of preference. Essentially, the various rounds of voting would still be undertaken but in one ballot paper/form. It was noted that, while the application of this system would be a departure from established practice in one part, it would nevertheless enable all Member States to participate in all rounds in exactly the same way.

7.3.8 It was noted that, in the event that the meeting is able to take place in person, in line with established practice, but some overseas delegations remain unable, or would prefer not to travel to London for the meeting in November, out of the 118 States Members of the 1992 Fund, 109 have official diplomatic representation in the United Kingdom in the form of an Embassy or High Commission which may enable them to send a UK-based representative to vote in person.

7.3.9 It was noted that in all cases, a circular would be issued in the three official languages in April 2021, calling for the nomination of candidates by 1992 Fund Member States and that the deadline for nominations would be 30 June 2021. The names of all candidates will be circulated to Member States in a circular in July 2021.

7.3.10 It was noted that, as set out in the Director's considerations in document IOPC/MAR21/7/3, should the 1992 Fund Assembly consider that any adaptation of the established ballot procedure is not practical or agreeable, it may wish to delay its consideration of the matter until after discussions at the IMO Council in June 2021, when it will be considering ballot procedures for the appointment of members of the Council. It was noted that, in that case, the 1992 Fund Assembly could hold an extraordinary session in July to discuss further details on the appointment process. It was noted that alternatively, the Assembly may wish to postpone the appointment of the Director until it is possible to do so using the established practice.

*Intervention by the observer delegation of the International Maritime Organization (IMO)*

- 7.3.11 The observer delegation of IMO confirmed that the IMO Secretariat had been exploring possible ballot procedures for the election of the IMO Council and that, in its view, the method of voting in that case would be highly dependent on the modality of the IMO Assembly meeting in December 2021, during which the election was due to take place. It noted three possible scenarios which were all dependent on the global progression of the COVID-19 pandemic and the resulting restrictions on travel, namely (i) a full physical meeting at the IMO building at which Member States would be able to attend in person; (ii) a hybrid meeting at which some delegations would be able to attend in person and others would attend remotely; and (iii) a fully remote meeting.
- 7.3.12 The IMO representative pointed out that each of the scenarios described above could lead to the use of a different method of voting to elect the members of the Council. Under scenario (i), it was expected that paper ballots and a physical vote would be possible, although the representative stated that IMO would be exploring the possibility of using electronic voting in the future. Scenario (ii) would, in the representative's view require the use of alternative methods of voting, such as the ones described in document IOPC/MAR21/7/3. Under scenario (iii), the IMO representative considered it likely that a new voting system would need to be adopted, such as physical voting by appointment to comply with any social distancing requirements in place at the time or perhaps online voting. It was noted that the IMO Secretariat had been looking into the practices of other UN organisations and agencies and would be providing its Member States with further information in that regard.

*Debate*

- 7.3.13 The 1992 Fund Assembly thanked the Director for the detailed information contained in document IOPC/MAR21/7/3. It also expressed its appreciation to the delegation of IMO for the information provided relating to the work it had also undertaken in relation to carrying out elections under the current exceptional circumstances.
- 7.3.14 Many delegations that spoke took the opportunity to express their appreciation for the work of the current Director during his two terms of office and noted that the appointment of the next Director was a very important decision for the organisation that required careful consideration.
- 7.3.15 A number of delegations stated that they were eager to see a return to physical, in-person meetings and all delegations that spoke agreed that ideally the election of the next Director should be carried out in person, by secret ballot, in a private meeting, under the supervision of two scrutineers appointed by the Assembly and therefore fully in line with established practice.
- 7.3.16 However, the majority of delegations noted that, while the progression of the pandemic in the United Kingdom appeared to be more positive at present, the situation was not the same in every State and remained unpredictable. With this in mind, delegations accepted that it may not be possible to hold an in-person meeting in full in November 2021 and that it was right to consider alternative options for ballot procedures. It was emphasised, however, that any decision to deviate from established practice would only be taken on an exceptional basis and in order to find a pragmatic solution to the current exceptional situation only and should not be used as a precedent for any future voting or election requirements that the Assembly may have or for other organisations.
- 7.3.17 One delegation expressed that although the COVID-19 pandemic has required working methods to be adjusted, changes made should be kept only to what is necessary and endeavour to maintain established practice. That delegation preferred not to deviate from the established voting procedure. It specifically referred to the election carried out by the International Civil Aviation Organization (ICAO) in February 2021 where multiple rounds of voting were held and each round of voting was conducted on a separate day. That delegation also referred to an election to be conducted by the Intergovernmental Oceanographic Commission (IOC) in June 2021, whereby the sessions will be held

