



International Oil Pollution
Compensation Funds

Agenda Item 11

IOPC/NOV21/11/WP.2

Date

5 November 2021

Original

English

1992 Fund Assembly

92A26

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1992 Fund Executive Committee

92EC77

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Supplementary Fund Assembly

SA18

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DRAFT

RECORD OF DECISIONS OF THE NOVEMBER 2021 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 1 to 5 November 2021)

| Governing Body (session) | | Chair | Vice-Chairs |
|--------------------------|------------------------------------|---------------------------------------|---|
| 1992 Fund | Assembly (92A26) | Ambassador Antonio Bandini (Italy) | Professor Tomotaka Fujita (Japan) Mr Sipho Mbatha (South Africa) |
| | Executive Committee (92EC77) | Ms Gillian Grant (Canada) | Mrs Luisa Burgess (Ecuador) |
| Supplementary Fund | Assembly (SA18) | Mr Sungbum Kim (Republic of Korea) | Mr Andrew Angel (United Kingdom) Mr Emre Dinçer (Turkey) |

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*Opening of the sessions***1992 Fund Assembly**

- 0.1 Prior to the opening of the sessions, the Director welcomed participants to the fourth remote meeting of the IOPC Funds' governing bodies and referred to document IOPC/NOV21/1/4 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 noted that, due to the COVID-19 pandemic and the consequent travel restrictions and conditions which had limited movement and travel in some countries, the sessions were being held remotely. He noted, however, that since restrictions relating to the pandemic within the United Kingdom had been lifted and delegations were now permitted in the International Maritime Organization (IMO) building, part of the meeting relating to the appointment of the Director would take place in person by roll call, in accordance with established practice, as decided by the governing bodies at their March 2021 meeting (IOPC/MAR21/9/2, paragraph 7.3.36).
- 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/NOV21/1/3.
- 0.4 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/NOV21/1/3.
- 0.5 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

- 0.6 The Chair of the 1992 Fund Assembly opened the 26th session of the Assembly with 61 Member States present at that time.

Supplementary Fund Assembly

- 0.7 The Supplementary Fund Assembly Chair opened the 18th session of the Assembly with 24 Member States present.

1992 Fund Executive Committee

- 0.8 The 1992 Fund Executive Committee Chair opened the 77th session of the Executive Committee with 15 Member States present.
- 0.9 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

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|-----|---|------------|-------------|-----------|
| 1.1 | Adoption of the Agenda Documents IOPC/NOV21/1/1 and IOPC/NOV21/1/1/1 | 92A | 92EC | SA |
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- 1.1.1 The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly took note that at the time of issuing the invitation to the meeting in September 2021, as is standard practice, a provisional agenda and timetable had been published (document IOPC/NOV21/1/1). However, in order to take into account a change in format of the ballot procedure for the appointment of the next Director, a revised provisional agenda was issued on 8 October 2021 (document IOPC/NOV21/1/1/1).

- 1.1.2 The governing bodies adopted the agenda as contained in document IOPC/NOV21/1/1/1.

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| 1.2 | Election of the Chairs | 92A | 92EC | SA |
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- 1.2.1 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, paragraph 6.1.3 (i)).

- 1.2.2 The Director announced that Ms Aurenay Aguirre O. Sunza of Mexico had resigned from her post as the Second Vice-Chair of the 1992 Fund Assembly. The post of Second Vice-Chair of the 1992 Fund Assembly was, therefore, vacant and the Assembly would be invited to elect a new Second Vice-Chair.

1992 Fund Assembly decision

- 1.2.3 The 1992 Fund Assembly elected, by acclamation, the following delegates to hold office until the next regular session of the 1992 Fund Assembly:

Chair: Ambassador Antonio Bandini (Italy)

First Vice-Chair: Professor Tomotaka Fujita (Japan)

Second Vice-Chair: Mr Sipho Mbatha (South Africa)

- 1.2.4 The Chair of the 1992 Fund Assembly thanked, also on behalf of the two Vice-Chairs, the 1992 Fund Assembly for the confidence shown in them.

- 1.2.5 The newly elected Second Vice-Chair, Mr Sipho Mbatha, stated that he was pleased and honoured to be elected and thanked the nominating and supporting States for electing him.

Supplementary Fund Assembly decision

- 1.2.6 The Supplementary Fund Assembly elected, by acclamation, the following delegates to hold office until the next regular session of the Assembly:

Chair: Mr Sungbum Kim (Republic of Korea)

First Vice-Chair: Mr Andrew Angel (United Kingdom)

Second Vice-Chair: Mr Emre Dinçer (Turkey)

- 1.2.7 The Chair of the Supplementary Fund Assembly thanked, also on behalf of the two Vice-Chairs, the Supplementary Fund Assembly for the confidence shown in them.

1992 Fund Executive Committee decision

- 1.2.8 The Chair of the 1992 Fund Executive Committee announced that Mr Kanagalingam Selvarasah of Malaysia had resigned from his post as Vice-Chair of the 1992 Fund Executive Committee. It was noted that the post of Vice-Chair of the Executive Committee was, therefore, vacant and that the Executive Committee would be invited to elect a new Vice-Chair for this 77th session.
- 1.2.9 The 1992 Fund Executive Committee elected, by acclamation, Mrs Luisa Burgess as Vice-Chair, to hold office until the end of the 77th session of the Executive Committee.
- 1.2.10 The Chair of the 1992 Fund Executive Committee thanked Mrs Luisa Burgess for accepting to step in as Vice-Chair for this session.
- 1.2.11 The newly elected Vice-Chair of the 1992 Fund Executive Committee, Mrs Luisa Burgess, thanked the nominating and supporting States for the confidence shown in her. She stated that she was very pleased to be elected and would be dedicated in supporting the Chair and the Executive Committee.

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| 1.3 | Temporary suspension of Rules of Procedure in connection with the November 2021 sessions of the governing bodies Document IOPC/NOV21/1/3 | 92A | 92EC | SA |
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- 1.3.1 The governing bodies considered the proposals to amend or temporarily suspend Rules of Procedure as contained in document IOPC/NOV21/1/3.
- 1.3.2 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 November 2021 sessions of the governing bodies to be conducted remotely.
- 1.3.3 It was also noted that the proposals for amendments to procedures were the same as those approved by the governing bodies at their remote sessions in December 2020, March 2021 and July 2021 and were closely aligned to the guidance on remote sessions adopted by IMO.
- 1.3.4 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 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.

1992 Fund Assembly and Supplementary Fund Assembly decisions

- 1.3.5 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^{<1>} 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 five working day period from the publication of the revised draft Record of Decisions, for delegations to comment on that document by correspondence; and

^{<1>} 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.

1.3.6 The governing bodies also noted that:

- (i) while Rule 9/8^{<2>} 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, 15 October 2021; and
- (ii) for the purposes of the November 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

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

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| 1.4 | Examination of credentials Documents IOPC/NOV21/1/2, IOPC/NOV21/1/2/1, IOPC/NOV21/1/2/2, IOPC/NOV21/1/2/3 and IOPC/NOV21/1/2/4 | 92A | 92EC | SA |
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Establishment of the Credentials Committee

- 1.4.1 The governing bodies took note of the information contained in document IOPC/NOV21/1/2.
- 1.4.2 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.
- 1.4.3 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

- 1.4.4 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 Malaysia, Nigeria, Panama, the Russian Federation, and Turkey as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

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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

Interim reports of the Credentials Committee

- 1.4.6 In order to confirm the list of Member States eligible to vote in the election of the next Director as well as to facilitate the resolution of an issue regarding the credentials of one particular delegation, the Chair of the Credentials Committee, Mr Yury Melenas (Russian Federation), presented three interim reports of the Credentials Committee on Tuesday 2 November, Wednesday 3 November and Thursday 4 November (documents IOPC/NOV21/1/2/1, IOPC/NOV21/1/2/2 and IOPC/NOV21/1/2/3).
- 1.4.7 The Chair of the Credentials Committee recalled that during the meetings of the governing bodies in October 2019, December 2020 and March 2021, the Director had received two letters of credentials for two separate delegations claiming to represent the Bolivarian Republic of Venezuela (Venezuela). The Chair also recalled that on those occasions 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 and Professor Antonios Tzanakopoulos, Associate Professor of Public International Law of the Faculty of Law in the University of Oxford, who both provided legal opinions on this matter. 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, December 2020 and March 2021 sessions of the governing bodies. He added that the recommendations of the Credentials Committee had been accepted in all instances by the 1992 Fund Assembly, and noted by the 1992 Fund Executive Committee and the Supplementary Fund Assembly.
- 1.4.8 The Chair of the Credentials Committee reported that, prior to the November 2021 sessions of the governing bodies, the Director had again received two letters of credentials for Venezuela. The Director had again requested the advice of Professor Antonios Tzanakopoulos, who provided a legal opinion on this matter.
- 1.4.9 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 (UN) (i.e., the UN General Assembly 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 November 2021 sessions of the Funds' governing bodies and make its recommendation to the 1992 Fund Assembly.
- 1.4.10 In considering this matter and the legal advice provided by Professor Tzanakopoulos on 25 October 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 November 2021 sessions of the governing bodies. The Credentials Committee noted, however, that this position was applicable to the November 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

- 1.4.11 The 1992 Fund Assembly took note of the Member States eligible to vote in the election of the next Director as set out in the three interim reports of the Credentials Committee. In addition, based on the recommendation of the Credentials Committee, the Assembly decided to accept the credentials of the delegation headed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to IMO and other international organisations headquartered in London, appointed by President Nicolas Maduro) as the official representative of Venezuela at the November 2021 sessions of the governing bodies.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Report of the Credentials Committee

- 1.4.13 After having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee and the Supplementary Fund, the Credentials Committee confirmed in its report (document IOPC/NOV21/1/2/4) that it had examined 85 letters of credentials, of which 85 were in order. The Credentials Committee reported that Mauritania and Montenegro had presented credentials but had not participated in the sessions. The Credentials Committee also reported that Mozambique and Papua New Guinea had participated in the sessions but had not yet submitted credentials; this situation was expected to be rectified shortly after the meeting.

- 1.4.14 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the November 2021 meeting.

2 Overview

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|-----|---|------------|--|-----------|
| 2.1 | Report of the Director Document IOPC/NOV21/2/1 | 92A | | SA |
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- 2.1.1 The Director presented his report contained in IOPC/NOV21/2/1. He recalled that the November 2021 meeting would be the fourth time the governing bodies had convened remotely since December 2020. He noted that the meeting was especially important because, in addition to making substantive decisions, Member States would have to elect the next Director of the organisation, who would be the fifth Director of the IOPC Funds in its 40-year history. He added that, as it had been decided by the governing bodies in March 2021, the meeting would be held remotely using the KUDO platform and that the voting itself would take place in the IMO main conference hall, in person, by roll-call, in a private meeting, in accordance with established practice as it was now possible following the lifting of restrictions in the United Kingdom (UK).
- 2.1.2 The Director explained that since the outbreak of the COVID-19 pandemic, the Secretariat had made substantial adjustments in the way it worked. He was pleased to report that staff had been working back in the office since 20 September 2021. He explained that flexible work guidelines had been introduced to allow a safe return to the office and that staff had already been working under the IOPC Funds' working from home (WFH) policy in order to assist with a work-life-balance. He added that these arrangements would be in place, on a trial basis, until 31 January 2022.
- 2.1.3 In terms of membership, the Director recalled that the 1992 Fund Convention had entered into force for the Republic of Nauru in March 2021. He reported that the Republic of San Marino and the Republic of Costa Rica had acceded to the 1992 Fund Convention in April and May 2021, respectively, which would bring the number of 1992 Fund Member States to 120 in May 2022. The Director further recalled that 32 States were Members of the Supplementary Fund.
- 2.1.4 With respect to compensation matters, the Director reported that the 1992 Fund was dealing with 13 incidents. With respect to the *Hebei Spirit* incident, the Director reported that the Samsung Heavy Industries Co., Ltd (SHI) Limitation Court had issued a decision on the distribution of the SHI limitation fund and added that in June 2021, the 1992 Fund received £2.2 million (KRW 3.4 billion). He also reported that the reconciliation of joint costs with the Skuld Club had been completed in 2021 and that it was the Fund's intention to hold a meeting in 2022 with all those involved in the handling of the claims arising from the *Hebei Spirit* incident to discuss the case and the lessons learned.

- 2.1.5 With respect to the *Agia Zoni II* incident, the Director reported that the assessment of claims was continuing and that assistance remained available to claimants following the closure of the Claims Submissions Office in Piraeus in December 2020. He also reported that investigations into the cause of the incident by the Public Prosecutor continued.
- 2.1.6 With respect to the *Bow Jubail* incident, the Director recalled that it was still to be decided whether the incident was covered under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) or if the 1992 Civil Liability and Fund Conventions applied. He noted that the 1992 Fund had a financial interest in this case, since if a final judgment were to decide that the 1992 Civil Liability and Fund Conventions applied, the 1992 Fund would pay compensation as the losses were expected to exceed the shipowner's limit under the 1992 Civil Liability Convention (CLC) and the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 limit.
- 2.1.7 The Director reported that the 1992 Fund was awaiting a decision by the Supreme Court on whether it could join the proceedings and said that the opinion rendered by the Advocate General in July 2021 had been that the 1992 Fund should be allowed to join the proceedings as an interested party and submit cassation pleadings. He also reported that the 1992 Fund has had been notified or sued as a defendant in legal actions brought by claimants, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident.
- 2.1.8 With respect to the incident in Israel, the Director recalled that in February 2021, the Government of Israel had contacted the 1992 Fund requesting assistance with oil found along the Israeli coastline believed to be caused by a mystery spill. He also recalled that the Israeli authorities had concluded that the pollution had been caused by crude oil; and that the experts engaged by the IOPC Funds had reached the same conclusion and were of the view that the pollution could not have originated from any other source but a passing oil tanker.
- 2.1.9 The Director reported that initial estimates of the cost of the response to the oil spill until that moment were in the region of ILS 55 million and that further costs and claims for economic losses were to be expected.
- 2.1.10 The Director recalled that in July 2021, the 1992 Fund Executive Committee had decided that the 1992 Civil Liability and Fund Conventions applied and had, therefore, authorised him to pay compensation.
- 2.1.11 When reporting on financial matters, the Director stated that the 1992 Fund Assembly and the Supplementary Fund Assembly would be invited to approve the 2020 Financial Statements for both Funds.
- 2.1.12 The Director was pleased that 93 States had submitted reports to the 1992 Fund and that 31 States had submitted reports to the Supplementary Fund for 2020, representing 95% and 97% of the expected total contributing oil, respectively.
- 2.1.13 The Director was also pleased to report that the outstanding contributions represented 0.20% of the total contributions levied since the establishment of the 1992 Fund. He said that he would continue to engage with the authorities in Curaçao, Ghana, Iran, the Russian Federation and Venezuela, and with respect to outstanding contributions to correct this situation soon. He also reported that outstanding contributions to the Supplementary Fund related to the Republic of the Congo and represented 0.05% of contributions levied to date. The Director said that he had started to examine the possibility of invoicing contributors based on estimates if no reports were submitted and that he was examining the matter with the Audit Body.
- 2.1.14 Regarding the budget, the Director said that the 1992 Fund Assembly would be asked to approve the joint Secretariat budget of £4 855 778 for 2022.

- 2.1.15 The Director said that contributions were required for the reimbursement of a loan of £3.9 million taken by the General Fund from the *Hebei Spirit* Major Claims Fund to meet an estimated deficit on the General Fund for 2021. This loan had been taken out as an alternative to levying 2020 contributions. The Director invited the 1992 Fund Assembly to levy contributions to the General Fund of £12.2 million for payment by 1 March 2022. The Director said he would also be inviting the 1992 Fund Assembly to levy 2021 contributions of £8 million to the incident in Israel Major Claims Fund, with £4 million payable by 1 March 2022, and £4 million, or part thereof, to be invoiced later in 2022 if it proved necessary. He also invited the 1992 Fund Assembly not to levy 2021 contributions to the Major Claims Funds established for the *Prestige*, *Hebei Spirit*, *Alfa I*, *Agia Zoni II* and *Nesa R3* incidents.
- 2.1.16 The Director said that the Supplementary Fund Assembly would be asked to approve the budget of £52 400 for 2022.
- 2.1.17 The Director also invited the Supplementary Fund Assembly to decide not to levy contributions to the General Fund.
- 2.1.18 The Director noted that the 1992 Fund Assembly and the Supplementary Fund Assembly would have to decide on a proposal by the Chair, whether to appoint Mrs Alison Baker as the external expert of the Audit Body for an initial term of three years. He explained that a panel consisting of Mr Michael Knight, Mr Ranjit Pillai and himself had interviewed several candidates and that Mrs Baker has been proposed as successor in that post. He added that the Chair of the 1992 Fund Assembly had also met with Mrs Baker and would be recommending her appointment. The Director also took the opportunity to thank Mr Michael Knight for the services provided to the IOPC Funds over the last 10 years with his invaluable sound advice and sense of humour.
- 2.1.19 With respect to staff matters, the Director referred to the departure from the Secretariat of Ms Kathleen McBride (Finance Assistant) and commended her work and dedication to the Funds. He also recommended that the Assembly approve the movement of Mr Robert Owen (Head, Information Technology) to D1 level with effect 1 December 2021. He further reported that the new Policy Officer, Mr Yuji Okugawa, had joined the Secretariat on 1 July 2021 and had been working in the Director's Office since then.
- 2.1.20 The Director said that the Secretariat had continued to carry out the tasks necessary to set up the 2010 HNS Fund and prepare for the first session of the HNS Fund Assembly.
- 2.1.21 In concluding, the Director, having noted that this was to be his last report to the Assembly, expressed his gratitude to all Member States, the P&I Clubs and fellow international organisations with whom the IOPC Funds had worked closely together with the oil industry in Member States, and the international shipping community. He thanked all members of the Audit Body, the members of the Investment Advisory Body, the representatives of the External Auditor (BDO), and the lawyers and experts who worked for the Funds. He also thanked the Secretary-General of IMO and IMO staff, the Chairs and Vice-Chairs of the governing bodies, and expressed his gratitude and appreciation to all his colleagues in the Secretariat past and present, for their commitment, dedication and professionalism to their work at the Funds over all these years, without whom he would not have been able to carry out this demanding task successfully.

Intervention by the Chair of the 1992 Fund Assembly and the Chair of the Supplementary Fund Assembly

- 2.1.22 The Chair of the 1992 Fund Assembly thanked the Director for his report. He noted that it was an emotional moment as this was the last time that the Director presented his report to the Assembly before final expiration of his mandate and commended the work of the Director. In keeping with a request from the Director, the Chair of the 1992 Fund Assembly asked delegations who wished to bid farewell to the Director to wait until the end of the proceedings to make a brief intervention.

Given that not all delegates were attending in person, the Chair of the 1992 Fund Assembly proposed organising a proper farewell gathering for the Director at the next available opportunity. The Chair of the Supplementary Fund Assembly also thanked the Director for his report and said that he would reserve his farewell remarks for the end of the meeting as requested by the Chair of the 1992 Fund Assembly.

3 Incidents involving the IOPC Funds

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| 3.1 | Incidents involving the IOPC Funds Document IOPC/NOV21/3/1 | | 92EC | SA |
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3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/NOV21/3/1, which contained information on documents for the November 2021 meeting relating to incidents involving the IOPC Funds.

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

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| 3.2 | Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/NOV21/3/2/Rev.1 | | 92EC | |
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3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV21/3/2/Rev.1 relating to the *Prestige* incident.

Judgment by the Spanish Supreme Court

3.2.2 The Executive Committee recalled that in December 2018, the Spanish Supreme Court had delivered a judgment awarding, after amendments in January and March 2019, EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million), although the judgment had clarified that moral and pure environmental damages were not recoverable from the 1992 Fund.

3.2.3 It was recalled that the Court in La Coruña, in charge of the enforcement of the judgment, had issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid by the Fund, i.e. EUR 28 million. It was also recalled that at its April 2019 session, the Executive Committee had decided to authorise the Director to pay to the Court EUR 28 million less:

- (i) EUR 800 000 which should be kept available to pay any judgments by French courts; and
- (ii) EUR 4 800, which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.

3.2.4 It was further recalled that, in accordance with the Executive Committee's decision, the 1992 Fund had in April 2019 paid into the Court some EUR 27.2 million. The Executive Committee recalled that the Fund had also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 Civil Liability Convention (CLC)).

3.2.5 The Executive Committee recalled that in November 2019, the Court in La Coruña had issued an order on the distribution of the amount deposited in Court by the 1992 Fund and the amount corresponding to the limitation fund. It was also noted that the distribution ordered by the Court largely corresponded with the lists provided by the 1992 Fund of how the compensation available under the 1992 Fund Convention and the 1992 CLC should be distributed among all the claimants in the Spanish legal proceedings.

- 3.2.6 The Committee noted that the Court in La Coruña had made payments totalling EUR 51.6 million to claimants in the Spanish legal proceedings, of which the Spanish State had received EUR 40.7 million, the French State EUR 9.3 million and other claimants in Spain and France EUR 1.6 million.

Civil proceedings in France

- 3.2.7 The Executive Committee recalled that there were 42 legal actions pending before the French courts.

RECOURSE ACTIONS

Legal action by Spain against the American Bureau of Shipping (ABS) in the United States of America

- 3.2.8 The Executive Committee recalled that the Spanish Government had taken legal action against the classification society of the *Prestige*, namely ABS, before the Federal Court of First Instance in New York and had requested compensation for all damage caused by the incident. It was recalled, however, that in August 2012, the Court of Appeal for the Second Circuit had dismissed the claim by the Spanish Government holding that the Spanish Government had not produced sufficient evidence to establish that ABS had acted in a reckless manner.

Legal action by France against ABS in France

- 3.2.9 The Executive Committee recalled that in April 2010, the French Government had brought a legal action in the Court of First Instance in Bordeaux against ABS and that the defendants had opposed this action relying on the defence of sovereign immunity. It was also recalled that the Court of Cassation in France had rendered a judgment deciding that ABS could not avail itself of the defence of sovereign immunity in this case. It was further recalled that, following the Court's decision, the case had gone back to the Court of First Instance in Bordeaux to consider the merits of France's claim against ABS.

