



International Oil Pollution  
Compensation Funds

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

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

(held from 7 to 10 November 2023)

Governing Body (session)		Chair	Vice-Chairs
1992 Fund	Assembly (92A28)	Ambassador Antonio Bandini (Italy)	Professor Tomotaka Fujita (Japan)  Ms Stellamaris Muthike (Kenya)
	Executive Committee (92EC81)	Mr Samuel Soo (Singapore)	Ms Karen Andersen (Denmark)
Supplementary Fund	Assembly (SA20)	Mr François Marier (Canada)	Mr Andrew Angel (United Kingdom)  Ms Safiye Tecen (Türkiye)

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*Opening of the sessions*

- 0.1 Prior to opening the sessions of the IOPC Funds' governing bodies, the Chair of the 1992 Fund Assembly announced the sad news that Captain David Bruce, representative of the Marshall Islands and former Chair of the 1971 Fund Administrative Council had passed away in September 2023.
- 0.2 The Director expressed his sincere condolences on behalf of the IOPC Funds to Captain Bruce's family and colleagues. He reminded delegations that Captain Bruce had attended sessions of the IOPC Funds' governing bodies for over 20 years. He referred, in particular, to Captain Bruce's time as Chair of the 1971 Fund Administrative Council, a post which he held for over six years. As Chair, his excellent diplomatic skills and wisdom proved pivotal to the successful winding up of the original IOPC Fund (the 1971 Fund) in 2014.
- 0.3 The Director expressed his appreciation for the support Captain Bruce had always demonstrated for the work of the IOPC Funds and his commitment and dedication to the wider maritime community. He noted how extremely well-respected he was, both as a professional representative within the conference hall, but also as a warm, kind and friendly character outside of the meeting, and underlined that he would be very much missed by all at the IOPC Funds.
- 0.4 Throughout the week of the meeting many delegations, when intervening for the first time, expressed their sincere condolences to the family and colleagues of Captain Bruce. Prior to the closing of the meeting, the delegation of the Marshall Islands expressed how profoundly grateful and moved it had been by the expressions of condolences, and shared that the kind words from the meeting had been communicated to the family and friends of Captain Bruce during his funeral service, which had taken place the same week, and that they had been of great comfort.

***1992 Fund Assembly***

- 0.5 The Chair of the 1992 Fund Assembly opened the 28th session of the Assembly at 9.30 am, with 64 Member States present at that time.

***Supplementary Fund Assembly***

- 0.6 The Supplementary Fund Assembly Chair opened the 20th session of the Assembly with 24 Member States present.

***1992 Fund Executive Committee***

- 0.7 The 1992 Fund Executive Committee Chair opened the 81st session of the Executive Committee with 15 Member States present.
- 0.8 The Member States present at the sessions are listed in Annex I, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

**1 Procedural matters**

- 1.1
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| <b>Adoption of the Agenda<br/>Document IOPC/NOV23/1/1</b> | <b>92A</b> | <b>92EC</b> | <b>SA</b> |
|---|------------|-------------|-----------|

The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/NOV23/1/1.

1.2	<b>Election of the Chairs</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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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 1992 Fund Assembly noted that Mr Sipho Mbatha (South Africa), had resigned from his post within the South African Government and that the position of Second Vice-Chair of the Assembly was therefore vacant.

1.2.3 The Supplementary Fund Assembly noted that Mr Emre Dinçer (Türkiye) had informed the Chair and the Director that he would be stepping down from the position of Second Vice-Chair prior to the November 2023 sessions.

***1992 Fund Assembly decision***

1.2.4 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: Ms Stellamaris Muthike (Kenya)

1.2.5 The Chair thanked, also on behalf of the two Vice-Chairs, the 1992 Fund Assembly for the confidence shown in them. He also expressed appreciation, on behalf of the Assembly, for the work of the outgoing second Vice-Chair, Mr Sipho Mbatha.

***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 Supplementary Fund Assembly:

Chair: Mr François Marier (Canada)

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

Second Vice-Chair: Ms Safiye Tecen (Türkiye)

1.2.7 The Chair thanked, also on behalf of the two Vice-Chairs, the Supplementary Fund Assembly for the confidence shown in them. He also expressed appreciation, on behalf of the Assembly, for the work of the outgoing second Vice-Chair, Mr Emre Dinçer.

1.3	<b>Examination of credentials Documents IOPC/NOV23/1/2, IOPC/NOV23/1/2/1 and IOPC/NOV23/1/2/2</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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***Establishment of the Credentials Committee***

1.3.1 The governing bodies took note of the information contained in document IOPC/NOV23/1/2.

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

It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.

- 1.3.3 The governing bodies further recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (documents 92FUND/A.13/25 and SUPPFUND/A.4/21).
- 1.3.4 It was recalled that, at their May 2023 sessions, the governing bodies had amended the Rules of Procedure relating to the deadline for the submission of credentials and had decided that credentials should be submitted no later than five working days in advance of the meeting. It was noted that for the November 2023 sessions, the deadline was therefore 31 October 2023.
- 1.3.5 The Secretariat took the opportunity to thank all those Member States who had adhered to the new Rule and had submitted their credentials in advance of the deadline of 31 October 2023. It was noted that this had made a significant improvement to the processing of credentials. However, it was reported that seven States had submitted credentials shortly after the deadline.
- 1.3.6 It was noted that, given that this was the first time that the amendment to the Rules of Procedure had applied and that very few States had missed the deadline, the Director was of the view that on this occasion, some flexibility could be applied to accept the seven credentials submitted after the deadline but in advance of the meeting, on an exceptional basis. It was noted that, in the Director's view, no further credentials should be accepted since the Credentials Committee would be meeting on that same day to review the credentials received.

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

- 1.3.7 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 Ecuador, Malaysia, Portugal, United Kingdom and Uruguay as members of the Credentials Committee.
- 1.3.8 The 1992 Fund Assembly decided to accept the credentials submitted by seven States after the deadline but in advance of the opening of the sessions on an exceptional basis, since it was the first time that the amendment to the Rules of Procedure relating to the deadline for submission of credentials had applied.

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

- 1.3.9 The 1992 Fund Executive Committee and the Supplementary Fund Assembly took note of the appointment of the Credentials Committee by the 1992 Fund Assembly.
- 1.3.10 They also noted the decision of the 1992 Fund Assembly regarding the acceptance of the credentials of seven States after the deadline for submission on an exceptional basis.

#### ***Interim Report of the Credentials Committee***

- 1.3.11 In order to confirm the list of delegations authorised to vote for the election of the joint Audit Body, the Chair of the Credentials Committee, Mr Mohd Fairoz Bin Rozali (Malaysia), presented an interim report of the Credentials Committee on Tuesday 7 November 2023 (document IOPC/NOV23/1/2/1). The Chair of the Credentials Committee reported that credentials had been reviewed from 72 Member States, which were all in order and therefore eligible to vote.

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

- 1.3.12 The 1992 Fund Assembly, the 1992 Fund Executive Committee and the Supplementary Fund Assembly noted the interim report of the Credentials Committee.

*Final Report of the Credentials Committee*

- 1.3.13 The Credentials Committee reported in its final report (document IOPC/NOV23/1/2/2) that the credentials submitted by 72 Member States were found to be in order. It was noted that three Member States had presented credentials after the exceptionally extended deadline decided by the 1992 Fund Assembly, which were therefore not accepted.
- 1.3.14 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the November 2023 meeting.

1.4	<b>Information on the format of meetings</b> <b>Document IOPC/NOV23/1/3</b>	<b>92A</b>		<b>SA</b>
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- 1.4.1 The governing bodies took note of the information contained in document IOPC/NOV23/1/3 regarding the format of meetings.
- 1.4.2 It was recalled that, since September 2022, International Maritime Organization (IMO) meetings had been held in a hybrid format for a trial period. It was also recalled that at the October 2022 and May 2023 sessions, the governing bodies had discussed the possibility of IOPC Funds' meetings being held in hybrid format and that, whilst meetings had continued in person, a passive streaming service had been introduced at the May 2023 sessions.
- 1.4.3 It was recalled that the introduction of a passive streaming service had been well received and that there had been general agreement that it should continue to be provided at the November 2023 sessions. It was also recalled that the governing bodies had agreed at the May 2023 sessions, that any remote participation in the future should be complementary to, and not instead of, in-person participation.
- 1.4.4 It was further recalled that a majority of delegations had expressed their support in May 2023 for not proceeding with any decision in respect of hybrid meetings before the outcome of the trial period by IMO and had noted that the issue would be revisited at that time, taking into account the human and financial resources required to deliver such meetings.
- 1.4.5 The governing bodies noted that at the July 2023 session of the IMO Council, the Council had agreed to extend its trial period for holding hybrid meetings to enable the assessment of planned enhancements introduced by the IMO Secretariat. It was noted that a final decision on the matter had been deferred to the 132nd session of the IMO Council (C 132), scheduled for mid-2024. It was also noted that interim guidance to facilitate the hybrid meeting capabilities of the Council, with particular regard to the Council Rules of Procedures, would be developed for submission and consideration at C 132.
- 1.4.6 The governing bodies noted that, in light of the decision of the IMO Council to extend the trial period for holding meetings in hybrid format, and taking into account that at the May 2023 sessions of the IOPC Funds' governing bodies, a majority of delegations had expressed their support for not proceeding with any decision in respect of hybrid meetings before the outcome of that trial period, the Director was of the view that the IOPC Funds' meetings should continue to be held in-person, complemented by a passive streaming service.

- 1.4.7 The governing bodies noted that the Director would continue to liaise with the IMO Secretariat on a regular basis ahead of the final outcome of IMO's trial period and would report any developments, in particular with regards to IMO's discussions in respect of amendments to relevant Rules of Procedure, to the governing bodies at their next sessions.

#### *Debate*

- 1.4.8 One delegation, whilst recognising the decision of the governing bodies to await the outcome of the trial by IMO, enquired as to whether there was any merit in the IOPC Funds also undertaking its own trial of holding hybrid meetings.
- 1.4.9 In response, the Director pointed out that the Secretariat had already gained experience holding remote meetings during the Covid-19 pandemic and had also continued to widen its experience by holding several online and hybrid training activities. He considered that the decision by the governing bodies in May 2023 to await the outcome of the IMO trial had been taken with that in mind, and reassured delegations that, in the event that a decision were to be taken in the future to change the format of IOPC Funds' meetings to a hybrid format, the Secretariat would be ready.

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

- 1.4.10 The governing bodies noted that the IOPC Funds meetings would continue to be held in-person, complemented by a passive streaming service and that the Director would report on the outcome of the IMO trial period at a future session.

## **2 Overview**

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|-----|---|------------|--|-----------|
| 2.1 | <b>Report of the Director<br/>Document IOPC/NOV23/2/1</b> | <b>92A</b> |  | <b>SA</b> |
|-----|---|------------|--|-----------|
- 2.1.1 The Director welcomed everybody to the meeting (those attending in person and those following the sessions of the governing bodies via the passive streaming service). He presented his report contained in document IOPC/NOV23/2/1.
- 2.1.2 In terms of membership, the Director noted that the 1992 Fund Convention had entered into force for the Republic of Guinea-Bissau on 12 May 2023. He also noted that at the opening of the 28th session of the 1992 Fund Assembly, 121 States were Members of the 1992 Fund. The Director further noted that 32 States were Members of the Supplementary Fund.
- 2.1.3 With respect to compensation matters, the Director reported that the 1992 Fund was dealing with 12 incidents. With respect to the *Bow Jubail* incident, the Director reported that in March 2023, the Supreme Court in the Netherlands had confirmed the decision of the lower courts that the *Bow Jubail* qualified as a ship under the 1992 Civil Liability Convention (CLC). He also reported that in June 2023, the owner and insurer of the ship had applied to the Rotterdam District Court to limit their liability in accordance with the 1992 CLC, and that a first hearing of the Rotterdam Limitation Court had been held in September 2023. The Director further reported that the Court had rejected the owner's application stating that the limitation amount should include both the CLC limit and statutory interest. He added that the owner would therefore have to submit the application again with the correct amount. The Director hoped that this would be resolved soon.
- 2.1.4 With respect to the *Princess Empress* incident, the Director reported that the claims for pollution damage had surpassed the 1992 CLC limit and that the 1992 Fund had therefore commenced making payments. He added that the Shipowners' P&I Club had reimbursed the 1992 Fund for the compensation payments made by the 1992 Fund until the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) limit had been reached. The Director further reported that the 1992 Fund had commenced making provisional payments to claimants in the fisheries sector on the basis of a provisional assessment of the losses. He explained that since



the bulk of those claimants did not have bank accounts, the challenge in finding a way to pay compensation had been significant and had required the use of substantial resources of the Secretariat. The Director thanked the Philippine Government and, in particular, the Philippine Coast Guard for their assistance during the visits by members of the IOPC Funds' Secretariat to the Philippines. He was also grateful to the local authorities in the affected areas for their help, especially regarding the opening of temporary local claims submission offices. The Director commended the excellent cooperation with the Shipowners' Club and their proactive approach to the incident, which showed how well the international liability and compensation regime could operate when there was good cooperation between the shipowner's insurer and the IOPC Funds.