online, but voting will be conducted in person. That delegation, therefore, confirmed its preference for in-person voting.

- 7.3.18 Many delegations provided their initial feedback on the options set out in the document, however, they expressed a strong preference to delay making any decision at the current session. Instead, they suggested that the matter be discussed again at an extraordinary session of the Assembly in July 2021 when it should be clearer which format the November meeting will take in light of the progression over the coming months of the pandemic and the global vaccination programme. Those delegations were also keen to learn from the experience and decisions of other organisations, in particular that of IMO given the similar circumstances.
- 7.3.19 One delegation expressed the view that the options presented in document IOPC/MAR21/7/3 were not all the possible ones and that other international organisations and bodies of the UN system could provide some practice to take into account, such as voting by appointment even when the meeting was remote.
- 7.3.20 From the feedback provided on the alternative ballot procedure options, many delegations considered that option (c), which is a hybrid option of both physical and online voting, to be the preferred option. Several delegations expressed the view that this option would allow for many States to vote in person, in line with established practice, while still offering the possibility to those States who may be unable to travel to London, to vote in a secure, confidential and efficient manner.
- 7.3.21 Some delegations stated that they would be happy to proceed with option (a) only which would involve voting exclusively online and would enable all States to vote in a uniform manner regardless of their physical presence at the meeting. However, those States confirmed that they would also agree to option (c) in order to accommodate the different preferences and concerns of other States. Those delegations expressed their satisfaction with the previous experience using the online voting system.
- 7.3.22 A number of delegations expressed concern about the security and secrecy of online voting and reiterated that the decision to elect the members of the joint Audit Body in December 2020 using the online voting tool was for the purposes of that election only and should not be used as a precedent for the appointment of the Director.
- 7.3.23 A number of delegations expressed their preference for option (d), which is a hybrid of both in-person and postal voting, which they considered to be more secure and the most in line with established practice.
- 7.3.24 However several delegations discussed postal voting and expressed their concerns, some with regard to the risk of delays or lost postal votes and others with regards to the management of multiple ballots under this system if required.
- 7.3.25 One delegation stated multiple ballots could be accommodated within the postal voting system. That delegation considered that options (c) and (d) could be refined and developed further. It insisted, however, that any postal vote should be managed by the Secretariat and not by an external provider. Another delegation requested the Secretariat to develop a possible timetable and further details on the practicalities of using such a system for multiple ballots. In that regard, one delegation suggested that the use of postal voting should require States to use a courier service to return votes to reduce the risk of delays.
- 7.3.26 One delegation suggested a further option, namely a hybrid of the three voting systems (in-person, online and by post) to accommodate the preferences of all States. Another delegation highlighted that with any hybrid option it would be important to ensure that each State could only vote once. That delegation also enquired as to how the presentations by candidates could be accommodated if

postal votes were made before the meeting week, as it noted that to be a key part of the election process.