Legal action by the 1992 Fund against ABS in France

- 3.2.10 It was recalled that, following the decision of the 1992 Fund Executive Committee at its October 2012 session, the 1992 Fund had brought a recourse action against ABS in the Court of First Instance in Bordeaux. The Executive Committee recalled that the proceedings, which had been stayed pending the resolution of the legal proceedings in Spain, had been reinstated.
- 3.2.11 The Executive Committee noted that a case management hearing had taken place in January 2020, at which both ABS and the 1992 Fund had argued that the issue of sovereign immunity should be dealt with as a priority by the Judge in charge of the merits, together with the other admissibility arguments raised by ABS.
- 3.2.12 The Executive Committee also noted that ABS intended to challenge the question of sovereign immunity up to the level of the Court of Cassation in the hope that it might reverse its judgment of April 2019 in the case of the French State against ABS. It was further noted that ABS were, in addition, arguing that:
- since the United States' courts had already discharged them from any liability in the *Prestige* case, the United States' court decision rendered in the case of the Spanish State against ABS had *res judicata* authority before any other court;
 - ABS would be protected by Article III(4) of the 1992 CLC, and therefore, the Fund's action against ABS would not be admissible; and
 - the Fund's action would be time-barred under the Civil Liability and Fund Conventions, according to Article VIII of the 1992 CLC.

- 3.2.13 It was noted that if the Fund's action against ABS were considered admissible by the Court, the 1992 Fund would have to prove that ABS was negligent in the way it carried out its work in respect of the classification of the vessel.
- 3.2.14 It was also noted that the 1992 Fund's lawyer was working with the lawyers engaged by the French Government in consideration of how to proceed with their respective actions against ABS.

1992 Fund Executive Committee

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

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| 3.3 | Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i> Document IOPC/NOV21/3/3 | | 92EC | |
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- 3.3.1 The 1992 Fund Executive Committee took note of document IOPC/NOV21/3/3, which contained information relating to the *Solar 1* incident.
- 3.3.2 The Executive Committee recalled that some 32 466 claims had been received and payments totalling PHP 987 million had been made in respect of 26 870 claims, mainly in the fisheries sector.
- 3.3.3 The Executive Committee also recalled that three claims remained outstanding, all of which were subject to legal proceedings in the Philippines.

Legal proceedings by the Philippine Coast Guard (PCG)

- 3.3.4 In respect of the claim for PHP 104.8 million by the Philippine Coast Guard (PCG), the Executive Committee recalled that the Solicitor General and the PCG had agreed to settle the PCG claim in the amount assessed by the 1992 Fund. It was recalled that in February 2016, one of the PCG lawyers and the lawyers representing the 1992 Fund and the Shipowners' Club, signed the compromise agreement, thereby formally recognising the PCG's agreement to accept the figure of PHP 104.8 million in full and final settlement of the PCG claim, and their agreement to dismiss the legal proceedings which had been commenced by the PCG. It was also recalled that the parties still awaited the signature of the Solicitor General.
- 3.3.5 It was further recalled that in February 2017, the claimant and the 1992 Fund's lawyers appeared at court for a judicial dispute resolution procedure where the Court exercised its power to try to aid the parties to finally arrive at a settlement, and that the main issue discussed was whether Congressional approval was required for the compromise agreement. The Executive Committee recalled that the Judge had warned the PCG that continued delay would constrain him to act favourably on a motion to dismiss the case for failure to prosecute.
- 3.3.6 The Executive Committee also recalled that the PCG had applied for Congressional approval of the compromise agreement, and the approval of both the Lower and Upper Houses of Representatives was currently awaited.
- 3.3.7 The Executive Committee further recalled that in August 2018, the PCG obtained the endorsement of the Office of the Presidential Spokesperson for immediate approval of the House Resolution granting Congressional approval to the compromise agreement. The PCG indicated that it was also seeking the approval of the Philippine President to the compromise agreement.
- 3.3.8 It was recalled that in May 2019, the PCG had confirmed to the Court that the PCG would seek Congressional approval for a settlement offer of PHP 104.8 million and not for a higher amount, and that they would only settle the claims when they had obtained Congressional approval to do so.

- 3.3.9 It was noted that due to the PCG's inability to obtain Congressional approval for the agreed settlement within the time permitted by the Court, the presiding Judge had terminated the attempt at a judicial dispute resolution and ordered the case to be reset to a different court for the continuation of pre-trial procedures.

Developments since 2020

- 3.3.10 It was noted that at a hearing in January 2020, the PCG indicated that a new lawyer for the PCG would be dealing with the court case, who informed the 1992 Fund's lawyers that the view of the PCG and the Office of the Solicitor General (OSG) (who took over as lead Counsel for the PCG) was that there was no need to obtain Congressional approval to the settlement agreement.
- 3.3.11 It was also noted that the OSG had given its recommendation for the settlement of the case on the condition that an additional stipulation be made in the settlement so that if the PCG found additional evidence to prove its claim after the dismissal of the case due to settlement, the PCG wished to retain the right to file another claim against the 1992 Fund.
- 3.3.12 It was further noted that the 1992 Fund could not agree to this request as the settlement needed to be final. The Executive Committee noted that the OSG had requested that the PCG be given a further opportunity to search their records for any further evidence not previously assessed, and the Secretariat had allowed a total period of 60 days, but that no evidence had been found.
- 3.3.13 The Executive Committee also noted that the case was set for a further hearing in June 2020 but was cancelled as several personnel from the Court tested positive for COVID-19, and that the 1992 Fund's lawyers continued to push for completion of the settlement without the need for Congressional approval.

Legal proceedings by 967 fisherfolk

- 3.3.14 It was recalled that a civil action was filed in August 2009 by a law firm in Manila that had previously represented a group of fisherfolk from Guimaras Island. The suit pertained to claims from 967 of these fisherfolk totalling PHP 286.4 million for property damage as well as economic losses. It was also recalled that the claimants had rejected the 1992 Fund's assessment of a 12-week business interruption, as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without, however, providing any evidence or support. It was further recalled that the 1992 Fund had filed defence pleadings in response to the civil action, noting that under the law of the Philippines, the claimants must prove their losses but that to date, had not done so and the Judge, therefore, ordered the case to proceed through to trial.
- 3.3.15 The Executive Committee noted that through 2019, a number of witnesses were presented by the claimants' lawyers, but their claims were proved to have no factual or legal basis, and further court hearings were set for July and August of 2019, but these were cancelled and reset for January 2020, at which the claimants' lawyer filed a motion to cancel the hearing due to the impending eruption of the Taal Volcano.
- 3.3.16 The Executive Committee also noted that the hearing was reset to April 2020, at which the 1992 Fund's lawyers filed a motion to hold the hearings twice a month and for a minimum of 15 witnesses to be examined at each hearing, in an attempt to expedite the presentation of the witnesses. A further hearing was set for August 2020 but cancelled due to the COVID-19 pandemic, and at a hearing in July 2021, upon cross-examination by the 1992 Fund's lawyers, the two witnesses produced by the claimants' lawyers confirmed that their claim amounts had been dictated to them by their lawyer and had no basis in fact. It was noted that further hearings were set for September and October 2021.

Legal proceedings by a group of municipal employees

- 3.3.17 The Executive Committee recalled that 97 individuals, employed by a municipality on Guimaras during the response to the incident, had taken action in court against the mayor, the ship's captain, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having been paid for their services and that, after a thorough review of the legal documents received, the 1992 Fund had filed pleadings of defence in court, noting in particular that the majority of claimants were engaged in activities in principle not admissible for compensation.
- 3.3.18 The Executive Committee further recalled that after a series of hearings to continue the examination of the witnesses submitted by the claimants, which proved inconclusive, in every case, the 1992 Fund's lawyers showed the Court that their claims for compensation had no basis. A further hearing was set for August 2020 but was cancelled due to the COVID-19 pandemic, and the hearing took place in July 2021, at which, upon cross-examination, the witnesses confirmed that they had not paid court fees, their activity reports were not signed and validated by the mayor, they were volunteers or that they were paid their normal salaries on the days they performed relief work.

1992 Fund Executive Committee

- 3.3.19 The 1992 Fund Executive Committee noted that the legal proceedings were continuing and that due to the number of witnesses presented by the claimants, the court hearings would likely take a number of years to conclude. The 1992 Fund Executive Committee further noted that the Director would continue to monitor the incident and report any developments at the next session of the governing bodies.

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| 3.4 | Incidents involving the IOPC Funds — 1992 Fund: <i>Hebei Spirit</i> Document IOPC/NOV21/3/4 | | 92EC | |
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- 3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV21/3/4 relating to the *Hebei Spirit* incident.
- 3.4.2 The Executive Committee recalled that the total amount available for compensation under the 1992 Fund Convention was KRW 321.6 billion, including the amount of KRW 186.8 billion paid by the shipowner's insurer Assurancéföreningen Skuld (Gjensidig) (Skuld Club).
- 3.4.3 The Executive Committee further recalled that all claims arising out of this incident had been finalised by either mediation or judgment and that a total of KRW 432.9 billion had been awarded and that all legal proceedings have been finalised.

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

- 3.4.4 The Executive Committee recalled that the 1992 Fund had paid a total of KRW 107.3 billion in compensation to the Government of the Republic of Korea.
- 3.4.5 The Executive Committee also recalled that the Director and the Government of the Republic of Korea had agreed the terms of a bilateral agreement by which the 1992 Fund would transfer the remaining amount available for compensation to the Government for it to pay all remaining claims in exchange for a hold harmless agreement. The Executive Committee further recalled that, as a consequence, the 1992 Fund had paid the balance of compensation, totalling KRW 27 486 198 196 to the Government of the Republic of Korea.

Balancing payment to the Skuld Club

- 3.4.6 The Executive Committee recalled that in November 2018, the Limitation Court in Seosan issued the 1992 CLC distribution table for this incident. The Executive Committee also recalled that the

amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion, which included KRW 139.4 billion of principal and KRW 91.5 billion of interest.

- 3.4.7 The Executive Committee recalled that, based on the exchange rate applied by the Limitation Court, the Skuld Club had paid KRW 47.4 billion in excess of its limit (KRW 139.4 billion). The Executive Committee also recalled that, by 2020, the 1992 Fund had reimbursed the entirety of the overpayment by the Skuld Club.
- 3.4.8 The Executive Committee noted that a reconciliation of costs had been completed by September 2021. It was further noted that the joint costs, which were still being incurred after the end of 2020, which were mainly related to the storage of incident documents for the period of time required under Korean law, were being shared between the Skuld Club and the 1992 Fund.

Recourse action against Samsung Heavy Industries Co., Ltd (SHI)

- 3.4.9 The Executive Committee recalled that in March 2009, the Seoul Central District Court (Limitation Court) rendered the order for the commencement of the limitation proceedings of the bareboat charterer of the Marine Spread (the crane barge, the two tugs and the anchor boat) SHI, and set the limitation fund at KRW 5.6 billion including legal interest. The Executive Committee further recalled that the SHI Limitation Court decided to wait to distribute the Limitation Fund until after the assessment decision was issued by the Seosan Court.
- 3.4.10 The Executive Committee recalled that proceedings recommenced in July 2019 and that, at the time, the 1992 Fund submitted a claim in the limitation proceedings for the amount paid by the 1992 Fund in compensation, i.e. KRW 134 787 509 429, plus any interest accrued as per Korean law.
- 3.4.11 The Executive Committee noted that the SHI Limitation Court, in its assessment decision in February 2021, recognised the Fund's claim as totalling KRW 155 785 519 163, i.e., the principal amount of KRW 134 787 509 429 plus KRW 20 998 009 734 in interest. The Committee also noted that the Court determined the 1992 Fund's share of the SHI limitation fund to be KRW 3 271 486 069. The Executive Committee further noted that Court's decision was not appealed nor was the distribution table challenged and that, therefore, the decision became final in May 2021.
- 3.4.12 The Executive Committee noted that in June 2021, the Limitation Court paid the amount of KRW 3 271 486 069 to the 1992 Fund. The Committee further noted that the 1992 Fund's share from the SHI limitation fund had now been recovered.

Lessons learned from the Hebei Spirit incident

- 3.4.13 The Executive Committee recalled that as per the 1992 Fund's practice after the claims arising out of a major incident have been assessed, the Director had intended to hold a meeting with all those involved in the handling of the incident to discuss what lessons could be learned, so as to enable the 1992 Fund to deal with claims more efficiently in the future.
- 3.4.14 The Executive Committee recalled that the meeting for the *Hebei Spirit* incident had been scheduled to take place in Seoul in May 2020. However, due to the global COVID-19 pandemic and the restrictions on travel, the meeting has been postponed *sine die*. The Executive Committee also noted that the Director would update the Executive Committee as to when it would be possible to reschedule the meeting, at a subsequent session of the governing bodies.

Intervention by the delegation of the Republic of Korea

- 3.4.15 The delegation of the Republic of Korea made a presentation on the *Hebei Spirit* incident. In its intervention, that delegation noted that the incident was successfully closed thanks to the close cooperation between the Government of the Republic of Korea, the Skuld Club and the 1992 Fund,

as well as the technical support of the experts involved and the work of the national courts, which resolved most of the cases through reconciliation.

- 3.4.16 That delegation noted that, despite the case being successfully resolved, a number of matters arising out of the incident would warrant further study and would benefit from a discussion during the wash-up meeting. In particular, that delegation noted that more than half the claims submitted were eventually rejected. That delegation pointed out that it would be important to understand the reasons why so many claims were rejected to ensure that, in future incidents, claimants' expectations are better managed. That delegation also noted the disparities between the amounts of the losses initially assessed by the 1992 Fund (KRW 199.9 billion) and the Court's final assessment (KRW 432.9 billion), which should be examined during the wash-up meeting.
- 3.4.17 That delegation also thanked the Secretariat, particularly the Director, who was directly involved in the management of the incident from the beginning, for his leadership and cooperation, which made it possible to resolve this case in such a relatively short period of time.

Intervention by the Director

- 3.4.18 The Director thanked the delegation of the Republic of Korea for its intervention. He noted that the *Hebei Spirit* was the biggest case the 1992 Fund has dealt with, both in terms of the number of claims and amounts claimed.
- 3.4.19 The Director noted that the key to the effective management of an incident is cooperation among the IOPC Funds, the government affected by the spill, the insurer, as well as the experts involved. The *Hebei Spirit* case showed that when the main parties work together, even an incident of such magnitude can be successfully resolved despite the initial difficulties. The Director thanked the Chair of the Supplementary Fund Assembly for his personal involvement in the case since he was initially Head of the *Hebei Spirit* task force and then, later, Chair of the Supplementary Fund Assembly and that his contribution had been crucial in the satisfactory resolution of the case.

Debate

- 3.4.20 The Chair thanked the delegation of the Republic of Korea for its intervention on the incident and for the successful cooperation with the Secretariat, as well as the other actors. She further noted that the Executive Committee looked forward to hearing the results of the wash-up meeting.

1992 Fund Executive Committee

- 3.4.21 The 1992 Fund Executive Committee noted that the Director would submit a document to the governing bodies summarising the lessons learned from this incident once the wash-up meeting had taken place.

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| 3.5 | Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i> Document IOPC/NOV21/3/5 | | 92EC | |
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/NOV21/3/5, which contained information relating to the *Redfferm* incident.
- 3.5.2 The Executive Committee recalled that in January 2012, the Secretariat was informed of an incident that occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank following a transshipment operation from the tanker *MT Concep*. The barge sank, spilling an unknown quantity (estimated to be approximately 100 tonnes) of cargo/residue of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.

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

Reasons for rejection of claims

- 3.5.4 It was recalled that in February 2014, the 1992 Fund rejected the claims submitted for the following reasons:
- (a) the barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 CLC;
 - (b) there were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
 - (c) there was a lack of information submitted to prove the claimants' identities and occupations.

Legal proceedings

- 3.5.5 It was also recalled that in March 2012, a claim for USD 26.25 million was filed by 102 communities against the owner of the *MT Concep*, the owner of the *Redfferm*, the agent of both the *MT Concep* and the *Redfferm*, and the 1992 Fund.
- 3.5.6 It was further recalled that in February 2013, the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. It was recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.
- 3.5.7 The Executive Committee recalled that on a number of occasions throughout 2014 and 2015, the 1992 Fund's lawyers had written to the Registrar of the Court of Appeal, requesting that the 1992 Fund's appeal against the first instance ruling be listed for a hearing date and that a date was set for May 2016. Thereafter, the legal proceedings continued very slowly until October 2017, when the Nigerian Court of Appeal referred the case back to the Federal High Court.
- 3.5.8 The Executive Committee also recalled that in early May 2018, the agent of the owner of the barge *Redfferm* had filed an application seeking a stay of the proceedings pending in the Federal High Court, arguing that its appeal related to a jurisdictional issue which should be heard in the Court of Appeal. The Executive Committee further recalled that the Court of Appeal had subsequently adjourned the hearing of the application until January 2019.
- 3.5.9 It was recalled that in May 2018, the claimants had filed an amended statement of claim, increasing the claim from the previously filed total of USD 26.25 million, to USD 92.26 million. It was also recalled that, as a result of the transfer to the Federal High Court, and in view of the amended statement of claim filed by the claimants, the 1992 Fund was obliged to file a defence. It was noted that during 2019, no further substantive developments took place in the legal proceedings.
- 3.5.10 It was further recalled that In February 2020, the matter was listed for trial but was adjourned until March 2020 when the claimants made an application for a default judgment against the owner/charterer of the *Redfferm*. It was also noted that the case was adjourned, but the court hearing did not take place due to the impact of the COVID-19 pandemic and that a new hearing date was awaited.

1992 Fund Executive Committee

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

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| 3.6 | Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i> Document IOPC/NOV21/3/6 | | 92EC | |
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- 3.6.1 The Executive Committee took note of document IOPC/NOV21/3/6, which contained information relating to the *Haekup Pacific* incident.
- 3.6.2 The Executive Committee recalled that in April 2013, the 1992 Fund was informed of an incident which took place in April 2010 in the Republic of Korea when the *Haekup Pacific*, an asphalt carrier of 1 087 GT, was involved in a collision with the *Zheng Hang*, as a result of which the *Haekup Pacific* sank in waters of approximately 90 metres in depth off Yeosu, Republic of Korea.
- 3.6.3 The Executive Committee also recalled that the *Haekup Pacific* was entered with the UK P&I Club and that it was a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and that, therefore, STOPIA 2006 would apply. The Executive Committee further recalled that a small spill of some 200 litres of oil had occurred shortly after sinking, resulting in some minor pollution.
- 3.6.4 It was recalled that in September 2013, the City of Yeosu and Marine Police had requested the shipowner to provide a plan for the removal of the wreck and that in April 2014, a further request was made.
- 3.6.5 It was also recalled that a number of further meetings had taken place with the City of Yeosu and Marine Police at which the shipowner had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

Civil proceedings

- 3.6.6 It was further recalled that in April 2013, the shipowner/insurer had started legal proceedings against the 1992 Fund in the Seoul Central District Court before the expiry of the three-year anniversary of the date when the damage occurred, in order to protect their rights in respect of any future liability for costs of the removal operation which they might have to pay.
- 3.6.7 The Executive Committee recalled that the UK P&I Club had indicated that, if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had been paid in respect of the potential claim for removal operations), then only the six-year time bar under the 1992 Fund Convention would be applicable.
- 3.6.8 The Executive Committee also recalled that the UK P&I Club and the 1992 Fund had settled the terms of an agreement on facts, stating that since the costs of the potential claim for removal operations had not yet taken place, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer were withdrawn in June 2013.
- 3.6.9 The Executive Committee further recalled that in April 2016, the shipowner and insurer had filed a claim for USD 46.9 million (subsequently amended to USD 25.13 million in accordance with the STOPIA 2006 agreement) against the 1992 Fund before the expiry of the six-year time bar, in order to preserve the shipowner and insurer's rights against the 1992 Fund in the event that they be instructed to comply with the wreck and oil removal orders.

- 3.6.10 It was also recalled that in April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the courts of the Republic of Korea had stayed the proceedings. It was further recalled, however, that the courts could, of their own volition, resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wished a further stay of the proceedings.
- 3.6.11 The Executive Committee recalled that in December 2017, the 1992 Fund's lawyers had advised that in the related litigation between the shipowners/insurers of the colliding vessels, the Seoul High Court had ruled that although experts opined that the wreck removal of the *Haekup Pacific* was very difficult since the wreck removal order remained effective (despite repeated requests for its withdrawal), it was difficult to consider the order to be null and void based solely on the experts' opinion/parties' submissions.
- 3.6.12 The Executive Committee also recalled that since the shipowner of the *Haekup Pacific* was currently still obliged to remove the vessel, the Seoul High Court had ruled that it was reasonable to deem that the damages of the wreck removal costs had in fact arisen. It was noted that the shipowner/insurer of the *Zheng Hang* had appealed against the Seoul High Court's judgment to the Supreme Court, and in early July 2020, the Supreme Court of the Republic of Korea had rendered its judgment.
- 3.6.13 It was also noted that the Supreme Court had recognised *inter alia* that:
- (a) the *Haekup Pacific* sank in waters of 90 metres depth and was buried in the seabed;
 - (b) there had been no trace of oil or the asphalt cargo from the *Haekup Pacific* since it sank and considering the temperature of the sea at the seabed, any oil or asphalt remaining in the vessel should have been stabilised through solidification. Furthermore, no diesel oil appeared to have remained in the vessel as it would have been diffused with seawater or evaporated following the sinking, so the risk of environmental pollution appears to be minimal;
 - (c) if the *Haekup Pacific*, which had remained in the seabed for a prolonged period of time, was to be salvaged or removed, there was a high risk of destroying the hull leading to the exposure of the remaining oil or asphalt, which posed further pollution concerns;
 - (d) the operation of salvaging or removing the vessel would be a technically difficult task requiring advanced diving technology in the environment involving strong currents, limited visibility, and the risk of the destruction of the ship's hull. It would be difficult to assess the costs for salvaging/removing the vessel and the overall risk level as there had been no prior cases where a wreck was salvaged/removed from a similar depth as the *Haekup Pacific*.
- 3.6.14 It was further noted that the Supreme Court referred the case to the appellate court so that the appellate court could reconsider the question concerning whether the vessel's removal would be necessary and whether the administrative orders to salvage and remove the vessel should be revoked.