- 2.1.5 The Director also reported that relatively few claims, which were within the Greek court system, remained outstanding in the *Agia Zoni II* incident. He added that a decision from the Public Prosecutor as to the cause of the incident was awaited, some six years after the incident had occurred.
- 2.1.6 When reporting on financial matters, the Director stated that the 1992 Fund Assembly and the Supplementary Fund Assembly would be invited to approve the 2022 Financial Statements for their respective Funds.
- 2.1.7 The Director reported that, as at 25 September 2023, 88 States had submitted oil reports to the 1992 Fund representing some 95% of the expected total contributing oil; and that all States had submitted reports to the Supplementary Fund for 2022 and other preceding years. The Director noted that since the document had been prepared the Secretariat had received more oil reports and added that an update would be provided when the document on oil reports would be presented. The Director stated that he would continue to engage with those States that had outstanding reports and encouraged Member States who had reporting difficulties to contact the relevant members of the Secretariat, who were always available to assist with the submission of oil reports. The Director thanked the authorities of the Netherlands for their cooperation in resolving the submission of oil reports by two contributors in Bonaire and Sint Eustatius. He also thanked all Member States for their engagement and cooperation with respect to the correct and timely submission of oil reports.
- 2.1.8 The Director was also pleased to report that, as at 25 September 2023, outstanding contributions to the 1992 Fund represented 0.25% of the total contributions levied since the establishment of the Fund. He said that throughout 2023, he had continued to engage with the authorities in Ghana, Venezuela, the Islamic Republic of Iran, Curaçao, and Argentina with respect to the outstanding contributions in those States. He also said that he intended to continue to liaise with those Member States in 2024 and to work towards correcting the situation. He added that he hoped that the Russian Federation would give a positive response in relation to the settlement of its obligations in respect of the 1992 Fund. He reported that, as at 25 September 2023, outstanding contributions to the Supplementary Fund related to the Republic of the Congo and represented 0.05% of contributions levied to date.
- 2.1.9 The Director recalled the concern of Member States in relation to States who did not fulfil their treaty obligations to submit oil reports and to ensure payment of annual contributions. He reported that as at 25 September 2023, 1992 Fund Resolution N°12 was applicable to 21 Member States and Supplementary Fund Resolution N°3 was applicable to one Member State. He also reported that in August 2023, Member States of the 1992 Fund and Supplementary Fund with oil reports or contributions outstanding for two or more years had been notified by a formal letter that Resolution N°12 and Resolution N°3 respectively, were applicable to them. He urged Member States to submit oil reports under the 1992 Fund Convention and the Supplementary Fund Protocol.

- 2.1.10 The Director noted that he had worked hard with the Secretariat to limit the increase to the budget in 2024, which had been a particular challenge given the inflationary environment. He explained that the proposed increase related to staff costs, which were always a challenge to control given the Secretariat's use of the United Nations (UN) common system for salaries, allowances and benefits.
- 2.1.11 The Director added that the 1992 Fund Assembly would be asked to approve the draft administrative budgets for 2024 for the 1992 Fund and the Supplementary Fund. The Director noted that the 1992 Fund administrative budget figure was only 5.7% more than the 2023 budget figure. He added that the Supplementary Fund Assembly would be asked to approve the budget of £58 100 for 2024. The Director proposed that the 1992 Fund and the Supplementary Fund maintained their working capitals at £15 million and £1 million, respectively, in the budget year 2024.
- 2.1.12 The Director said he would propose that the 1992 Fund Assembly levy 2023 contributions to the General Fund of £10 million for payment by 1 March 2024. The Director said that he would also propose that the 1992 Fund Assembly levy 2023 contributions of £20 million to the *Bow Jubail* Major Claims Fund, and £10 million to the *Princess Empress* Major Claims Fund, both payable by 1 March 2024. The Director said he would propose that the Supplementary Fund Assembly did not levy contributions to the General Fund. The governing bodies noted that there was no need to levy contributions to any Claims Fund as there had been no incidents involving the Supplementary Fund.
- 2.1.13 The Director reported that on 30 October 2023, the IOPC Funds and the Association of Commercial P&I Insurers (ACPII) had signed a Memorandum of Understanding (MoU). He explained that the IOPC Funds and ACPII would cooperate on claims-handling with the aim of ensuring that compensation was paid as promptly as possible within the legal framework of the 1992 Conventions if there was an incident involving insurers who were members of the ACPII. He added that the signing of this MoU was part of the work undertaken to address the problems encountered in some oil pollution incidents involving insurers that are not members of the International Group of P&I Associations (non-International Group insurers) and that he was hoping to sign a STOPIA agreement with ACPII in the future.
- 2.1.14 The Director noted that the period of office for the External Auditor, BDO International LLP (BDO), would end following its report on the 2025 Financial Statements at the 2026 regular sessions of the governing bodies. He also noted that the management of the selection process of the External Auditor fell within the mandate of the Audit Body. He said that the Audit Body would present a proposal to the governing bodies on the audit tender evaluation process and timetable.
- 2.1.15 The Director also noted that the mandate of the Investment Advisory Body (IAB) members expired in November 2023. He said that he would propose that the three present members of the IAB be reappointed for a full three-year term, until the regular sessions of the IOPC Funds governing bodies in 2026. He added that he would submit, for consideration and approval by the governing bodies, rotation and succession planning guidelines for the IAB members, which had been developed in consultation with the Audit Body.
- 2.1.16 The Director reported that, as the mandate of the seventh Audit Body was expiring in November 2023, a circular had been issued in June 2023 calling for nominations by 1992 Fund Member States of candidates for the new Audit Body and that eight candidates had been nominated. The Director said the 1992 Fund Assembly would be invited to elect six out of the eight nominated candidates for the new Audit Body. He added that the Chair and Vice-Chair of the Audit Body would be appointed by the 1992 Fund Assembly from the members elected, on a proposal of the Chair of the 1992 Fund Assembly. The Director reminded the governing bodies that Mrs Alison Baker had been appointed as the external expert of the Audit Body for a term of three years from 1 January 2022 to 31 December 2024.

- 2.1.17 The Director recalled that at their October 2022 sessions, the governing bodies had instructed him to prepare, in consultation with the Audit Body, a draft resolution authorising him to invoice contributors based on estimates when no oil reports have been submitted, and to prepare the relevant consequential amendments to the Internal Regulations. He added that he would be presenting the draft Resolutions for the 1992 Fund and the Supplementary Fund on this matter and the relevant consequential amendments to their respective Internal Regulations for consideration and approval of the governing bodies.
- 2.1.18 With respect to staff matters, the Director referred to the changes in the External Relations and Conference Department and reported that, with effect from 1 June 2023, Mr Thomas Liebert had been transferred to the role of HNS Project Officer within the Office of the Director, and Ms Victoria Turner had been appointed External Relations and Conference Manager in the Administration Department. He also reported that Ms Ana Cuesta had been promoted to the vacant P3/P4 dual graded Claims Manager position with effect from 1 June 2023. He further reported that Ms Christine Galvin had been appointed to the position of External Relations and Conference Coordinator, Administration Department, with effect from 1 October 2023 and that Ms Dušanka Šupica had been appointed to the position of External Relations and Conference Assistant, Administration Department, with effect from 1 February 2023.
- 2.1.19 The Director reported that inflation rates had recently been exceptionally high and that, since August 2021, inflation had been higher than the interest earned on the staff Provident Fund (PF1), a staff savings scheme provided in lieu of a pension. He added that he would be proposing the introduction of an inflation protection measure to protect the mandatory contributions made by staff members to PF1 from negative real interest rates.
- 2.1.20 The Director reported that the Secretariat had continued to improve the general information services it provided and the way in which it delivered communications to Member States and other key stakeholders.
- 2.1.21 The Director reported that on 23 October 2023, France had deposited an instrument of ratification to the 2010 Hazardous and Noxious Substances Protocol (2010 HNS Protocol) with the Secretary-General of IMO, bringing the number of Contracting States to the Protocol to seven. He reported the Secretariat had continued to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and prepare for the first session of the HNS Fund Assembly. He also reported the Secretariat had continued to promote the entry into force of the 2010 HNS Convention, had carried out outreach and technical assistance activities, had continued to work on the development of the HNS reporting and contributions system, and to make progress on the drafting of a Claims Manual. He added that a workshop focusing on reports and contributions was planned to take place in conjunction with the next sessions of the governing bodies in 2024.
- 2.1.22 The Director reported that an appropriation of £424 000 had been included in the 2024 budget for the 1992 Fund to cover the costs for the preparations and other administrative tasks in respect of the HNS Fund. He explained that these costs related mainly to additional staff time required, including having a dedicated HNS Project Officer, and to the establishment and maintenance of operational systems, such as reporting and contributions, the HNS Finder and the website. He noted that this increase in the budget was intended to ensure that the work of the Secretariat and the costs incurred while setting up the HNS Fund were properly reflected, apportioned and Reimbursed to the 1992 Fund with interest.
- 2.1.23 The Director referred to the IOPC Funds' Annual Academy which had been held in person in London during the week of 12 June 2023 and had been attended by participants from 15 Member States of the 1992 Fund. He thanked IMO, the International Group, INTERTANKO, ITOPF and the International Chamber of Shipping (ICS) for their support of the course. The Director added that the Secretariat intended to organise the next Annual Academy in the summer of 2024.

- 2.1.24 The Director also referred to the Induction Course for delegates of the 1992 Fund Member States which had taken place on 6 November 2023.
- 2.1.25 With respect to the active engagement of the Secretariat with its Member States, the Director reported that the Secretariat had continued to organise and contribute to international conferences, exhibitions, national and regional workshops and other training events, including a number of customised training activities at the request of Member States, informal lunches for the UK-based representatives of Member States and visits from universities and other educational institutions. He also referred to the online webinars offered by the Secretariat in an effort to ensure that a wider audience could benefit from training opportunities on issues relating to the IOPC Funds.
- 2.1.26 The Director reported that in light of the decision of the IMO Council to extend the trial period for holding meetings in hybrid format, and taking into account that at the May 2023 sessions of the IOPC Funds' governing bodies, a majority of delegations had expressed their support for not proceeding with any decision in respect of hybrid meetings before the outcome of that trial period, he was of the view that the IOPC Funds' meetings should continue to be held in person, complemented by a passive streaming service. He added that he would continue to liaise with the IMO Secretariat and would report on any developments at the next session of the governing bodies.
- 2.1.27 The Director referred to the impact of sanctions on the international liability and compensation regime. He noted that recent data had shown a substantial increase in the size of the so-called 'ghost' or 'dark' fleet between January and June 2023. He added that there was a higher threat of accidents and oil spills, an increased difficulty in assigning liability when ship-source spills did occur, and a lack of proper insurance or other financial security. He added that the IOPC Funds and its contributors were exposed to an increased risk of having to pay the full compensation for oil spills if no sufficient insurance was available to cover the shipowner's liability. He also added that the Secretariat would therefore continue to monitor the situation and liaise with Member States, IMO and the International Group on this issue. The Director reminded Member States of their obligation, under the 1992 CLC, to ensure that tankers had a CLC certificate and noted that failure to do so might result in flag State liability.
- 2.1.28 The Director referred to the main challenges that the IOPC Funds would be facing in the coming 12 months and focused on the Secretariat's activities for 2024. He said the Secretariat would continue to: (i) actively engage with Member States to ensure that the Conventions were uniformly and effectively implemented and interpreted and to improve their preparedness ahead of a potential oil spill; (ii) increase awareness of the benefits of the international liability and compensation regime in States which had not yet ratified the 1992 Fund Convention and the Supplementary Fund Protocol; (iii) assist States in their work towards ratification of the 2010 HNS Protocol and developing a system for HNS reporting and invoicing of contributions that was solid and efficient; (iv) raise awareness of the rights and obligations of Member States and urge them to fulfil their obligation to submit oil reports and pay contributions; (v) address the specific needs of claimants in Member States, adapt the IOPC Funds' claims payment system, and enhance its ability to operate in challenging environments in order to process claims effectively and efficiently, (vi) cooperate in every possible way with all initiatives undertaken to address the problems encountered when dealing with non-International Group insurers; and (vii) serve the Member States and the victims of oil pollution, and to protect the interests of the IOPC Funds, while adapting to their changing needs in an efficient and effective manner.

