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International Oil Pollution Compensation Funds

Agenda Item 11	IOPC/NOV23/**11/WP.1/1**	
Date	10 November 2023	
Original	English	
1992 Fund Assembly	92A28	
1992 Fund Executive Committee	92EC81	●
Supplementary Fund Assembly	SA20	●

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RECORD OF DECISIONS OF THE NOVEMBER 2023 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

INCIDENTS INVOLVING THE IOPC FUNDS

(continued)

3 Incidents involving the IOPC Funds

3.1	**Incidents involving the IOPC Funds** **Document IOPC/NOV23/3/1**		**92EC**	**SA**

3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/NOV23/3/1, which contained information on documents for the November 2023 meeting relating to incidents involving the IOPC Funds.

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

3.2	**Incidents involving the IOPC Funds — 1992 Fund: *Prestige*** **Document IOPC/NOV23/3/2**		**92EC**	

3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV23/3/2 concerning the *Prestige* incident.

3.2.2 It was recalled that in January 2016, the Spanish Supreme Court had delivered a judgment as follows:

- the master of the *Prestige* was criminally liable for damages to the environment, with civil liability;
- the shipowner had civil liability and was not entitled to limit its liability, and its insurer, the London P&I Club, had civil liability up to the limit of its policy of USD 1 000 million; and
- the 1992 Fund was found to have civil liability within the limit provided under the 1992 Fund Convention.

3.2.3 It was also recalled that, in December 2018, the Spanish Supreme Court had awarded losses as follows: EUR 1 439.08 million (pollution damage of EUR 884.98 million + pure environmental and moral damages of EUR 554.10 million). The Executive Committee further recalled, however, that the judgment had stated that the pure environmental and moral damages were not recoverable from the 1992 Fund.

3.2.4 It was recalled that, in accordance with the judgment, and as authorised by the 1992 Fund Executive Committee, the 1992 Fund had paid EUR 27.2 million into the Court in La Coruña, which is the amount available from the 1992 Fund under the 1992 Fund Convention, less the amounts already paid by the 1992 Fund, and EUR 804 800 which has been set aside to cover potential liabilities in France and Portugal.

3.2.5 It was also recalled that the 1992 Fund had provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings, prorated at a 15.22% level of payment which resulted from dividing the amount awarded by the Court by the amount available for compensation. The Executive Committee further recalled that the Court had distributed the amount deposited in Court by the 1992 Fund and the amount corresponding to the limitation fund, making payments totalling EUR 51.7 million to claimants in the Spanish legal proceedings, including the Spanish and French States.

Legal action by France against ABS in France

3.2.6 The Executive Committee recalled that, in April 2010, the French Government had brought a legal action against the American Bureau of Shipping (ABS) in the Court of First Instance in Bordeaux. It was also recalled that, in April 2019, 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.

3.2.7 It was noted that in the action of the French State against ABS, the Court had suggested the appointment of a court expert to deliver a new report on the incident's facts, in order to help the Court identify the causes of the incident and the potential liabilities.

3.2.8 The Executive Committee also noted, however, that the Court had eventually decided not to appoint a court expert to investigate the facts.

3.2.9 It was further noted that the Court had postponed the proceedings until the 12 December 2023 and had invited the parties to send by then their final submissions, on the sole questions of admissibility. It was noted that only if the action were held admissible, would the Court re-open the proceedings to deal with the merits of the case.

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.

3.2.11 It was also recalled that ABS submitted points of defence alleging, *inter alia,* that it was entitled to sovereign immunity on the same basis as the flag State of the *Prestige*.

3.2.12 It was further recalled that, if the 1992 Fund's action against ABS were to be 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.

3.2.13 It was noted that the Court, like in the action of the French State against ABS, had postponed the proceedings in the action of the 1992 Fund against ABS until the 12 December 2023 and had invited the parties to send by then their final submissions, on the sole questions of admissibility. It was noted that only if the action were held admissible, would the Court re-open the proceedings to deal with the merits of the case (cause of the incident, liability of ABS, amount of payments).

1992 Fund Executive Committee

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

3.3	**Incidents involving the IOPC Funds — 1992 Fund: *Solar 1* Document IOPC/NOV23/3/3**		**92EC**	

3.3.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/3, which contained information relating to the *Solar 1* incident.

3.3.2 The 1992 Fund Executive Committee noted that some 32 466 claims had been received and payments totalling PHP 1 091 million (£12.3 million) had been made in respect of 26 872 claims, mainly in the fisheries sector, and for the main clean-up claim presented by the Philippine Coast Guard (PCG).

3.3.3 The 1992 Fund Executive Committee also noted that two sets of claims remained outstanding, both of which were subject to legal proceedings in the Republic of the Philippines.

Legal proceedings by the PCG

3.3.4 In respect of the claim for PHP 104.8 million by the PCG, the 1992 Fund Executive Committee recalled that the 1992 Fund had paid the full settlement of PHP 104.8 million to the PCG in August 2022, and that the legal proceedings by the PCG were dismissed. The 1992 Fund Executive Committee also recalled the 1992 Fund had invoiced the P&I Club for repayment pursuant to the terms of the STOPIA 2006, and had received payment.

Legal proceedings by 967 fisherfolk

3.3.5 The 1992 Fund Executive Committee further 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 (£4.66 million) for property damage as well as economic losses. It was 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 also 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. As at the November 2023 sessions of the governing bodies, the claimants had not done so and the Judge, therefore, ordered the case to proceed through to trial.

3.3.6 The 1992 Fund Executive Committee recalled that during 2019, a number of witnesses were presented by the claimants' lawyer, but their claims were proved to have no factual or legal basis. A further court hearing was set for August 2019, but was 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.

3.3.7 The 1992 Fund Executive Committee also recalled 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. At a hearing in July 2021, upon cross-examination by the 1992 Fund's lawyers, the two witnesses produced by the claimants' lawyer confirmed that their claim amounts had been dictated to them by their lawyer and had no basis in fact.

3.3.8 The 1992 Fund Executive Committee further recalled that at a hearing in February 2022, under cross-examination, the witness presented by the claimants' lawyer admitted that the amount detailed in the claim was merely supplied by the claimants' lawyer and the witness had not filed a claim against the 1992 Fund, contrary to the assertion in her Judicial Affidavit that the 1992 Fund had wrongly denied her claim.

3.3.9 It was recalled that at a number of further hearings in April 2022, similar testimonies were heard from other witnesses presented by the claimants' lawyer. Consequentially, the 1992 Fund had requested its lawyers to file an application at court to dismiss any such fraudulent claims as it was apparent that none of the witnesses presented to date by the claimants' lawyer had filed any documents proving their monthly income upon which their claim had been based; the claimed amounts submitted for the witnesses presented had simply been supplied by the claimants' lawyer with no basis for their calculations; and the claimants had not filed claims against the 1992 Fund, nor had they subsequently received denials of such alleged claims.