Possible recourse action against the owner of the Zheng Hang

- 3.6.15 It was recalled that the 1992 Fund's lawyers had advised that given the financial status of the owner of the *Zheng Hang*, it may not be financially worthwhile for the Fund to pursue a recourse action against the *Zheng Hang* owner's interests.

The status of the wreck and risk of pollution

- 3.6.16 It was also recalled that in September 2019, the City of Yeosu had requested the shipowner/insurer of the *Haekup Pacific* to implement the wreck and oil removal orders and to submit a document to the City of Yeosu by 10 February 2020, containing information regarding the current situation of the ship and the shipowner/insurer's plans for: (1) the removal of oil residue and the cargo; (2) the wreck removal; and (3) the prevention of oil pollution that might occur during the removal operation.
- 3.6.17 The Executive Committee noted that the shipowner hired a salvage company to examine the wreck's current condition, and that the shipowner also obtained a time extension from the City of Yeosu until July 2020, in order that the salvage company could begin the inspection, and that following the survey, the salvage company had provided its results to a firm of naval architects and marine engineers retained by the *Haekup Pacific's* P&I Club to prepare a report.
- 3.6.18 The Executive Committee also noted that the report recommended that the *Haekup Pacific* be left undisturbed, but the City of Yeosu and Marine Police had instructed the shipowner to remove the bunker fuels from the wreck since, in their view, the possibility could not be ruled out that there were bunker fuels remaining in the wreck. The Executive Committee further noted that the bunker fuel oil removal operation would commence in October 2021.
- 3.6.19 The Executive Committee further noted that the 1992 Fund's lawyers were of the view that it remained to be seen how the appellate court and/or the City of Yeosu would decide, and the legal proceedings were likely to take at least one to two years before they may be concluded.

Intervention by the delegation of the Republic of Korea

- 3.6.20 The delegation of the Republic of Korea stated that the salvage contract had been awarded to a Japanese salvage company that intended to undertake the bunker fuel removal operation from December 2021 to January 2022.
- 3.6.21 That delegation also stated that after the bunker fuel removal operation had concluded, the City of Yeosu and Marine Police would decide whether to revoke the wreck removal order, on the basis of the status of the remaining oil and an environmental assessment.

Debate

- 3.6.22 Another delegation stated that in its view, the 1992 Fund would be liable for the costs of the oil and wreck removal operations, if and only if, such costs qualified as preventive measures in accordance with Article 1(7) of the 1992 CLC, which was defined as 'any reasonable measures taken by any person after an incident has occurred to prevent or minimise pollution damage'.
- 3.6.23 That delegation further stated that after considering paragraph 6.13 and paragraphs 7.3–7.9 of the document, it was of the view that the removal costs did not constitute a reasonable measure to prevent or minimise pollution damage. The delegation stated that the mere fact that a wreck and oil removal operation was conducted following a removal order issued by a local court or authority of a Member State, did not necessarily mean that such costs qualified as reasonable or preventive measures under the 1992 Civil Liability and Fund Conventions. The delegation stated that there was a possibility that the 1992 Fund would not be liable for the removal costs, and it requested that the Director raise such views in any defence to any claim by the shipowner and insurer.
- 3.6.24 In response, the Director stated that the Secretariat was watching the developments very closely and that he noted that the wreck had lain on the seabed for some time, and it appeared that at present, the operation to be conducted was only the removal of the bunker fuel, not the removal of the wreck. The Director noted that the case involved a ship within the STOPIA 2006 arrangement and that there was a high limit of some USD 28 million to be paid before the 1992 Fund would be

asked to pay. The Director also stated that the situation would be monitored, and the next Director would decide whether to bring the matter to the attention of the 1992 Fund Executive Committee, for it to decide whether the steps undertaken constituted preventive measures and whether it should pay compensation for the operations.

1992 Fund Executive Committee

- 3.6.25 The 1992 Fund Executive Committee noted that the situation regarding the wreck removal order was not presently clear and that there was a fairly high threshold to overcome before the 1992 Fund would be asked to pay, due to the STOPIA 2006 arrangement, and that the Director would continue to monitor the incident and report any developments at the next session of the governing bodies.

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| 3.7 | Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i> Document IOPC/NOV21/3/7 | | 92EC | |
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- 3.7.1 The 1992 Fund Executive Committee took note of document IOPC/NOV21/3/7, which contained information relating to the *Alfa I* incident.

- 3.7.2 The Executive Committee recalled that since no limitation fund had been established, the insurer was liable for the full amount claimed, i.e. for EUR 15.8 million. It was also recalled that in February 2018, the Bank of Greece had revoked the insurer's license and placed the company into liquidation for failure to maintain the necessary solvency capital requirements under Greek law. It was further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.

- 3.7.3 The Executive Committee also recalled that in June 2019, the insurer had filed an appeal to the Supreme Court against the March 2018 judgment issued by the Piraeus Court of Appeal, which had distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 CLC limit applied), from the case of carriage of fewer than 2 000 tonnes of oil and held that, in either case, there was an obligation to insure and a right of direct action against the insurer. The Executive Committee also noted that the 1992 Fund had also filed an appeal to the Supreme Court supporting the obligatory insurance provisions under Article VII of the 1992 CLC and that the appeal was heard in February 2021.

- 3.7.4 It was noted that in July 2021, the Supreme Court issued its judgment, dismissing all of the insurer's grounds of appeal and held that:

1. The issuance by the State authorities of a certificate (based on the blue card of insurance issued by the insurer) signified that there existed in place an insurance cover entered into in accordance with the CLC provisions regarding obligatory insurance;
2. The wording of Article VII(1) of CLC 'carrying more than 2000 tons of oil in bulk as cargo' should be interpreted to mean capable of carrying more than 2000 tons. The Supreme Court linked the obligation of insurance (or other financial security) to the carrying capacity of a vessel, irrespective of the actual quantity carried on board.

- 3.7.5 It was also noted that the 1992 Fund's lawyers had advised that the obligation of the insurer to pay was now undisputed.

Insurer's liquidation

- 3.7.6 The Executive Committee recalled that in January 2020, the 1992 Fund's lawyers reported that the claim submitted by the Fund to the insurer in liquidation had been dismissed without giving any reason.

- 3.7.7 The Executive Committee also recalled that the 1992 Fund's lawyers had sent the liquidator a declaration protesting the dismissal of the 1992 Fund's claim and requesting a full list of the admissible claims and the justification for the liquidator's refusal to include the 1992 Fund's claim within the list. However, the liquidator refused to provide the list of other claims, citing confidentiality reasons under the General Data Protection Regulation (GDPR) as a reason not to provide the information.
- 3.7.8 The Executive Committee further recalled that the 1992 Fund's lawyers had filed an appeal before the Uni Membered Court of First Instance of Athens, which was due to be heard in May 2020 but was delayed due to the outbreak of the COVID-19 pandemic, so the hearing took place in July 2021, with judgment expected in 2021.
- 3.7.9 It was noted that the main clean up contractor (who is working with the 1992 Fund's lawyers in pursuing the balance of its claim from the insurer), did not appeal, but had submitted before the Piraeus Court of First Instance a writ of action against the liquidator for a declaratory judgment which ruled that the procedure followed by the liquidator was irregular. Pleadings were filed in October 2020, and a court hearing took place in July 2021, with a judgment expected in late 2021.
- 3.7.10 The Executive Committee further recalled that the 1992 Fund had filed applications for prenotated mortgages against buildings owned by the insurer in an attempt to secure its claim for the return of the 1992 CLC limitation fund amount, but that only the land registry in Thessaloniki had accepted the 1992 Fund's application and granted the registration on two properties owned by the insurer as security for EUR 851 000.

Applications for prenotated mortgages — Thessaloniki

- 3.7.11 It was recalled that in July 2017, the insurer had requested the deletion of the prenotated mortgages recorded on its Thessaloniki properties on the grounds that the first instance judgment of the Court of Piraeus could not be considered a title for the prenotated mortgages since it was issued in 2015. It was noted that in late 2018, the Thessaloniki Court of First Instance had issued a judgment dismissing the insurer's request, which the insurer subsequently appealed.
- 3.7.12 It was noted that the hearing of this appeal took place in December 2019, on documents alone, before the Thessaloniki Court of Appeal and in 2020, the Court of Appeal dismissed the insurer's appeal.

Applications for prenotated mortgages — Athens

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

Applications for prenotated mortgages — Piraeus

- 3.7.14 It was also recalled that following an appeal by the 1992 Fund, the Piraeus Court of Appeal had issued its judgment, finding in favour of the 1992 Fund and accepting the opposite views from those accepted by the Athens Court of Appeal. The insurer (now in liquidation) appealed the decision of the Piraeus Court of Appeal to the Supreme Court and a hearing date was set for February 2020.
- 3.7.15 It was noted that at that hearing, the 1992 Fund's lawyers submitted pleadings and a judgment was expected to be issued within the next three to five months, but matters were delayed by the outbreak of the COVID-19 pandemic.

- 3.7.16 It was also noted that in late 2020, the Supreme Court issued a judgment dismissing the insurer's appeal and concluding the dispute of whether the 1992 Fund was entitled to register prenotated mortgages as the 1992 Fund had been successful in both appeals before the Supreme Court.

Legal proceedings against the insurer for potentially defrauding creditors

- 3.7.17 It was noted that during the litigation regarding the assets of the insurer and the 1992 Fund's attempts to obtain prenotated mortgages over the insurer's properties, it had been discovered that the insurer had sold to third parties a property in Athens for a price of EUR 370 000 when the property had an imputed tax value of EUR 1.03 million and a commercial value of EUR 1.5 million and the 1992 Fund's lawyers had advised that there were reasonable grounds to have the property transferred on the grounds of defrauding a creditor, which, if successful, could result in a recovery for the 1992 Fund.
- 3.7.18 It was also noted that the 1992 Fund had been successful in recording prenotated mortgages against the insurer's assets, and if it can also succeed in reinserting the 1992 Fund's claims back into the liquidator's list of admissible claims, the 1992 Fund's lawyers had advised that they are confident that the 1992 Fund's claim would have a reasonable chance to be given priority over other creditors of the insurance company.

Debate

- 3.7.19 One delegation expressed its satisfaction with the holding of the Greek Supreme Court's judgment in July 2021 that the issuance by the appropriate authority of a Contracting State of a certificate (based on the blue card of insurance issued by the insurer) signified that there existed in place an insurance cover, entered into in accordance with the 1992 CLC provisions regarding obligatory insurance.
- 3.7.20 That delegation stated that in view of the judgment, the dismissal of the 1992 Fund's claim against the insurer by the liquidator, was puzzling and questionable. That delegation also sought an update on the progress of the judgment of the 1992 Fund's appeal against the dismissal of the claim, which was expected by September or October 2021.

Intervention by the delegation of Greece

- 3.7.21 In response to the delegation's request for an update, the Greek delegation stated that as far as it was aware, the 1992 Fund's appeal would be discussed in June 2022.

1992 Fund Executive Committee

- 3.7.22 The 1992 Fund Executive Committee noted the interventions by the delegations and also noted that the Director would report on further developments in this case to future sessions of the Executive Committee.

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| 3.8 | Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/NOV21/3/8 | | 92EC | |
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- 3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV21/3/8 relating to the *Nesa R3* incident.
- 3.8.2 The Executive Committee recalled that, at its October 2013 session, it had authorised the Director to make payments of compensation in respect of the *Nesa R3* incident and claim reimbursement from the shipowner/insurer.

- 3.8.3 The Executive Committee recalled that 33 claims had been received by the 1992 Fund and that 28 claims totalling OMR 3 521 364.39 and BHD 8 419.35 had been settled. It was also recalled that the remaining claims had been rejected.
- 3.8.4 The Executive Committee recalled that the shipowner had not responded to the requests from the Omani Government to pay compensation for the damage caused by the *Nesa R3* incident. The Executive Committee also recalled that the shipowner/insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Executive Committee also recalled that the Omani Government had commenced legal proceedings against the shipowner and its insurer in the Court of Muscat and that in February 2016, the 1992 Fund had joined in the legal proceedings.
- 3.8.5 The Executive Committee recalled that in December 2017, the Court of Muscat rendered a judgment finding that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the 1992 Fund and the Omani Government totalling, respectively, OMR 1 777 113.44 plus BHD 8 419.35 and OMR 4 154 842.80, i.e. the amounts paid by the 1992 Fund at the time of the judgment and the balance of the amount claimed by the Omani Government. The Executive Committee further recalled that this judgment was appealed by both the Omani Government and the 1992 Fund and that the appeal proceedings were still ongoing.
- 3.8.6 The Executive Committee recalled that, following the settlement of the claims, the 1992 Fund had been subrogated to all claims arising out of the incident, and the Omani Government had agreed to withdraw from Court all claims settled with the 1992 Fund. The Committee noted that the claims have not yet been withdrawn.
- 3.8.7 The Executive Committee further noted that the legal proceedings had progressed slowly due to the fact that it had been difficult to contact the insurer, who had from the beginning refused to pay compensation. It also noted that the Court of Muscat had postponed its hearings several times to allow time for attempts to contact the insurer.
- 3.8.8 The Executive Committee noted that, once the proceedings in Oman were finalised, the 1992 Fund intended to pursue recovery of the compensation paid from the shipowner and insurer of the *Nesa R3*, which would most likely require bringing legal proceedings against the shipowner in the United Arab Emirates and the insurer in Sri Lanka.

1992 Fund Executive Committee

- 3.8.9 The 1992 Fund Executive Committee noted that the Director would report any further developments at future sessions of the Committee.

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| 3.9 | Incidents involving the IOPC Funds — 1992 Fund: <i>Trident Star</i> Document IOPC/NOV21/3/9 | | 92EC | |
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- 3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV21/3/9 concerning the *Trident Star* incident.
- 3.9.2 The Committee recalled that on 24 August 2016, the *Trident Star* had spilled an unconfirmed quantity of marine fuel oil into the water at the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), during loading operations.
- 3.9.3 It was recalled that the PTP was situated on the estuary of the Pulai River in Johor, Malaysia, and that the oil spill appeared to have drifted across the mouth of the River to the PTP container terminal. It was also recalled that approximately 3.5 kilometres of the container terminal wharf as well as several cargo vessels and tugs had been oiled following the incident. It was further recalled that some of the container terminal's berths had been closed or experienced disruption of their normal activity for about three weeks.

Claims for compensation

- 3.9.4 The Executive Committee noted that claims arising from this incident exceeded the 1992 CLC limit applicable to the *Trident Star* of RM 27.1 million (USD 6.5 million) and that therefore, the 1992 Fund was liable to pay compensation. It was recalled, however, that all payments were recoverable from the shipowner's insurer under STOPIA 2006.
- 3.9.5 It was noted that claims had been settled at USD 7.6 million of which the 1992 Fund had paid USD 561 695. It was also noted that the shipowner's insurer had reimbursed the Fund under STOPIA 2006.
- 3.9.6 The Executive Committee noted that claims by a group of shipping companies, totalling USD 6.6 million, remained outstanding and were being assessed by the Shipowners' Club and the 1992 Fund. It was noted that these claims were related to costs and losses incurred as a result of 22 vessels being contaminated, as well as costs and losses incurred as a result of the diversion to a Singapore terminal of another 20 vessels in order to avoid the pollution in the PTP container terminal.

Limitation proceedings

- 3.9.7 The Executive Committee recalled that nine actions comprising 19 claimants (the operator of the container terminal affected by the pollution and 18 shipping companies) had been filed in the limitation proceedings. It was noted, however, that following out of court settlements reached with claimants, the only remaining actions were those by a group of shipping companies, totalling USD 6.6 million.
- 3.9.8 It was recalled that since the 1992 Fund was liable to pay compensation, it was intervening in the limitation proceedings in order to protect the Fund's rights.

1992 Fund Executive Committee

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

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| 3.10 | Incidents involving the IOPC Funds — 1992 Fund: <i>Nathan E. Stewart</i> Document IOPC/NOV21/3/10 | | 92EC | |
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- 3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV21/3/10 relating to the *Nathan E. Stewart* incident.
- 3.10.2 The Executive Committee recalled that on 13 October 2016, the articulated tug-barge (ATB) composed of the tug *Nathan E. Stewart* and the tank barge *DBL 55* had run aground at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia, Canada. It was also recalled that the tug's hull had breached, and approximately 107 552 litres of diesel bunker oil and 2 240 litres of lubricants had been released into the environment.
- 3.10.3 The Executive Committee also recalled that the application of the Conventions was not clear in this case for the following reasons:
- there is a question over whether the *Nathan E. Stewart/DBL 55* ATB falls within the definition of 'ship' under Article I(1) of the 1992 CLC; and
 - at the time of the incident, the barge was empty and, therefore, was not carrying oil in bulk as cargo. In addition, it has not been established whether during any previous voyage it had

carried any persistent oil in bulk as cargo. Its last known cargo was jet fuel and gasoline, which are non-persistent products.

- 3.10.4 The Executive Committee further recalled that if the ATB carried non-persistent oil on previous voyages, the Civil Liability and Fund Conventions would not be applicable and that, in that case, since the spilled oil was bunkers, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) should apply instead.

Civil proceedings

- 3.10.5 The Executive Committee recalled that in October 2018, a First Nation community consisting of five tribes had brought a legal action against the owners, operators, the master and an officer of the *Nathan E Stewart/DBL 55* ATB in the Supreme Court of British Columbia. It was also recalled that the claimants also included as third parties: the Ship-source Oil Pollution Fund (SOPF), the 1992 Fund and the Supplementary Fund.
- 3.10.6 It was further recalled that the claimants argued that they had aboriginal title and sovereign rights in the affected area.
- 3.10.7 The Executive Committee recalled that the claimants argued for the application of the Bunkers Convention 2001 or, as an alternative, the 1992 CLC, and in the latter case, the claimants would seek from the 1992 Fund and the Supplementary Fund compensation for any damage in excess of the 1992 CLC.
- 3.10.8 It was also recalled that the shipowners had filed an application to stay the proceedings at the Supreme Court of British Columbia, maintaining that the Federal Court of Canada was a more suitable forum for those claims to be adjudicated.
- 3.10.9 The Executive Committee recalled that the proceedings at the Supreme Court had been stayed pending final determination of the limitation action instituted by the shipowners in the Federal Court.

Limitation proceedings

- 3.10.10 The Executive Committee recalled that in May 2019, the shipowners had filed an action before the Federal Court to establish a limitation fund and stay the Supreme Court proceedings.
- 3.10.11 The Executive Committee also recalled that the Federal Court had rendered a decision in July 2019, which granted the shipowners' motion and ordered that any claimants were precluded from commencing or continuing proceedings against the shipowners before any court other than the Federal Court, until the limitation action had been determined. It was also recalled that the Federal Court had decided that a limitation fund should be constituted pursuant to the Bunkers Convention 2001 and the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96), on the basis of the combined tonnage of the tug and barge. It was further recalled that the Federal Court had concluded that there was no factual basis upon which a limitation fund under the 1992 CLC could be constituted at that time.
- 3.10.12 It was also recalled that, at a later stage, the Court would have to determine whether or not, for the purpose of limitation, the barge and tug formed one unit.
- 3.10.13 The Executive Committee recalled that, eventually, the shipowners would be subject to discovery and would have to communicate all relevant information/documentation, which should include the details about the nature of the substances carried on board the tug and the barge. It was recalled that this should enable the Court to reach a decision on whether or not the incident falls within the scope of the 1992 CLC.

3.10.14 It was recalled that, following the Federal Court's decision, the shipowners had filed with the Court a bank guarantee in the amount of CAD 5 568 000 plus interest.

3.10.15 The Executive Committee recalled that it was very unlikely that the 1992 Fund and the Supplementary Fund would remain involved in this case. It was noted that the Funds would have to wait until the shipowners had disclosed their list of documents to determine whether the Funds should remain a party to the proceedings.

1992 Fund Executive Committee

3.10.16 The 1992 Fund Executive Committee noted that the Director would continue to monitor the incident and report any further developments at the next session of the Executive Committee.

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| 3.11 | Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/NOV21/3/11 | | 92EC | |
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3.11.1 The 1992 Fund Executive Committee took note of document IOPC/NOV21/3/11 relating to the *Agia Zoni II* incident.

Limitation fund claims evaluation procedure

3.11.2 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.

3.11.3 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. It was noted that in September 2021, a hearing took place of all appeals against the limitation fund administrator's evaluation.

Investigation into the cause of the incident

3.11.4 The Executive Committee recalled that the National 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.

3.11.5 The Executive Committee also 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.

3.11.6 The Executive Committee further 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.

- 3.11.7 It was noted that in June 2021, the 1992 Fund's lawyer and a number of other parties were summoned and questioned by the Public Prosecutor investigating the cause of the incident, to answer questions dealing with the procedure followed for the payment of claims, with emphasis on the clean-up contractors' claims. It was further noted that the results of the investigations were still awaited.
- 3.11.8 It was also noted that the Greek Mercantile Marine, as the supervisory body overseeing disciplinary matters for seafarers, had initiated a disciplinary tribunal against the crew members mentioned in the ASNA report who were on board the *Agia Zoni II*, at the time of the incident, and the senior representative of the salvor mentioned in the ASNA report.
- 3.11.9 It was further noted that in June 2021, the disciplinary tribunal published its findings and held that the Master was liable in negligence for the loss of the ship, but the tribunal did not examine the ASNA report's criticism of the salvors for their delayed antipollution response in sealing off and pumping out the wreck.

Impact of the reports on the 1992 Fund's payment of compensation

- 3.11.10 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.
- 3.11.11 It was also 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.
- 3.11.12 It was further recalled, however, that the 1992 Fund's 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

- 3.11.13 The Executive Committee further recalled 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

- 3.11.14 The Executive Committee also noted that the 1992 Fund had received 423 claims amounting to EUR 99.89 million and USD 175 000, had approved 410 claims and paid 187 claims amounting to EUR 14.93 million in compensation, and that further offers of compensation and advance payments had been made to a number of claimants whose responses were awaited.