- 2.1.29 In concluding the Director thanked the Member States, the oil industry, the P&I Clubs, IMO, fellow international organisations and the international shipping community. He also thanked all members of the seventh Audit Body, who had contributed significantly to the work of the Secretariat, including during the Covid-19 pandemic, which was a very difficult time, and had addressed very difficult issues such as the problems encountered with non-International Group insurers and had provided highly valuable input when drafting measures to encourage the submission of oil reports. He also thanked the members of the IAB, representatives of the External Auditor (BDO), and the lawyers and experts who had worked with the IOPC Funds.
- 2.1.30 The Director thanked Secretary-General of IMO, Mr Kitack Lim, and the IMO staff for their support and cooperation. He noted that Mr Kitack Lim would be stepping down as IMO Secretary-General at the end of 2023 and wished him all the best for his future endeavours. He also congratulated Mr Arsenio Dominguez who had been appointed to become the next Secretary-General. The Director said he was confident that, under Mr Dominguez's leadership, the excellent relationship which had always existed between the IOPC Funds and IMO would continue for the common benefit of the organisations and the international maritime community.
- 2.1.31 The Director also expressed his gratitude to the Chairs and Vice-Chairs of the governing bodies who had provided their assistance and views on key issues affecting the IOPC Funds; and thanked his colleagues at the Secretariat who had been key in his everyday work to serve the Member States and the victims of oil pollution and to protect the interests of the IOPC Funds, while adapting to their changing needs in an efficient and effective manner.

*Debate*

- 2.1.32 The Chair of the 1992 Fund Assembly thanked the Director for his comprehensive report. Several delegations thanked the Director for his report and thanked the Secretariat for the organisation of the Annual Academy and the Induction Course.
- 2.1.33 The delegation of Argentina commended the efforts of the Director with regard to budget and the constructive dialogue with delegations with regard to pending reports and contributions. It also noted that paragraph 2.2 of document IOPC/NOV23/2/1 made reference to a matter addressed in document IOPC/NOV23/8/1. The delegation stated that it would make an intervention upon the presentation of document IOPC/NOV23/8/1 which applied fully to both documents.
- 2.1.34 One delegation expressed concern regarding the increase of the ghost ships and the transfer of oil at sea under unregulated circumstances, which increased the possibility of spills which would impact the coastline of many States whose economy was based on having clear and pristine waters. That delegation stated that an incident in any of those States involving an uninsured tanker would have an enormous and debilitating impact on their economy and way of life and would also impact the Member States who would have to pay for the cost of the incident. The delegation requested those Member States engaging in this type of activities to look at the impact that this would have at a global level and urged them to avoid carrying them out.
- 2.1.35 The Chair of the 1992 Fund Assembly thanked the delegations for the comments made and said that this issue would be discussed when presenting the document on the potential impact of sanctions on the international liability and compensation regime.

### 3 Incidents involving the IOPC Funds

3.1	<b>Incidents involving the IOPC Funds Document IOPC/NOV23/3/1</b>		<b>92EC</b>	<b>SA</b>
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3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/NOV23/3/2</b>		<b>92EC</b>	
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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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i> Document IOPC/NOV23/3/3</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i></b> <b>Document IOPC/NOV23/3/4</b>		<b>92EC</b>	
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- 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 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i></b> <b>Document IOPC/NOV23/3/5</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i> Document IOPC/NOV23/3/6</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/NOV23/3/7</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund:</b> <b><i>Nathan E. Stewart</i></b> <b>Document IOPC/NOV23/3/8</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/NOV23/3/9</b>		<b>92EC</b>	
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- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i></b> <b>Document IOPC/NOV23/3/10</b>		<b>92EC</b>	
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- 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)<sup><1></sup>, 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>MT Harcourt</i> Document IOPC/NOV23/3/11</b>		<b>92EC</b>	
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- 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.

<sup><1></sup> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)' and references to 'TOPIA 2006' should be taken to read 'TOPIA 2006 (as amended 2017)'.

- 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	<b>Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel Document IOPC/NOV23/3/12</b>		<b>92EC</b>	
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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: <i>Princess Empress</i> Document IOPC/NOV23/3/13		92EC	
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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 ITOFF 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.

#### **4 Compensation matters**

4.1

<b>Report of the 1992 Fund Executive Committee</b>	<b>92A</b>		
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The 1992 Fund Assembly noted the reports of the 79th and 80th sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT22/11/1 and IOPC/MAY23/9/1) and expressed its gratitude to the Executive Committee's Chair, its Vice-Chair and its members for their work.

4.2

<b>Election of members of the 1992 Fund Executive Committee Document IOPC/NOV23/4/1/Rev.1</b>	<b>92A</b>		
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4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV23/4/1/Rev.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):
Canada India Italy Republic of Korea Spain Thailand United Kingdom	Algeria Bahamas Colombia Cyprus Denmark New Zealand Poland South Africa

- 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 1992 Fund 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: Ms Małgorzata Buszyńska (Poland)

Vice-Chair: Ms Karen Andersen (Denmark)

- 4.2.6 The newly elected Chair, Ms Buszyńska, thanked the 1992 Fund Executive Committee for the confidence shown in her and stated that it was both an honour and a privilege to be elected to the post. She confirmed her commitment to ensuring that the Committee's future sessions run smoothly. She congratulated the current 1992 Fund Executive Committee Chair, Mr Samuel Soo, for his outstanding leadership and stated that she looked forward to working with the Vice-Chair, Ms Andersen, the Chairs of the other governing bodies, the Director and the Secretariat.

4.3	<b>STOPIA 2006 and TOPIA 2006 — Recent information on entered ships</b> <b>Document IOPC/NOV23/4/2</b>	<b>92A</b>		<b>SA</b>
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- 4.3.1 The governing bodies took note of the information contained in document IOPC/NOV23/4/2 regarding the recent status of the STOPIA 2006, and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 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 2023 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 2023	7 666	99	7 765	98.73%
20 August 2022	8 132	105	8 237	98.73%
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 not 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 2023, the number of relevant ships not 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.
- 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.

*Debate*

- 4.3.8 One delegation expressed its appreciation for the fact that 98.73% of the vessels insured by International Group Clubs have entered STOPIA 2006, and hoped that this situation would continue in the future. That delegation also highlighted the importance of striking the right balance of financial burden between the shipowner/insurers and the IOPC Funds and its contributors by applying STOPIA 2006. That delegation also appreciated the Director's efforts in signing an MoU with the Association of Commercial P&I Insurers (ACPII) and supported his idea to include an agreement equivalent to STOPIA 2006 with ACPII in the future.

**1992 Fund Assembly and Supplementary Fund Assembly**

- 4.3.9 The 1992 Fund Assembly and Supplementary Fund Assembly noted with satisfaction the information contained in document IOPC/NOV23/4/2.

4.4	<b>The potential impact of sanctions on the international liability and compensation regime</b> <b>Document IOPC/NOV23/4/3</b>	<b>92A</b>		<b>SA</b>
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- 4.4.1 The 1992 Fund Assembly and Supplementary Fund Assembly took note of document IOPC/NOV23/4/3.
- 4.4.2 The governing bodies recalled that in March 2022 the Director had submitted document IOPC/MAR22/8/1 which contained at its Annex, a draft circular of the IMO Legal Committee (IMO document LEG 109/16/1, paragraphs 5.14 and 5.15) containing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. That circular included information relevant to the IOPC Funds.
- 4.4.3 The governing bodies recalled that from 5 December 2022, pursuant to Articles 3m and 5aa of European Regulation 833/2014 (the Regulation), further restrictions had come into effect which governed the carriage and insurance of Russian crude oil and products, and prohibited transactions with the entities listed in Annex XIX of the Regulation that were controlled by the Russian Federation, which may have included potential shippers and contributors to the IOPC Funds.
- 4.4.4 The governing bodies also recalled that as a result of the restriction on insurance of vessels carrying Russian crude oil and products, many of the P&I Clubs that are members of the International Group had not been able to insure such vessels, meaning that the shipowners needed to seek insurance from other non-International Group P&I Clubs.
- 4.4.5 The governing bodies further recalled that while the IOPC Funds are intergovernmental organisations and are not ordinarily subject to domestic or international sanction regulations and legislation, a number of practical difficulties might arise if dealing with an incident involving a vessel laden with Russian oil.
- 4.4.6 The governing bodies noted that it appeared that the war in Ukraine was escalating with the potential for civilian vessels (including tankers from which pollution would likely result) to be targeted.
- 4.4.7 The governing bodies noted that although the 1992 Fund had no liability for pollution damage resulting from acts of war, hostilities, civil war or insurrection or for damage caused by oil escaping or discharging from a warship or other ship owned or operated by a State and used exclusively for government non-commercial service at the time of the incident, in the event of an oil spill following an attack on a civilian vessel, there might be extensive pollution affecting governments, businesses, individuals, the environment and wildlife.

*Sanctions-avoiding vessels*

- 4.4.8 The governing bodies noted that a high number of vessels had been reported as attempting to circumvent the sanctions by various methods, including turning off their automatic identification system (AIS) transponders so as to disappear from coverage. It was noted that this was understood to be done in order to conduct illegal ship-to-ship (STS) oil transfer operations, often in dangerous waters or the open sea or in areas with little satellite coverage, thereby negating many of the IMO safety measures and putting coastlines at increased risk of oil pollution.
- 4.4.9 It was also noted that maritime authorities had also been grappling with a further deceptive shipping practice of location manipulation, which involved a vessel transmitting a fake location.

*Council of the European Union (EU) – 11th package of economic sanctions*

- 4.4.10 It was noted that with the introduction of the 11th package of economic sanctions, EU ports and locks were no longer available to any vessel that a competent authority had reasonable cause to suspect had illegally interfered with, switched off, or otherwise disabled its AIS, at any point of the voyage to a Member State's ports or locks, in breach of the International Convention for the Safety of Life at Sea (SOLAS) Regulations when transporting crude oil or petroleum products; or which had engaged in STS activity at any point of the voyage to an EU Member State's ports or locks, if the relevant competent authority had reasonable cause to suspect that the vessel was in breach of Articles 3m and 3n of the Regulation.
- 4.4.11 It was also noted that even if the vessel's fixture was in compliance with the Regulation, it would not be granted access if it failed to notify the relevant competent authority at least 48 hours in advance of such STS activity, if it took place within the EEZ or 12 nautical miles from the baseline of the Member State's coast, but there were exceptions or grounds for derogation in emergency circumstances or for humanitarian purposes.

*Provision of insurance by International Group insurers – compliance with Price Cap Scheme*

- 4.4.12 The governing bodies recalled that on 5 February 2023, the EU had expanded the Price Cap Scheme which was intended to curb the revenue that the Russian Federation earned from its petroleum products of Russian origin which fall under the EU's Combined Nomenclature (CN) code 2710 and that there were two price caps set depending on whether the petroleum product traded at a discount or a premium to crude oil.
- 4.4.13 The governing bodies also recalled that under the Price Cap Scheme, the International Group were permitted to provide P&I cover for shipments of Russian petroleum products to countries which were not part of the Price Cap Coalition provided that the price of the cargo remained below the relevant price cap per barrel, from the time it was loaded until it had cleared customs at the port of destination.
- 4.4.14 The governing bodies further recalled that a shipowner or charterer that intended to transport Russian petroleum product cargoes after 5 February 2023, needed to provide its P&I Club with an attestation that it would not, for the duration of the insurance period, carry Russian petroleum product cargoes which had been sold at a price that, for the period it was on board the vessel, was in excess of the price caps.
- 4.4.15 It was recalled that this enabled shipowners that were able to provide and comply with the attestation provisions to be insured by an International Group P&I Club for the limited destinations covered by the Price Cap Scheme, but that for voyages outside those permitted under the regulations, no such insurance was permitted, and shipowners would have to seek insurance from insurers not covered by the sanctions.

*Provision of insurance by non-International Group insurers*

- 4.4.16 It was noted that with the likelihood that more shipowners would need to insure with non-International Group insurers, there was a risk that some of these insurers might be less likely to comply with their obligations under the 1992 CLC, meaning that the 1992 Fund might have to pay additional compensation if a shipowner or its insurer failed to establish a limitation fund.

*Provision of services by shipping registries*

- 4.4.17 It was noted that there had been an increase in the number of ships undertaking flag transfers to those States with less enviable inspection records.

*STS operations*

- 4.4.18 It was noted that there had been a dramatic increase in the number of STS operations being undertaken especially in the Strait of Gibraltar.

*The use of ageing vessels*

- 4.4.19 The governing bodies also noted that a result of the growing 'ghost' or 'dark' fleet had been an increase in the age of the tanker fleet calling at Russian ports, and that it appeared that a number of shipping companies that wished to operate outside the international regulatory order were being welcomed by some open registries, and with little regulatory oversight appeared to be willing to accept ships on the fringes of the global safety regime.

*Banking restrictions*

- 4.4.20 The governing bodies further noted that there were a number of practical issues that might arise if an incident occurred involving a vessel laden with Russian oil, or within the Russian Federation itself; specifically with the existence of the sanctions, many banks had refused to have any dealings with money destined for, or originating from, the Russian Federation, meaning that the 1992 Fund might face difficulties in establishing bank accounts from which to pay compensation.