3.3.10 It was also recalled that the 1992 Fund had instructed its lawyers to file a 'cease and desist application' against the claimants' lawyer in order to force him to refrain from wasting costs and further court time, and that there were a number of further court hearings in 2023, but no substantive developments occurred.

Legal proceedings by a group of municipal employees

3.3.11 It was further recalled that 97 individuals employed by a Municipality of 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. The 1992 Fund Executive Committee recalled 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.

3.3.12 The 1992 Fund Executive Committee also 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. The hearing took place in July 2021, at which, upon cross-examination, the claimants confirmed that they had not paid court filing fees; that their activity reports were not signed and validated by the Mayor; and that they were volunteers or had been paid their normal salaries on the days they performed relief work.

3.3.13 The 1992 Fund Executive Committee further recalled that at a series of hearings throughout 2022, the witnesses presented by the claimants' lawyer all testified under cross-examination that:

(a) they had not filed any claim against the 1992 Fund;

(b) the services they had rendered were voluntary and not motivated by money and the documents which had been submitted on their behalf did not bear the signature of the mayor or any other official of the accounting office;

(c) that the amounts claimed were merely supplied by the claimants' lawyer;

(d) that the amounts claimed as compensation were for alleged transportation expenses, even though the vehicles that were used to deliver and distribute goods were provided by the Mayor's Office; and

(e) that they had not filed any claim against the 1992 Fund, contrary to the assertions in the Judicial Affidavit filed by the claimants' lawyer, and that as a consequence the 1992 Fund had instructed its lawyers to file a 'cease and desist application' against the claimants' lawyer.

3.3.14 The Executive Committee also noted that contrary to expectations, the Judge had denied the 1992 Fund's application, that the 1992 Fund's lawyers had filed an application for reconsideration and that a court date was awaited to hear the application.

3.3.15 The Executive Committee further noted that at a court hearing in April 2023, the claimants' lawyer requested a date for hearing the testimony of the two remaining claimants, following which the 1992 Fund's lawyers would begin to present their evidence.

1992 Fund Executive Committee

3.3.16 The 1992 Fund Executive Committee noted that the legal proceedings were continuing, and also noted that the Director would continue to monitor the incident and report any developments at the next session of the Executive Committee.

3.4	**Incidents involving the IOPC Funds — 1992 Fund: *Redfferm* Document IOPC/NOV23/3/4**		**92EC**	

3.4.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/4, which contained information relating to the *Redfferm* incident.

3.4.2 The 1992 Fund Executive Committee recalled that in January 2012, the Secretariat was informed of an incident that had occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the inland-certified barge *Redfferm* sank, following a transhipment operation from the tanker *MT Concep*.

3.4.3 The barge sank, spilling an unknown quantity (estimated to be between 100 and 650 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.

3.4.4 The 1992 Fund Executive Committee 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 also recalled that no evidence had been submitted of any sea-going voyages undertaken by the barge *Redfferm.*

Reasons for rejection of claims

3.4.5 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 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

3.4.6 The 1992 Fund Executive Committee 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.

3.4.7 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.

3.4.8 The 1992 Fund 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.

3.4.9 The 1992 Fund 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.

3.4.10 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 further recalled that during 2019, no further substantive developments had taken place in the legal proceedings.

3.4.11 The 1992 Fund Executive Committee 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*. The case was adjourned, but the court hearing did not take place due to the impact of the Covid-19 pandemic.

3.4.12 The 1992 Fund Executive Committee also recalled that there were no substantive developments in 2020 or 2021, but noted that in February 2022, a First Instance Judge delivered a summary judgment against the owner/charterer of the *MT Concep* (the first defendant) and the owner/charterer of the barge *Redfferm* (the second defendant) and awarded the claimants their claim in the sum of USD 92.26 million and USD 5 million as 'general damages'.

3.4.13 The Executive Committee further noted that the Judge had not referred to the Memorandum of Appearance and Statement of Defence filed by the first defendant, or to the counter-affidavit filed by the 1992 Fund in opposition to the claimants' application for final judgment against the first and second defendants.

3.4.14 The Executive Committee noted that the first and second defendants had filed appeals to set aside the summary judgment on the grounds of fraud, on the basis that the Court had been misled into believing that the first defendant had failed to enter appearance or file a defence, when it had in fact done both.

3.4.15 It was noted that in early June 2022, the claimants' lawyer filed garnishee proceedings against all the defendants including the 1992 Fund. The 1992 Fund's lawyers had filed pleadings seeking to remove the 1992 Fund from the list of defendants. The 1992 Fund Executive Committee noted that as at the November 2023 sessions of the governing bodies, a decision was awaited.

3.4.16 It was further noted that in November 2022, the claimants' lawyer discontinued the claim against the former third defendant (Thames Shipping) and that at a further court hearing, the Judge upheld the default judgment and garnishee order against the first defendant and dismissed the default judgment and garnishee proceedings against the 1992 Fund. It was noted that as at 15 August 2023, no formal application had been made to set matters down for trial, and that no response had been made to the claimants' lawyer's request for the 1992 Fund to pay the judgment.

3.4.17 The 1992 Fund Executive Committee also noted that the 1992 Fund's lawyers had advised that there were a range of scenarios which might occur, but that it was too early to say with any degree of certainty which scenario would occur and what steps would be taken to oppose the claim further.

3.4.18 The Executive Committee further noted that the claimants' lawyer had subsequently filed a motion to reinstate the proceedings against the second defendant, who in response, had filed a counter-affidavit, stating that the writ had expired and could not be renewed by the Court. It was noted that the matter had not yet been heard by the Court.

3.4.19 It was noted that the 1992 Fund's lawyers had confirmed that the 1992 Fund still retained its arguments regarding the applicability of Article I(1) of the 1992 CLC, and had already filed a defence rejecting the claims on the grounds that the barge *Redfferm* was not a ship within Article I(1) of the 1992 CLC.

Intervention by the delegation of Nigeria

3.4.20 The Nigerian delegation stated that it noted the range of scenarios that had been presented and that the matter was before a competent court, and awaited its final decision. The delegation urged the Director to continue to monitor the situation and that it looked forward to updates at the next session of the Executive Committee.

1992 Fund Executive Committee

3.4.21 The 1992 Fund Executive Committee noted the range of scenarios that existed as at the November 2023 sessions of the governing bodies, and also noted that the Director would continue to monitor the incident and report any developments at the next session of the Executive Committee.

3.5	**Incidents involving the IOPC Funds — 1992 Fund: *Haekup Pacific* Document IOPC/NOV23/3/5**		**92EC**	

3.5.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/5, which contained information relating to the *Haekup Pacific* incident.