Civil proceedings

- 3.11.15 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.

3.11.16 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 totalling EUR 2.09 million by three other claimants 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

3.11.17 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

3.11.18 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

3.11.19 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. It was noted that an advance payment was offered to the Greek State in respect of its claim and a decision was awaited whether to accept the offer.

3.11.20 The Executive Committee also recalled that there was a close correlation between the limitation fund administrator's assessments which were published in September 2019 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 within 30 days of the provisional assessment and only eight claimants had appealed.

Statement by the delegation of Greece

3.11.21 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 the persons who suffered pollution damage from 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, while we are fully aware of the special conditions they experience during the claims' assessment process of each oil pollution incident.

This delegation would also like to express its gratitude for the advance payment offer made by your side with regard to the Greek State's claim. In this respect, we would like to note that this matter is currently under consideration by the Administration, whose final decision on this important issue is expected in due time.

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 to reiterate our position on the issue, as it has been explicitly expressed during previous sessions of the Executive Committee examining this matter.

Furthermore, it is noted that the legal procedure run by the Public Prosecutor is ongoing, and its finalisation is still pending. Once we are informed of the outcome, our Administration will let you know accordingly without delay.

Please allow us once more to emphasise that the circumstances and the nature of each case are significant facts that largely affect the whole penal procedural process.

The investigative reports concluded by the Technical University of Athens (TUA), and the third Marine Accident Investigation Council (ASNA) 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 penal judgment would be required if any persons were to be held to have intentionally or negligently caused the pollution damage.

With regard to the disciplinary process followed, which is independent from the penal procedure run by the Public Prosecutor, it is mentioned that the disciplinary tribunal, which, according to applicable national law, is competent only for the imposition of disciplinary sanctions against Greek seafarers under examination for breach of their maritime professional duties, imposed a disciplinary penalty against the master of the ship.'

1992 Fund Executive Committee

- 3.11.22 The Executive Committee noted the information in the document and the statement by Greece and also noted that the Director would continue to monitor this case and would report the latest developments to the 1992 Fund Executive Committee at its next session.

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| 3.12 | Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Documents IOPC/NOV21/3/12 | | 92EC | |
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- 3.12.1 The Executive Committee took note of the information contained in document IOPC/NOV21/3/12 relating to the *Bow Jubail* incident.

- 3.12.2 The Executive 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 also 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

- 3.12.3 It was recalled that Article I(1) of the 1992 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'.
- 3.12.4 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.

- 3.12.5 The Executive 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 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 would apply as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.
- 3.12.6 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 STOPIA 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.
- 3.12.7 It was further recalled, that if the shipowner was successful in proving that there were no oil cargo residues on board, the incident would fall under the Bunkers Convention 2001 and, therefore, the limitation amount (SDR 14 312 384) under the LLMC 76/96 would apply.

Limitation proceedings

- 3.12.8 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 limitation of the shipowner's liability would be governed by the 1992 CLC, not the LLMC 76/96.
- 3.12.9 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

- 3.12.10 It was recalled 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.
- 3.12.11 It was recalled that the Fund's Netherlands lawyers had advised that it would 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.

Opinion of the Advocate General

- 3.12.12 The Executive Committee noted that in the Advocate General's opinion issued in July 2021, the 1992 Fund could be regarded as an interested party and should be allowed to submit an independent defence with grounds for cassation.
- 3.12.13 It was noted that the Supreme Court was expected to render a decision on the Fund's application before the end of the 2021.

Civil proceedings

- 3.12.14 The Executive Committee noted that legal actions had been brought by several claimants before the District Court in Rotterdam against the shipowner, its insurer and other parties. It was noted

that the 1992 Fund had been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident.

- 3.12.15 It was further noted that the 1992 Fund was intervening in these proceedings, requesting a stay of the proceedings until such time as the Supreme Court renders its decision on whether the Bunkers Convention 2001 or the 1992 CLC apply to this incident.

Debate

- 3.12.16 The delegation of the Netherlands stated that no developments had taken place in the case since the last session of the Executive Committee, and that it was necessary to wait for the legal proceedings to take their course. That delegation also added that they would continue to be in close contact with the Secretariat regarding the developments in this case.

- 3.12.17 One delegation enquired whether there had been any developments towards the establishment of standard operating procedures for the cases where a 'ship' able to carry persistent oil and other substances would cease to be a 'ship' under the 1992 CLC.

- 3.12.18 The Director explained that the Secretariat was following this case with interest, since this case may open the doors to a new situation where incidents that would not normally have involved the IOPC Funds, might involve the Funds in the future. The Director stated that there had been no developments concerning the setting up of a standard operating procedure for cases where a ship able to carry persistent oil and other substances, would cease to be a 'ship' under the 1992 CLC. He referred to the guidance on the definition of 'ship' under the 1992 CLC, adopted by a working group and endorsed by the Assembly, together with the guidelines on the definition of 'ship' published by the 1992 Fund, and the use of the concept of the maritime transport chain for grey areas to help decide on a case-by-case basis when a vessel could qualify as a 'ship' under the 1992 CLC. The Director also stated that the 1992 Fund had to wait for the decision on whether the Fund could join the legal proceedings, followed by a judgment by the Supreme Court on whether the 1992 CLC or the Bunkers Convention 2001 applied to this incident. He added that once the Supreme Court has rendered its judgment, the 1992 Fund Assembly would have to decide on how to proceed.

- 3.12.19 The observer delegation of the International Group recognised the need to wait for the Supreme Court's decision and the time required for due process in the legal proceedings, especially considering the effects of the global pandemic on courts. That delegation, however, expressed concern that three and a half years had passed since the incident took place and the claimants could not get compensation until such time as the Court had decided whether the 1992 CLC or the Bunkers Convention 2001 applied and, therefore, which limitation regime would be applicable. The delegation expressed the wish that the Supreme Court would take the corresponding decisions as soon as possible in order to resolve this case promptly.

1992 Fund Executive Committee

- 3.12.20 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.

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| 3.13 | Incidents involving the IOPC Funds — 1992 Fund: <i>MT Harcourt</i> Document IOPC/NOV21/3/13 | | 92EC | |
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- 3.13.1 The Executive Committee took note of document IOPC/NOV21/3/13.

- 3.13.2 The Executive Committee recalled 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.

- 3.13.3 The Executive Committee also recalled that cargo and slops disposal operations were suspended immediately, and all crew were mustered and accounted for. It was further recalled that there were no injuries or other casualties.
- 3.13.4 The Executive Committee recalled that approximately 31 barrels (approximately 4.2 tonnes) of crude oil was lost from the cargo tank into the water ballast tank, out of which a small quantity spilled overboard. It was also recalled that this oil was immediately contained by the Terminal, booms were placed 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.
- 3.13.5 It was further recalled 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 had modelled and monitored vessel stability while the cargo was discharged safely in stages to various barges and other vessels in the same management.
- 3.13.6 It was also recalled that the clean-up operation was organised by the Terminal who had 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

- 3.13.7 It was further recalled 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 (USD 289.17 million).
- 3.13.8 The Executive Committee recalled 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 (USD 25.50 million).
- 3.13.9 The Executive Committee also recalled 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 (USD 28.49 million).
- 3.13.10 The Executive Committee further recalled 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

- 3.13.11 It was recalled that the *MT Harcourt* was insured with the West of England P&I Club, part of the International Group.

Claims for compensation

- 3.13.12 It was also recalled 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.
- 3.13.13 It was further recalled that the claim amounted to NGN 11.98 billion (approximately USD 29 million), but little evidence had been provided in support of the claim, and the P&I Club was of the view that the claim was unfounded and opportunistic.

Intervention by the delegation of Nigeria

3.13.14 The delegation of Nigeria stated that the incident in November 2020 involved a Marshall Island flagged oil storage tanker, that suffered an explosion that affected 12 riverine communities.

3.13.15 That delegation also stated that the matter was currently under litigation in the Federal High Court in Nigeria, and a report of the preliminary investigation on the cause of the incident was ready. The delegation further urged the IOPC Funds to consider and expedite an early conclusion of the matter.

1992 Fund Executive Committee

3.13.16 The 1992 Fund Executive Committee noted the intervention made by the delegation of Nigeria and that the Director would continue to monitor the incident and would report any developments at the next sessions of the governing bodies.

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| 3.14 | Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel Document IOPC/NOV21/3/14 | | 92EC | |
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3.14.1 The 1992 Fund Executive Committee took note of the information regarding the incident in Israel as set out in document IOPC/NOV21/3/14.

3.14.2 The Executive Committee recalled that in February 2021, the Government of Israel had contacted the 1992 Fund requesting assistance with oil found along the Israeli coastline believed to be caused by a mystery spill. The Executive Committee also recalled that the Israeli Government believed a spill had occurred in the waters of the exclusive economic zone (EEZ) of Israel. It further recalled that the source of the spill had not been identified.

3.14.3 The Executive Committee recalled that, according to the investigations carried out by the 1992 Fund experts, the pollution was caused by crude oil, and it could not have originated from any other source but a passing oil tanker.

3.14.4 The 1992 Fund Executive Committee recalled that, at its July 2021 session, it had decided that the pollution which had affected the coastline of Israel could be considered as a spill from an unknown source (a so-called 'mystery spill') and that, for this reason, the 1992 Civil Liability and Fund Conventions would apply. It further recalled that it had authorised the Director to pay compensation in respect of claims arising out of the incident in Israel.

3.14.5 The Executive Committee noted that on the basis of the value of the Israeli New Shekel (ILS) *vis-à-vis* the Special Drawing Rights (SDR) on the date of the adoption of the 1992 Fund Executive Committee's Record of Decisions of its 76th session, i.e., 23 July 2021, at the rate of SDR 1 = ILS 4.645440, the conversion of SDR 203 million into that currency gave a total amount available for compensation of ILS 943 024 320.

3.14.6 The Executive Committee noted that, while no claims had been submitted yet, initial estimates of the cost of the response to the oil spill were in the region of ILS 55 million and that additional claims for economic losses were expected.

3.14.7 The Executive Committee noted that, for this reason, the Director had engaged a local firm, with a long history of assisting P&I Clubs, to act as the focal point for this incident, in order to help potential claimants and to facilitate the submission and processing of claims.

Debate

3.14.8 The delegation of Israel thanked the Secretariat, and the Director in particular, for the cooperation and support in the handling of this incident so far. That delegation informed the Executive

Committee that the Israeli Government had compiled a set of information for claimants, which would soon be disseminated through the press and the media. That delegation expected that, once this information was in the public domain, claims would begin to be submitted.

3.14.9 One delegation asked whether there had been any development in the investigation into identifying the source of the spill, and when the results of such investigation would be reported to the Executive Committee.

3.14.10 The Director explained that, since the Executive Committee's decision on the applicability of the 1992 Civil Liability and Fund Conventions to this case, the 1992 Fund had been focused on making arrangements for receiving claims and payment of compensation. To this end, the 1992 Fund had appointed a local focal point to help with the submission of claims and had also liaised with the Israeli authorities to ensure that the information was being disseminated appropriately. The Director confirmed that the 1992 Fund was continuing to investigate the possible origin of the spill and that he would inform the Executive Committee at future sessions on any developments in the investigation.

1992 Fund Executive Committee

3.14.11 The 1992 Fund Executive Committee noted that the Director would report any further developments at future sessions of the Committee.

4 Compensation matters

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| 4.1 | Report of the 1992 Fund Executive Committee on its 73rd, 74th, 75th and 76th sessions | 92A | | |
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The 1992 Fund Assembly noted the reports of the 73rd, 74th, 75th and 76th sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT19/11/1, IOPC/NOV20/11/2, IOPC/MAR21/9/2 and IOPC/JUL21/9/2) and expressed its gratitude to the Executive Committee's Chair, its Vice-Chair and its members for their work.

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| 4.2 | Election of the members of the 1992 Fund Executive Committee Document IOPC/NOV21/4/1 | 92A | | |
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4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV21/4/1.

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

| Eligible under paragraph (a) | Eligible under paragraph (b) |
|------------------------------|------------------------------|
| France | Ecuador |
| India | Germany |
| Italy | Jamaica |
| Japan | Liberia |
| Netherlands | Malaysia |
| Singapore | Marshall Islands |
| Spain | Morocco |
| | Philippines |

4.2.3 The governing bodies recalled the procedure adopted in April 2015 for the election of the Chair and Vice-Chair of the 1992 Fund Executive Committee, by which the incoming Chair and Vice-Chair of

the 1992 Fund Executive Committee would be elected at the same time as the incoming Executive Committee was elected (document IOPC/APR15/9/1, paragraph 6.1.6 (i)).

4.2.4 It was noted that the incoming Chair and Vice-Chair would assume their positions as soon as the sessions had concluded and the Record of Decisions had been adopted, and until the end of the next regular session of the Assembly.

4.2.5 The 1992 Fund Executive Committee elected, by acclamation, the following delegates to hold office until the end of the next regular session of the 1992 Fund Assembly:

Chair: Mr Samuel Soo (Singapore)

Vice-Chair: Mrs Luisa Burgess (Ecuador)

4.2.6 The newly elected Chair and Vice-Chair thanked the 1992 Fund Executive Committee for the confidence shown in them.

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| 4.3 | STOPIA 2006 and TOPIA 2006 Document IOPC/NOV21/4/2 | 92A | | SA |
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4.3.1 The governing bodies took note of the information contained in document IOPC/NOV21/4/2 regarding the recent information on the Small Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) (STOPIA 2006) and Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) (TOPIA 2006).

Number of ships entered and not entered in STOPIA 2006

4.3.2 The 1992 Fund Assembly noted that the total number of ships reported by the International Group as entered and not entered in STOPIA 2006 as at 20 August 2021 was as follows:

| Year | Number of ships entered in STOPIA 2006 (relevant ships and written agreements) | Number of ships insured by International Group Clubs and not entered in STOPIA 2006 | Total | % of ships entered in STOPIA 2006 |
|----------------|--|---|-------|-----------------------------------|
| 20 August 2020 | 7 739 | 104 | 7 843 | 98.67 |
| 20 August 2021 | 7 599 | 120 | 7 719 | 98.45 |

4.3.3 It was further noted that the International Group had also reported that the number of relevant ships without being entered in STOPIA 2006 was nil, and the number of ships entered in STOPIA 2006 (whether as a Relevant Ship or by an independent written agreement between the owner and its Club) and which ceased to be entered in STOPIA 2006 while remaining insured by the Club, was also nil.

Number of relevant ships not entered in TOPIA 2006

4.3.4 The Supplementary Fund Assembly noted that the International Group had reported that as at 20 August 2021, the number of relevant ships without being entered in TOPIA 2006 was nil, and the number of ships entered in TOPIA 2006 (whether as a Relevant Ship or by an independent written agreement between the owner and its Club) and which ceased to be in TOPIA 2006 while remaining insured by the Club, was also nil.

- 4.3.5 The Supplementary Fund Assembly also noted that the International Group is not required to provide the list of ships entered in TOPIA 2006 under the Memorandum of Understanding (MoU) between the International Group and the IOPC Funds.

Director's considerations

- 4.3.6 The governing bodies noted that the Director was satisfied with the STOPIA 2006 data, which showed the current situation and that the equitable sharing of the burden of compensation between shipowners and oil receivers was maintained. The governing bodies also noted that the Director was in discussion with the International Group as to the difference between the STOPIA 2006 and TOPIA 2006 data reporting requirements in the MoU and that the Director would report the developments at future sessions of the governing bodies.
- 4.3.7 The Director thanked the International Group for its implementation of STOPIA 2006 and TOPIA 2006 and for sharing the STOPIA 2006 data.

Intervention by the observer delegation of the International Group

- 4.3.8 The observer delegation of the International Group shared its update on the figure of the STOPIA 2006 data that the number of ships not reinsured through the Group's pooling arrangements but that had voluntarily entered in STOPIA 2006 by written agreement increased by 9 vessels since it was reported in document IOPC/NOV21/4/2. As at 2 November 2021, this figure stands at 235 ships out of the 346 in total not reinsured through the Group's pooling arrangements, while the number of ships insured by the International Group Clubs and not entered in STOPIA 2006 is 111 instead of 120. This means that the figure of 7 599 in the number of ships entered in STOPIA 2006 is now 7 608 and that the percentage figure would be 98.56% rather than 98.45%.

1992 Fund Assembly and Supplementary Fund Assembly

- 4.3.9 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information contained in document IOPC/NOV21/4/2 and the updated STOPIA 2006 figures provided by the observer delegation of the International Group. The governing bodies further noted that the Director would monitor the application of both STOPIA 2006 and TOPIA 2006 and that he would continue discussions with the International Group in order to have a clearer understanding of the application of TOPIA 2006 and would report any developments at future sessions of the governing bodies.

5 Financial reporting

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| 5.1 | Submission of oil reports Document IOPC/NOV21/5/1 | 92A | | SA |
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- 5.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/NOV21/5/1 in respect of the submission of oil reports.
- 5.1.2 It was noted that since the publication of document IOPC/NOV21/5/1, reports had been received from Algeria, Argentina, the Gambia, and Kiribati.
- 5.1.3 The 1992 Fund Assembly noted that out of 24 States with outstanding reports for the 1992 Fund, 9 States recorded outstanding reports for one year only and one Member State had made a partial submission in respect of 2020. It was also noted that throughout 2020 and 2021 Member States had been impacted by COVID-19 restrictions which had led to delays in submissions, and it was expected that the reports would be submitted once the effects of the restrictions had eased.
- 5.1.4 The 1992 Fund Assembly noted with concern that six States had outstanding reports for four years or more and in particular, it was noted that two of those States had never submitted any reports: the Dominican Republic (22 years) and the Syrian Arab Republic (12 years). It was also noted that

one Member State, the Kingdom of the Netherlands, had eight years of outstanding reports from two contributors in overseas territories.

- 5.1.5 With regards to the Supplementary Fund, it was noted that one Member State, Greece, had not submitted any reports for 2020. One Member State, the Netherlands, had made a partial submission in relation to overseas territories.
- 5.1.6 It was also noted that, while the financial consequences of the missing 2020 reports could not be determined, the Member States that had submitted their reports for 2020 represented approximately 95% of the total contributing oil expected to be reported to the 1992 Fund and 97% of the total contributing oil expected to be reported to the Supplementary Fund.

Online Reporting System (ORS)

- 5.1.7 It was recalled that the Secretariat had been developing the Online Reporting System (ORS) to assist Member States to submit contributing oil data to the Secretariat. The governing bodies recalled that additional development work on the ORS had been postponed until the Secretariat's new Enterprise Resource Planning (ERP) system had been implemented. It was also recalled that the ERP system had become operational in late 2020 and that the Secretariat expected that the work to integrate the ORS and the ERP would begin in 2022.

Measures encouraging the submission of oil reports

- 5.1.8 It was further recalled that at the October 2019 sessions of the governing bodies, the Director had been instructed to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributions based on estimates in the event that no reports were submitted (IOPC/OCT19/11/1, paragraph 5.1.17).
- 5.1.9 The Director informed the Assembly that he had been discussing the possibility of using estimates to invoice contributions with the Audit Body and that a legal opinion had been received on the matter. The Director indicated that he would report back to the Assembly at a future session.

Director's considerations

- 5.1.10 The Director expressed his gratitude for the engagement and cooperation of Member States with regards to the submission of reports in spite of the difficult circumstances that had been faced as a result of the COVID-19 pandemic. He also expressed his concern, however, that six Member States had outstanding reports for four years or more and that two States had never submitted reports, despite being members of the 1992 Fund for many years.
- 5.1.11 The Director assured the governing bodies that he would continue his efforts to obtain the outstanding reports and to ensure that Member States continued to fulfil this very important treaty obligation.

Debate

- 5.1.12 The delegation of Greece provided an update on the progress that had been made with regard to their reports. They noted that most of their reports had been collated but that bureaucratic difficulties had been encountered with respect to one contributor. That delegation assured the governing bodies that a partial submission of reports would be completed as soon as possible and that the competent authority would continue to engage with the remaining contributor to ensure the reporting obligations were met.
- 5.1.13 Another delegation expressed their appreciation to the Director and the Audit Body for their work to examine the possibility of invoicing contributions based on estimates in the event that no reports were submitted.

1992 Fund Assembly and Supplementary Fund Assembly

5.1.14 The governing bodies emphasised the importance of submitting reports in a timely manner as it continued to be of crucial importance for the functioning of the Funds.

5.1.15 The governing bodies instructed the Director to continue his efforts to obtain the outstanding reports and to continue to bring the matter of the submission of oil reports to each regular session. They also urged delegations to cooperate with the Secretariat to ensure that States fulfil their obligations in this regard.

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| 5.2 | Report on contributions Document IOPC/NOV21/5/2 | 92A | | SA |
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5.2.1 The governing bodies took note of the information on contributions contained in document IOPC/NOV21/5/2.

5.2.2 The 1992 Fund Assembly noted that a government-owned contributor in Ghana had outstanding contributions amounting to some £100 000 and that the Secretariat had again offered a payment plan by instalments. The Director would continue the dialogue with the authorities in Ghana about the outstanding contributions due.

5.2.3 The 1992 Fund Assembly recalled that at its session in October 2017, it had decided to write off contributions due from two contributors in the Russian Federation, after the authorities in the Russian Federation had provided oil reports which contained incorrect information and had not rectified errors in the oil reports in a timely manner. It was noted that since then, the Director had met with representatives from the Russian Federation in relation to this matter on several occasions.

5.2.4 It was also noted that during 2019, the Director had held meetings with the Russian representatives, and at their request, the Director had written to the Prime Minister of the Russian Federation setting out the IOPC Funds' position. It was further noted that in March 2020, the Director received a letter from the Ministry of Transport of the Russian Federation confirming that consideration was being made to meet the Russian Federation's obligation under Article 15.4. The governing bodies noted that the Director had again written to the Russian authorities in July 2021, reiterating his view of the Russian Federation's obligation under Article 15.4 of the 1992 Fund Convention, and that he was hopeful a formal response and payment would be received soon. The 1992 Fund Assembly also noted that the Russian Government was assisting in resolving the outstanding contributions due from two other contributors rather than reverting to legal action.