*Potential mitigating actions*

- 4.4.21 The governing bodies recalled that, in accordance with the recent IMO LEG guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates, Member States should recall their existing obligations pursuant to IMO Circular 3464, which stated that when receiving a 'blue card' or similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, the Member State should verify the financial standing and solvency of such company in order to make sure that prompt and adequate compensation for victims was available.
- 4.4.22 It was also recalled that the Government of the United Kingdom (UK) had issued a guidance document (UK Maritime Services Prohibition and Oil Price Cap Guidance) for the UK ban on the provision of maritime transportation of, and associated services for, certain oil and oil products. It was further recalled that the guidance contained exceptions to the prohibitions of maritime transportation and associated services for Russian oil and gas products, specifically mentioning an exception for when dealing with an emergency, stating that the prohibitions would not apply to any person performing an act that assisted with the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment.
- 4.4.23 It was recalled that the document stated that it was not an offence to provide financial/brokering services or funds globally to anyone who was supplying or delivering by ship, oil and oil products from a place in the Russian Federation to a third country or between third countries, if it was to deal with an emergency, e.g. to clear up an oil spill.
- 4.4.24 It was also recalled that as detailed within IMO Circular Letter 4548 of 7 April 2022, the Russian Federation had stated that it guaranteed fulfilment of all assumed obligations in their entirety under the international merchant shipping instruments it had previously ratified, and confirmed full validity of insurance or other financial securities in respect of liability, including 'blue cards' issued by Russian insurance companies in compliance with the requirements of international conventions.

*Statement by the delegation of Japan*

## 4.4.25 The delegation of Japan made the following statement:

'This delegation would like to express its appreciation to the Secretariat for preparing this document.

This delegation is deeply concerned with the increase of the so-called 'dark fleet', namely vessels attempting to avoid sanctions by various measures, as operations by such vessels heighten the risk of oil pollution incidents, and thus increase the financial burden of the IOPC Funds.

The issue of the 'dark fleet' is expected to be discussed again in the IMO Assembly later this month, but this delegation would like to take this opportunity to emphasise the seriousness of the situation to other delegations in the room.

Japan also would like to inform the Secretariat and the delegations that in October 2023, the G7 and their coalition members jointly issued an advisory document regarding the Oil Price Cap Scheme on Russian oil, directed at both governments and private sector actors.

This advisory document recommends seven actions as best practices. Namely:

- 'Require appropriately capitalised P&I insurance';
- 'Receive classification from an IACS member society';
- 'Best-practice use of AIS';
- 'Monitor high-risk ship-to-ship transfers';
- 'Request associated shipping and ancillary costs';
- 'Undertake appropriate due diligence'; and
- 'Report ships that trigger concerns'.

This delegation is of the position that the Oil Price Cap Scheme must be implemented properly, and would like to urge all Member States to encourage their industry stakeholders to take on these recommended actions which are crucial to securing the safe operation of vessels under the relevant conventions such as SOLAS, MARPOL and CLC.

In particular, Japan would like to emphasise the importance of obtaining sufficient P&I insurance coverage for the transport of Russian oil, because Russian crude oil and oil products can be insured by the members of the International Group P&I Clubs as far as the cargo price is below the cap, as stated in this document.'

*Debate*

## 4.4.26 One delegation stated that it remained concerned about the increase in the dangerous practice of STS transfers in the open ocean and the growth of the dark fleet, specifically those vessels operating without P&amp;I coverage. That delegation stated that an oil spill from one of these ships could have a significant impact on the integrity of the tanker safety regime that IMO had worked so steadily to enhance over the past 40 years and could place a significant undue financial burden on the IOPC Funds as the ownership of tankers often cannot be traced, the flag States are unknown and the vessels often do not have insurance.

- 4.4.27 That delegation also stated that a Resolution was being proposed for adoption by the IMO Assembly urging flag States to ensure that tankers registered under their flag, adhere to measures that prohibit or regulate STS transfers and to follow safe shipping standards to minimise the risk of oil pollution.
- 4.4.28 That delegation encouraged Member States to share the Price Cap Coalition Maritime Advisory within their administrations and to shipowners and receivers of oil in those states, to ensure the protection of the environment and the safety of the international tanker fleet. That delegation further called upon Member States to support the proposed Resolution at the upcoming 33rd session of the IMO Assembly.
- 4.4.29 The delegation of the Russian Federation stated that it appreciated the Secretariat having looked ahead for the challenges that the IOPC Funds may face and for presenting this insightful document on sanctions and their consequences.
- 4.4.30 That delegation stated that in its view, in general when sanctions were introduced in respect of oil producing countries, this would lead to the risks mentioned in the document. That delegation stated that the countries producing (imposing) the sanctions were very well aware of such risks as well as their detrimental effect to the regime of environmental protection in general, but that they still persisted in imposing them. That delegation also stated that this meant that the sanctions were the root cause of the situation and any risks such as STS transfers and the issues arising from the operation of the dark fleet arose directly therefrom.
- 4.4.31 One delegation stated that it was unacceptable for the maritime community that illegal practices conducted by some vessels, endangered navigation and environmental safety, such as by manipulating maritime administrations by switching off AIS devices or by deliberately misrepresenting their location in order to conduct illegal activities. That delegation was also concerned that oil pollution incidents may go uncontrolled with the increase in STS operations.
- 4.4.32 That delegation stated that it did not permit STS operations to take place in its territorial seas, but only in ports. It pointed out that the relevant documents in relation to STS operations stated that it was necessary to obtain suitable permits and take the necessary environmental precautions before and after the operation. That delegation emphasised that Coastal States needed to make such arrangements for the effective implementation of the IMO Conventions.
- 4.4.33 A number of delegations confirmed that they shared the concerns of others regarding the unregulated dark fleet which posed a high risk of causing pollution and that they supported the draft Resolution that would be put before IMO at the 33rd session of its Assembly to encourage flag and port States to adhere to measures which lawfully regulated STS transfers and to ensure all proper regulations were being followed.

*Statement by the International Group of P&I Associations*

- 4.4.34 The observer delegation of the International Group made the following statement:

‘The International Group would like to share a few comments on this helpful document examining the potential impact of sanctions on the international liability and compensation regime.

Firstly, we note a number of references in the document to the impact of the Russian oil price cap on International Group Clubs. Whilst International Group Clubs are bound to comply with these sanctions regimes, we think it is important to clarify that the price cap also applies to non-International Group P&I insurers, reinsurers and H&M underwriters in G7 and coalition countries as it extends to all ‘service providers’.

We also note references in the paper to a 'ghost' or 'dark' fleet. These terms have been widely used and there have been a number of reports on the growth of this fleet. However, the International Group believes it is important to clarify that whilst some of these vessels will be performing sanctions breaking voyages, there is also what the International Group terms a 'parallel fleet' which are legitimately transporting Russian oil and petroleum products as neither the vessel, owners or services providers are connected with a G7 or coalition country.

In terms of the operation of the price cap, we note that section 2.11-2.12 of the document uses the phrase 'for the limited destinations covered by the Price Cap'. Whilst there are sanctions that restrict the import of Russian oil and petroleum products into the EU, UK, US and other coalition countries, we would like to clarify that the price cap does not have geographical boundaries. Instead, the price cap applies to the transportation of any Russian oil or petroleum products where the vessel, owner or services providers are located in a G7 or coalition country.

Lastly, we welcome the comments made in section 3.3-3.5, which we understand refer to the terms of a General License that allows International Group Clubs to discharge their IMO (and ILO convention) obligations in the event of a pollution incident or maritime casualty and which would include a CLC blue card obligation. We think it is important to highlight the importance of these emergency measures, which we hope will provide states with a degree of comfort that International Group Clubs will be able to provide prompt assistance in the event of a pollution incident, despite the potential application of the price cap sanctions regime.'

- 4.4.35 The observer delegation of the ICS stated that it fully supported the comments of the International Group and that what was meant by the terms 'dark fleet', 'ghost fleet' or 'parallel fleet' did vary, dependent on the source being quoted.
- 4.4.36 The Director stated that the situation gravely concerned him due to the risk that an uninsured or badly insured vessel had an incident and caused oil pollution to occur. The Director reminded States that there was an obligation under Article VII of the 1992 CLC to ensure the vessel was insured, and there was a potential liability upon a State which did not do so, so the consequences were potentially severe.

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

- 4.4.37 The governing bodies took note of the information contained in the document and the interventions of the delegations specifically relating to the Price Cap Coalition Maritime Safety Advisory and also noted that the current situation was a cause of major concern. They noted that it was not acceptable to have partial compliance with a sanction if it was agreed to adhere to it, and that the issues under discussion were not just issues for the IOPC Funds to deal with, but for IMO and possibly the UN also.
- 4.4.38 The Chair of the Supplementary Fund Assembly noted that most States who spoke were members of the Supplementary Fund, and that for a large incident involving a non-International Group insured vessel which impacted upon the Supplementary Fund, there would be no TOPIA agreement, likely no P&I insurer and it would be difficult to locate the owner of the vessel. The governing bodies instructed the Director to continue to monitor the situation and to report back to them at their next sessions.

4.5	<b>Development of a guidance document — Procedures for determining whether a ship falls under the 1992 Civil Liability Convention or the Bunkers Convention 2001</b> <b>Document IOPC/NOV23/4/4</b>	92A		SA
4.5.1	The governing bodies took note of the information contained in document IOPC/NOV23/4/4 concerning the development of a guidance document.			
4.5.2	It was noted that the <i>Bow Jubail</i> incident may have broad implications for the definition of a ‘ship’ under the 1992 CLC or a ‘ship’ under the Bunkers Convention 2001, in particular with reference to tankers capable of carrying both persistent oil and other chemical substances as cargo.			
4.5.3	It was recalled that in the court proceedings derived from the <i>Bow Jubail</i> incident, the Court of Appeal in The Hague: <ul style="list-style-type: none"> <li>(i) had considered that there was no generally accepted standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001 ceased to be a ‘ship’ under the 1992 CLC; and</li> <li>(ii) had remarked that consideration should be given by the Parties to the 1992 Fund Convention to the creation of such a standard procedure that could then be followed, with a view to invoking the exception provided for in Article I(1) of the 1992 CLC.</li> </ul>			
4.5.4	It was recalled that at their May 2023 session, the 1992 Fund Executive Committee had requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001 ceased to be a ‘ship’ under the 1992 CLC.			
4.5.5	It was also recalled that during the discussion in May 2023, it had also been suggested that, as part of the investigation, the Secretariat could investigate the possible number of dual tankers that may be on various registers, to determine whether this was a narrow pool or if it extended to a point whereby, going forward, a guidance document could meaningfully impact the industry itself.			
4.5.6	The governing bodies recalled that at that same session, the Director had noted that the 1992 Fund’s position in this case had been that there was already a standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL) but that he had also acknowledged that, following the decision of the courts in the Netherlands, further guidance might need to be developed.			
4.5.7	It was further recalled that the 1992 Fund Executive Committee had also requested that the Director consider an interpretation of the meaning of the word ‘residues’ in Article I(1) of the 1992 CLC, to ensure that there was a common understanding among Member States as to whether the wording of ‘no residues of such carriage of oil’ in that Article required that physically, no oil would be found in the oil tank, or rather that tank would be sufficiently cleaned that the risk of pollution was essentially the same as a tanker which was not carrying oil on board as cargo.			
4.5.8	The governing bodies noted that, following the request by the 1992 Fund Executive Committee at their May 2023 session, the Director had met with industry representatives and had been consulting with the joint Audit Body of the 1992 Fund and the Supplementary Fund, in order to develop a proposal for the way forward to determine whether a ship falls under the Bunkers Convention 2001 or the 1992 CLC.			
4.5.9	It was noted that, at the same time, the Director had also begun an historical review of the interpretation of ‘oil residues’ in existing conventions and guidance documents, in order to achieve a fuller picture of the current understanding of its meaning.			



- 4.5.10 It was also noted that the Director intended to conduct these two streams of work concurrently, with a view to submitting a more detailed document to the 1992 Fund Assembly at a future session and that he would report on the progress of the work at the next session of the 1992 Fund Assembly.