3.5.2 The Executive Committee recalled that in April 2013, the 1992 Fund was informed of an incident which had taken 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 approximately 90 metres deep off Yeosu, Republic of Korea.

3.5.3 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 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.

3.5.4 It was recalled that in September 2013, the City of Yeosu and the 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.

3.5.5 It was also recalled that a number of meetings had taken place with the City of Yeosu and the 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

3.5.6 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.

3.5.7 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.

3.5.8 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 been incurred, 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.

3.5.9 The 1992 Fund 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 STOPIA 2006) 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.

3.5.10 It was recalled that in April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Seoul Central District Court had stayed the proceedings. It was also recalled 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.

3.5.11 It was further 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.

3.5.12 The Executive Committee recalled that the Seoul High Court had ruled that since the owner of the *Haekup Pacific* was still obliged to remove the vessel, it was reasonable to deem that the damages of the wreck removal costs had in fact arisen.

3.5.13 The Executive Committee also recalled 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.

3.5.14 The 1992 Fund Executive Committee further recalled that the Supreme Court had recognised, *inter alia*, that:

(a) the *Haekup Pacific* sank in waters 90 metres deep 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 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 appeared 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; and

(d) the operation of salvaging or removing the vessel would be a technically difficult task requiring advanced diving technology in an 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*.

3.5.15 It was recalled that the Supreme Court had referred the case to the Appellate Court so that it 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

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

The status of the wreck and risk of pollution

3.5.17 It was further 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 the removal of oil residue and the cargo, the wreck removal, and the prevention of oil pollution that might occur during the removal operation.

3.5.18 The Executive Committee recalled that the shipowner had hired a salvage company to examine the wreck's condition and that the shipowner had also obtained a time extension from the City of Yeosu until July 2020, in order that the salvage company could begin the inspection. 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.

3.5.19 The 1992 Fund Executive Committee also recalled 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 that there were bunker fuels remaining in the wreck could not be ruled out.

3.5.20 The Executive Committee further recalled that the bunker fuel oil removal operation took place in December 2021 and that in total, some 29.5 tonnes of oil were removed from the fuel tanks in an operation which lasted until 28 December 2021, during which no oil leaked from the wreck location.

3.5.21 It was recalled that the bunker fuel removal report stated that the asphalt cargo had solidified and was considered irrecoverable from the wreck by conventional means, and that the wreck continued to settle, would likely disappear into the seabed and posed no threat to safe navigation or to the marine environment.

3.5.22 It was also recalled that the total costs of the bunker fuel removal operation were reported as being approximately USD 10 million which was less than the amount available from the insurer pursuant to STOPIA 2006 and that, as at the November 2023 sessions of the governing bodies, no claim had been submitted to the 1992 Fund for the costs incurred.

3.5.23 It was further recalled that the shipowner/insurer's lawyers had met with the new Head of the City of Yeosu to discuss the possible revocation of the wreck removal order which still remained in place, and that in June 2022, a three-person panel of experts, comprising the Coast Guard, the Ministry of Oceans and Fisheries, and Korea Offshore & Shipbuilding Association, was appointed and that they in turn had sought input from an external expert, a university professor, which implied a potential deferment of the decision to this third party.

3.5.24 It was noted that the UK P&I Club had requested the City of Yeosu to issue an official letter stating that its final decision regarding the lifting of the wreck removal order would be contingent upon the expert's opinion.

3.5.25 It was also noted that as at 7 August 2023, no response had been received from the City of Yeosu and consequently, it remained uncertain what timeframe the City of Yeosu would require to determine whether the wreck removal order would be lifted or not. It was further noted that the 1992 Fund's lawyers were of the view that due to the delay, it remained to be seen what the Appellate Court and/or the City of Yeosu would decide, and that the legal proceedings were likely to take at least one to two years before they might be concluded.

Intervention by the delegation of the Republic of Korea

3.5.26 The delegation of the Republic of Korea stated that the City of Yeosu was actively engaging with experts on the impact on the environment and carrying out a comprehensive assessment of relevant matters, and that it was expected that the City of Yeosu would make a final decision, including whether to lift the wreck removal order, once the assessment was completed. That delegation stated that they would update the Executive Committee of any developments at a future meeting.

1992 Fund Executive Committee

3.5.27 The 1992 Fund Executive Committee noted the interventions made and the information presented, and that the Director would continue to monitor the incident and report any developments at the next session of the Executive Committee.

3.6	**Incidents involving the IOPC Funds — 1992 Fund: *Alfa I* Document IOPC/NOV23/3/6**		**92EC**	

3.6.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/6, which contained information relating to the *Alfa I* incident.

3.6.2 The Executive Committee recalled that since no limitation fund had been established, the insurer was liable for the full amount claimed by the main clean-up contractor, i.e. for EUR 15.8 million. The Executive Committee 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. The Executive Committee further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.

3.6.3 It was 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. This judgment had distinguished the case of carriage of more than 2 000 tonnes of oil, where the 1992 CLC limit applied, from the case of carriage of fewer than 2 000 tonnes of oil. It was recalled that the Court had held that in either case, there was an obligation to insure and a right of direct action against the insurer. It was also recalled 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 had been heard in February 2021.

3.6.4 It was further recalled that in July 2021, the Supreme Court had issued its judgment, dismissing all of the insurer's grounds of appeal and held that:

(i) 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 1992 CLC provisions regarding **obligatory** insurance; and

(ii) the wording of Article VII(1) of the 1992 CLC '...carrying more than 2 000 tons of oil in bulk as cargo' should be interpreted to mean **capable of carrying more than 2 000 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.

3.6.5 The Executive Committee recalled that the 1992 Fund's lawyers had advised that the obligation of the insurer to pay was undisputable.

Claims submitted against the insurance liquidator following the insurer's liquidation

3.6.6 The 1992 Fund Executive Committee recalled that the insurer had been placed into liquidation and that, in January 2020, the 1992 Fund's lawyers had reported that the claim submitted by the 1992 Fund against the insurance liquidator had been dismissed without any reason being given.

3.6.7 The Executive Committee further recalled that the 1992 Fund's lawyers had sent the insurance 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. It was recalled that the insurance liquidator had, however, 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.

3.6.8 It was 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.

3.6.9 It was also recalled that the 1992 Fund had succeeded with its appeal but that the insurance liquidator had appealed before the Athens Court of Appeal and a hearing had been set for 20 October 2022. It was further recalled that the hearing had been adjourned and that a date in September 2023 had been set but was adjourned due to a public strike in Greece.

3.6.10 It was recalled that the 1992 Fund's lawyers had served the insurance liquidator with an extrajudicial declaration putting the liquidator on notice not to transfer any of the insurer's property or make any distributions until a judgment was reached by the Athens Court of Appeal.