- 7.3.27 With regard to the possibility of ranking candidates in one ballot in order to avoid issues with accommodating multiple ballots within a reduced timetable or through postal voting, the majority of States did not consider this to be a suitable solution. Several delegations considered this to depart too far from established practice and considered it important that several ballots take place if required.
- 7.3.28 One delegation expressed concern that the options presented would all require a departure from established practice and the existing rules. In this case, either the waiver of existing rules or the development of new rules and practices will be required within a limited timeframe. That delegation therefore suggested that an alternative possibility could be to extend the term of office of the current Director, a decision which, in its view, would be in accordance with Resolution N°9 which provides for such an extension under exceptional circumstances.
- 7.3.29 Taking into account all the options presented and noting that other options could still be considered, the large majority of States agreed with the Director's statement that it was possible and practical to proceed with the appointment of the new Director in November 2021, despite the challenging circumstances and did not see a need to postpone until a later date.
- 7.3.30 One delegation pointed out that intergovernmental organisations were often criticised for being too bureaucratic and unable to react swiftly to changing circumstances. With this in mind, that delegation considered that the IOPC Funds could in this particular situation find solutions and should therefore take a decision either at the current session or at the next session on how to proceed. Another delegation also emphasised that the work of the organisation must continue and that pragmatic solutions, such as online voting, could always be found. It reminded delegations of the challenges faced by others as a result of the pandemic, specifically seafarers and the issue of crew changes, and how they had continued their tasks regardless.
- 7.3.31 One delegation stated its preference for option (b) postal voting only and suggested that in the event that further ballots were required, online voting could be used as a contingency.
- 7.3.32 The delegation of Singapore noted that many delegations had expressed their support for options (a) and (c) and the use of online voting. That delegation stated that it remained highly uncomfortable with the use of online voting for the purposes of the appointment of the Director. In its view, options (c) and (d) could both be successfully used and it strongly believed that there was sufficient time to organise an in-person vote, even if the meeting was held remotely. That delegation also stated that delaying a decision on this matter until a session in July 2021 should not be for the purpose of following the decisions of IMO since the IOPC Funds was a separate organisation. It did, however, agree that lessons could be learned given that the two organisations were located in the same building.
- 7.3.33 The Chair of the 1992 Fund Assembly thanked the many delegations who had provided feedback. He noted that there was a strong preference to continue discussions at an extraordinary session to be held in July 2021 which would enable States to take into account the status of the global pandemic at that time, and the decisions of IMO both in respect of their own election process and their plans for the format of meetings in the IMO building later in the year.
- 7.3.34 He noted furthermore that, whilst there was no conclusion of the discussions at this session, it was clear that in the event that it was not possible to hold an in-person meeting in full in November 2021, many delegations were in favour of option (a) under which the appointment of the Director would be carried out exclusively via an online voting tool. He noted, however, that the majority of States were flexible, open to finding pragmatic solutions and happy in principle to adopt a hybrid approach in some

format, possibly with the use of an online tool and in-person voting (option (c)), to accommodate those States who had expressed concerns regarding online voting.

- 7.3.35 The Chair thanked the Director for the useful details provided in document IOPC/MAR21/7/3 and recommended that the document be refined where possible and resubmitted at the next session to assist in the next stage of discussion. He also noted that delegations had suggested that it would be useful to draw on the experience of other international organisations when organising elections for similar senior official positions. The Director agreed to explore the matter further and encouraged any States who were aware of particular relevant examples to kindly inform the Secretariat.

#### ***1992 Fund Assembly decision***

- 7.3.36 The 1992 Fund Assembly decided to proceed with the appointment of the Director in November 2021. It also decided that in the event that it was possible to hold an in-person meeting in full at that time, that the appointment of the Director should take place in accordance with established practice, as set out in document IOPC/MAR21/7/3.
- 7.3.37 The Assembly also decided to continue its discussions in respect of the alternative options for the ballot procedure at an extraordinary session of the Assembly to be held in July 2021. That extraordinary session of the Assembly would consider ballot procedures in the event that the November 2021 meeting is held partly or fully remotely.
- 7.3.38 The Assembly further decided to instruct the Director to update the information in respect of the options set out in document IOPC/MAR21/7/3, and to provide background information on the experience of the UN and other international organisations when they conduct an election for similar senior official positions.

#### ***Supplementary Fund Assembly***

- 7.3.39 The Supplementary Fund noted the information contained in document IOPC/MAR21/7/3 and the decisions taken by the 1992 Fund Assembly.