5.2.5 The 1992 Fund Assembly noted that a contributor in Venezuela had outstanding contributions accumulating since May 2019, which amounted to some £658 000 corresponding to late oil reports received for the years 2006 to 2018. It was noted that the Director had been working with the Venezuelan Ambassador in London to resolve the issue and was hopeful payment would be received in the foreseeable future.

5.2.6 It was noted that a contributor in Curaçao (Kingdom of the Netherlands) had outstanding contributions of some £102 000 since March 2020. It was further noted that the contributor may no longer operate in Curaçao and the Secretariat was working with the relevant authorities to establish the status of the company and whether liabilities had been transferred to another company. It was noted that, if it is confirmed by the authority that no company in Curaçao is responsible for the liabilities, the Director would write off the outstanding contributions and interest, and the Assembly would be advised at a future session.

5.2.7 It was noted that a contributor in Iran had outstanding contributions of some £80 000 and the Director was hopeful that payment would be received in due course.

- 5.2.8 The 1992 Fund Assembly noted that contributions of some £29 000 were outstanding from two contributors in Argentina and the Director indicated he would liaise with the authorities regarding these outstanding obligations.
- 5.2.9 The 1992 Fund Assembly noted that the Director did not intend to take legal action in respect of outstanding contributions from contributors in Argentina, Curaçao, Ghana, Iran, the Russian Federation, and Venezuela at the present time.
- 5.2.10 The 1992 Fund Assembly recalled that contributions were due from four contributors based in Denmark, Morocco, Switzerland (oil received in France), and the United Kingdom which had gone into liquidation. Pursuant to its decision at the October 2014 session, the 1992 Fund Assembly recalled that any balance due would be written off in the Financial Statements on receipt of final settlement.
- 5.2.11 The Supplementary Fund Assembly noted that only one Member State, the Republic of Congo, had outstanding contributions of £1 489 since 2019.

Debate

- 5.2.12 One delegation expressed appreciation to the Director for his efforts on this issue and also expressed concerns about the fact that some contributors had not paid their contributions in a timely manner. That delegation also called on the new Director for determined leadership on this issue.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.2.13 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided on contributions.

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| 5.3 | Report on investments Document IOPC/NOV21/5/3 | 92A | | SA |
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- 5.3.1 The governing bodies took note of the information on the IOPC Funds' investments for the period 1 July 2020 to 30 June 2021 contained in document IOPC/NOV21/5/3. The governing bodies also noted the number of institutions used by the Funds for investment purposes and the amounts invested by each Fund during that period.
- 5.3.2 The governing bodies further noted that the Bank of England, the United States Federal Reserve and the European Central Bank had all decreased base rates during the reporting period which had resulted in a marked negative impact on yields achieved by the Funds.
- 5.3.3 It was noted that the joint Investment Advisory Body had made no recommendations to change the lending limits in the Internal Investment Guidelines due to the credit markets remaining stable during the reporting period.
- 5.3.4 It was also noted that Barclays Bank plc and HSBC Bank plc had been the Funds' designated house banks during the reporting period and that Lloyds Bank plc, BNP Paribas, and Santander UK Ltd had been designated as temporary house banks to hold euros for the *Agia Zoni II* incident.
- 5.3.5 It was further noted that during the reporting period one GBP/EUR dual currency investment (DCI) was entered into, which was expected to mature in December 2021. It was noted that the principal amount would be used for claims (*Agia Zoni II* incident) and claims-related expenses.
- 5.3.6 It was also noted that investments with the temporary house bank Santander UK plc had exceeded the normal limit on one occasion.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.3.7 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided and would continue to follow closely the investments held by the 1992 Fund and the Supplementary Fund.

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| 5.4 | Report of the joint Investment Advisory Body Document IOPC/NOV21/5/4 | 92A | | SA |
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- 5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund, contained in the Annex of document IOPC/NOV21/5/4.
- 5.4.2 The governing bodies noted the mandate and the composition of the IAB. The governing bodies also noted that the report of the IAB was comprehensive and included sections on the economy, credit markets and hedging currency risks.
- 5.4.3 The governing bodies noted that, as in previous years' reports, the IAB had referred to the Hedging Guidelines, which detailed the approach to hedging a currency risk associated with the liability of an incident. They further noted that the IAB had kept under review the holding of currencies other than pounds sterling for incidents as part of the Funds' normal assets; and that the *Agia Zoni II* was the only incident for which compensation was payable and required currency management. It was also noted that a balance of approximately EUR 20 million was being held, which represented 49% of the current amount estimated to be required in respect of that incident.
- 5.4.4 The governing bodies noted that the IAB continued to monitor the creditworthiness of the Funds' counterparty banks in accordance with the approved investment guidelines and that changes affecting those financial institutions were reflected in the financial institutions master list provided to the Secretariat by the IAB every quarter. It was further noted that the current list of financial institutions with which deposits might be placed stood at 36 and that they were divided into two groups with a tenor of 12 months and a tenor of six months.
- 5.4.5 The governing bodies noted that the IAB had continued to review the IOPC Funds' financial risks during the current year. It was also noted that the impact of the UK's withdrawal from the European Union (Brexit) and the current pandemic were considered to be an ongoing concern and that the IAB continued to monitor the impact on the UK economy and the pound sterling. The governing bodies noted that the IAB was also focusing on the effect that negative interest rates in the eurozone had on the ability of the Secretariat to maximise the return on investments. In addition, it was also noted that the IAB continued to monitor the valuation of Provident Fund (PF2) on a quarterly basis at its meetings with the Secretariat and to provide comments when appropriate.
- 5.4.6 It was further noted that, in addition to the frequent meetings among the IAB members during the period November 2020 to October 2021, the IAB had held four remote meetings with the Director, the Deputy Director/Head of the Finance and Administration Department and the Finance Manager. It was noted that the members of the IAB had also met with the External Auditor and the Audit Body during that period.
- 5.4.7 The governing bodies also noted that the IAB would continue to provide support and advice to the Secretariat on a day-to-day basis as necessary, and assist in providing solutions to help optimise the returns on the Funds' investments. It was further noted that the IAB would leverage its broad knowledge and experience within the financial markets to advise the Secretariat of future events that were likely to trigger periods of increased volatility, that would relate to the security of the Funds' assets or have negative implications for the Funds' capital.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.4.8 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information provided by the joint Investment Advisory Body in its report and expressed their gratitude for their expert advice to the Secretariat and important contribution in safeguarding the assets of the 1992 Fund and the Supplementary Fund.

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| 5.5 | Report of the joint Audit Body Document IOPC/NOV21/5/5 | 92A | | SA |
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- 5.5.1 The governing bodies noted the report of the Audit Body contained in document IOPC/NOV21/5/5 presented by the Chair on behalf of all six members of the Audit Body.
- 5.5.2 The governing bodies noted that the Audit Body had held three remote meetings during the reporting year and had worked according to a detailed programme of activities.
- 5.5.3 The governing bodies further noted that the work programme, which had been planned at its inaugural meeting, focused on six main areas: (a) ascertaining the adequacy and effectiveness of the IOPC Funds' management and financial systems; (b) reviewing the effectiveness of the IOPC Funds' risk management; (c) reviewing the IOPC Funds' Financial Statements and reports; (d) promoting the understanding and effectiveness of the audit function within the IOPC Funds; (e) managing the process for the selection of the External Auditor; and (f) undertaking any other tasks or activities as requested by the IOPC Funds' governing bodies.
- 5.5.4 The governing bodies noted that the Audit Body continued to focus on the effectiveness of the IOPC Funds' risk management. It was also noted that the work undertaken by the Audit Body in relation to the risks associated with the insurers who are not members of the International Group (non-IG insurers) had been included in its report. It was further noted that the document IOPC/NOV20/5/5/1 which had been presented in 2020 to the governing bodies had been forwarded to IMO and had been on the agenda of the 108th session of the Legal Committee in July 2021 (document LEG 108/5). The governing bodies noted that the Audit Body had decided to follow the developments at IMO on the issue.
- 5.5.5 The governing bodies noted that the Audit Body had been consulted by the Director on the possibility of levying contributions based on estimated oil receipts, in circumstances where relevant oil reports had not been received and that the Audit Body was currently examining the issue, including the legal aspects.
- 5.5.6 The governing bodies noted that pursuant to its review of the Financial Statements and consideration of all relevant reports and comments provided by the External Auditor, the Audit Body recommended the approval of the Financial Statements of the 1992 Fund and the Supplementary Fund for the year ending 31 December 2020.
- 5.5.7 The Chair of the Audit Body thanked her colleagues in the Audit Body for their hard work. She thanked Mr Michael Knight, the external expert of the Audit Body, in particular, who was at the end of his term, for his qualified advice, the Chairs of the governing bodies who had provided wise counsel and the Secretariat, which had assisted the Audit Body in discharging its responsibilities.
- 5.5.8 The Chair of the Audit Body asked the 1992 Fund Assembly and Supplementary Fund Assembly to take note of the report of the Audit Body and to provide comments and instructions as might be warranted; and to consider the joint Audit Body's recommendation regarding the adoption of the 2020 Financial Statements.

Debate

- 5.5.9 The Chairs of the 1992 Fund Assembly and the Supplementary Fund Assembly thanked the Audit Body for their work. They also expressed their appreciation to the outgoing external expert, Mr Michael Knight, for his service for the last 10 years. The Director also thanked the members of the Audit Body and the Chair of the Audit Body, Mrs Birgit Sjølling Olsen, in particular, for their work during these difficult times. He also thanked Mr Michael Knight for his advice during these last 10 years and commended his ability to put very complicated issues in simple terms and thanked him for his assistance over the years.
- 5.5.10 Mr Knight said it had been a privilege to work for the Funds during these last 10 years and thanked the Chair of the 1992 Fund Assembly, the Chair of the Supplementary Fund Assembly, the Chair of the Audit Body and the Director for their kind words.
- 5.5.11 Several delegations thanked the Audit Body for their work in relation to non-IG insurers and on the possibility of levying contributions based on estimated oil receipts. They also thanked Mr Knight for his contribution which had been crucial to the work of the Audit Body and wished him well in his future endeavours.
- 5.5.12 One delegation requested a clarification on the usual cycle of the periodic internal audit type reviews by the Audit Body, which had not been conducted during the period covered by the report. The Chair of the Audit Body responded that the internal audit type reviews were a core area of the Audit Body's work which depended on the work of the Secretariat. The Director explained that the Funds had a system of internal audit and that Mazars LLP had been engaged as the Funds' internal audit service provider. He added that the next internal audit review would focus on the handling of claims, to be conducted in 2022.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.5.13 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their appreciation to the Chair of the Audit Body and the other Audit Body members for the work they had carried out during very difficult times. They also thanked them for their report and noted the recommendation of the Audit Body to approve the 2020 Financial Statements and Auditor's Report and Opinions.

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| 5.6 | 2020 Financial Statements and Auditor's Report and Opinions Documents IOPC/NOV21/5/6, IOPC/NOV21/5/6/1 and IOPC/NOV21/5/6/2 | 92A | | SA |
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- 5.6.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/NOV21/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2020, contained in documents IOPC/NOV21/5/6/1 and IOPC/NOV21/5/6/2.
- 5.6.2 A representative of the External Auditor, BDO International, Mr David Eagles, introduced the External Auditor's Report and Opinion for the 1992 Fund and the External Auditor's Opinion for the Supplementary Fund.
- 5.6.3 The governing bodies noted that the audit was conducted entirely on a remote basis and that the audit was again well supported by the Secretariat and the working papers provided to the auditors were of good quality.
- 5.6.4 The governing bodies noted that the Financial Statements continued to be prepared in accordance with International Public Sector Accounting Standards (IPSAS) and in accordance with the Funds' Financial Regulations in all respects. The governing bodies also noted that, as in previous years, the financial disclosures were comprehensive and contained enough detail to facilitate in-depth analysis of the Funds' positions, performance and future commitments. It was further noted that

there had been no new accounting policies or other significant changes compared with previous years.

- 5.6.5 The governing bodies noted with appreciation the Financial Statements of their respective organisations as well as the External Auditor's Report and Opinions, and also noted that the External Auditor had provided an unmodified audit opinion on the 2020 Financial Statements for each organisation.
- 5.6.6 It was further noted that the audit had involved procedures considered appropriate for the entity according to the Auditor's judgement, risk assessment and testing of the internal controls of the organisations. The External Auditor was satisfied that no weaknesses had been identified in the internal controls. The governing bodies noted that the unmodified audit opinions on the Financial Statements were confirmation that the organisations' internal financial controls had operated effectively.
- 5.6.7 The 1992 Fund Assembly took note that there were no new recommendations in the External Auditor's Report on the 2020 Financial Statements and noted the Director's response to a recommendation made by the External Auditor in a previous year. It was further noted that the recommendation had been fully implemented.

1992 Fund Assembly decision

- 5.6.8 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2020.

Supplementary Fund Assembly decision

- 5.6.9 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2020.

6 Financial policies and procedures

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| 6.1 | Proposal relating to the appointment of the 'external expert' of the Audit Body Document IOPC/NOV21/6/1 | 92A | | SA |
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- 6.1.1 The governing bodies took note of the information contained in document IOPC/NOV21/6/1.
- 6.1.2 The governing bodies noted that, in accordance with the Composition and Mandate of the Audit Body, the external expert of the Audit Body, who is the member of the Audit Body that is not related to the organisations and has expertise and experience in financial matters ('external expert'), is elected on the recommendation of the Chair of the 1992 Fund Assembly.
- 6.1.3 The governing bodies recalled that Mr Michael Knight had been appointed as the external expert of the Audit Body in October 2011 and reappointed by the 1992 Fund Assembly for two further three-year terms in 2014 and 2017. It was also recalled that at its December 2020 meeting, the 1992 Fund Assembly had decided to reappoint Mr Knight for one extra year until 31 December 2021, to facilitate the continuity and functioning of the Audit Body.
- 6.1.4 The governing bodies noted that as the term of office of the current external expert would expire on 31 December 2021, Mr Michael Knight, the Director and the Deputy Director/Head of Finance and Administration, interviewed three candidates for the position of the external expert. It was also noted that the Chair of the 1992 Fund Assembly had met the preferred candidate in October 2021 and recommended that Mrs Alison Baker be appointed as the external expert for an initial term of three years from 1 January 2022 to 31 December 2024.

- 6.1.5 The Chair of the 1992 Fund Assembly, the Chair of the Supplementary Fund Assembly, the Chair of the Audit Body and the Director congratulated Mrs Baker on her appointment. The Director and the Chair of the Audit Body invited Mrs Baker to observe the next Audit Body meeting to be held on 19 November 2021.

1992 Fund Assembly decision

- 6.1.6 The 1992 Fund Assembly decided to appoint Mrs Alison Baker as the external expert to the joint Audit Body for a term of three years from 1 January 2022 to 31 December 2024.

Supplementary Fund Assembly

- 6.1.7 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly on the appointment of the new external expert.

7 Secretariat matters

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| 7.1 | Secretariat matters Document IOPC/NOV21/7/1 | 92A | | SA |
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- 7.1.1 The governing bodies took note of the information contained in document IOPC/NOV21/7/1 regarding the operation of the Secretariat.
- 7.1.2 The governing bodies noted that there were 35 posts within the structure, however, there were 26 staff members working in the Secretariat. The governing bodies also noted that there were six vacant posts in the Professional Category: the posts of two in-house Translators (French and Spanish), External Relations Officer, Claims Manager, Office Manager and Legal Counsel. The governing bodies further noted that there were three vacant posts in the General Service category: one in the Director's Office, one in the Claims Department and one in the Finance and Administration Department, and that none of these posts had been budgeted for in 2022.
- 7.1.3 The governing bodies noted that Ms Kathleen McBride, Finance Assistant, had decided to take early retirement and had separated from the organisation at the end of September 2021 after more than 14 years of valuable service to the IOPC Funds.
- 7.1.4 The governing bodies noted that at its March 2021 sessions, the Director had informed them of his decision to make Mr Robert Owen a permanent member of the Management Team and to change his post title to 'Head, Information Technology' following the establishment of a separate Information Technology (IT) Department, with effect from 1 April 2021. It was also noted that the IT Department headed by Mr Robert Owen would also be responsible for the office management.
- 7.1.5 The governing bodies noted that the post of 'Head, Information Technology' had been reclassified, as per standard practice, to P5/D1 dual grade. The governing bodies also noted that decisions relating to grades above the P5 level (i.e. grades D1 and D2) were to be taken by the 1992 Fund Assembly on the basis of proposals by the Director.
- 7.1.6 The governing bodies noted that Mr Yuji Okugawa had been appointed to the position of Policy Officer, Director's Office, with effect from 1 July 2021.

Amendments to Staff Regulations and Staff Rules

- 7.1.7 The governing bodies noted the Director had issued amendments to the 1992 Fund Staff Rules in respect of Annex A of the Staff Rules, which contain the salary scales for staff members in the Professional and higher categories with effect from 1 January 2021; Annex C of the Staff Rules which contain the salary scales for staff members in the General Service category with effect from

May 2021; Annex E of the Staff Rules which contain the pensionable remuneration scale for staff in the Professional and higher categories with effect from 1 February 2021.

COVID-19

- 7.1.8 The governing bodies noted that the Director had requested that all staff members work remotely from 12 March 2020, following the IMO's decision to restrict access to the IMO building.
- 7.1.9 The governing bodies also noted that the IOPC Funds had been following the timelines for reopening of the IOPC Funds offices in terms of the percentage of staff and visitors allowed in the building as per IMO's reopening plan. The governing bodies further noted that, in accordance with the IMO reopening plan, from 1 September 2021, the building had been opened to 100% of all staff and that this had applied to all IOPC Funds staff from 20 September 2021.
- 7.1.10 The governing bodies noted that with the aim of further supporting and accommodating staff members' needs to enable a better work-life balance and given the success of working from home during the pandemic, staff had been allowed to work from home for two days per week, for a four-month trial period. It was also noted that this hybrid working modality would be reviewed thereafter to determine its success and if any adjustments needed to be made.
- 7.1.11 The governing bodies noted that all staff members had been urged to take the COVID-19 vaccine.

Conscious Rewarding Scheme

- 7.1.12 The governing bodies noted that the Director had continued to apply a Conscious Rewarding Scheme, first introduced in 2011, to reward staff members on an annual basis for outstanding performance in their current role.
- 7.1.13 The governing bodies further noted that during 2020, no Manager's awards had been awarded. It was also noted that no Director's awards had been awarded in 2020 and that one Director's award had been awarded in 2021 for long service to the IOPC Funds.

Debate

- 7.1.14 In response to a question from the Chair of the 1992 Fund Assembly relating to the size of the Secretariat, the Director noted that it had always been one of his priorities to ensure that the Secretariat was lean and fit and that the established posts were not filled unless required. He added that he had always ensured that the organisation had enough core staff to handle a potential incident and protect Member States while striking a balance between the resources required and costs involved.
- 7.1.15 One delegation expressed its support for the Director's approach of maintaining a reduced number of staff that could be added to if required.

1992 Fund Assembly decision

- 7.1.16 The 1992 Fund Assembly, following the Director's recommendation and in line with the Secretariat's dual grade policy, decided to move Mr Robert Owen's grade to the D1 level with effect from 1 December 2021 as he had already served over six years at the P5 grade.
- 7.1.17 The Assembly congratulated Mr Owen.

Supplementary Fund Assembly

- 7.1.18 The Supplementary Fund Assembly noted the information provided and the decision taken by the 1992 Fund Assembly with respect to the movement of Mr Robert Owen's grade to the D1 level.

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| 7.2 | Appointment of the Director Documents IOPC/NOV21/7/2 and IOPC/NOV21/7/2/1 | 92A | | SA |
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DOCUMENT IOPC/NOV21/7/2 – CANDIDATES

7.2.1 The 1992 Fund Assembly noted that the post of Director would become vacant on 31 December 2021 on the expiry of the current Director's term of office. It further noted that the Assembly would therefore be invited, at its 26th session, to appoint a new Director who will, *ex officio*, also be Director of the Supplementary Fund.

7.2.2 The Assembly recalled that nominations of candidates for the position of the Director had been invited from 1992 Fund Member States in circular IOPC/2021/Circ.3. It was noted that by the deadline of 30 June 2021, the following nominations had been received (listed alphabetically by Member State):

Mrs Liliana Monsalve nominated by Colombia

Mr Thomas Liebert nominated by France

Mr Gaute Sivertsen nominated by Norway

7.2.3 The Assembly further noted that the nominations, together with the supporting documents, had been circulated to 1992 Fund Member States in circular IOPC/2021/Circ.6, dated 14 July 2021, and were also contained in document IOPC/NOV21/7/2.

DOCUMENT IOPC/NOV21/7/2/1 – PROCEDURES

7.2.4 The 1992 Fund Assembly recalled that under Rule 54 of the 1992 Fund Assembly's Rules of Procedure, for the appointment of the Director, the Assembly shall vote by secret ballot in a private meeting.

7.2.5 It also recalled its decision in March 2021 that, in the event that it is possible to hold an in-person meeting in full in November 2021, the appointment of the Director should take place in person, by secret ballot in accordance with established practice (document IOPC/MAR21/9/2, paragraph 7.3.36).

7.2.6 It was further recalled that, taking into account the progression of the COVID-19 pandemic and its possible impact on the format of the November 2021 meeting, at both the March and July 2021 meetings, the governing bodies had considered a number of alternative options for ballot procedures, including the possibility of organising a vote in person, by appointment which was the preferred alternative option of the Assembly (document IOPC/JUL21/9/2, paragraph 7.1.20).

7.2.7 It was noted, however, that since the July 2021 meeting and the lifting of restrictions within the United Kingdom, the IMO Secretariat had informed the Director that delegations were now permitted in the main conference hall, and that this would enable the ballot procedure to take place in person, within the main hall, in accordance with established practice. It was noted, therefore, that even though the meeting would continue remotely using the KUDO platform as in previous remote meetings, the voting itself would take place in person, by roll call in a separate private meeting, as decided in March 2021.

7.2.8 The Chair of the 1992 Fund Assembly therefore proposed that all procedures for the appointment of the Director would, to the extent possible, follow established practice as employed during the appointment of previous Directors in 2006, 2011 and 2016, and as set out in paragraph 2.6 of document IOPC/NOV21/7/2/1.