3.6.11 The Executive Committee recalled that the main clean-up contractor (who had been 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 had been filed in October 2020 and a court hearing had taken place in July 2021.

3.6.12 It was noted that the Court had dismissed this claim by judgment 2024/2021, but the contractor had appealed the judgment. The Executive Committee noted that this appeal was upheld by the Athens First Instance Court by judgment 159/2022. It was also noted that the insurance liquidator had also submitted an appeal which was due to be heard in September 2023, but which had been adjourned due to the public strike.

3.6.13 The Executive Committee recalled that the 1992 Fund had filed applications for prenotated mortgages against buildings owned by the insurer in an attempt to secure its claim for the return of the 1992 CLC limitation fund amount, but that initially 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.

3.6.14 It was recalled that after the lengthy legal proceedings relating to the 1992 Fund's application for prenotated mortgages, the Greek courts held that the 1992 Fund was entitled to the prenotated mortgages in respect of all of the liquidated insurer's properties in Thessaloniki, Athens and Piraeus.

Legal proceedings against the insurer for potentially defrauding creditors

3.6.15 The 1992 Fund Executive Committee recalled 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 a property in Athens to third parties 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. It was further recalled that 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.

3.6.16 It was further recalled that the 1992 Fund had been successful in recording prenotated mortgages against the insurer's assets, and if it could 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 were confident that the 1992 Fund's claim would have a reasonable chance to be given priority over other creditors of the insurance company.

Legal proceedings by second clean-up contractor

3.6.17 The Executive Committee recalled that in September 2019, the 1992 Fund was served with legal proceedings by the second clean-up contractor for some EUR 349 000 plus interest and that in September 2020, the Piraeus Court of First Instance had agreed with the defence filed by the 1992 Fund, and declared the claim time-barred. The Executive Committee also recalled that the second clean-up contractor had appealed the judgment and subsequently the Court issued judgment 401/2022 dismissing the appeal and confirming that it was always necessary to submit a formal writ of action against the IOPC Funds no later than six years from the date of the incident that caused the damage, otherwise, such a claim would be extinguished.

Intervention by the Greek delegation

3.6.18 The delegation of Greece made the following statement:

> 'Having heard your summary on the said incident I would kindly like to complement to your summary with a few more comments with regards to further updates. I would begin referencing paragraph 4.7 on the decision mentioned. To the best of our knowledge a judgment from the Athens Court of Appeal has been already issued whereby further actions to register prenotated mortgages are being taken.
>
> Furthermore, with regard to the hearing of the insurance liquidator appeal mentioned in paragraph 4.14, it was held on 19 October 2023 and the relevant judgement is anticipated within a period of five months.'

1992 Fund Executive Committee

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

3.7	**Incidents involving the IOPC Funds — 1992 Fund: *Nesa R3* Document IOPC/NOV23/3/7**		**92EC**	

3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV23/3/7 relating to the *Nesa R3* incident.

3.7.2 The 1992 Fund 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.

3.7.3 The Executive Committee also recalled that 33 claims had been received by the 1992 Fund and that 28 claims totalling OMR 3 521 364.39 (£6.7 million) and BHD 8 419.35 (£16 000) had been settled. It was further recalled that the remaining claims had been rejected.

3.7.4 The 1992 Fund 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 further recalled that the Omani Government (Environmental Authority, formerly the Ministry of Environment and Climate Affairs (MECA)) 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.

3.7.5 The 1992 Fund 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 (£3.6 million) plus BHD 8 419.35 (£16 000), and OMR 4 154 842.80 (£8.5 million), 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.

3.7.6 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.

3.7.7 The 1992 Fund Executive Committee also recalled that in March 2022, the Court of Appeal in Muscat decided to appoint an expert to review the settlement agreement concluded between 1992 Fund and the Environmental Authority, in order to determine the amounts owed to the Environmental Authority, if any, and the amounts owed to the 1992 Fund. The Executive Committee further recalled that in June 2022, the court-appointed expert issued his report, confirming the total amount settled by the 1992 Fund and also noting that the Environmental Authority had agreed to withdraw its claims from court.

3.7.8 The Executive Committee recalled 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. The Court of Muscat had postponed its hearings several times to allow time for attempts to contact the insurer.

3.7.9 The 1992 Fund Executive Committee also recalled that, in January 2023, the Court of Appeal in Muscat rendered its judgment, in which the Court accepted the appeal by the 1992 Fund, dismissed the appeal by the Environmental Authority and ordered Indian Ocean P&I Club Association of Ceylon and Welance Marine Inc. to pay the 1992 Fund an amount of OMR 3 521 364.39 and BHD 8 419.35.

3.7.10 The Executive Committee further recalled that the Secretariat had reported its understanding that, in February 2023, the Indian Ocean P&I Club had filed an objection before the Supreme Court. The Executive Committee recalled that the objection was still under the assessment of the Court to determine whether it would accept it for consideration.

3.7.11 The Executive Committee also noted that, at the end of October 2023, the 1992 Fund had received an official notification from the Supreme Court of two objections being entertained by the Court, one of which was by the Government of Oman. It further noted that, upon receipt of the notification, it became clear that the initial understanding of the 1992 Fund was based on incorrect information and that, in fact, it was the Korean contractor who worked on the removal of pollutants from the wreck, and not the insurer, that had filed the objection previously reported.

3.7.12 The Executive Committee noted that it appeared that the reason why the 1992 Fund was not made aware of the second objection was that when the Omani Government filed its objection, the objection had been merged with the one by the Korean contractor, and therefore only one objection appeared in the system.

3.7.13 The Executive Committee also noted that the 1992 Fund was preparing a response to the objections to the Supreme Court.

3.7.14 The 1992 Fund Executive Committee further recalled that the Director had in the past investigated the financial position of the shipowner and the insurer to ascertain their solvency, in preparation for a possible recourse action against either. The Executive Committee recalled that the result of that investigation had shown that neither entity had sufficient funds to cover the claims arising from this incident. The 1992 Fund Executive Committee also noted that, in June 2023, following reports of the insurer having resumed commercial activities, the 1992 Fund had commissioned an investigation into its financial position. The Executive Committee noted that the investigation found that, while the company was in the early stage of resuming commercial activities under a new name, there was no evidence that the company owned or controlled any assets that might be targeted for attachment as security.

3.7.15 The Executive Committee also noted that, as a consequence, the Director considered that any recourse actions taken against the Indian Ocean P&I Club Association of Ceylon would be unlikely to enable the 1992 Fund to recover any of the compensation paid for this incident.

Debate

3.7.16 One delegation took the floor to note that in this case, the 1992 Fund had to pay compensation from the beginning, because of the shipowner and insurer refusing to pay their share of the compensation. That delegation also noted that this kind of behaviour went against the principles of the international liability regime, and urged all shipowners to ensure that they have proper insurance as per the 1992 CLC.