*Debate*

- 4.5.11 The delegations who spoke on this matter thanked the Director for the work carried out and welcomed the proposed way forward of concurrently working on a set of guidelines to determine whether a ship falls under the Bunkers Convention 2001 or the 1992 CLC, as well as on an historical review on the interpretation of 'oil residues'.
- 4.5.12 A number of delegations noted that the issues raised by the national court's ruling on the *Bow Jubail* incident would have an impact on the interpretation of the definition of ship, and that the lack of clarity would be detrimental to maintaining consistency in the regime. Those delegations noted that it was important to address this issue in the wake of the *Bow Jubail* incident, in order to ensure that it did not happen again in the future. Those delegations expressed the hope that the work of the Director on the guidelines would resolve this problem.
- 4.5.13 Several delegations which took the floor to support the development of both types of guidance mentioned in document IOPC/NOV23/4/4 also asked whether the Secretariat would be consulting IMO's Marine Environmental Protection Committee (MEPC), and whether the Director intended to submit the matter to a future MEPC meeting, since the work of IMO and the MEPC in particular might also be necessary to support the work of the IOPC Funds.
- 4.5.14 Other delegations expressed the view that the proposed guidelines should include a common understanding of how to interpret the text 'no residues' in Article I(1) of the 1992 CLC, and confirm the interpretation that the text does not require that, physically, no oil should be found in the oil tank, but rather that the tank was sufficiently cleaned so that the risk of pollution was essentially the same as a tanker which was not carrying oil on board as cargo. It was remarked that all information and evidence available should be taken into consideration, including the decision by the Supreme Court in the Netherlands in the *Bow Jubail* case, since that pertains to the implementation of the Convention in Member States.
- 4.5.15 Those delegations also urged the Director to ensure that the guidelines establish common practices to be adopted by ships' operators and that they describe the meaning of residues, what that entails, and which Convention should be applied in a clear and simple way so that all Member States and ships' operators alike have the same understanding.
- 4.5.16 The observer delegation of the International Group of P&I Associations expressed its thanks for the work already done by the Director and noted that it was one of the industry associations which had already met with the Director to discuss the issue, together with representatives of the shipping and oil and gas industries. That delegation agreed with the Director's view that there was a standard procedure for tank cleaning for oil tankers under MARPOL 73/78. However, that delegation pointed out that at present there was no nexus between that procedure and the definition of ship, nor was there any reference to MARPOL tank cleaning requirements in the 1992 Funds' policy on the definition of ship. That delegation pointed out that the word 'residues' is referenced in Article 1(5) of the 2010 HNS Convention and remarked that, whilst the 2010 HNS Convention is a completely different regime to the 1992 CLC/1992 Fund, an analysis of the reference to 'residues' in the 2010 HNS Convention could be helpful for the purposes of the guidelines. That delegation was further supportive of the intention of the Director to carry out historical research into the interpretation of the definition of 'residues' in existing conventions and guidance documents, since that could have a significant impact on the direction of the document being drafted. That delegation noted how understanding the intention of the States at the time a document was drafted was crucial in order to achieve a common understanding of the meaning of

the text, as was proven in the work of the IMO Legal Committee on the Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO Conventions. That delegation concluded by confirming its intention to continue to cooperate with the Secretariat on this work as it developed.

- 4.5.17 The Secretariat thanked all delegations who took the floor for their support and participation in the discussion. The Secretariat reiterated how the document only provided a roadmap of the work that the Director intended to carry out, and that the Director would consider what other steps were necessary and whether to consult IMO and others on the matter as the work progressed.
- 4.5.18 The Chair of the 1992 Fund Assembly noted how the discussion showed that the issue is of great importance to Member States and that each State has a view on how to resolve the matter of common interpretation of the Conventions. The Chair remarked how, while it was normally Member States who expressed concerns about the interpretation of the Conventions by a national court, on this occasion it had been heartening to see that it was a national court which had expressed concerns about the lack of a unified interpretation of the Conventions. The Chair concluded that this fact could be considered as a very good omen for the future work of the Director.
- 4.5.19 The Chair of the Supplementary Fund Assembly stressed how these guidelines would also apply to the Supplementary Fund. He further noted that all the Members of the Supplementary Fund who had spoken supported the work by the Secretariat on the guidelines.

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

- 4.5.20 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their support for the proposed way forward presented by the Director, and noted that he will report on the progress of the work at the next session of the governing bodies.

## **5 Financial reporting**

5.1	<b>Submission of oil reports Document IOPC/NOV23/5/1</b>	<b>92A</b>		<b>SA</b>
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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/NOV23/5/1 in respect of the submission of oil reports.
- 5.1.2 It was noted that since the publication of document IOPC/NOV23/5/1, reports had been received from Algeria, Colombia, Ecuador, Georgia, Islamic Republic of Iran, Marshall Islands, Liberia and Oman for 2022. Consequently, 28 Member States of the 1992 Fund had not completed the submission of oil reports for 2022. It was also noted that the reports already submitted by Member States as at the November 2023 sessions of the governing bodies totalled 95% of expected contributing oil for the 2022 calendar year.
- 5.1.3 The 1992 Fund Assembly also noted that Curaçao (Kingdom of the Netherlands) had submitted reports for 2020, 2021 and 2022, but that further information was required to process the reports.
- 5.1.4 The 1992 Fund Assembly further noted that Argentina had provided information to resolve issues relating to their outstanding oil reports and that Panama had shared further information on their outstanding oil reports, which the Secretariat was investigating and hoped to resolve the issues imminently.
- 5.1.5 The 1992 Fund Assembly noted with concern that nine States had outstanding reports for five or more years and in particular, it was noted that Syrian Arab Republic had not submitted any reports for 14 years since joining the 1992 Fund.

- 5.1.6 It was further noted that Dominican Republic, who had not submitted any reports for 24 years since joining the 1992 Fund in 2000, had submitted oil reports on 15 February 2022. The Secretariat had analysed the data and had been trying to liaise with the Member State to ensure that the correct quantities of oil were recorded.
- 5.1.7 With regard to the Supplementary Fund, it was noted that all Member States of the Supplementary Fund had submitted reports for 2022 and all previous years.
- 5.1.8 It was also noted that Member States with oil reports or contributions outstanding for two or more years had been notified by formal letter that Resolution N°12—Measures in respect of outstanding oil reports and outstanding contributions might be applicable to them.

#### *Online Reporting System*

- 5.1.9 It was recalled that the Secretariat had been developing the Online Reporting System (ORS) to assist Member States with the submission of contributing oil data to the Secretariat.
- 5.1.10 The governing bodies also noted that the Secretariat would identify opportunities to integrate the ORS with the new Enterprise Resource Planning (ERP) system, incorporating contributions management and financial accounting.
- 5.1.11 It was further noted that the Secretariat is exploring requirements for an online HNS reporting system, incorporating reporting and contributions management. The governing bodies noted that development of the ORS would be coordinated with work done on behalf of the future HNS Fund.

#### *Measures encouraging the submission of oil reports*

- 5.1.12 It was recalled that at the October 2019 sessions of the governing bodies, the Director was 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.
- 5.1.13 It was further recalled that at the October 2022 sessions, the governing bodies noted the conclusions drawn by the IOPC Funds' legal adviser in public international law, Professor Dan Sarooshi K.C., on the legal basis under the 1992 Fund Convention for the Director to issue, and the 1992 Fund Assembly to authorise the Director to issue, invoices to contributors based on estimated oil receipts; and to do so retrospectively in relation to past periods (document IOPC/OCT22/6/1).
- 5.1.14 It was also recalled that at the October 2022 sessions, the governing bodies had instructed the Director to prepare, in consultation with the Audit Body, a draft Resolution in order to enable him to issue invoices to contributors based on estimates if no oil reports were submitted. They had also instructed him to introduce the relevant draft amendments to the Internal Regulations at a future meeting of the governing bodies in 2023 (document IOPC/OCT22/11/1, paragraph 6.1.19).
- 5.1.15 It was noted that the draft Resolution and relevant draft amendments to the Internal Regulations were presented in document IOPC/NOV23/6/2.

#### *Director's considerations*

- 5.1.16 The Director expressed his gratitude for the engagement and cooperation of Member States with regard to the submission of reports, highlighting the necessity of continuous work to ensure that all Member States continue to fulfil this important obligation under the 1992 Fund Convention and the Supplementary Fund Protocol.

5.1.17 The Director also expressed his concern that nine Member States had outstanding reports for five years or more and that one State had never submitted reports, despite being a member of the 1992 Fund for many years.

5.1.18 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*

5.1.19 Several delegations recognised the importance of submitting oil reports in compliance with the Conventions and expressed appreciation to the Secretariat for its efforts to encourage Member States to fulfil those treaty obligations.

5.1.20 One delegation noted that the Secretariat planned to identify opportunities to integrate the ORS with the new ERP system, and that delegation was looking forward to receiving updates on this effort when available.

5.1.21 The delegation of Malaysia provided an update on outstanding oil reports, reporting that the competent authority in Malaysia was working with the contributors and hoped that the outstanding reports would be submitted soon.

*Statement by the delegation of South Africa*

5.1.22 The delegation of South Africa made the following statement:

‘South Africa thanks the Secretariat for preparing and introducing document IOPC/NOV23/5/1, contents of which we note with appreciation.

Chair, we raised our flag to simply commend the IOPC Funds’ Secretariat, led by the Director, for their endeavours in reaching out to all Member States, and in doing so not only encouraging all of us to fulfil our treaty obligations to submit our oil reports as required, but for also employing practical measures to engage, assist and support all States to ensure 100% compliance.

This delegation remains confident that with full cooperation and commitment by all stakeholders, and inspired by the achievements of the Supplementary Fund, it is also possible for the 1992 Fund to soon turn the corner and start reporting 100% compliance as well.

We make this humble comment Chair fully cognisant of unique circumstances that various Member States might be facing in compiling and subsequently submitting their reports in the manner required by the 1992 Fund.’

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

5.1.23 The governing bodies emphasised the importance of submitting oil reports. They instructed the Director to continue his efforts to obtain outstanding reports and to continue to bring the matter of 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.

5.2	<b>Report on contributions</b> <b>Document IOPC/NOV23/5/2</b>	<b>92A</b>		<b>SA</b>
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5.2.1 The governing bodies took note of the information on contributions contained in document IOPC/NOV23/5/2.

- 5.2.2 The 1992 Fund Assembly noted that a government-owned contributor in Ghana had outstanding contributions of £105 051 and that the Secretariat had again offered a payment plan by instalments. The governing bodies further noted that 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 October 2017 session 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 and corresponded 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 had received a letter from the Ministry of Transport of the Russian Federation confirming that consideration was being given to meet the Russian Federation's obligation under Article 15.4 of the 1992 Fund Convention. The 1992 Fund Assembly also noted that the Russian delegation had, on 7 April 2022, corresponded via IMO Circular Letter No.4548, which referred to the Russian Federation's commitment to fulfilling all obligations arising from previously ratified international instruments.
- 5.2.5 The 1992 Fund Assembly noted that a contributor in the Bolivarian Republic of Venezuela had outstanding contributions which had accumulated since May 2019, which amounted to £828 996 corresponding to late oil reports received for the years 2006 to 2021. It was noted that the Director has been in communication with the Venezuelan Ambassador to resolve this issue.
- 5.2.6 It was also noted that a contributor in the Islamic Republic of Iran had outstanding contributions of £280 879 and that the Director was hopeful that payment would be received in due course.
- 5.2.7 The 1992 Fund Assembly further noted that a contributor in Curaçao (Kingdom of the Netherlands) had outstanding contributions of £48 913 since March 2020. It was noted that the Director had been in communication with authorities in Curaçao and was hoping for a resolution soon.
- 5.2.8 The 1992 Fund Assembly noted that contributions of £56 606 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 also noted that the Director did not intend to take legal action in respect of outstanding contributions from contributors in Argentina, Curaçao, Ghana, Islamic Republic of 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 all gone into liquidation. Pursuant to its decision in 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 from the liquidators.
- 5.2.11 The Supplementary Fund Assembly noted that only one Member State, the Republic of the Congo, had outstanding contributions and that £1 489 had been due since 2019.

*Debate*

- 5.2.12 The delegation of the Russian Federation expressed thanks for the document on outstanding obligations, and appreciation to the Director for his focus on reporting and financial discipline. That delegation confirmed that it had received the letter referred to in paragraph 4.5.4 of

document IOPC/NOV23/5/2, that the message had been conveyed to all relevant ministries, that the issue was being processed and that contact had been made with the companies with outstanding contributions. That delegation confirmed that it would remain in contact with the Secretariat and would report progress 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.

5.3	<b>Report on the applicability of 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3 Document IOPC/NOV23/5/3/Rev.1</b>	<b>92A</b>		<b>SA</b>
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- 5.3.1 The governing bodies took note of the information contained in document IOPC/NOV23/5/3/Rev.1 in respect of the applicability of 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3.
- 5.3.2 The governing bodies recalled that the 1992 Fund Assembly and the Supplementary Fund Assembly have repeatedly expressed great concern about Member States who do not fulfil their treaty obligations to submit oil reports and to ensure payment of annual contributions.
- 5.3.3 In an effort to address this ongoing concern, the governing bodies recalled that at their April 2016 sessions, they adopted 1992 Fund Resolution N°12 — Measures in respect of outstanding oil reports and outstanding contributions, and Supplementary Fund Resolution N°3 — Measures in respect of outstanding contributions.
- 5.3.4 The governing bodies further recalled that the importance of this issue was highlighted at the May 2023 session of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, where it was noted that a large majority of delegations had expressed support for the application of Resolution N°12 in respect of the payment of compensation relating to the *Bow Jubail* incident to government authorities in the Netherlands, while oil reports from that State remained outstanding for more than two years.
- 5.3.5 The governing bodies noted that 1992 Fund Resolution N°12 was applicable to 21 Member States and Supplementary Fund Resolution N°3 was applicable to one Member State, as at 25 September 2023, and set out at Annex III of document IOPC/NOV23/5/3/Rev.1.