- 7.2.9 The Assembly agreed with this proposal and confirmed a number of corresponding procedural decisions, as set out below.

1992 Fund Assembly decision

- 7.2.10 On the proposal of the Chair, the 1992 Fund Assembly elected Mr Bernis Pinder (the Bahamas) and Ms Michaela Muscat (Malta) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.

- 7.2.11 The Assembly adopted the following timetable for the election:

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|-----------------------------|--------------------------------|
| First ballot | Tuesday, 2 November, 2.30 pm |
| Second ballot (if required) | Wednesday, 3 November, 2.30 pm |
| Third ballot (if required) | Thursday, 4 November, 2.30 pm |

- 7.2.12 It also decided to invite the three candidates to make presentations prior to the election and to hold a question-and-answer session with each candidate immediately following their presentation. It was agreed that, in accordance with established practice, the presentations would be delivered in a private meeting, to be held on Tuesday, 2 November at 12.45 pm.

- 7.2.13 The Assembly decided that, in accordance with established practice, for the private meetings, including those at which the 1992 Fund Member States would cast their vote by secret ballot, only 1992 Fund Member States and members of the Audit Body should be present. It also decided, following the proposal of the Chair, that, on this occasion, the current Director and one member of the Secretariat (the Executive Assistant to the Director) should also attend to monitor the online attendance and assist the Chair as required.

- 7.2.14 It was noted that since the November 2021 meeting was being held remotely, in order to ensure that the privacy of the meeting is maintained, links providing access to any virtual private meeting had been circulated to 1992 Fund Member States only, and that online attendance would be monitored closely.

Presentations by candidates

- 7.2.15 The Assembly held a meeting in private on Tuesday, 2 November 2021, pursuant to Rule 12 of the Assembly's Rules of Procedure, at which the three candidates were invited to make presentations. Following the presentations by each candidate a brief question-and-answer session with the candidate was held. During the private meeting only representatives of Member States of the 1992 Fund and the members of the Audit Body were present. None of the candidates were present for the presentation of the others and, other than the current Director and the Executive Assistant, who were required to assist with the technical aspects of the remote meeting, members of the Secretariat did not attend the private meeting.

- 7.2.16 At a separate meeting held in private later on Tuesday, 2 November 2021, at which only representatives of 1992 Fund Member States, members of the Audit Body, the current Director and the Executive Assistant were present, the Assembly held a secret ballot under Rule 54 of the Rules of Procedure with the following result:

| | |
|---------------------------------|----------|
| Mrs Liliana Monsalve (Colombia) | 16 votes |
| Mr Thomas Liebert (France) | 28 votes |
| Mr Gaute Sivertsen (Norway) | 29 votes |
| Blank ballots | 0 |

- 7.2.17 Since 73 delegations were present at the time of the vote, the required two-thirds majority of 49 votes was not achieved.

7.2.18 Subsequent to the ballot, Mrs Liliana Monsalve announced that she was withdrawing her candidature in the light of the results.

7.2.19 Given that the provisions of the 1992 Fund Convention required the Director to be elected by two-thirds majority as well as the need for Rule 54 of the Assembly's Rules of Procedure to be observed, the Assembly held a second secret ballot at a private meeting on Wednesday, 3 November 2021 at which only representatives of the 1992 Fund Member States, members of the Audit Body, the current Director and the Executive Assistant were present, with the following result:

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|-----------------------------|----------|
| Mr Thomas Liebert (France) | 31 votes |
| Mr Gaute Sivertsen (Norway) | 40 votes |
| Blank ballots | 2 |

7.2.20 Since 73 delegations were present at the time of the vote, the required two-thirds majority of 49 votes was not achieved.

7.2.21 Given that the provisions of the 1992 Fund Convention required the Director to be elected by two-thirds majority as well as the need for Rule 54 of the Assembly's Rules of Procedure to be observed, the Assembly held a third secret ballot at a private meeting on Thursday, 4 November 2021 at which only representatives of the 1992 Fund Member States, members of the Audit Body, the current Director and the Executive Assistant were present.

7.2.22 The candidate with the least number of votes in the previous ballot, Mr Liebert, was not included in the list of candidates for the third ballot. This is in accordance with established practice employed during the appointment of previous Directors in 2006, 2011 and 2016.

7.2.23 The result of the third ballot was as follows:

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| Mr Gaute Sivertsen (Norway) | 61 votes |
| Blank ballots | 5 |

7.2.24 Since 66 States were present at the time of the vote, the required two-thirds majority of 44 votes was achieved.

1992 Fund Assembly decision

7.2.25 The 1992 Fund Assembly declared that Mr Gaute Sivertsen had been elected as the next Director of the 1992 Fund from 1 January 2022 and that he would, *ex officio*, also be Director of the Supplementary Fund.

7.2.26 The 1992 Fund Assembly expressed its sincere gratitude to all three candidates for their willingness to serve as Director and congratulated Mr Sivertsen on his election.

Supplementary Fund Assembly

7.2.27 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly to elect Mr Gaute Sivertsen as the next Director of the IOPC Funds and that he would *ex officio* also be the Director of the Supplementary Fund.

7.2.28 The Director-Elect, Mr Gaute Sivertsen, made the following statement:

‘Thank you, Chair, ladies and gentlemen. It is an honour and pleasure to address you today as the Director-Elect.

I would like to take this opportunity to thank all those who supported my candidature and voted for me from the beginning, and I thank those who did not vote for me in the first rounds

but have now given me their vote of confidence. I am very grateful for the trust you have bestowed upon me.

Let me also thank Liliana Monsalve and Thomas Liebert for submitting their candidacies and giving me a good competition for the post. I believe it is good for the organisation that the Member States have had three different candidates to choose from. I look forward to working with Liliana and Thomas in the future.

Furthermore, I must thank my Ministry and the Ministry of Foreign Affairs and especially our Embassy here in London for all their help.

To the staff of the Secretariat, I would like to say that I really look forward to working with you. I know you as very skilled and professional, and it will be an honour to take the helm of this 'Premier League' team.

In my presentation on Tuesday, I promised to serve the Member States and victims of oil pollution, to defend the Funds' interests and to adapt to changing needs. That is a promise I intend to keep.

I look forward to engaging with you all, the Member States, the members of the Secretariat, industry and other stakeholders, on how best to proceed on the issues.

I would also like to take this opportunity to thank the Director, José Maura, for the excellent cooperation and friendship we had in my 10 years as Chair of the 1992 Fund Assembly. I believe you have done a fantastic job, and your act will be hard to follow – big shoes to fill.

But I know that you leave behind a very competent organisation and you have done everything you can to resolve as many cases and issues as possible in preparation for the new Director. The circumstances we find ourselves in – with the KUDO meeting and COVID-19 restrictions – do not allow for a proper farewell party for you. So I promise that as soon as the situation allows, we will have a proper farewell party for you to allow Member States to thank you properly.

In closing, I would just like to say that I look forward to carrying the IOPC Funds mantle forward, and I will do all I can to live up to the high standards that have been set by my predecessors.'

7.2.29 The Chair of the 1992 Fund Assembly made the following statement:

'Well, it is now my turn to congratulate Gaute Sivertsen for being elected as Director.

There are two considerations I would like to make.

We have had a very encouraging electoral process. We have had three candidates; it was a very inclusive process not only in terms of gender but also in terms of national origin, and there being three candidates, each representing the three official languages of this organisation. They also have had experience representing the three fields of activity of the Funds. This brings me to my second point.

The Assembly, in its wisdom, has, in the end, decided to play safe; play safe by voting for three candidates, all very qualified but with different specific qualifications for this job. In the history of the Funds, the Director is either chosen amongst the members of the Secretariat or is the Chair of the Assembly. I can also see that a 10-year tenure is frequent. While I can assure you that in 10 years' time, I will not be a candidate because, if I get there, which is a big if, my plans would be completely different. Having said so, I think this really gives reassurance to the Member States that successful continuity of the organisation is granted. When we celebrated

the 40th anniversary of this organisation, I mentioned that at a time when many international bodies see their role questioned, and doubts raised about their real purpose and most of all, their actual effectiveness, this has not been the case for the IOPC Funds. The IOPC Funds has a record of services performed that is extremely real and utterly undeniable. So I see why, again, in their wisdom, Member States think that continuity is an important issue and, this time, optimal.

One more word for my predecessor, Chair of the Assembly for 10 years, well he certainly has all the necessary experience that he has developed in those 10 years. There are probably two things that are needed for this organisation to function: one is to have a solid financial and technical base, and this is what the two unsuccessful candidates were in a position to guarantee. You also need experience with national administrations, and you need certain political skills to be able to deal with a membership of (soon) 120 States. I think Gaute Sivertsen has already proved that he has that, so on a personal level, as well as Chair of this Assembly, and as Head of the Italian Delegation, I wish to warmly congratulate you, being assured that the smooth future of this organisation is guaranteed.

One last word for the unsuccessful candidates, I certainly hope that their skills have not only been proved but have received the appreciation of a large number of Member States and will remain with the organisation. I am encouraged by the fact that both have indicated that they are ready to continue their work and to assist, to the best of their skills, the new Director.'

Intervention by the Chair of the Supplementary Fund Assembly

- 7.2.30 The Chair of the Supplementary Fund Assembly first extended his gratitude to the candidates Mrs Liliana Monsalve and Mr Thomas Liebert, for their hard work and campaigns and thanked the States who supported their candidatures.
- 7.2.31 The Chair congratulated Mr Gaute Sivertsen on his appointment as the new Director of the IOPC Funds. The Chair recalled that he had worked with him for 10 years when Mr Sivertsen was the Chair of the 1992 Fund Assembly and stated that he was confident that he would discharge his new responsibilities as the Director in an efficient and transparent manner. He also stated that Mr Sivertsen would provide the perspective of Member States in the running of the Secretariat while still respecting practices and procedures, and in parallel fulfil the role to pay compensation to victims of oil pollution incidents while still preserving the interests of contributors. The Chair expressed his belief that Mr Sivertsen would achieve this balance between all stakeholders well and looked forward to working with him in the years to come.
- 7.2.32 In closing, the Chair also took the opportunity to thank the current Director and Secretariat for carrying out a smooth election process.
- 7.2.33 The Director, Mr Jose Maura, made the following statement:

'Let me start by thanking my colleagues Liliana and Thomas for having stood as candidates for the post of Director. I know from my own experience that it is a difficult task that requires courage and a lot of effort and energy, and you have done that, and I think that is good. I also know how difficult when the result is different from what one would have wished, I have been in that position, and I know how you feel. It is a difficult situation, and you have both handled it well. The Funds have benefited from having Liliana and Thomas as candidates as this has given Member States a greater choice, which is always positive.

I am sure, and I hope that both Liliana and Thomas will continue to serve the Funds with the same professionalism and dedication and that you will use all your energy to help this organisation to continue prospering under Gaute's leadership.

But now, Gaute, I am very pleased that you have been elected. I think you are going to do a marvellous job. I know you very well and have done for a long time. You have such a long history with the organisation, having participated in the 1992 Diplomatic Conference that adopted the current Conventions and have always followed the Funds activities very closely, either from the podium, as Chair of the Executive Committee or Chair of the 1992 Fund Assembly, and also as part of the Norwegian delegation. I am certainly confident that I am leaving the Funds in very safe and experienced hands.

You started as Chair of the 1992 Fund Assembly at the same time that I was elected Director in 2011, and we spent ten years side by side on the podium, so I have already seen first-hand both your skill at navigating through difficult discussions on the floor as well as your dedication and commitment to working with States and the Secretariat behind the scenes to ensure meetings run smoothly.

You know the maritime world well, you are well-versed in the Conventions, and have met and negotiated with many of the main stakeholders in the international regime.

You are already very familiar with the important work of the Funds' oversight bodies, having participated as an observer at Audit Body meetings and having met the Investment Advisory Body on many occasions.

You have had the opportunity to meet the staff of the Secretariat and exchange views, and work with many of them. Many of them are here now, present and listening to you.

You certainly know the IMO building well, having visited countless times and regularly visited the Funds' office.

All this has given you valuable insight into the Funds, of the work it does and how it operates, the challenges it faces and the opportunities that are in store in the coming years. It also means that I have no doubt that you will hit the ground running when you take up your position in January. No time needed to prepare; you know it all already!

Both myself, personally and the organisation in general, have benefited over the years from your advice, your negotiating skills and your firm but diplomatic way of chairing the meetings of the governing bodies and now the organisation will have the benefit of those same skills with you at the helm. You certainly proved to be an exceptional Chair and I'm sure you will prove to be an excellent Director. After all these years, you have already played a part in the Funds' success story and now, one way or another, you will carry that story forward and be a part of its future.

I can advise you that it will not be an easy job. The role of Director is not easy, but you know this and will do it very well. You have a good team behind you, and they will support you. I can tell you that it is probably the most interesting job in the maritime community along with the Secretary-General of IMO.

One thing I can assure you is, on your first day as Director of the Funds you will be welcomed by professional colleagues and friends who will be there to help you thrive in this challenging role, to support you and ensure this transition is both successful and enjoyable. I wish you all the best, and I know you will be able, as Director, to further strengthen the Funds and to continue to serve the international compensation regime. I am very happy to leave the organisation in your safe hands and the Funds will be well protected.'

7.2.34 Mrs Liliana Monsalve made the following statement:

'It has been an honour for me to participate in the process for the election of a new Director of the Funds. It was an enriching experience, and it was a privilege to be in a position to engage with so many countries.

I profess an enormous respect for you, the international community and I have faith in the dialogue of countries for the achievement of goals. For me personally, to bring to the contest a candidate from a different continent and a woman has been a privilege as this is something not done before here.

Sixteen is the number engraved on my heart. I thank all the countries that supported me and have faith in me and Colombia.

I congratulate Gaute and Norway. I will be very happy to work with the newly elected Director. I believe you all saw the similarities in approach in our respective campaign manifestos, so it should be positive for the organisation that we can work together to achieve common goals!

As a candidate, I would also like to thank the Director, José Maura, for making sure that the election process ran smoothly, and my colleagues in the Secretariat, they have done a fantastic job this week under what I am sure were unsettling circumstances for them.'

7.2.35 Mr Thomas Liebert made the following statement:

'To begin with, I would like to thank France for choosing to submit my candidature for the post of Director of the IOPC Funds. It was a great honour to be supported by Annick Girardin, Minister of Marine Affairs, and by France's Permanent Representation team here in London, headed by Ambassador Geneviève Jean-van Rossum. This team were fantastic, highly effective and highly supportive throughout this period, and I thank them from the bottom of my heart.

I also would like to thank my wife and my two daughters, and also my father, who have been a highly important emotional support during this period.

I also wish to thank my colleagues in the Secretariat, in particular those in my team, who were right at the heart of things organising the meeting, and who gave me so much energy every day!

Last but not least, I wish to thank all the States who agreed to support my candidature and for having believed in this adventure! It was a great adventure which I shall never forget, and I will remember every one of you in the years to come.

Now I would like to congratulate my fellow candidates. First, Liliana Monsalve, for her efforts in offering a different profile, in many ways, to lead the organisation. This was courageous of her, and she should be recognised for that. Then, congratulations to Gaute Sivertsen for winning this election. I knew it was going to be a difficult competition, and he demonstrated that I was right!

The victory went to a candidate offering the continuation of the original IOPC Funds' mission and applying its current methodologies, while my own view was that the Funds should build on its expertise and develop a strategy to adapt to the evolution of maritime transport in the future. One thing for sure is that we both have the interest of the organisation at heart!

Now, I look forward to Mr Sivertsen's arrival in January, to see how we can work together for the good of the organisation and its members. I am confident that we will all be able to work together to ensure that all Member States find a benefit in being part of the IOPC Funds in the years to come.'

Interventions by nominating Member States

- 7.2.36 The delegation of Norway congratulated Mr Gaute Sivertsen and expressed that it was proud of his achievements and the outcome of the election and thanked everyone for their support and trust in the Norwegian candidate. That delegation stated that, for Norway, maritime affairs was an existential issue in that Norwegians made their living from the sea and had done so for centuries and would continue to do so in the future. Therefore, that delegation stated that to see a Norwegian in the heart of the international maritime community's work was a joy, that the Funds were in safe hands, and wished Mr Sivertsen the best for the future.
- 7.2.37 The delegation of France expressed its sincere congratulations to Mr Gaute Sivertsen on his new appointment as the Director of the IOPC Funds for the period 2022–2026. That delegation stated that as an important coastal State with overseas territories bordering several oceans, which had experienced a number of major oil pollution incidents, France had played an active role in the safety of maritime navigation and the protection of an exceptional natural environment. That delegation confirmed that it was committed to the work of the IOPC Funds and to the 2010 HNS Convention, which France had signed and was working to implement. That delegation ensured that it would lend its full support to the new Director in modernising the Secretariat to adapt to major challenges that maritime transport would face in the years ahead. In concluding, that delegation thanked the many States who supported the candidature of Mr Thomas Liebert and expressed its appreciation to Mrs Liliana Monsalve.
- 7.2.38 The delegation of Colombia echoed the sentiments of the delegations of Norway and France and stated that it was proud to have participated in the election. That delegation reaffirmed its commitment to the sustainable development goals (SDGs), and in particular, SDG 5 on Gender Equality. That delegation recalled the 2019 World Maritime Day Parallel Event in Cartagena, Colombia, which provided an opportunity to demonstrate Colombia's continued work in empowering women within the maritime sector, as seafarers and other key stakeholders that form a vital part of the community. That delegation stated that it was proud of Mrs Liliana Monsalve and hoped that she would continue contributing to the organisation, which protects the seas and Member States.

Debate

- 7.2.39 Many delegations offered their heartfelt congratulations to Mr Sivertsen on his well-deserved appointment as the next Director of the IOPC Funds. Those delegations confirmed that they had confidence in him to lead the organisation with distinction and carry out its mandate successfully.
- 7.2.40 Delegations that spoke recalled Mr Sivertsen's considerable experience, knowledge and career trajectory within the IOPC Funds, initially as an active participant of meetings of the governing bodies, and then later as Chair of the 1992 Fund Assembly for 10 years, where he demonstrated excellent leadership skills and decision-making capacity.
- 7.2.41 Several delegations expressed the view that leading the organisation was an important role and that there was a lot of work to be done with many challenges ahead. One delegation pointed out in particular problems regarding the enforcement of contributions, the correct and informed implementation of the Conventions and the insufficient coverage by some insurers. Those delegations referred to Mr Sivertsen's numerous qualities, including his dedication, wisdom and diplomacy and recalled the keywords in his campaign: Serve, Protect and Adapt, and trusted that the Director-Elect would be successful in securing a promising future for the regime.
- 7.2.42 The Chair of the Audit Body also congratulated Mr Gaute Sivertsen and looked forward to working with him in his new capacity, and wished him the best in his new endeavour. The Chair of the Audit Body also congratulated Mr Liebert and Mrs Monsalve and was pleased that the Audit Body would

still have the benefit of their expertise and knowledge and also looked forward to working with them again.

- 7.2.43 Several delegations reaffirmed their support to the Funds and pledged their cooperation to the Director-Elect in the service of those affected by oil spills around the world, expressing that his success would be the success of Member States.
- 7.2.44 One delegation noted that Member States were given three different options for the future administration of the organisation, all of whom offered excellent professional and personal qualities. All delegations that spoke commended Mr Liebert and Mrs Monsalve for their courage in participating in the election and recognised the significant work behind their campaigns. Both were sincerely congratulated for being worthy candidates and bringing a great richness to the election by contributing ideas and sparking the debate, making it a true and fruitful process, which was deeply appreciated by all.
- 7.2.45 Those delegations hoped that both Mr Liebert and Mrs Monsalve would continue to serve the organisation from within the Secretariat working with the new Director so that Member States could continue to rely on their esteemed collaboration and friendship and benefit from their expertise and knowledge.
- 7.2.46 One delegation acknowledged, in particular, Mrs Monsalve's efforts and willingness to stand as a candidate, which had promoted the inclusivity of women in senior-level positions in international organisations.
- 7.2.47 Another delegation stated that it had been its first time participating in the election of the Director of the IOPC Funds and that the procedures in place did not seem to properly regulate the appointment of the Director, in particular with regards to the provision of a two-thirds majority that could lead to many ballots taking place. That delegation suggested that, while the procedures were still fresh in everyone's minds, the new Director might be able to examine this further and resolve this issue in time for the next election.
- 7.2.48 In response, the Chair of the 1992 Fund Assembly explained that there was indeed some ambiguity in that the procedures carried out for the election were in accordance with both the Convention and established practice as adopted by the governing bodies (document IOPC/NOV21/7/2/1). The Chair agreed that clarification on this process would be welcome.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.2.49 The governing bodies expressed their appreciation to all the candidates for providing a good election, and sincerely congratulated the Director-Elect, Mr Gaute Sivertsen on his new appointment. The governing bodies also thanked the Chairs for conducting the meeting successfully and the Secretariat for their work in making the election a success.

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| 7.3 | Director's contract Document IOPC/NOV21/7/2/2 | 92A | | SA |
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- 7.3.1 The 1992 Fund Assembly held a meeting in private pursuant to Rule 12 of the Assembly's Rules of Procedure to consider this agenda item. During the private meeting, only representatives of Member States of the 1992 Fund and members of the Audit Body and the Director were present. The Director-Elect, Mr Gaute Sivertsen, did not attend the private meeting.
- 7.3.2 The Assembly decided that Mr Sivertsen's contract should, as far as possible, contain the same terms and conditions as the current Director.
- 7.3.3 Bearing the above in mind, the 1992 Fund Assembly decided that Mr Sivertsen's contract should contain the following main elements:

- Salary at the level of Under-Secretary-General (USG) in the United Nations Common System +10%, subject to usual post adjustment.
- Other benefits and allowances applicable to staff under the 1992 Fund's Staff Regulations and Rules.
- Representation allowance of £20 000 per annum.
- In view of the fact that Mr Sivertsen had been in the Norwegian Civil Service for over 31 years and shall be forgoing his pension contribution for the most important years, the Assembly decided that he should receive annually a special contribution of £10 000 to the Provident Fund, payable on 1 January each year, commencing 1 January 2022.