3.7.17 That delegation further asked the Secretariat to clarify why the Omani Government had not yet withdrawn their lawsuit following the terms of the settlement and whether the Secretariat had engaged with the Government to resolve the situation.

3.7.18 The Secretariat explained that it had engaged with the Omani Government on the issue, and that it was their understanding that it was a matter of internal communication between departments. The Secretariat confirmed that the 1992 Fund will continue to reach out to the Omani Government to resolve this situation.

1992 Fund Executive Committee

3.7.19 The 1992 Fund Executive Committee noted the information provided by the Director with regard to the investigation into the financial status of owner and insurer of the *Nesa R3*.

3.7.20 It also noted the developments with regard to the proceedings in the Supreme Court, and that the Director would continue to reach out to the Omani Government to resolve the issue of the withdrawal of the lawsuits.

3.7.21 The Executive Committee noted that the Director will report any further developments at the next session of the Executive Committee.

3.8	**Incidents involving the IOPC Funds — 1992 Fund:** ***Nathan E. Stewart*** **Document IOPC/NOV23/3/8**		**92EC**	

3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV23/3/8 pertaining to the *Nathan E. Stewart* incident.

3.8.2 The Executive Committee recalled that in October 2018, the Director had been served with proceedings concerning an incident that had occurred two years earlier, in 2016. It was also 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 10 nautical miles west of Bella Bella, British Columbia, Canada. It was further recalled that the tug had subsequently sank and separated from the barge. It was recalled that approximately 110 000 litres of diesel oil had been released into the environment.

Applicability of the Conventions

3.8.3 The Executive Committee recalled that the application of the Conventions was not clear in this case:

- Firstly, 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.

- Secondly, at the time of the incident, the barge was empty and was therefore 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.

3.8.4 The Executive Committee also recalled that if the ATB had carried non-persistent oil on previous voyages, it would appear that the 1992 CLC and 1992 Fund Convention would not be applicable. 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.

Legal proceedings

3.8.5 It was recalled that a First Nation community consisting of five tribes, which allegedly has aboriginal title and rights over the area impacted by the incident, had brought a legal action against the shipowners, 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 had also included as third parties, among others, the Ship-source Oil Pollution Fund (SOPF) in Canada, the 1992 Fund and the Supplementary Fund.

3.8.6 It was further recalled that the legal action brought by the First Nation community had been stayed by the Federal Court of Canada pursuant to an order rendered in July 2019 in the context of limitation proceedings commenced by the owners of the tug and the barge. It was recalled that the Federal Court had ordered that a limitation fund 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. The Executive Committee also recalled that the Court had also concluded that there was no factual basis upon which a limitation fund could be constituted under the 1992 CLC at this time.

3.8.7 The Executive Committee further noted that the shipowners, the claimant, the Canadian Government and the Administrator of SOPF had agreed to participate, on a voluntary basis, in a three-day mediation in November 2023. It was noted that, for the time being, the IOPC Funds' participation had not been sought.

3.8.8 It was noted that, to allow for the mediation to occur in November 2023, the parties had proposed that the Federal Court action be held in abeyance until 15 December 2023.

3.8.9 It was noted that the 1992 Fund, through its lawyer in Canada, will monitor the progress of the mediation with the intention of obtaining confirmation that no claim will ever be pursued against the IOPC Funds.

Debate

3.8.10 The delegation of Canada took the floor and clarified that mediation will not occur in November 2023. That delegation also stated that discussions between the parties were ongoing and would likely continue into 2024.

1992 Fund Executive Committee

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

3.9	**Incidents involving the IOPC Funds — 1992 Fund: *Agia Zoni II* Document IOPC/NOV23/3/9**		**92EC**	

3.9.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/9, relating to the *Agia Zoni II* incident.

Limitation fund claims evaluation procedure

3.9.2 The Executive Committee 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 their provisional assessments totalling EUR 45.45 million.

3.9.3 The Executive Committee also recalled that the 1992 Fund had filed pleadings against the limitation fund in respect of the claims it had paid but which had not been subrogated, due to the short period (six months) set under Greek Law for filing claims against the limitation fund, which had expired in May 2018. The Executive Committee further recalled that court hearings had taken place in 2020 to deal with the eight appeals lodged against the Limitation Fund Administrator's assessments.

3.9.4 It was recalled that in September 2021, the Limitation Fund Administrator had dismissed the claims due to the time bar and as a result, the 1992 Fund had filed an appeal for a judgment resolving the apparent contradiction between the time allowed by domestic legislation for submission of claims to the Limitation Fund Administrator and the time bar provided by the 1992 CLC. It was further recalled that in September 2021, a hearing took place of all appeals against the Limitation Fund Administrator's evaluation.

3.9.5 The Executive Committee recalled that in June 2022, a judgment was made by the Piraeus Multi-Member Court of First Instance which generally upheld the Limitation Fund Administrator's assessments, but denied the 1992 Fund's appeal for all of the 1992 Fund's subrogated payments made to claimants to be included within the limitation fund. The judgment also denied the 1992 Fund's appeals in respect of the Limitation Fund Administrator's assessments of 33 claims.

3.9.6 The Executive Committee noted that in late 2022, the 1992 Fund had appealed against the judgment on two legal issues, namely:

(i) whether the 1992 Fund had the right to appeal against the Limitation Fund Administrator's list of claims; and

(ii) what was the significance of the extinction of time provided in Article VIII of the 1992 CLC, when the limitation fund had been established. The Executive Committee also noted that the Court had set a hearing date in February 2024 which was the earliest available date.

Investigation into the cause of the incident

3.9.7 The Executive Committee recalled that two investigations had been conducted into the cause of the incident which had each reached different conclusions: one determining that the *Agia Zoni II* sank after an explosion, and the other that it sank after the seawater ballast valves were opened. It was also recalled that the ASNA report considered that the incident was attributed to the deliberate and negligent actions of:

- the shipowner;
- the two crew members on board at the time of the incident;
- the General Manager of the shipowning company;
- the Designated Person Ashore of the shipowning company; and
- representatives of the salvor/clean-up contracting company.

3.9.8 The 1992 Fund Executive Committee also recalled 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.

3.9.9 The Executive Committee recalled 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.

3.9.10 The Executive Committee also recalled 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.

3.9.11 The Executive Committee further noted that the results of the investigations were still awaited and that it was understood that the Public Prosecutor's report was with the District Attorney to decide whether to pursue criminal charges against the shipowner and salvor/clean-up contractor, but a decision was still awaited.

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

3.9.12 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 so that clean-up and preventive measures would be payable at all times.

3.9.13 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 involved in clean-up operations 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.