***Director's considerations***

- 5.3.6 The Director expressed his concern that there were 22 Member States to which 1992 Fund Resolution N°12 or Supplementary Fund Resolution N°3 could be applied, which affects the IOPC Funds' ability to implement an equitable system of levying contributions to ensure that victims of oil pollution in Member States are compensated in full for their loss or damage.
- 5.3.7 The Director recalled the obligation of States Parties pursuant to Article 15 of the 1992 Fund Convention and Article 13 of the Supplementary Fund Protocol to submit oil reports. He also recalled the duty of the States Parties pursuant to Article 13.2 of the 1992 Fund Convention and Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Funds arising under the Convention in respect of oil received within the territory of those States is fulfilled, and to this end to take appropriate measures under their national law.
- 5.3.8 The Director urged the States Parties listed at Annex III of document IOPC/NOV23/5/3/Rev.1 to fulfil their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention and Articles 12.1 and 13.1 of the Supplementary Fund Protocol, by submitting oil reports in a timely and accurate manner and ensuring the prompt payment of contributions.

*Debate*

- 5.3.9 Several delegations highlighted the importance of fulfilling treaty obligations, recognising that incomplete reporting increases the financial burden on contributors complying with reporting obligations, which undermines the legitimacy and equity of the IOPC Funds' system. Those delegations supported further efforts to address the situation and the proposal for draft Resolution N°13 under agenda item 6.
- 5.3.10 One delegation stressed that 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3 should be applied without hesitation if the situation required it, recalling that at the May 2023 sessions of the governing bodies, a large majority of delegations had expressed support for the application of Resolution N°12 in relation to the payment of compensation to government authorities in the Netherlands in respect of the *Bow Jubail* incident, referred to in paragraph 2.1 of document IOPC/NOV23/5/3/Rev.1. That delegation also expressed its concern about the fact that almost one third of all Member States had failed to meet their obligation to submit oil reports.
- 5.3.11 Some delegations expressed appreciation for the effort made by the Netherlands to solve their issues on outstanding oil reports.

*Statement by the delegation of the Netherlands*

- 5.3.12 The delegation of the Netherlands made the following statement:

'The delegation of the Netherlands thanks the Secretariat for the document IOPC/NOV23/5/3/Rev.1 on the applicability of the 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3. We would like to thank the Secretariat and the Director of the IOPC Funds for providing this document in which is stated that all outstanding reports of the Netherlands have been received. I think on both sides we are very pleased to have solved this issue.

We however would like to make one clarification concerning the information contained in paragraph 2.2 of this document. In this paragraph, it is stated that Resolution N°12 no longer applies to the Netherlands. Looking back at the discussions held at the 1992 Fund Assembly in May this year and reviewing document IOPC/MAY23/9/1 which contains the Record of Decisions of the May 2023 sessions of the IOPC Funds' governing bodies, the delegation of the Netherlands wants to make clear that Resolution N°12 has not been applied to the Netherlands.

This is also stated in the Record of Decisions of the May 2023 meeting in paragraph 8.3.15 (document IOPC/MAY23/9/1). This paragraph reads and I quote: 'the 1992 Fund Administrative Council did not oppose the Chair's proposal that the issue be revisited at the next session of the 1992 Fund Assembly in November 2023; to take an updated stock of the reporting situation and decide whether eventual payment of claims to the Government of the Netherlands be deferred pending rectification of the reporting requirement'.

Therefore, the delegation of the Netherlands is of the opinion that this issue would be revisited in the current session, and thus Resolution N°12 was not applied to the Netherlands during the session of May 2023.'

- 5.3.13 The Chair of the Audit Body stated that the Audit Body was mindful of Resolution N°12 and Supplementary Fund Resolution N°3 and recalled paragraph 12 of Resolution N°12 and paragraph 3 of the Supplementary Fund Resolution N°3, directing the Audit Body to monitor the effectiveness of actions in respect of outstanding oil reports and outstanding contributions, and to report to the governing bodies on its findings, including recommendations for further measures as may be warranted.

- 5.3.14 The Chair of the 1992 Fund Assembly noted the information provided in document IOPC/NOV23/5/3/Rev.1 and the concerns expressed by delegations. He also noted Member States' support for the efforts made by the Secretariat to resolve the issues relating to oil reports and contributions.
- 5.3.15 The Chair of the 1992 Fund Assembly recalled that in response to interventions made by delegations on the discussion during the May 2023 sessions of the governing bodies, there had been strong support for the application of Resolution N°12 to all States who had not completely fulfilled their treaty obligations. He also noted that, at the same time, there had been a feeling that the Netherlands case was an exceptional situation considering the unusual legal status of the receiver. On that basis, and taking into account the ongoing efforts to resolve the matter, which eventually proved successful, it had been decided in May 2023 that the issue would be revisited at the November 2023 sessions of the governing bodies.

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

- 5.3.16 The governing bodies noted the information contained in document IOPC/NOV23/5/3/Rev.1

5.4	<b>Report on investments</b> <b>Document IOPC/NOV23/5/4</b>	<b>92A</b>		<b>SA</b>
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- 5.4.1 The governing bodies took note of the information on the IOPC Funds' investments for the period 1 July 2022 to 30 June 2023 contained in document IOPC/NOV23/5/4. The governing bodies also noted the number of institutions used by the IOPC Funds for investment purposes and the amounts invested by each Fund during that period.
- 5.4.2 The governing bodies noted that the Bank of England, the United States Federal Reserve and the European Central Bank continued to increase base rates, resulting in a significant increase to yields achieved by the IOPC Funds throughout the reporting period, and in 2023 in particular.
- 5.4.3 It was also noted that the IAB 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.
- 5.4.4 It was further noted that the 1992 Fund was holding euros for the General Fund and the *Prestige* and *Agia Zoni II* Major Claims Funds, Israeli shekels for the Incident in Israel Major Claims Fund and United States dollars for the General Fund.
- 5.4.5 It was also noted that no investments had exceeded the normal limits during the reporting period.

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

- 5.4.6 The governing bodies took note of the information provided and noted that the report indicated a smooth execution of the internal investment guidelines without any breach of the IOPC Funds' self-imposed limits, during a period of volatile financial changes in the international currency world.

5.5	<b>Report of the joint Investment Advisory Body</b> <b>Document IOPC/NOV23/5/5</b>	<b>92A</b>		<b>SA</b>
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- 5.5.1 The governing bodies took note of the report and the three-year self-evaluation of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund, contained at the Annex to document IOPC/NOV23/5/5. The governing bodies also noted the mandate and the composition of the IAB and recalled that Mr Alan Moore, Ms Beate Grosskurth and Mr Marcel Zimmermann had been appointed to serve until the 2023 regular sessions of the governing bodies.



- 5.5.2 The governing bodies noted that over the reporting period, the two major global trends that had dominated the financial markets for the previous two years had continued to prevail; namely the above-target inflation and rising interest rates in most major economies (excluding China and Japan).
- 5.5.3 The governing bodies noted that the headline inflation had come down from the peaks reached in 2022, but core inflation had proved persistent (either stabilising or continuing to rise) and that almost everywhere inflation remained well above central bank targets.
- 5.5.4 The governing bodies also noted that hedging activity to minimise the risk of adverse currency movements had been minimal in the previous 12 months, and that the exchange rates of currencies to which the IOPC Funds had an exposure, or other currencies that were also likely to have an impact, had been monitored daily.
- 5.5.5 The governing bodies noted that there were four incidents for which compensation was payable and required currency management:
- (i) *Agia Zoni II*: as at 7 June 2023, the amount of euros held was 55% of the total balance payable from the Major Claims Fund of EUR 38 035 269, and current hedging levels were considered appropriate;
  - (ii) Incident in Israel: the total amount of compensation payable was estimated at GBP 13 million, of which 39% was hedged by the purchase of Israeli shekels (ILS), which was considered appropriate;
  - (iii) *Bow Jubail*: the estimated liability was EUR 60 million, with SDR 20 million covered by the P&I Club, leaving some EUR 35 million to be financed by the IOPC Funds. A Major Claims Fund levy, proposed to the 1992 Fund Assembly at the November 2023 meetings of the governing bodies, should be hedged by the purchase of euros; and
  - (iv) *Princess Empress*: liability was estimated at USD 60 million, and the STOPIA 2006 liability limit of SDR 20 million, payable by the P&I Club, had been reached. Discussions regarding hedging for this incident were ongoing while information was gathered on settlement currencies.
- 5.5.6 The governing bodies noted that considering the challenges facing the global financial markets throughout the reporting period, credit markets had remained relatively calm. It was also noted that equity and bond markets had continued to recover after the political upheaval in the United Kingdom at the start of the fourth quarter of 2022.
- 5.5.7 The governing bodies noted that only a small number of the IOPC Funds' banks had been subjected to changes in their credit-rating outlooks by the main ratings agencies. It was also noted that the credit default swap spreads (CDS) had stayed mainly within tight ranges, with only the odd exception, over the reporting period and that capital ratios had remained at acceptable levels.
- 5.5.8 The governing bodies noted that the IAB had continued to monitor the IOPC Funds' financial risks on a daily basis. It was also noted that the United States regional banking sector had come under extreme pressure with the failure of several high-profile regional banks and that the financial markets had required close scrutiny to ensure that the IOPC Funds' counterparty banks were unaffected.

- 5.5.9 The governing bodies noted that continued inflationary pressures and high global interest rates had continued to be of particular interest and that the IAB had continued to monitor the impact on the economy of the United Kingdom, and on pounds sterling. The governing bodies noted that the IAB had continued to observe the creditworthiness of the IOPC Funds' counterparty banks in accordance with the approved investment guidelines. It was further noted that there had been no changes to the list of counterparty banks, other than the removal of Credit Suisse, with 34 banks remaining in the Group One and Group Two list. The governing bodies noted, however, that following the integration of the Credit Suisse business into UBS, Fitch had downgraded the short-term credit rating for UBS AG which had resulted in UBS being relegated from the Group One list of counterparties to Group Two.
- 5.5.10 The governing bodies noted that the IAB had met with the Secretariat on four occasions during the reporting period and had also met with the Audit Body and with the External Auditor by video conference. 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 returns on the IOPC Funds' investments. The governing bodies further noted that the IAB would leverage its broad knowledge and experience within the financial markets to advise the Secretariat of any future events that were likely to trigger periods of increased volatility that would relate to the security of the IOPC Funds' assets or have negative implications for the IOPC Funds' capital. The members of the IAB assured that they would continue to act with diligence, caution and prudence as they had done in the past.

#### *Debate*

- 5.5.11 The Chair of the 1992 Fund Assembly asked the IAB whether the increased volatility in the international financial currency markets had made it necessary to have a more extensive recourse to hedging contracts, and whether this had implied further budgetary outlays for the Funds.
- 5.5.12 The IAB responded that the current levels of hedging were satisfactory and that the outstanding hedges were being monitored on a regular basis with annual revaluations.

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

- 5.5.13 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the information provided by the joint IAB in its report and expressed their gratitude for the joint IAB's expert advice to the Secretariat and important contribution in safeguarding the assets of the 1992 Fund and the Supplementary Fund.

5.6	<b>Report of the joint Audit Body Document IOPC/NOV23/5/6</b>	<b>92A</b>		<b>SA</b>
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- 5.6.1 The governing bodies noted the report of the joint Audit Body and the review of the functioning of the seventh Audit Body contained in document IOPC/NOV23/5/6.
- 5.6.2 The governing bodies noted that the Audit Body had met three times during the reporting year and had worked according to a detailed programme of activities for its three-year tenure. They also noted that the work plan is adjusted regularly and is presented to the 1992 Fund Assembly and the Supplementary Fund Assembly every year. The governing bodies noted that the programme of activities of the Audit Body focused on six main areas in order to discharge its responsibilities under the Audit Body mandate, which were:
- (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.

- 5.6.3 The governing bodies noted that the Audit Body had devoted time to discussing the possibility, including the legal aspects, of invoicing contributors based on estimates when no oil reports had been submitted, in breach of the Conventions. The governing bodies recalled that, at their October 2022 meeting, they had instructed the Director to prepare, in consultation with the Audit Body, a draft Resolution to enable him to issue such invoices. They also recalled that the Director had also been instructed to introduce the relevant draft amendments to the relevant Internal Regulations. The governing bodies noted that the Audit Body had discussed and supported the draft Resolution N°13 for the 1992 Fund and the draft Resolution N°5 for the Supplementary Fund, and the amendments to the relevant Internal Regulations as indicated in document IOPC/NOV23/6/2.
- 5.6.4 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 2022.
- 5.6.5 The governing bodies noted that, at their October 2022 meeting, they had approved the re-appointment of the External Auditor, BDO, for a two-year term (2024 and 2025), as it had been proposed by the Audit Body due to special circumstances. The governing bodies had been informed that, in accordance with its mandate, the Audit Body would be working on the process for the selection of a new External Auditor. It was further noted that the Audit Body had prepared document IOPC/NOV23/6/4 on this matter to be discussed at the November 2023 sessions of governing bodies.
- 5.6.6 The governing bodies noted that, in accordance with the Composition and Mandate of the Audit Body, the functioning of the Audit Body was reviewed every three years. The governing bodies also noted that the Audit Body had conducted a structured self-assessment of its performance with comments provided by each Audit Body member, the external expert, the Chairs of the 1992 Fund Assembly and the Supplementary Fund Assembly, and the Director on behalf of the Secretariat, which had been summarised in the evaluation report (document IOPC/NOV23/5/6, Annex II). The governing bodies noted that the External Expert had performed this considerable task and that the Audit Body had benefitted from her expertise.
- 5.6.7 The governing bodies noted that the review had indicated that consideration of best practices should remain a focus of attention as such practices continued to evolve. The governing bodies also noted that it did not appear that the way in which the governing bodies had established the Audit Body and specified its work, nor the way in which responsibilities had been discharged, had resulted in any significant divergence from best practice. It was also noted that the review showed that there was no need to amend the mandate of the Audit Body.
- 5.6.8 The governing bodies noted that the functioning of the Audit Body depended on the tasks assigned to it by the governing bodies and cooperation with the Secretariat, the Chairs of the governing bodies and the External Auditor. It was reported that the cooperation with the Secretariat had been excellent, that the Chairs of the governing bodies had provided a valuable insight into the performance expected of the Audit Body, and that the assistance of the External Auditor had also been essential for the examination of the Audit Report.