### **8 Other matters**

8.1	<b>Any other business</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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- 8.1.1 The governing bodies noted that the next regular sessions of the IOPC Funds' governing bodies were due to be held the week commencing 8 November 2021. However, the next regular sessions will now take place from Monday, 1 November to Friday, 5 November 2021 due to a revision in the IMO meeting programme.
- 8.1.2 The governing bodies also noted that further extraordinary sessions would be held on 22 and 23 July 2021, which would be confirmed via the usual channels.
- 8.1.3 No other items were raised under this agenda item.

### **9 Adoption of the Record of Decisions**

#### ***1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly decision***

- 9.1.1 It was recalled that the governing bodies had approved the proposal relating to the preparation and consideration of the Record of Decisions during remote sessions (paragraph 1.4.6).



- 9.1.2 The draft Record of Decisions for the March 2021 sessions of the IOPC Funds' governing bodies as contained in documents IOPC/MAR21/9/WP.1 and IOPC/MAR21/9/WP.1/1 was submitted for consideration by Member States on the last day of the virtual meeting.
- 9.1.3 Due to the limited duration of the virtual meeting, document IOPC/MAR21/9/WP.1 only contained discussions up until the second day of the virtual meeting.
- 9.1.4 Following the approval of the draft Record of Decisions by the governing bodies at the end of their virtual meeting, the Director prepared a revised draft report (document IOPC/MAR21/9/WP.2) which incorporated the discussions held on the last day of the meeting.
- 9.1.5 Following the publication of the revised draft report, a correspondence period of seven working days began for Member States to submit comments by correspondence.
- 9.1.6 Following the correspondence period, the Director prepared an additional document containing the comments received with an accompanying explanation on how they had been addressed in the final Record of Decisions (document IOPC/MAR21/9/1). The final Record of Decisions was then circulated in document IOPC/MAR21/9/2.

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## ANNEX I

### 1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
1	Algeria	•		
2	Angola	•		
3	Antigua and Barbuda	•		
4	Argentina	•		
5	Australia	•		•
6	Bahamas	•		
7	Bahrain	•		
8	Belgium	•		•
9	Brunei Darussalam	•		
10	Bulgaria	•		
11	Cambodia	•		
12	Cameroon	•		
13	Canada	•	•	•
14	China <sup>&lt;1&gt;</sup>	•		
15	Colombia	•		
16	Cook Islands	•		
17	Côte d'Ivoire	•		
18	Croatia	•		•
19	Cyprus	•		
20	Denmark	•		•
21	Dominica	•		
22	Ecuador	•	•	
23	Estonia	•		•
24	Finland	•		•
25	France	•		•
26	Georgia	•		
27	Germany	•	•	•

<sup><1></sup>

The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.  
IOPC/MAR21/9/WP.2, Annex I, page 1

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
28	Ghana	•	•	
29	Greece	•		•
30	Guyana	•		
31	India	•	•	
32	Iran (the Islamic Republic of)	•		
33	Israel	•		
34	Italy	•	•	•
35	Jamaica	•		
36	Japan	•		•
37	Latvia	•		•
38	Liberia	•	•	
39	Luxembourg	•		
40	Madagascar	•		
41	Malaysia	•	•	
42	Malta	•		
43	Marshall Islands	•	•	
44	Mexico	•		
45	Morocco	•	•	•
46	Mozambique	•		
47	Netherlands	•	•	•
48	New Zealand	•		•
49	Nicaragua	•		
50	Nigeria	•		
51	Norway	•		•
52	Palau	•		
53	Panama	•		
54	Philippines	•	•	
55	Poland	•		•
56	Portugal	•		•

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
57	Qatar	•		
58	Republic of Korea	•	•	•
59	Russian Federation	•		
60	Saint Kitts and Nevis	•		
61	Singapore	•		
62	Spain	•	•	•
63	Sri Lanka	•		
64	Sweden	•		•
65	Thailand	•	•	
66	Trinidad and Tobago	•		
67	Tunisia	•		
68	Turkey	•		•
69	United Arab Emirates	•		
70	United Kingdom	•		•
71	Uruguay	•		
72	Vanuatu	•		
73	Venezuela (Bolivarian Republic of)	•		