3.9.14 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 with the aim of receiving the compensation or show that the claimant had been condemned by a criminal court to that effect by an unappealable judgment. The Executive Committee recalled, therefore, that the mere suspicion of such action would not be sufficient to deny payment.

Recourse actions

3.9.15 The Executive Committee 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

3.9.16 The Executive Committee noted that the 1992 Fund had received 423 claims amounting to EUR 100.21 million and one claim for USD 175 000, that it had approved 416 claims and had paid 191 claims amounting to EUR 14.97 million in compensation. Further offers of compensation and advance payments had been made to a number of claimants whose responses were awaited.

Legal proceedings commenced by clean-up contractors

3.9.17 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.

3.9.18 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 2.09 million by three other companies involved in clean-up operations. In total, the 33 clean-up claims filed against the 1992 Fund amount to EUR 83.54 million.

3.9.19 The Executive Committee further recalled that in September 2021, the 1992 Fund's lawyers had attended court hearings and filed supplementary pleadings relating to the concept of reasonableness as defined under the Conventions, in relation to the tariff rates employed by the clean-up contractors, which sought to maximise commercial profit. It was recalled that in June 2022, the Court had issued judgment 1891/2022, which several parties had appealed.

Legal proceedings commenced by fisherfolk

3.9.20 It was noted that the 1992 Fund had been served with legal proceedings amounting to EUR 3.35 million from claimants in the fisheries sectors. It was also noted that court hearings had taken place in 2022 and judgments were awaited.

Legal proceedings commenced by claimants in the tourism sector

3.9.21 The Executive Committee recalled that the 1992 Fund had been served with legal proceedings amounting to EUR 4.3 million by claimants in the tourism sector. The Executive Committee also recalled that the hearings of all writs of action against the 1992 Fund had been adjourned until February and March 2022, and that judgments were awaited.

Legal proceedings commenced by the Greek State

3.9.22 The Executive Committee recalled that in July 2020, the 1992 Fund had been served with legal proceedings by the Greek State to protect its right to compensation. In July 2021, an advance payment was offered to the Greek State in respect of its claim. It was recalled that the claim had been paid in March 2023 after the Greek State had accepted it.

3.9.23 It was noted that the Greek State had amended its claim for liquid waste disposal costs claiming some EUR 317 000, calculated by virtue of a recent ministerial decision of the Minister of Shipping and Insular Policy, and that a court hearing was set for May 2024.

3.9.24 It was also recalled that the Director and the Claims Manager responsible for dealing with the incident had visited Greece in May 2022. They met the Minister of Shipping and Insular Policy, members of the Hellenic Coast Guard and ministries dealing with the incident, to discuss the Greek State claim and issues arising from the incident, including the lack of conclusion to the investigation into the cause of the incident.

3.9.25 The Executive Committee further 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. It was noted that every claimant with a claim against the limitation fund had the right to accept or appeal within 30 days of the provisional assessment, that only eight claimants had appealed, and that judgments in respect of the writs were awaited.

Statement by the delegation of Greece

3.9.26 The delegation of Greece made the following statement:

> 'First of all, allow us, 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 the claims.

Notwithstanding judicial proceedings currently taking place and their outcomes and in total respect of the 1992 Fund's internal assessment process of these outcomes, we would also emphasise the need and underline the importance of ensuring seamless procedures on the compensation payments to all those who are entitled to compensation from the incident of *Agia Zoni II* in a prompt and effective manner.

Moreover, with regard to the references made in paragraphs 4.3.1 and 5.5.3 of document IOPC/NOV23/3/9 under deliberation relating to the re-calculation of the cost for the disposal of liquid waste to the amount of EUR 317 389.54, which consists part of the total cost submitted by the Greek State for the activation of the anti-pollution vessel *Aktea* Osrv through the EMSA mechanism, we would like to highlight the following:

In early September this year the Greek State has brought legal actions against the IOPC Funds in order to ensure its right to compensation pursuant to Article 6, as we count already six years from the date of the incident. In this action it is declared that the cost of disposal of liquid waste from the incident of sinking of the *Agia Zoni II* has been re-calculated following the final decision of Piraeus Administrative Court of Appeal (No A 245/2021), to the amount of EUR 317 389.54. This amount has been validated by virtue of a recent ministerial decision of the Minister of Shipping and Insular Policy. It is worth mentioning that both the said action and the ministerial decision determine and validate the same amount of the claim as calculated by the IOPC Funds following the conduct of its Technical Analysis in August 2022.

In view of this development the Greek State is looking forward to the finalisation of the formal proceedings for the payment of this claim by the IOPC Funds prior to the hearing of the above action (i.e. before 21 May 2024) in order to avoid unnecessary legal costs incurred to both parties.

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 note that, to the best of our knowledge, there has been progress in the conduct of the legal procedure run by the Public Prosecutor.

In particular, a decision 644/2023 of (Council of Misdemeanors Judges) has been delivered and the case file *Agia Zoni II* has been furnished to the Public Prosecutor for further consideration and handling.

At this moment, we do not have at our disposal further information.'

3.9.27 In response, the Secretariat stated that it was fully aware of the court decision that had been based on its own experts' assessment, and that it had made an offer of settlement to the Greek State. The Secretariat reported that it awaited the Greek State's response, and if the offer was accepted, it hoped the matter would be concluded before any further legal costs were incurred.

1992 Fund Executive Committee

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

3.10	**Incidents involving the IOPC Funds — 1992 Fund: *Bow Jubail* Document IOPC/NOV23/3/10**		**92EC**	

3.10.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/10 on the *Bow Jubail* incident.

3.10.2 The Executive Committee recalled that on 23 June 2018, the oil and chemical tanker *Bow Jubail* (23 196 GT) had collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Netherlands, resulting in a leak in the area of the starboard bunker tank, spilling fuel oil into the harbour.

3.10.3 It was also recalled that, at the time of the incident, the *Bow Jubail* was in ballast but that on the voyage prior to the incident, the *Bow Jubail* carried 'oil' as referred to in the 1992 CLC. It was further recalled, however, that the shipowner had stated that the tanks were clean of oil cargo residues at the time of the incident.

3.10.4 The Executive Committee recalled that the shipowner had applied before the Rotterdam District Court for leave to limit its liability in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96), arguing that the incident was covered under Article 1.8 of the Bunkers Convention 2001. The Executive Committee also recalled that the Rotterdam District Court had, in November 2018, determined that the *Bow Jubail* qualified as a ship as defined in the 1992 CLC and had therefore decided not to grant the leave to limit its liability under the Bunkers Convention 2001.

3.10.5 The 1992 Fund Executive Committee further recalled that in 2020, the Court of Appeal in The Hague had rendered a judgment confirming the decision of the Rotterdam District Court.