- 5.6.9 The governing bodies noted that the different knowledge and expertise of the Audit Body members had been important for the functioning and performance of the Audit Body. It was also noted that the Audit Body had found it fruitful to examine other issues, such as how to minimise the financial risks for the IOPC Funds when insurance was provided by non-International Group insurers or how to minimise the potential loss for the IOPC Funds by invoicing contributors based on an estimated import of oil, when they had not submitted oil reports, in breach of the Conventions.
- 5.6.10 The Chair of the Audit Body thanked her Audit Body colleagues for their hard work over the last year. The Chair also thanked all members of the Secretariat, who had helped the Audit Body to discharge its responsibilities, and the Chairs of the governing bodies, who had attended the Audit Body meetings or otherwise provided wise counsel to their deliberations.
- 5.6.11 In closing, the Chair asked the 1992 Fund Assembly and Supplementary Fund Assembly to take note of the report of the Audit Body, to consider the joint Audit Body's recommendation regarding the adoption of the 2022 Financial Statements, to note the three-year review of the Audit Body and to provide comments and instructions as may be warranted.

#### *Debate*

- 5.6.12 The Chair of the 1992 Fund Assembly thanked the seventh Audit Body for its last report and commended the work of the members, which was not limited to ascertaining the adequacy and effectiveness of the IOPC Funds' management and financial systems, but also entailed performing other important tasks as requested by the governing bodies or undertaken under the Audit Body's own initiative.
- 5.6.13 The Chair of the Supplementary Fund Assembly also thanked the members of the seventh Audit Body for the work they had carried out during the last three years, including the policy matters that had been assigned to the Audit Body by the governing bodies, in particular in relation to 1992 Fund Resolution N°13 and Supplementary Fund Resolution N°5. He thanked the Chair of the Audit Body and recalled that she had been one of the driving forces behind the creation of the Supplementary Fund.
- 5.6.14 The Director also thanked the seventh Audit Body members for their work. He recalled that he had worked with the Chair of the Audit Body since the 1990s in the IOPC Funds and other international organisations. He said he had been delighted when the Chair was elected as a member of the Audit Body in 2017 and added that she was well known to the Funds from her time as a delegate. He recalled that the Chair had been elected as Vice-Chair in 2019 and as Chair of the Audit Body in 2020. The Director noted that the Chair knew the organisation well and that she had brought a wealth of knowledge, experience and renewed energy to the team. He commended the Chair's ability to find a compromise agreeable to all in sometimes difficult discussions. Finally, the Director, on behalf of the Funds, expressed appreciation for the Chair's service. The Director presented the Chair of the Audit Body with an inscribed glass ornament in recognition of her years of service as Chair of the Audit Body.
- 5.6.15 The Chair of the Audit Body thanked the Director and governing bodies. She expressed her sadness at leaving the IOPC Funds family and her appreciation to Member States, delegates, colleagues, and friends for their kindness and professionalism. She said she felt honoured to have participated in the work carried out by the organisation, which had important consequences for victims of oil pollution all over the world.

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

- 5.6.16 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the recommendation of the Audit Body to approve the 2022 Financial Statements and Auditor's Report and Opinions, and the three-year review of the Audit Body as set out at Annex II to document IOPC/NOV23/5/6.

5.7	<b>2022 Financial Statements and Auditor's Report and Opinions Documents IOPC/NOV23/5/7, IOPC/NOV23/5/7/1 and IOPC/NOV23/5/7/2</b>	<b>92A</b>		<b>SA</b>
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- 5.7.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/NOV23/5/7. The governing bodies dealt separately with their respective Financial Statements for the financial year 2022, contained in documents IOPC/NOV23/5/7/1 and IOPC/NOV23/5/7/2.
- 5.7.2 A representative of the External Auditor, BDO, Mr Steve Bladen, introduced the External Auditor's Report and Opinion for the 1992 Fund and the External Auditor's Opinion for the Supplementary Fund.
- 5.7.3 The governing bodies noted that the audit was well supported by the Secretariat and the working papers provided to the auditors were of good quality.
- 5.7.4 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 IOPC 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 IOPC 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.
- 5.7.5 The governing bodies noted with appreciation the Financial Statements of their respective organisations as well as the External Auditor's Report and Opinions. It was also noted that the External Auditor had provided an unmodified audit opinion on the 2022 Financial Statements for each organisation.
- 5.7.6 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.
- 5.7.7 The 1992 Fund Assembly noted that there were no new recommendations in the External Auditor's Report on the 2022 Financial Statements and no recommendations had been carried forward from previous years.

***1992 Fund Assembly decision***

- 5.7.8 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2022.

***Supplementary Fund Assembly decision***

- 5.7.9 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2022.

## 6 Financial policies and procedures

6.1	<b>Election of members of the joint Audit Body</b> <b>Documents IOPC/NOV23/6/1 and IOPC/NOV23/6/1/1</b>	<b>92A</b>		<b>SA</b>
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6.1.1 The governing bodies took note of the information contained in documents IOPC/NOV23/6/1 and IOPC/NOV23/6/1/1. They noted that the term of office of the present members of the joint Audit Body of the 1992 Fund and the Supplementary Fund would expire at the November 2023 sessions of the governing bodies and that the 1992 Fund Assembly would be invited to elect a new Audit Body.

6.1.2 The governing bodies noted that the joint Audit Body of the 1992 Fund and the Supplementary Fund was composed of seven members elected by the 1992 Fund Assembly for three years: six named individuals nominated by 1992 Fund Member States and one named individual not related to the organisations (an 'external expert') with expertise and experience in financial and audit matters, nominated by the Chair of the 1992 Fund Assembly.

6.1.3 The governing bodies further noted that, in response to a circular from the Director calling for nominations (IOPC/2023/Circ.4), eight nominations had been received from 1992 Fund Member States by the deadline of 15 September 2023:

Mr Alfred H.E. Popp, CM, K.C.	Nominated by Canada (for a second term)
Mr Arnold Rondeau	Nominated by France (for a second term)
Mr Volker Schöfisch	Nominated by the Federal Republic of Germany (for a first term)
Captain Anish Joseph	Nominated by India (for a first term)
Dr Hideo Osuga	Nominated by Japan (for a second term)
Captain Thomas F. Heinan	Nominated by the Marshall Islands (for a second term)
Mr Christoph Kagame Mungandjela	Nominated by the Republic of Namibia (for a first term)
Mr Watchara Chiemanukulkit	Nominated by the Kingdom of Thailand (for a first term)

6.1.4 The governing bodies noted that Mrs Alison Baker had been appointed as the external expert of the Audit Body for a term of three years from 1 January 2022 to 31 December 2024.

6.1.5 The governing bodies noted that, as there were only six vacancies for the named individuals nominated by 1992 Fund Member States, an election would take place. It was also noted that six members of the joint Audit Body would be elected from the eight candidates who had been nominated and put forward for election by Member States.

6.1.6 It was further noted that the Chair and Vice-Chair of the Audit Body would be appointed on the proposal of the Chair of the 1992 Fund Assembly, in consultation with the Chair of the Supplementary Fund Assembly, from among the six members elected.

### *Ballot procedure*

6.1.7 The governing bodies noted that the 1992 Fund Assembly had adopted a ballot procedure for the election of members of the Audit Body which was in accordance with the relevant Rules of Procedure, and which had become established practice. The governing bodies also noted that the November 2023 meeting was being held in person, complemented by a passive streaming service and that only those Member States represented in person would be able to cast a vote in the election of members for the joint Audit Body. The governing bodies further noted that the Director had therefore proposed that the ballot procedure should follow the established practice of previous in-person elections.

- 6.1.8 The governing bodies noted the standard ballot procedures proposed by the Director, as indicated under section 2 of document IOPC/NOV23/6/1/1.

***1992 Fund Assembly decision***

- 6.1.9 The 1992 Fund Assembly decided to adopt the proposed ballot procedure for the election of the Audit Body as set out in section 2 of document IOPC/NOV23/6/1/1 and appointed two scrutineers from 1992 Fund Member States present at the meeting, who would scrutinise the votes cast.

***Supplementary Fund Assembly***

- 6.1.10 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly in respect of the ballot procedure for the election of members of the joint Audit Body.

***Election results***

- 6.1.11 In accordance with their decision in paragraph 6.1.9 above to adopt the ballot procedures described in document IOPC/NOV23/6/1/1, the 1992 Fund Assembly carried out a vote by secret ballot, following the established practice of previous in-person elections.
- 6.1.12 Seventy-two States presented credentials which were in order and were therefore eligible to vote. A total number of 67 Member States posted a ballot paper. Sixty-six votes were valid and there was one invalid vote.
- 6.1.13 Following the closure of the voting period, and after the votes had been scrutinised, the results were announced as follows:

Dr Hideo Osuga (Japan)	55 votes
Mr Christoph Kagame Mungandjela (Namibia)	51 votes
Captain Anish Joseph (India)	50 votes
Mr Alfred H.E. Popp, CM, K.C. (Canada)	46 votes
Captain Thomas F. Heinan (Marshall Islands)	45 votes
Mr Volker Schöfisch (Germany)	41 votes
Mr Watchara Chiemanukulkit (Thailand)	40 votes
Mr Arnold P.Y. Rondeau (France)	39 votes

***1992 Fund Assembly decisions***

- 6.1.14 The 1992 Fund Assembly elected the following members of the Audit Body for a period of three years:

Mr Alfred H.E. Popp, CM, K.C. (Canada)  
 Mr Volker Schöfisch (Germany)  
 Captain Anish Joseph (India)  
 Dr Hideo Osuga (Japan)  
 Captain Thomas F. Heinan (Marshall Islands)  
 Mr Christoph Kagame Mungandjela (Namibia)

- 6.1.15 On the proposal of the Chair of the 1992 Fund Assembly and in consultation with the Chair of the Supplementary Fund Assembly, the governing bodies elected Mr Volker Schöfisch as Chair and Dr Hideo Osuga as Vice-Chair of the eighth Audit Body for the three-year term, until the 2026 regular session of the governing bodies.

**Supplementary Fund Assembly**

- 6.1.16 The Supplementary Fund Assembly noted the decisions of the 1992 Fund Assembly.

*Interventions by the Chairs of the 1992 Fund Assembly and the Supplementary Fund Assembly*

- 6.1.17 Speaking on behalf of the 1992 Fund Assembly, the Chair thanked the States who had nominated candidates. He also thanked the persons nominated for their willingness to serve on the Audit Body. He noted that the number of candidates had exceeded the available positions, which confirmed the importance that Member States attributed to the Audit Body and its functions. He also added that the fact that the elections had led to very close results was evidence of the generally high quality of all the candidates. He also thanked the outgoing members of the seventh Audit Body for their hard work and dedication.
- 6.1.18 The Chair of the Supplementary Fund Assembly congratulated the members of the new Audit Body and stated that he looked forward to working with them in the coming year.

*Intervention by the Director*

- 6.1.19 The Director congratulated the newly elected Audit Body members on their appointment and said that he was looking forward to working with them. He added that the Audit Body members played a very important role and that it was fortunate to benefit from their knowledge and experience. He stated that it was a privilege for the 1992 Fund Assembly to have the opportunity to elect six out of eight highly qualified candidates. The Director thanked the nominees who had not been elected, despite being excellent candidates, for their willingness to work in the Audit Body of the IOPC Funds.

6.2	<b>Measures encouraging the submission of oil reports – Draft Resolutions authorising the Director to issue invoices based on estimates</b> <b>Document IOPC/NOV23/6/2</b>	<b>92A</b>		<b>SA</b>
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- 6.2.1 The governing bodies took note of the information contained in document IOPC/NOV23/6/2 regarding the measures encouraging the submission of oil reports.
- 6.2.2 It was recalled that Member States had expressed concern that the non-submission of oil reports had been a long-standing issue. It was also recalled that, at their October 2019 sessions, the governing bodies had instructed the Director to examine, in consultation with the IOPC Funds' joint Audit Body, ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates if no oil reports were submitted.
- 6.2.3 The governing bodies recalled that, at their October 2022 sessions, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, and the Supplementary Fund Assembly had noted the work undertaken by the Secretariat and the Audit Body on this matter throughout 2021 and 2022 and the conclusions of the IOPC Funds' legal adviser in public international law, Professor Dan Sarooshi K.C., which provided a firm legal basis under the 1992 Fund Convention for the Director to issue, and for the governing bodies to authorise him to issue invoices retrospectively in relation to past periods.
- 6.2.4 It was also recalled that, at their October 2022 sessions, the governing bodies had endorsed the Director's proposal to issue a draft Resolution authorising him to invoice contributors based on estimates when no oil reports were submitted, and had instructed him to prepare, in consultation with the Audit Body, such draft Resolution and the relevant consequential amendments to the Internal Regulations.