7.3.4 The Chair was authorised to sign, on behalf of the 1992 Fund, the contract with the Director-Elect containing the elements set out above.

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| 7.4 | Oath of the Director-Elect Document IOPC/NOV21/7/2/3 | 92A | | SA |
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7.4.1 The 1992 Fund Assembly noted that, in accordance with Regulation 5 of the Staff Regulations of the 1992 Fund, every member of the Secretariat, on taking up his or her duties, should make and sign the oath or declaration set out in Staff Regulation 5.

7.4.2 The Director-Elect, Mr Gaute Sivertsen, made the following declaration in front of the governing bodies of the 1992 Fund and the Supplementary Fund:

'I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the 1992 Fund, to discharge those functions and regulate my conduct with the interests of the 1992 Fund and the Supplementary Fund only in view and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the 1992 Fund and the Supplementary Fund.'

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| 7.5 | Information services Document IOPC/NOV21/7/3 | 92A | | SA |
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7.5.1 The governing bodies noted the information contained in document IOPC/NOV21/7/3 in respect of remote training, educational and outreach activities delivered by the Secretariat in 2021 as well as on new, ongoing and future projects relating to the development of the website, publications and other general information services provided by the Secretariat.

Remote training and educational activities

7.5.2 The governing bodies noted that, following the continued global impact of the COVID-19 pandemic in 2021 and the resulting restrictions on international travel, the Secretariat had adapted a number of its practices to ensure it was able to continue to engage with Member States, non-Member States and other stakeholders to provide support, training and to increase awareness of the international liability and compensation regime in general. This had included the delivery of or contribution to a number of remote national workshops (Canada, Estonia, the Gambia, Mauritius, Mexico and New Zealand) as well as a regional workshop organised by Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) for the benefit of States in the Gulf of Thailand. It also included the delivery of presentations for several webinars run by fellow organisations involved in oil spill preparedness and response and participation in the International Oil Spill Conference. It was noted that the Secretariat had also maintained its support for interested students by providing online seminars to universities and other educational institutions.

- 7.5.3 It was noted that since the Secretariat had returned to working at the Funds' offices, members of staff were looking forward to being able to host face-to-face physical events again but that invaluable lessons had been learned from organising remote activities over the past 18 months and the IOPC Funds intended to continue to offer a number of remote or, where possible, hybrid activities in the future.

Short course

- 7.5.4 It was noted that the annual IOPC Funds Short Course was held online for the first time in June 2021 and that, rather than the usual week-long intensive course, the programme had been adapted to run three hours per day over the course of two weeks. Representatives from 21 Member States of the 1992 Fund participated in the event, with nine Member States participating in the course for the first time. The 1992 Fund Assembly noted that the Secretariat had received positive feedback from participants and that the online format of the course had appeared to be a successful trial which could be developed to possibly run alongside or as an additional option to the London-based course in the future.

Induction course

- 7.5.5 The 1992 Fund Assembly noted that whilst it had not been possible prior to the November 2021 meeting to organise a remote edition of the Induction Course (a half-day course designed specifically to prepare new delegates shortly before meetings), the Secretariat was committed to delivering the Induction Course once again in 2022.

Website

- 7.5.6 The 1992 Fund Assembly noted the significant increase in usage of the IOPC Funds' website over the past year. Delegates to the Funds' meetings were urged to register for an account under the Document Services section of the website to avoid missing key updates, particularly while the COVID-19 pandemic continued to necessitate changes to usual IOPC Funds' key practices, such as remote meetings. Delegates were also encouraged to follow the @IOPCFunds account on Twitter and the IOPC Funds page on LinkedIn.
- 7.5.7 It was also noted that the IOPC Funds introductory video, available under the About Us section of the website, had been updated in April 2021 to include the latest figures.
- 7.5.8 It was recalled that circular IOPC/2016/Circ.2 issued in January 2016 invited Member States to submit copies of relevant national legislation to the Secretariat for inclusion in the online country profiles. It was noted that as at the November 2021 sessions, 18 States had done so. All Member States were again encouraged to submit copies of their relevant national legislation to the Secretariat at their earliest convenience.

Publications

- 7.5.9 It was noted that the 2019 Financial Statements of the 1992 Fund and Supplementary Fund were published as online publications in December 2020 and that the Annual Report 2020 was made available in March 2021.
- 7.5.10 It was also noted that in August 2021, OSPRI (Oil Spill Preparedness Regional Initiative in the Caspian Sea, Black Sea and Central Eurasia) had contacted the Director, through IPIECA (the global oil and gas industry association), in collaboration with the UN Environment Programme (UNEP), expressing an interest in producing the 1992 Fund Claims Manual, Guidelines for presenting claims for clean-up and preventive measures and the Guidelines for presenting claims for environmental damage, in Russian. The Members of OSPRI had confirmed that they are willing to support the project financially, and UNEP had agreed to provide a suitably qualified and experienced translator to undertake the project.

- 7.5.11 It was recalled that, making such publications available in languages other than the three official languages of the organisation can assist the IOPC Funds in its endeavours to engage with more States, particularly in relation to the implementation of the Conventions and also in relation to raising States' and potential claimants' awareness of the liability and compensation regime and claims processes. It was also recalled that similar projects had been undertaken and supported by the IOPC Funds in the past, with the production of a number of publications in Arabic and Chinese. As such, it was noted that the Director had welcomed the proposal from OSPRI and had responded positively to cooperating on producing the Claims publications in Russian, noting that several Member States and non-Member States would potentially benefit from the availability of this important guidance in the Russian language.

Contact information

- 7.5.12 The 1992 Fund Assembly noted that the Secretariat had recently implemented a new customer relationship management (CRM) system, which had significantly improved the way in which communications are delivered to Member States and other key stakeholders. Delegations were reminded, however, that the value of the system remained dependent on the contact information stored within it and were urged to keep the Secretariat informed of any changes in staff, in particular Heads of delegations, by email to externalrelations@iopcfunds.org.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.5.13 The governing bodies welcomed the information provided and thanked the Secretariat for its efforts to continue to deliver outreach activities and information services to Member States, despite the difficult circumstances arising from the COVID-19 pandemic.

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| 7.6 | European Union General Data Protection Regulation Document IOPC/NOV21/7/4 | 92A | | SA |
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- 7.6.1 The 1992 Fund Assembly and Supplementary Fund Assembly took note of document IOPC/NOV21/7/4, which contained information on the application of the General Data Protection Regulation (GDPR) of the European Union (EU) and Directive 2016/680 (Directive) to the IOPC Funds and on the Secretariat's engagement towards the implementation of the GDPR and Directive.
- 7.6.2 The governing bodies recalled that the Secretariat had sought a clarification from the UK Government on the application of the GDPR and the Directive in light of the existing Headquarters Agreement, and that the reply indicated that the GDPR applies to the IOPC Funds and that the IOPC Funds can have its own position as to its application.
- 7.6.3 The governing bodies noted that the Secretariat had retained the services of a data protection lawyer to provide advice as to the application of the GDPR and the Directive, and generally advise on the policies and procedures to be implemented by the IOPC Funds.
- 7.6.4 The governing bodies also noted that following the departure of the UK from the EU on 31 January 2020, the UK had maintained the data protection standards that existed under the GDPR and the UK's Data Protection Act 2018 by means of legislation, and on 28 June 2021, the EU Commission adopted two 'adequacy decisions' for the UK, thereby recognising that UK data protection legislation provided an essentially equivalent level of protection to that guaranteed under EU law, and permitted the free flow of personal data between the UK and EU and are subject to a review after a period of four years.
- 7.6.5 The governing bodies further recalled that the Secretariat believed that the GDPR would not apply to the IOPC Funds, based on the inviolability of archives stipulated in Article 6 of the Headquarters Agreement for the 1992 Fund but nevertheless, the Secretariat believed that the same principles as the GDPR should be applied to protect the data held by the IOPC Funds.

- 7.6.6 The governing bodies further recalled that the Secretariat had engaged an expert in implementing the GDPR, in order to receive assistance with developing policies and procedures reflecting the data protection principles laid out by the GDPR. It was also recalled that the Secretariat had identified personal data which the Funds held and had also drafted: a Data Protection Policy; Data Privacy Notices for claimants and all other persons who have had dealings with the Funds; and a Data Classification and Retention Policy; and the provisions necessary to be inserted in various types of contracts which the Funds conclude, including the experts contract which the Funds normally conclude with insurers and experts in the claims-handling process.
- 7.6.7 It was recalled that the Secretariat had also engaged a data protection lawyer to review the various policies and procedures, and it was noted that the Secretariat had engaged an IT support team to assist with the implementation of the Microsoft Information Protection (MIP) suite of IT programs which enabled a phased approach to be adopted and which identified sensitive information and defined the security and controls to be applied to the data.
- 7.6.8 It was also noted that the Secretariat had made substantial progress with the tasks and had continued to develop the application of the GDPR. It was further noted that preliminary training had been provided to the staff of the IOPC Funds upon the concept of data protection which would be expanded upon with further department-specific training using the MIP when fully installed, to ensure that each individual was aware of their duties and responsibilities under the IOPC Funds' data protection system.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.6.9 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided on the GDPR, noting that the protection of personal information dealt with by the organisation was very important with IT systems playing a crucial role, and that the Director would report any further developments at future sessions of the governing bodies.

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| 7.7 | Appointment of the Appeals Board Document IOPC/NOV21/7/5 | 92A | | SA |
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- 7.7.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV21/7/5.

Developments since the October 2019 session of the 1992 Fund Assembly

- 7.7.2 The 1992 Fund Assembly noted that since their appointment in October 2019, Board members Mr Iwao Shimizu (Japan) and Ms Ana Aurenay Aguirre O. Sunza (Mexico), along with substitute member Mr Song Sang-Keun (Republic of Korea), had returned to their capitals and no longer served on the Board.
- 7.7.3 It also noted that the Director had invited Mr Kohichi Yamagishi (Japan), Mrs Fernanda Millicay (Argentina), and Mr Jaehyung Ryoo (Republic of Korea) to be considered for appointment to the Appeals Board and had confirmed that they had all kindly accepted to serve.

Proposed composition of the new Appeals Board

- 7.7.4 The 1992 Fund Assembly noted that Mr Marios Stephanides (Cyprus) had agreed to serve as member of the Appeals Board in place of Ms Ana Aurenay Aguirre O. Sunza (Mexico) as he was the longest-serving substitute member.
- 7.7.5 It was also noted the Director's proposed composition of the Appeals Board was for a term of two years, i.e. until the 1992 Fund Assembly's regular session in 2023.
- 7.7.6 The 1992 Fund Assembly expressed their appreciation to both the outgoing and incoming members and substitute members of the Appeals Board.

1992 Fund Assembly decision

- 7.7.7 The 1992 Fund Assembly appointed the following members and substitute members of the Appeals Board to hold office until the November 2023 session of the 1992 Fund Assembly:

| Members | Substitute members |
|-----------------------------------|---------------------------------------|
| Mr Marios Stephanides (Cyprus) | Mrs Fernanda Millicay (Argentina) |
| Mr Kohichi Yamagishi (Japan) | Ms Geneviève Jean-van Rossum (France) |
| Sir Michael Wood (United Kingdom) | Mr Jaehyung Ryoo (Republic of Korea) |

8 Treaty matters

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| 8.1 | Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/NOV21/8/1 | 92A | | SA |
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- 8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of document IOPC/NOV21/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.2 It was noted that, at the November 2021 sessions of the governing bodies, there were 118 Member States of the 1992 Fund.
- 8.1.3 It was also noted that the 1992 Fund Convention would enter into force for San Marino and Costa Rica on 19 April 2022 and 19 May 2022, respectively, which would bring the number of 1992 Fund Member States to 120.
- 8.1.4 It was further noted that there were 32 Member States of the Supplementary Fund.
- 8.1.5 The Director stated that the large membership of the 1992 Fund was indicative of the organisation's success and proof that the compensation regime was working well. The Director also stated that he would like to see an increase in the membership of the Supplementary Fund. The Chair of the Supplementary Fund Assembly pointed out that there had been no further accessions to the Supplementary Fund since 2018 and suggested that this could be an area to focus on with the next Director.

1992 Fund Assembly and Supplementary Fund Assembly

- 8.1.6 The governing bodies noted the information provided.

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| 8.2 | 2010 HNS Convention Document IOPC/NOV21/8/2 | 92A | | |
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- 8.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV21/8/2 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

- 8.2.2 It was noted that, since the March 2021 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

- 8.2.3 It was noted that a new feature, an archive system, had been developed for the HNS Finder (the online database of substances that fall within the definition of HNS). It was recalled that by default, the HNS Finder presents a searchable list of HNS identified in all the codes and listings in force during the current calendar year. It was noted, however, that the new Access Archived Data function now provides access to previous years' data, which could be beneficial to receivers and government authorities alike, for verification or reporting purposes. It was also noted that the first list available under the archive is from 2020 and that it will be updated annually from now on. With regards to the updated database itself, it was noted that from now on, it would be made available at the end of May every year, which corresponds to the submission deadline under the 2010 HNS Protocol.
- 8.2.4 In respect of the administrative tasks related to the handling of claims for compensation, it was noted that the informal group established by the IOPC Funds to work on the preparation of a draft HNS Claims Manual, consisting of Cedre, the International Chamber of Shipping (ICS), the International Group, ITOPF and IMO, had held its third meeting in May 2021. It was recalled 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 reported that the various sub-groups had held meetings in October and that the full group of experts were due to meet before the end of 2021 to share progress. It was recalled that once the group of experts has prepared a draft of the technical manual, it would be used as a basis for discussion and be made available for comment, further development and improvement from any interested delegations before its consideration by the first HNS Fund Assembly.
- 8.2.5 It was also noted that the Secretariat had endeavoured to continue its efforts to provide guidance and general information on HNS matters to States and other interested stakeholders and to promote the ratification of the 2010 HNS Convention, including via the HNS website and at the IOPC Funds Short Course. It was noted that it had also contributed to a national training course organised by the GI WACAF project for the Gambia in July 2021 and at a regional workshop organised by the Regional organization for the conservation of the environment in the Red Sea and Gulf of Aden (PERSGA) in September 2021, both of which provided good opportunities to discuss the Convention.

Debate

- 8.2.6 The Chair of the 1992 Fund Assembly noted that there had been limited progress towards entry into force of the Convention in the past year but acknowledged that the difficulties caused by the COVID-19 pandemic were likely to have caused some delays to administrative processes.
- 8.2.7 In response to a question from the Chair, the Director reaffirmed his belief that it was not a question of if the Convention would enter into force, but when it would do so. He referred to recent incidents involving container ships carrying HNS in Canada and Sri Lanka and stated that such incidents highlighted again the need for a suitable international liability and compensation system. The Director agreed that the pandemic was likely to have caused delays to the ratification progress but expressed his hope that work towards ratification of the HNS Convention should now be one of the priorities for governments, particularly following the COP26 conference, as international uptake of the Convention would contribute towards the protection of the marine environment.

- 8.2.8 The delegation of Canada referred to an incident involving the container ship *MV Zim Kingston*, which had occurred off the coast of Victoria in late October 2021. It was reported that the ship had lost some 109 containers and that the potential pollution risk was considerable. Furthermore, it was reported that a number of containers still on board the vessel, some of which contained HNS, had caught fire, which had added to the complexity of the response efforts. That delegation stated that the incident highlighted the need for a robust international system that would provide adequate compensation for clean-up measures, victims of pollution damage and response. It noted that 11 years had passed since the adoption of the 2010 HNS Protocol and, in light of the continuing occurrence of HNS incidents, expressed hope that the political will behind the Convention would grow.
- 8.2.9 That delegation thanked the Secretariat for its continued efforts to lead the preparations for entry into force of the Convention and stated that it looked forward to seeing the outcome of the expert group established to prepare a draft Claims Manual, with the hope that State Parties to the Convention would be consulted at an early stage. Finally, the delegation of Canada informed the Assembly that it continued to offer technical assistance to those States considering ratification.
- 8.2.10 The delegation of France also urged States to ratify the Convention, stating that it was an essential instrument for the future of maritime transport. It also reported on the current situation in France, confirming that a law authorising ratification of the Convention was in progress and due to be presented to Parliament in 2022, with a view to ratification by 2023. That delegation took the opportunity to thank the Secretariat for its assistance and explanation of the details of the Convention, which had greatly facilitated the procedure for collecting reports from receivers under the Convention.
- 8.2.11 The Chair of the Assembly recognised that it was a major endeavour for States to gather the required data on imports, given that the list of substances covered by the Convention was regularly updated and covered a sizeable number of substances. He stated however, that it was a task that must be done and that he was encouraged by a number of States which were coordinating their efforts and sharing information in order to make progress together. He noted the occurrence of incidents recently and expressed hope that the difficulties resulting from the pandemic would soon diminish and the resumption of normal activities would facilitate further progress towards entry into force of this important treaty.

1992 Fund Assembly

- 8.2.12 The 1992 Fund Assembly noted that the Secretariat would continue to prepare for and undertake the necessary administrative tasks ahead of the entry into force of the 2010 HNS Convention, would remain available to assist Member States in their efforts to accede to, or ratify the Convention, and will report on developments at the Assembly's next regular session.

9 Budgetary matters

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| 9.1 | Budgets for 2022 and assessments of contributions to the General Fund Documents IOPC/NOV21/9/1, IOPC/NOV21/9/1/1 and IOPC/NOV21/9/1/2 | 92A | | SA |
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- 9.1.1 The governing bodies took note of the information contained in documents IOPC/NOV21/9/1, IOPC/NOV21/9/1/1 and IOPC/NOV21/9/1/2.
- 9.1.2 The 1992 Fund Assembly considered the draft 2022 budget for the administrative expenses of the IOPC Funds' joint Secretariat, the management fee payable by the Supplementary Fund and the assessment of contributions to the General Fund of the 1992 Fund as proposed by the Director in document IOPC/NOV21/9/1/1.

- 9.1.3 The Supplementary Fund Assembly considered the draft 2022 budget and the assessment of contributions to the General Fund of the Supplementary Fund in document IOPC/NOV21/9/1/2.
- 9.1.4 It was recalled that the Director had been authorised to create positions in the General Service category as required, providing that the resulting cost did not exceed 10% of the figure for salaries in the budget and noted the request by the Director for this authorisation to be renewed.
- 9.1.5 It was also noted that the Director had requested the governing bodies renew the authorisation given to him to create one position in the Professional category at the P3 level, subject to need and within the budget resources available.
- 9.1.6 It was further noted that there was an overall increase of 3.1% in the draft 2022 joint Secretariat budget compared to the 2021 budget, mainly due to an increase in costs under Chapters for General Services and Meetings.
- 9.1.7 The governing bodies recalled that in March 2005, they had decided that the distribution of the cost of running the joint Secretariat should be made on the basis of the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.
- 9.1.8 The 1992 Fund Assembly noted the Director's estimate of the expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention and recalled that all costs incurred by the 1992 Fund for the setting up of the HNS Fund would be reimbursed by the HNS Fund with interest, once the HNS Fund was established.
- 9.1.9 The 1992 Fund Assembly noted the Director's proposal to maintain the working capital at £15 million in the budget year 2022.

1992 Fund Assembly decisions

- 9.1.10 The 1992 Fund Assembly renewed the authorisation given to the Director to create additional posts in the General Service category provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (i.e. up to £220 000, based on the 2022 budget).
- 9.1.11 The Assembly renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.
- 9.1.12 The Assembly adopted the budget for 2022 for the 1992 Fund joint Secretariat administrative expenses of £4 855 778 and the 1992 Fund's external audit fee of £53 600, as set out at Annex II, page 1.
- 9.1.13 The Assembly approved the Director's estimate of the expenses to be incurred in 2022 in respect of the preparation for the entry into force of the HNS Convention, i.e. £35 000.
- 9.1.14 The Assembly decided to maintain the working capital of the 1992 Fund at £15 million in the budget year 2022.
- 9.1.15 The Assembly approved the Director's proposal to levy 2021 contributions of £12.2 million, payable by 1 March 2022.

Supplementary Fund Assembly decisions

- 9.1.16 The Supplementary Fund Assembly adopted the budget for 2022 for the administrative expenses of the Supplementary Fund for a total of £52 400 (including the cost of the external audit), as set out at Annex II, page 2.

- 9.1.17 The Assembly decided to maintain the working capital of the General Fund at £1 million.
- 9.1.18 The Assembly approved the Director's proposal that there should be no levy of 2021 contributions to the General Fund.

1992 Fund Assembly and Supplementary Fund Assembly decision

- 9.1.19 The 1992 Fund Assembly and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay a management fee of £38 000 to the 1992 Fund for the financial year 2022.

| | | | | |
|-----|---|------------|--|-----------|
| 9.2 | Assessment of contributions to Major Claims Funds and Claims Funds Documents IOPC/NOV21/9/2, IOPC/NOV21/9/2/1 and IOPC/NOV21/9/2/2 | 92A | | SA |
|-----|---|------------|--|-----------|

- 9.2.1 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the Director's proposal for contributions to Major Claims Funds and Claims Funds, respectively, as outlined in documents IOPC/NOV21/9/2, IOPC/NOV21/9/2/1 and IOPC/NOV21/9/2/2.
- 9.2.2 The 1992 Fund Assembly noted that, in the Director's view, it would not be necessary to levy 2021 contributions for the *Prestige*, *Hebei Spirit*, *Alfa I*, and *Agia Zoni II* Major Claims Funds.
- 9.2.3 The Assembly also noted that in the Director's view that it would not be necessary to levy 2021 contributions to the *Nesa R3* Major Claims Fund and that any expenditure exceeding the balance available in the Major Claims Fund be met from loans from the General Fund or from another Major Claims Fund in accordance with Financial Regulations 7.1(c)(iv) and 7.2(d) of the 1992 Fund.
- 9.2.4 The Assembly noted that the Director's proposal to levy 2021 contributions of £8 million to the incident in Israel Major Claims Fund, with £4 million payable by 1 March 2022, and £4 million, or part thereof, to be invoiced later in 2022 if it proves necessary. It further noted that any further expenditure could be met from loans from the General Fund or from another Major Claims Fund in accordance with the 1992 Fund's Financial Regulations 7.1(c)(iv) or 7.2(d).