3.10.6 The Executive Committee recalled that the shipowner had appealed in the Supreme Court, and that the 1992 Fund had joined in those proceedings as an interested party.

3.10.7 The Executive Committee also recalled that the Supreme Court had rendered its judgment in March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague that the Bunkers Convention 2001 did not apply to the *Bow Jubail* incident and that the *Bow Jubail,* therefore, qualified as a 'ship' as defined under the 1992 CLC.

3.10.8 The Executive Committee further recalled that a total of 29 legal actions had been brought by 57 claimants before the Rotterdam District Court against the shipowner, its insurer and other parties. It was further recalled that 1992 Fund was notified or included as a defendant in the actions. The Executive Committee recalled that these proceedings had been stayed whilst the national courts determined which liability convention would apply in this case.

3.10.9 The Executive Committee also recalled that, at the inception of the case, the indication was that the total claim amounted to some EUR 80 million. The Executive Committee further noted that, after a preliminary review of the amounts claimed as at 10 October 2023, the total provisional amount was closer to EUR 60 million. The Executive Committee also noted that the amount claimed as at 10 October 2023 was already well in excess of the 1992 CLC limit as well as in excess of the indemnity that the shipowner would provide to the 1992 Fund under STOPIA 2006 (as amended 2017), which is SDR 20 million.

3.10.10 The Executive Committee also recalled that at its May 2023 meeting, it had authorised the Director to make payments in respect of losses arising out of the *Bow Jubail* incident.

3.10.11 The Executive Committee further noted that, in June 2023, the shipowner had applied before the Rotterdam District Court for leave to limit its liability to SDR 15 991 676 in accordance with the 1992 CLC.

3.10.12 The Executive Committee further noted that, at the first hearing of the Rotterdam Limitation Court in September 2023, which was attended by the 1992 Fund and its lawyers, some of the claimants had argued that the guarantee to be provided by the shipowner's P&I Club should also include legal interest accruing between the date of the incident and the date of the setting up the limitation fund.

3.10.13 The Executive Committee noted that in October 2023 the Court had rejected the shipowner's application to limit its liability to the amount of the 1992 CLC. It was noted that the shipowner would have to decide whether to appeal the decision, or to resubmit an application to limit its liability to the amount of the 1992 CLC, this time including interest.

1992 Fund Executive Committee

3.10.14 The 1992 Fund Executive Committee noted the information provided by the Director with regard to the *Bow Jubail* incident. It further noted that the Director would continue to monitor the incident and report any further developments at the next session of the Executive Committee.

3.11	**Incidents involving the IOPC Funds — 1992 Fund: *MT Harcourt* Document IOPC/NOV23/3/11**		**92EC**	

3.11.1 The 1992 Fund Executive Committee took note of document IOPC/NOV23/3/11 on the *MT Harcourt* incident.

3.11.2 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 recalled 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.

3.11.3 The Executive Committee further recalled that cargo and slops disposal operations were suspended immediately, and all crew were mustered and accounted for. It was noted that there were no injuries or other casualties.

3.11.4 It was also 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 further 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.

3.11.5 It was recalled that the West of England 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 whilst the cargo was discharged safely in stages to various barges and other vessels in the same management.

3.11.6 The 1992 Fund Executive Committee also recalled that the clean-up operation was organised by the Terminal who had used their own barges and crew, and that the West of England P&I Club's surveyors monitored the boom placement and were satisfied that the clean-up operation was ultimately wholly successful.

Applicability of the Conventions

3.11.7 The Executive Committee 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 269.54 million).

3.11.8 The Executive Committee recalled that, since the *MT Harcourt* is 26 218 GT units of tonnage, the limitation fund applicable under the 1992 CLC is SDR 17.9 million (USD 23.77 million).

3.11.9 It was 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 26.56 million).

3.11.10 It was 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

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

Claims for compensation

3.11.12 The Executive Committee 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.

3.11.13 The Executive Committee 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.

3.11.14 It was noted that the P&I Club had filed a defence and were successful in striking out the claim, but that the claimants had appealed the decision. It was also noted that the P&I Club had filed a defence to the appeal filed by the claimants and that a decision was awaited from the appeal Judge. It was further noted that it was unlikely that the 1992 Fund would be called upon to pay compensation.

Intervention by the delegation of Nigeria

3.11.15 The Nigerian delegation noted the developments and encouraged the Director to monitor the situation and report back on any developments.

1992 Fund Executive Committee

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

3.12	**Incidents involving the IOPC Funds — 1992 Fund:** **Incident in Israel** **Document IOPC/NOV23/3/12**		**92EC**	

3.12.1 The 1992 Fund Executive Committee took note of the information regarding the incident in Israel as set out in document IOPC/NOV23/3/12.

3.12.2 The 1992 Fund 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, which they believed to be from an unknown source. The Executive Committee also recalled that the Israeli Government believed the spill had occurred in the waters of the exclusive economic zone (EEZ) of Israel. It was further recalled that the source of the spill had not been identified.

3.12.3 The Executive Committee recalled that, although the result of the investigation by the Israeli authorities seemed to indicate that the spill might have originated from the *MT Emerald*, the evidence obtained by the Israeli authorities was only circumstantial and it was not possible to prove with sufficient certainty that the oil originated from this tanker.

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

3.12.5 The Executive Committee further recalled that, as a consequence, 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 the 1992 Civil Liability and Fund Conventions would apply. It was recalled that it had authorised the Director to pay compensation in respect of claims arising out of the incident in Israel.

3.12.6 The Executive Committee noted that 338 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 28.5 million and noted that six claims had been paid for a total of ILS 4.2 million. The Executive Committee noted that 23 claims for economic losses and property damage had been rejected for lack of supporting information.

3.12.7 The Executive Committee noted that further claims had been assessed at ILS 2.4 million and that the claimants had been informed of the assessments but had not yet replied.

3.12.8 The Executive Committee noted that further claims, including claims for spill response and clean-up operations carried out by local authorities along the Israeli coastline, and for economic losses, were being received.

3.12.9 The Chair of the 1992 Fund Executive Committee noted that the 1992 Fund continued to receive claims for this incident, and that the Secretariat was working to assess all claims received before the three-year time bar in February 2024. He further noted that the Director would report any further developments at the next session of the Executive Committee.

1992 Fund Executive Committee

3.12.10 The 1992 Fund Executive Committee noted that the Director will continue to monitor the incident and report any further developments at its next session.

3.13	**Incidents involving the IOPC Funds — 1992 Fund:** ***Princess Empress*** **Document IOPC/NOV23/3/13**		**92EC**	

3.13.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV23/3/13 dealing with the *Princess Empress* incident.