## 1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Brazil	•	•
2	Democratic People's Republic of Korea	•	•
3	Guatemala	•	•
4	Saudi Arabia	•	•

## 1.3 Intergovernmental organisations

		1992 Fund	Supplementary Fund
1	European Commission	•	•
2	International Maritime Organization (IMO)	•	•

## 1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	BIMCO	•	•
2	Cedre	•	•
3	Comité Maritime International (CMI)	•	•
4	European Chemical Industry Council (CEFIC)	•	•
5	Iberoamerican Maritime Law Institute (IIDM)	•	•
6	International Association of Classification Societies Ltd (IACS)	•	•
7	International Chamber of Shipping (ICS)	•	•
8	International Group of P&I Associations	•	•
9	International Spill Control Organization (ISCO)	•	•
10	INTERTANKO	•	•
11	ITOPF	•	•
12	Oil Companies International Marine Forum (OCIMF)	•	•

13	Sea Alarm Foundation (Sea Alarm)	•	•
14	World LPG Association (WLPGA)	•	•

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## ANNEX II

### **INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION**

(as amended by the 1992 Fund Assembly at its 24th extraordinary session held from 29 to 31 March 2021)

#### Regulation 12

##### *Delegation of authority in the absence of the Director*

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Head of the External Relations and Conference Department, the Head of the Claims Department, or the Head of the Information Technology Department in that order, to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chair of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume their responsibilities.

**INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY  
FUND ESTABLISHED UNDER THE 2003 SUPPLEMENTARY FUND PROTOCOL**

(as amended by the Supplementary Fund Assembly at its 8th extraordinary session  
held from 29 to 31 March 2021)

Regulation 12

*Delegation of authority in the absence of the Director*

The Director may authorise the Deputy Director/Head of the Finance and Administration Department, the Head of the External Relations and Conference Department, the Head of the Claims Department, or the Head of the Information Technology Department in that order, to act on his or her behalf in the fulfilment of the functions set out in Article 16 of the Supplementary Fund Protocol in conjunction with Article 29 of the 1992 Fund Convention, and to be the legal representative of the Supplementary Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the abovementioned officers contained elsewhere in these Regulations or in the Financial Regulations.

If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chair of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume their responsibilities.

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## ANNEX III

### FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as amended by the 1992 Fund Assembly at its 24th extraordinary session held from 29 to 31 March 2021)

#### Regulation 9

##### *Management of monies*

9.2 The Director may authorise officers to act as signatories on behalf of the 1992 Fund in giving payment instructions. The 1992 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1992 Fund when signed as follows:

- (a) for any sum up to £100 000, by any two officers from category A or B;
- (b) for any sum in excess of £100 000, by one officer from category A plus one officer from category A or B.

For the purposes of this Regulation, the categories are as follows:

Category A Director, Deputy Director/Head of the Finance and Administration Department, Head of the External Relations and Conference Department, and the Head of the Claims Department

Category B Head of the Information Technology Department and Finance Manager

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

**FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY  
FUND ESTABLISHED UNDER THE 2003 SUPPLEMENTARY FUND PROTOCOL**

(as amended by the Supplementary Fund Assembly at its 8th extraordinary session  
held from 29 to 31 March 2021)

Regulation 9

*Management of monies*

9.2 The Director may authorise officers to act as signatories on behalf of the Supplementary Fund in giving payment instructions. The Supplementary Fund's bankers shall be empowered to accept payment instructions on behalf of the Supplementary Fund when signed as follows:

- (a) for any sum up to £100 000, by any two officers from category A or B;
- (b) for any sum in excess of £100 000, by one officer from category A plus one officer from category A or B.

For the purposes of this Regulation, the categories are as follows:

Category A Director, Deputy Director/Head of the Finance and Administration Department, Head of the External Relations and Conference Department, and the Head of the Claims Department

Category B Head of the Information Technology Department and Finance Manager

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions.

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## ANNEX IV

### STRUCTURE OF THE IOPC FUNDS' SECRETARIAT EFFECTIVE 1 APRIL 2021