Debate

- 9.2.5 The Chair of the 1992 Fund Assembly enquired whether, in cases where the total amount of compensation payable in respect of an individual incident had been reached, the projected surplus for that incident was final. The Director responded that open incidents would continue to incur expenditure, in particular for the legal proceedings that often take place in the later stages of an incident. Therefore, the expenditure would continue to be incurred until all matters relating to the incident were final.

1992 Fund Assembly decisions

- 9.2.6 The 1992 Fund Assembly decided not to levy 2021 contributions in respect of the *Prestige*, *Hebei Spirit*, *Alfa I*, *Agia Zoni II* and *Nesa R3* Major Claims Funds
- 9.2.7 The 1992 Fund Assembly decided to levy 2021 contributions of £8 million to the incident in Israel Major Claims Fund, with £4 million payable by 1 March 2022, and £4 million, or part thereof, to be invoiced later in 2022 if it proves necessary. The Assembly also noted the Director's proposal to meet any further expenditure from loans from the General Fund or from another Major Claims Fund in accordance with the 1992 Fund's Financial Regulations 7.1(c)(iv) or 7.2(d).

Supplementary Fund Assembly decision

- 9.2.8 The Supplementary Fund Assembly noted that there had been no incidents that required the Supplementary Fund to pay compensation and that there was, therefore, no need for contributions to be levied.

10 Other matters

| | | | | |
|------|------------------------|------------|-------------|-----------|
| 10.1 | Future sessions | 92A | 92EC | SA |
|------|------------------------|------------|-------------|-----------|

1992 Fund Assembly and Supplementary Fund Assembly decisions

- 10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 24 October 2022.
- 10.1.2 The governing bodies agreed that their next sessions would take place during the week of 28 March 2022.

1992 Fund Executive Committee decision

- 10.1.3 The 1992 Fund Executive Committee decided to hold its 78th session during the week of 28 March 2022.

| | | | | |
|------|---------------------------|------------|-------------|-----------|
| 10.2 | Any other business | 92A | 92EC | SA |
|------|---------------------------|------------|-------------|-----------|

Intervention by the delegation of Nigeria

- 10.2.1 The delegation of Nigeria took the opportunity to update the governing bodies on developments in the effective application of the international liability and compensation regime in Nigeria.
- 10.2.2 The governing bodies noted that, as part of measures to facilitate the claims-handling process, a Standard Operating Procedure (SOP) had been developed, aimed at providing criteria for assessing claims from victims of oil pollution incidents in Nigeria, which was finalised in August 2020.
- 10.2.3 That delegation stated that it was grateful to the IOPC Funds' Secretariat for its support and assistance in finalising the SOP, and stated that it would continue to provide updates in respect of the National Price Index.
- 10.2.4 It was also noted that a Pollution Report (POLREP) Form had been developed for the polluter to complete within 12 hours of notification, which can then be emailed to the Secretariat of the National Standing Committee (NSC) on the IOPC Funds.
- 10.2.5 It was further noted that information regarding the implementation of the regime in Nigeria was accessible on the Nigerian Maritime Administration & Safety Agency (NIMASA) website.

Other matters

- 10.2.6 No other items were raised under this agenda item.

| | | | | |
|------|---|------------|-------------|-----------|
| 10.3 | Address by the outgoing Director | 92A | 92EC | SA |
|------|---|------------|-------------|-----------|

10.3.1 The Director, Mr Jose Maura, made the following statement:

‘This is my last meeting, after having served the Funds as Director for 10 years. I have also worked for the Funds in different positions for another 15 years. I think the interventions this morning were very nice, and I would like to thank everyone for the kind words, which were very well felt and very touching.

It has been a privilege for me to work for this unique organisation, which is really unique as we are in the international arena, but at the same time, we are dealing with real problems, with compensation to real victims, to fisherfolk whose livelihoods have been affected and we are there to help with money, not words, but money to help solve their problems.

It has been a pleasure for me to work as a Claims Manager, then Head of the Claims Department. I learnt a lot in those positions as this is when you actually deal with the problems of the cases, as you are not at the top, you are on the ground, discussing with claimants at claims offices, assessing claims and making sure that losses are paid. It has been a pleasure to do that.

I would not have been able to fulfil this important role without the support of my colleagues at the Secretariat, and the Chair of the Executive Committee made the point that this is very important. We talk all the time about the Director, the Chairs and the Director-Elect, but there is a team behind us; this is a team effort with everyone behind the scenes doing their job.

I would also like to thank the P&I Clubs who play a crucial role here. Most of the cases we deal with are 1992 CLC cases and lately, STOPIA 2006 cases, so it is their money on the table governed by the Member States who have set up these rules by approving the Claims Manual and guidance etc. So they are our very important partners who we work with, and we should thank them for their support and for working together with us.

Also to thank are IMO, our mother house, evidenced by us presently being in their main conference hall, and the relationship between the Funds and IMO is excellent and will, no doubt, continue. We are part of the IMO family.

To the oil industry, we were discussing contributions earlier and how could we get the outcome of over 99% contributions received without an oil industry that is firmly behind us paying their dues. Of course, we have problems, like any organisation, but this strong support is greatly appreciated.

Of course, I thank the international shipping community for being so interested in us and following our work closely, as well as the many intergovernmental and international non-governmental organisations with whom the organisation works regularly. I would like to express my gratitude to all of you.

While serving the Funds, I have always tried to listen to the concerns of all stakeholders and cater to their needs. It was a demanding task, which I have discussed with the Director-Elect, but I am sure he will enjoy it as you discover how lives can be changed through this work. I am confident that after all these years, after having worked together, we have been able to strengthen the international compensation regime.

I trust that the solid foundations of the Funds, the commitment of Member States, P&I Clubs, IMO, oil industry and the international shipping community, will allow the IOPC Funds to continue its success story and face the challenges that lie ahead.

I would like to express my sincere gratitude to the seventh Audit Body members and the members of previous Audit Bodies with whom I have worked closely. Their advice is not only essential to the Director but to the Chairs as well. The position of the Director is a pretty lonely one and having people with whom you can discuss tricky issues is very important, and you play this role.

I would also like to thank the Investment Advisory Body, which is very important as they manage £56 million and soon, £20 million more, which is an important amount of money which has to be well kept. They do this job very well, and I thank them for all their past help.

And last but not least, my colleagues at the Secretariat, 26 people who are excellent professionals and hard workers. They were worried about this change, which is normal, change is complicated, and now you have a new Director-Elect who will start 1 January 2022. You know him very well; you have seen him a lot over the years, and he is a very good and competent man who will be your new boss. I am sure everything will go very well. Thank you all for that.

I have seen many faces today, not as many as I would have liked to because of the situation we are in. I really would have liked to say goodbye to everybody in person. However, I have no doubt the Director-Elect will organise a reception next year and we will have champagne, prosecco, cava and all sort of things. Whatever the Director-Elect gives us!

For now, I say goodbye from the podium; it is the last time I will be on the podium after 25, almost 26 years. It is not easy to be on the podium as you are the spot for a whole week, but it has been a pleasure and I leave with very fond memories from the organisation.

Thank you all and farewell.'

10.3.2 The Chair of the 1992 Fund Assembly made the following statement:

'I am actually not at all enthusiastic at having to take the floor, as I have already said that we are going through an emotional moment when the Director presented his last report and now that is even all the more so, as this is really the last meeting he will be in, in his current position.

There are many things that are required to be a good Director of the IOPC Funds. I think Jose Maura has shown how he possesses them in very large amounts. He certainly has extremely solid technical and financial skills. This body could not work unless its financial and technical bases were sound, but that is not enough. What is also needed is remarkable diplomatic skills. Jose has congratulated me many times, he can be overly flattering at times to be honest, on my diplomatic skills, which I am supposed to have; otherwise you would not have elected me as Chair of the Assembly. I have honestly really admired how he has been able to forge a consensus among all our Member States. This is very important because this organisation really works on consensus. There may be times when we are called to vote on issues, but the fact that this has happened so seldom throughout its history shows that, by and large, our interests coincide. When interests are in common, international organisations may function. But this is not enough because you have to define what those interests are, and you come to a point where a single issue that has received the support of delegations may not all have had the same initial approach. Jose has extraordinary skills to do that. Look at the number of times we have adopted decisions by consensus, that we have elected officials by consensus. This is, I think, evidence of extraordinary diplomatic skills and deep knowledge of the functioning of multiple diplomatic bodies.

However, there is another very special skill for which I would like to commend Jose: he is a great coach. He is a great coach of Chairs. When you come as a Chair, you need someone to tell you how things work but not only that but to follow you step by step. You may have noticed

how many times, myself and occasionally my fellow Chairs, have to break the meeting and then lean towards the Director to ask for guidance. And it is not easy to give guidance without at the same time giving the impression that you are prevaricating. Jose has been extremely skilful at that. We will miss you for many reasons but I personally, will miss you for this one.

Another very important issue: integrity. When a Director takes an oath, he takes an oath not to be influenced by anything else other than the best interests of the organisations. I have never seen Jose Maura having less than good relationships with any delegations, but he certainly cannot be accused of having an eye of favour for any delegations, including those closer to his national origins or to that of his family's. So I think he should also be commended for his integrity.

And the last word coming from an Italian, which should not be a surprise: it is the human touch. I accepted the responsibilities of first, as Chair of the Executive Committee and then Chair of the Assembly because I knew I could professionally count on solid cooperation with the Director. I did not expect that I would also make a friend, but I have. So now I bid farewell to an excellent Director and a dear friend.'

10.3.3 The observer delegation of the International Group made the following statement:

'I am giving this intervention on behalf of the Industry associations representing shipowners, their liability insurers and their external technical advisers, namely, the International Group of P&I Clubs, ICS, BIMCO and ITOPF.

Firstly, let us start by congratulating both Gaute Sivertsen on being elected to the post of Director and also Thomas Liebert and Liliana Monsalve on their respective candidacies. We know Gaute well and have worked with him over many years on IOPC Funds matters, and we are very much looking forward to working with him going ahead in his role as Director of the IOPC Funds.

If we can now say a few words with this meeting being the last one for José as Director. The International Group Clubs, shipowners and their technical experts are perhaps uniquely placed to consistently see the excellent work undertaken by the Director, and the Funds' Secretariat as a whole, behind the scenes. We have seen the dedication and commitment that you, José, have devoted to the organisation over many years in your claims role and then as Director of the Funds, and the significant contribution that you have made to ensure that the system works for the benefit of claimants. Your energy and skill, and personal and professional interest, in making the system work has been clear for all to see.

It has not all been plain sailing during your time as Director of course, but your willingness to forge stronger relationships with industry and to ensure that a strong partnership between payers remains at the heart of the convention system has been greatly appreciated. During your time as Director we should also not forget that the Funds has continued to handle one of the most significant and complex cases in the Funds' history, the *Hebei Spirit*. The expert manner in which you, and your colleagues, dealt with the issues arising from this and other cases highlights your considerable legal, technical and diplomatic skills in bringing all of the parties working collaboratively together.

So, on behalf of the International Group and all 13 member Clubs, ICS, BIMCO and ITOPF, we would like to extend our thanks and appreciation to you, José, for the relationship that you have continued to develop with industry during your time as Director and for your willingness to work closely together for the benefit of claimants and the regime as a whole and we wish you the very best for the future.'

Debate

- 10.3.4 Many delegations recalled the Director's esteemed career and dedicated years of service at the IOPC Funds and expressed their heartfelt appreciation for his tremendous efforts and capable leadership.
- 10.3.5 Those delegations further recalled that Mr Maura had first joined the Funds as a Claims Officer, later becoming the Head of the Claims Department, and then, under very difficult circumstances, became Acting Director after the Director at the time suffered an unfortunate health crisis and was not able to continue his work. States noted that it had not been an easy task taking up leadership of the organisation, but the Director remained steadfast during a time of great need, and it was a pleasure to see him at the helm of the Secretariat navigating many challenges successfully.
- 10.3.6 A number of delegations noted with extreme gratitude the advice and support provided by the Director, especially during major pollution incidents and maritime disasters. It was noted that Mr Maura was always at the service of Member States and demonstrated outstanding dedication to the work of the organisation. Those delegations expressed that it had been a privilege to work with him due to his honesty, transparency and friendly nature.
- 10.3.7 Delegations noted that due to all his efforts over the last 25 years, the Director would leave a legacy of encouragement, achievement and work ethic that would always be a part of the Funds.
- 10.3.8 The delegation of Spain stated that it had listened to all the interventions from delegations with enormous pride as the examples and acknowledgement bestowed to Mr Maura was a testament to his success as a Director.
- 10.3.9 The Chair of the Audit Body also recalled the Director's long career at the Funds, which started in 1996 when there were only 19 Member States. The Chair noted that this had increased to 120 States which had ratified or acceded to the Convention and stated that the regime had rightfully taken its place as one of the most successful international cooperation systems which still had the major support of all its constituents, and that the Director's contribution to this success had been major. The Chair continued to express that the Director served with distinction and had always focused on the *raison d'être* of the Funds, providing a balanced interest between the victims of incidents, the contributors and Member States, which was not an easy task. On a personal note, the Chair noted that she had always been able to trust in the Director's advice and would miss the Director both professionally and as a good friend. In closing, she stated that he would be leaving a good legacy, and an excellent, competent and efficient Secretariat and wished him the best of luck.
- 10.3.10 One observer delegation expressed that it had been a pleasure to work with the Director during his tenure and that discussions on the many intricate institutional legal problems that had beset the Funds were always valued.
- 10.3.11 One delegation suggested that, taking into consideration the Director's dedicated career, a new recognition be established for the Director as Director-Emeritus. The Chair of the 1992 Fund Assembly noted the proposal as something the governing bodies may wish to discuss.
- 10.3.12 The Chair of the Supplementary Fund Assembly wanted to highlight one key word following all the tributes to the Director: History. The Chair believed that the Director's efforts were at the heart of the history of the organisation, particularly as he had navigated the organisation through very difficult times. Most notably when stepping in as Acting Director, winding up the 1971 Fund in 2014, which was an extremely complex task, and most recently the COVID-19 pandemic which was an unprecedented situation. All of these challenges constituted a tremendous success as a Director and as a friend. The Chair wished the Director all the best for the future.
- 10.3.13 All delegations that spoke wished the Director the best for his future endeavours.

10.3.14 The Chair of the 1992 Fund Assembly explained that due to the time constraints of the remote meeting, delegations that were not able to bid farewell to the Director during the meeting could send their statements to the Secretariat. He also noted that there was a plan to organise a more appropriate send-off in person at the next available opportunity, where delegations would have another chance to say goodbye to the Director.

11 Adoption of the Record of Decisions

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

11.1.1 It was recalled that the governing bodies had approved the proposal relating to the preparation and consideration of the Record of Decisions during the remote sessions (paragraph 1.3.5).

11.1.2 The draft Record of Decisions for the November 2021 sessions of the IOPC Funds' governing bodies as contained in documents IOPC/NOV21/11/WP.1 and IOPC/NOV21/11/WP.1/1 was submitted for consideration by Member States on the last day of the virtual meeting.

11.1.3 [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/NOV21/9/WP.2).

11.1.4 After the publication of the revised draft report, a correspondence period of five working days began for Member States to submit comments by correspondence.

11.1.5 At the end of 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/NOV21/11/1). The final Record of Decisions was then circulated in document IOPC/NOV21/11/2.]

* * *

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 | Belgium | • | | • |
| 8 | Brunei Darussalam | • | | |
| 9 | Bulgaria | • | | |
| 10 | Cambodia | • | | |
| 11 | Cameroon | • | | |
| 12 | Canada | • | • | • |
| 13 | China ^{<1>} | • | | |
| 14 | Colombia | • | | |
| 15 | Cook Islands | • | | |
| 16 | Côte d'Ivoire | • | | |
| 17 | Croatia | • | | • |
| 18 | Cyprus | • | | |
| 19 | Denmark | • | | • |
| 20 | Dominica | • | | |
| 21 | Ecuador | • | • | |
| 22 | Estonia | • | | • |
| 23 | Fiji | • | | |
| 24 | Finland | • | | • |
| 25 | France | • | | • |
| 26 | Georgia | • | | |
| 27 | Germany | • | • | • |

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The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.
IOPC/NOV21/11/WP.2, Annex I, page 1

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

| | | 1992 Fund Assembly | 1992 Fund Executive Committee | Supplementary Fund Assembly |
|----|-----------------------|-----------------------|-------------------------------------|--------------------------------|
| 57 | Nigeria | • | | |
| 58 | Norway | • | | • |
| 59 | Oman | • | | |
| 60 | Palau | • | | |
| 61 | Panama | • | | |
| 62 | Papua New Guinea | • | | |
| 63 | Philippines | • | • | |
| 64 | Poland | • | | • |
| 65 | Portugal | • | | • |
| 66 | Qatar | • | | |
| 67 | Republic of Korea | • | • | • |
| 68 | Russian Federation | • | | |
| 69 | Saint Kitts and Nevis | • | | |
| 70 | Senegal | • | | |
| 71 | Serbia | • | | |
| 72 | Singapore | • | | |
| 73 | South Africa | • | | |
| 74 | Spain | • | • | • |
| 75 | Sri Lanka | • | | |
| 76 | Sweden | • | | • |
| 77 | Switzerland | • | | |
| 78 | Thailand | • | • | |
| 79 | Trinidad and Tobago | • | | |
| 80 | Tunisia | • | | |
| 81 | Turkey | • | | • |
| 82 | United Arab Emirates | • | | |
| 83 | United Kingdom | • | | • |
| 84 | Uruguay | • | | |
| 85 | Vanuatu | • | | |

| | | 1992 Fund Assembly | 1992 Fund Executive Committee | Supplementary Fund Assembly |
|----|------------------------------------|-------------------------------|--|--|
| 86 | Venezuela (Bolivarian Republic of) | • | | |

1.2 States represented as observers

| | | 1992 Fund | Supplementary Fund |
|---|---------------------------------------|------------------|---------------------------|
| 1 | Brazil | • | • |
| 2 | Democratic People's Republic of Korea | • | • |

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 | International Association of Classification Societies Ltd (IACS) | • | • |
| 5 | International Chamber of Shipping (ICS) | • | • |
| 6 | International Group of P&I Associations | • | • |
| 7 | ITOPF | • | • |
| 8 | Oil Companies International Marine Forum (OCIMF) | • | • |
| 9 | Sea Alarm Foundation (Sea Alarm) | • | • |
| 10 | World LPG Association (WLPGA) | • | • |

* * *

ANNEX II
2022 Administrative Budget for 1992 Fund

| STATEMENT OF EXPENDITURE | Actual 2020 expenditure for 1992 Fund | 2020 budget appropriations for 1992 Fund | 2021 budget appropriations for 1992 Fund | 2022 budget appropriations for 1992 Fund |
|--|---|--|--|--|
| | £ | £ | £ | £ |
| I Personnel | | | | |
| (a) Salaries | 2 113 714 | 2 303 563 | 2 198 676 | 2 241 908 |
| (b) Separation and recruitment | 83 447 | 40 000 | 120 000 | 120 000 |
| (c) Staff benefits, allowances and training | 813 405 | 980 968 | 915 102 | 913 968 |
| (d) Conscious rewarding scheme | - | 20 000 | 20 000 | 20 000 |
| Sub-total | 3 010 566 | 3 344 531 | 3 253 778 | 3 295 876 |
| II General services | | | | |
| (a) Rent of office accommodation (including service charges and rates) | 167 945 | 186 500 | 188 109 | 192 902 |
| (b) IT (hardware, software, maintenance and connectivity) | 275 747 | 378 700 | 378 400 | 448 000 |
| (c) Furniture and other office equipment | 10 839 | 15 000 | 17 000 | 21 000 |
| (d) Office stationery and supplies | 2 136 | 10 000 | 9 000 | 9 000 |
| (e) Communications (courier, telephone, postage) | 21 921 | 30 000 | 26 000 | 28 000 |
| (f) Other supplies and services | 13 704 | 23 000 | 22 000 | 22 000 |
| (g) Representation (hospitality) | 1 873 | 20 000 | 20 000 | 20 000 |
| (h) Public information | 48 557 | 110 000 | 98 000 | 98 000 |
| Sub-total | 542 722 | 773 200 | 758 509 | 838 902 |
| III Meetings Sessions of the 1992 Fund and Supplementary Fund governing bodies and intersessional Working Groups | 86 658 | 130 000 | 110 000 | 130 000 |
| IV Travel Conferences, seminars and missions | 1 947 | 150 000 | 100 000 | 100 000 |
| V Other expenditure | | | | |
| (a) Consultants' and other fees | 147 587 | 150 000 | 150 000 | 150 000 |
| (b) Audit Body | 66 303 | 189 000 | 196 000 | 200 000 |
| (c) Investment Advisory Body | 78 421 | 79 000 | 80 000 | 81 000 |
| Sub-total | 292 311 | 418 000 | 426 000 | 431 000 |
| VI Unforeseen expenditure (such as consultants and lawyers' fees, cost of extra staff and cost of equipment) | 0 | 60 000 | 60 000 | 60 000 |
| Total joint Secretariat expenditure I–VI | 3 934 204 | 4 875 731 | 4 708 287 | 4 855 778 |
| VII External audit fee (1992 Fund only) | 53 600 | 53 600 | 53 600 | 53 600 |
| Total Expenditure I–VII | 3 987 804 | 4 929 331 | 4 761 887 | 4 909 378 |

2022 Administrative Budget for the Supplementary Fund

(Figures in pounds sterling)

| STATEMENT OF EXPENDITURE | | ACTUAL 2020 EXPENDITURE | 2020 BUDGET APPROPRIATIONS | 2021 BUDGET APPROPRIATIONS | 2022 BUDGET APPROPRIATIONS |
|--|---|----------------------------|-------------------------------|-------------------------------|-------------------------------|
| I | Management fee payable to 1992 Fund | 38 000 | 38 000 | 36 000 | 38 000 |
| II | Administrative expenses (including external audit fees) | 4 400 | 14 400 | 14 400 | 14 400 |
| Supplementary Fund budget appropriation | | 42 400 | 52 400 | 50 400 | 52 400 |