3.13.2 The Executive Committee recalled that on 28 February 2023, the *Princess Empress* had sunk off the coast of Naujan, Oriental Mindoro, the Philippines, whilst carrying 800 000 litres of fuel oil as cargo. It was also recalled that an oil spill was detected around the location of the wreck, which extended to other areas, causing pollution damage.

3.13.3 It was further recalled that the pollution damage resulting from the *Princess Empress* incident had affected the coasts of Oriental Mindoro to varying degrees and that the oil had also travelled to the Caluya archipelago, affecting the islands of Semirara and Liwagao.

3.13.4 The Executive Committee recalled that the vessel had sunk at approximately 400 metres depth. It was also recalled that the shipowner had engaged a salvor to remove the oil from the wreck and that the oil removal operations had been finalised in June 2023.

3.13.5 The Executive Committee further noted that clean-up and response operations had been officially finalised and that all fishing and swimming bans had been lifted.

3.13.6 It was noted that the Director had visited the Philippines in April 2023. The Executive Committee also noted that the Deputy Director/Head of the Claims Department and a Claims Manager had also visited the Philippines in June 2023.

3.13.7 It was further noted that a claims workshop was being organised by the PCG, ITOPF and the IOPC Funds in Manila. It was noted that the workshop, scheduled for November 2023, aimed to provide the Philippine Government agencies involved in the response to the spill with an understanding of the 1992 Fund's claims admissibility criteria and to facilitate the submission of claims.

Applicability of the Conventions

3.13.8 It was also recalled that the ship is insured with Shipowners' P&I Club, which is part of the International Group. It was recalled that the limitation amount applicable to the *Princess Empress* in accordance with the 1992 CLC is SDR 4.51 million, but that the owner of the *Princess Empress* is a party to STOPIA 2006, whereby the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 CLC and the total amount of admissible claims up to SDR 20 million.

3.13.9 The Executive Committee also noted that claims related to this incident had exceeded the limit of liability of the shipowner under the 1992 CLC. It was further noted that, although the 1992 Fund had started paying compensation when the 1992 CLC limit was reached, the shipowner's insurer had reimbursed the 1992 Fund for the amounts paid in compensation, up to the STOPIA 2006 limit of SDR 20 million. The Executive Committee noted, however, that the STOPIA 2006 limit had also been reached.

Claims for compensation

3.13.10 It was recalled that the 1992 Fund and the Shipowners' P&I Club had opened a Claims Submission Office (CSO) in Calapan, Oriental Mindoro, to facilitate the submission of claims for compensation resulting from the incident. It was further recalled that, given the characteristics and extent of the affected area, in order to give an opportunity to claimants to submit claims, it had been considered necessary to open temporary claims submission offices (collection centres) in different areas, some of which were not easily reachable.

3.13.11 The Executive Committee took note of the claims situation reported in section 7 of document IOPC/NOV23/3/13 and noted that, as at 6 October 2023, some 35 576 claims had been received, totalling approximately PHP 1.4 billion (USD 24.8 million), USD 26.4 million and EUR 2.7 million, and that the total amount paid so far in compensation for this incident was PHP 42.5 million, USD 24.8 million and EUR 2.6 million.

3.13.12 It was also noted that, included in the above, the CSO had so far registered 33 015 claims in the fisheries sector, with a total claimed of PHP 1.3 billion (USD 23.2 million). It was further noted that the majority of these claims had little supporting documentation. It was noted that, whilst the assessment was being finalised, a provisional assessment had been carried out in order to be able to make provisional payments to claimants in the fisheries sector and that, on the basis of the provisional assessment, a total of PHP 42.5 million had been paid to 3 103 fisherfolk.

3.13.13 The Executive Committee also noted that, in addition to the high volume of claims in the fisheries sector, the process had been complicated by the fact that most claimants in that sector do not have bank accounts, which had forced the Secretariat to find alternative ways of payment, opting for an internationally renowned remittance company to enable claimants to receive the compensation owed to them. It was further noted that the process of provisional payments continued.

Interim payments

3.13.14 The 1992 Fund Executive Committee recalled that, at its May 2023 session, the Executive Committee had authorised the Director to sign an agreement, including the terms of the Agreement on Standard Terms relating to Interim Payments (2016), with the Shipowners' P&I Club in respect of the *Princess Empress* incident, to be applied retrospectively to the amounts agreed by the 1992 Fund and paid by the Club prior to the signature of the agreement. It was also noted that the agreement on interim payments in respect of the *Princess Empress* incident had been signed on 25 May 2023.

Statement by the Philippines

3.13.15 The delegation of the Philippines made the following statement:

> 'On the matter at hand, on document IOPC/NOV23/3/13, the Philippines would like to thank the IOPC Funds and the Shipowners' P&I Club for the immediate establishment of the central Claims Submission Office in Calapan, Mindoro, the temporary collection centres and the claims desks at the different affected municipalities, as well as the claims caravan which expedited the acceptance of claims forms and the processing of the claims. This is indeed a best practice, learning from the lessons of the *Solar 1* experience. As you have conveyed, the shipowner's protection and indemnity insurance is currently processing the claims of the government agencies, the local government units, the fisherfolk and other affected stakeholders.
>
> In addition to the information in document IOPC/NOV23/3/13, and to complement the claims desks set up by the 1992 Fund and the P&I Club, the Philippines, through the Philippine Coast Guard and local government units, have established help desks with legal officers and paralegals to give legal advice and assistance to those who will be filing their claims.
>
> We are grateful to the IOPC Funds and ITOPF for the claims workshop that they will be conducting in Manila, Philippines next week for all stakeholders who will be filing their claims in relation to the *Princess Empress* oil spill incident. We look forward to welcoming you to our country next week.
>
> Rest assured that we will continue to extend all necessary assistance and cooperation to ensure the smooth processing of all claims, considering the varying challenges we are facing.
>
> Thank you Chair.'

Debate

3.13.16 One delegation took the floor and showed appreciation for the detailed information provided in the document and the presentation and for the smooth handling of the case. That delegation also showed appreciation to the government of the Philippines, the local authorities, the P&I insurer and other related parties for the good cooperation in claims-handling. The delegation also stated that this case showed the importance of STOPIA 2006, which is an essential mechanism to achieve a proper balance in the financial burden between the shipowners/insurers and the IOPC Funds and its contributors.

3.13.17 The Chair of the 1992 Fund Executive Committee noted that the incident had only happened in February 2023 and commended the Secretariat on the progress made in this case, although there were still claims to be dealt with. The Chair remarked in particular how an effort had been made to reach the

claimants and that the presentation showed how the work of the IOPC Funds had an impact on real people affected by an incident. He also commended the Secretariat for the prompt setting up of the CSO, and for coming up with new ways to deal with claims, including the use of remittance services such as Western Union. The Chair also added that this incident showed that the cooperation of all parties was very important in order to resolve a case.

1992 Fund Executive Committee

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

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