- 6.2.5 The governing bodies noted that the 1992 Fund Assembly and the Supplementary Fund Assembly were required to adopt separate and distinct Resolutions for the 1992 Fund and Supplementary Fund since they are separate organisations. It was further noted that the Audit Body and the Director had therefore prepared separate draft Resolutions for the 1992 Fund and the Supplementary Fund and had drafted the consequential amendments to each organisation's Internal Regulations taking into account the specific requirements of each Fund.
- 6.2.6 The governing bodies noted that Dr Rosalie Balkin AO, in her capacity as the IOPC Fund's legal adviser in matters of public international law, had assisted the Secretariat and the Audit Body in the preparation of draft 1992 Fund Resolution N°13 and draft Supplementary Fund Resolution N°5 and the relevant draft amendments to the Internal Regulations. The governing bodies also noted that the Resolutions had been prepared taking into account the concerns of Member States, the issues discussed by the Secretariat and the Audit Body over several meetings, and the legal opinion provided by Professor Sarooshi K.C. It was further noted that Professor Sarooshi's legal opinion provided a firm legal basis under the 1992 Fund Convention for the Director to issue, and for the governing bodies to authorise the Director to issue, invoices to contributors based on estimated oil receipts; and to do so retrospectively in relation to past periods, despite the lack of a specific reference to this effect in the Conventions.
- 6.2.7 The governing bodies further noted that this matter had been extensively debated in 2022. The governing bodies noted that draft 1992 Fund Resolution N°13 built on previous Resolutions and reiterated the duties and obligations of States Parties to the 1992 Fund Convention, urging them to fulfil those obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention to provide reports in a timely manner and to take action to ensure the payment of contributions.
- 6.2.8 The governing bodies further noted that draft Supplementary Fund Resolution N°5 built on the draft 1992 Fund Resolution N°13 and reiterated the duties and obligations of States Parties to the Supplementary Fund Protocol, urging them to fulfil their obligations under Article 13.1 of the Supplementary Fund Protocol to provide reports in a timely manner and to take action to ensure the payment of contributions.
- 6.2.9 The governing bodies noted that Internal Regulation 4 of both the 1992 Fund and Supplementary Fund entitled 'Reports on Contributing Oil Receipts' required amendments as these Regulations did not cover the estimation of oil receipts. The governing bodies noted that the draft Resolutions and amended regulations and their application had been extensively discussed with Dr Balkin and the Audit Body and very carefully drafted. The governing bodies noted that these Resolutions were tools that would be applied only in those cases where there was sufficient reliable data; any such invoice would be in keeping with due process. The governing bodies noted that the Member State concerned would be involved and would be aware of the invoice and would be invited to commence a dialogue. It was also noted that the Director explained the application of the draft Resolution would include an invitation to present an oil report with additional information if it found that the estimated amount was incorrect.
- 6.2.10 The governing bodies noted that paragraph 8 of Resolution N°13 and Resolution N°5 stated that when issuing invoices in the event that no oil reports were submitted, the Director would:
- (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued;
  - (b) report fully at each regular session of the 1992 Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued; and
  - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued.

- 6.2.11 The governing bodies noted that paragraph 10 of Resolution N°13 and Resolution N°5 stated that the Audit Body was instructed to monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions, and to report to the 1992 Fund Assembly on its findings, including recommendations for further measures, as may be warranted.
- 6.2.12 The governing bodies noted that Dr Balkin, the Audit Body and the Secretariat had worked on the drafting of these Resolutions and consequential amendments to the relevant regulations since October 2022.

*Debate*

- 6.2.13 The Chair of the 1992 Fund Assembly thanked the Director for the introduction to document IOPC/NOV23/6/2 on the measures encouraging the submission of oil reports, and recalled that the governing bodies had already made a decision in principle, which had been taken at the October 2022 sessions authorising the Director to issue draft Resolutions and consequential amendments to the Internal Regulations, which would allow him to invoice contributors based on estimates if no oil reports were submitted.
- 6.2.14 All of the delegations which took the floor fully supported the adoption of the draft Resolutions and the consequential amendments to the Internal Regulations of the 1992 Fund and the Supplementary Fund.
- 6.2.15 One delegation noted that the manner in which these Resolutions were applied could incur the risk of potential litigation under the legislation of the Member States.
- 6.2.16 A large number of delegations highlighted and recognised the importance of the submission of oil reports to enable the proper functioning of the compensation regime, noting that the Resolutions provided a tool for the Director to issue invoices to contributors who had not previously submitted them. The invoices would be based on estimates where there was available sufficient reliable information to produce such an estimate.
- 6.2.17 Those delegations expressed their appreciation for the efforts made by the Director to find innovative solutions to ensure that contributors complied with their obligations to submit oil reports, noting that the proposed solution enabled further actions to be taken beyond the ordinary diplomatic steps normally undertaken to engage with contributors.
- 6.2.18 One delegation noted that when the Director issued invoices on an estimated basis when no oil reports were submitted by Member States, the relevant oil receivers who received such invoices would be entitled to correct the estimation if they considered the figures were incorrect, and they could submit correct information to their government and to the IOPC Funds' Secretariat. That delegation stated that issuing invoices on an estimated basis, would encourage communications among the Secretariat, the Member State and the contributors and would enable the Funds to obtain the information necessary to receive oil reports.
- 6.2.19 That delegation requested the Director to estimate the amount of oil receipts properly, while noting that the estimation, by definition, might not always be precise. That delegation stated that in this regard, an underestimation was worse than overestimation, since the receivers would submit correct information if they believed the estimated amount was too high, while they might choose to keep silent if the estimated amount was too low.
- 6.2.20 That delegation noted that the Resolutions served as an initial step. That delegation encouraged the Director to continue to monitor the process to enhance its fairness and equity, and to keep the governing bodies informed so that they could decide to take further steps if necessary.

- 6.2.21 In reply to that delegation, the Director stated that the work on the Resolution would not constitute an end to the Secretariat's endeavours to seek ways to improve the submission of oil reports and payment of contributions, and the Secretariat would continue its efforts to ensure proper reporting and payment of contributions and would inform the governing bodies of any developments.
- 6.2.22 One delegation requested the Director to provide clarification on the selective approach to the issuing of invoices based on estimates as this could create concerns. It also requested the Director to provide clarification on the way in which the invoices would be issued retrospectively in relation to past periods. That delegation also requested clarification on the meaning of the wording 'and the basis on which such invoices had been issued' that appeared in paragraph 8 of Resolution N°13 and Resolution N°5. That delegation also noted that the implementation of the proposed Resolutions seemed to be time consuming and challenging and asked whether this would not place an extra burden on the Secretariat which would require additional staff and budget resources. The delegation asked the Director whether the risk of a dispute if there was a disagreement when issuing invoices had been considered.
- 6.2.23 In response to that delegation, the Director stated that the use of the estimates and how far back they would be used for, would depend on the quantity and accuracy of data available, as there was little reason to apply estimates automatically if no such data was available. The Director stated that in relation to the question of whether extra staff and resources would be required, significant efforts were already being made to pursue contributors that did not submit oil reports, so the proposals in the Resolutions might actually serve to reduce the work required. Finally, the Director reiterated that the estimates would be used to engage and communicate with contributors and States and that the application of Resolution N°13 would not cancel out the effect of Resolution N°12, since if the invoice issued on the basis of estimates proposed under Resolution N°13 did not produce results, the State concerned would still be subject to Resolution N°12. The Director also acknowledged the possibility of a dispute and said that any decision to pursue matters in court would depend on many factors such as the amount of money in dispute, the legal situation in that State and the costs involved.
- 6.2.24 In summarising the debate and noting the overwhelming support to adopt the Resolutions and consequential amendments to the Internal Regulations, the Chair of the 1992 Fund Assembly stated that it was important that the estimates be as factual as possible and that invoices would only be issued if there was relevant and sufficient data for the current and retrospective years. Noting further that it was important that the process be transparent, the Chair stated that the Director's submission, the data relied upon, and the means of calculating the estimates would be provided to the 1992 Fund Assembly and the process would also be overseen by the Audit Body. The Chair concluded that the process should be seen as a means to increase the dialogue between contributors, the State and the Secretariat.

***1992 Fund Assembly decision***

- 6.2.25 The 1992 Fund Assembly decided to adopt the proposed draft Resolution N°13, as set out in Annex II to this document, and the consequential amendments to the 1992 Fund Internal Regulations, as set out in Annex IV to this document.

***Supplementary Fund Assembly decision***

- 6.2.26 The Supplementary Fund Assembly decided to adopt the proposed draft Resolution N°5, as set out in Annex III to this document, and the consequential amendments to the Supplementary Fund Internal Regulations, as set out in Annex IV to this document.

6.3	<b>Appointment of members of the joint Investment Advisory Body</b> <b>Document IOPC/NOV23/6/3</b>	<b>92A</b>		<b>SA</b>
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- 6.3.1 The governing bodies took note of the information contained in document IOPC/NOV23/6/3 regarding the mandate of the joint IAB and its role in advising the Director on matters relevant to the investments of the IOPC Funds. The governing bodies noted that the IAB was composed of three members appointed by the 1992 Fund Assembly for three years.
- 6.3.2 The governing bodies noted that the mandate of the current IAB members, Mr Alan Moore, Ms Beate Grosskurth and Mr Marcel Zimmermann, expired in November 2023. The governing bodies also noted that the Director proposed that the three current IAB members be reappointed for a full three-year term, until the regular sessions of the IOPC Funds' governing bodies in 2026.
- 6.3.3 The governing bodies also noted that even though there was no requirement for a prescriptive rotation of the IAB members, the Director had consulted with the Audit Body on this matter in order to develop rotation and succession planning guidelines for consideration by the governing bodies.
- 6.3.4 The governing bodies noted that the unique structure of the IOPC Funds and the nature of its work and the context in which it operated required highly experienced technical experts with a clear understanding of the IOPC Funds' culture which could only be acquired after several years of serving on the IAB. The governing bodies also noted that, in order to minimise the loss of institutional knowledge and technical expertise upon the departure of IAB members, the Director proposed that:
- (i) future members of the IAB should be appointed for three-year terms up to a maximum of twelve years;
  - (ii) a new IAB member would be appointed only when the other two remaining members had served a minimum of three years but not more than nine years at the time of the appointment in order to ensure a staggered IAB composed of experienced members with different service terms and vast institutional knowledge, and the continuity of the work of the IOPC Funds; and
  - (iii) the Director should retain the necessary flexibility to extend, exceptionally, the tenure of the IAB members, beyond their fourth three-year term, if so required as a result of unforeseeable and unexpected circumstances beyond the Director's control.
- 6.3.5 The governing bodies noted that the IAB was a very specialised body and that the Director relied heavily on their advice in relation to investment and currency matters which was fundamental to the protection of the Funds' assets.

#### *Debate*

- 6.3.6 The Chair of the 1992 Fund Assembly submitted for the Assembly's approval the general guidelines proposed by the Director to limit the service of the IAB members with the caveat that the Director would be allowed to extend, exceptionally, the tenure of the IAB members, beyond their fourth three-year term, if so required.
- 6.3.7 Several delegations supported the reappointment of the three current members of the IAB and the rotation and succession planning guidelines developed for the appointment of the members of the IAB in the future.

**1992 Fund Assembly decisions**

- 6.3.8 The 1992 Fund Assembly decided to reappoint Ms Beate Grosskurth, Mr Alan Moore and Mr Marcel Zimmermann as members of the IAB for a term of three years, until the regular sessions of the governing bodies in 2026.
- 6.3.9 The 1992 Fund Assembly further decided to approve the rotation and succession planning guidelines developed for the appointment of the members of the IAB in the future, as set out in section 3 of document IOPC/NOV23/6/3.

**Supplementary Fund Assembly**

- 6.3.10 The Supplementary Fund Assembly took note of the decisions of the 1992 Fund Assembly.

6.4	<b>Appointment of the External Auditor</b> <b>Document IOPC/NOV23/6/4</b>	<b>92A</b>		<b>SA</b>
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- 6.4.1 The governing bodies took note of the information contained in document IOPC/NOV23/6/4 submitted by the Audit Body, on the appointment of the External Auditor, which was presented by Mrs Alison Baker, External Expert on the joint Audit Body.
- 6.4.2 The governing bodies noted that the term of office of the current External Auditor to the IOPC Funds, BDO, would come to an end following its report on the 2025 Financial Statements to the regular sessions of the IOPC Funds' governing bodies in 2026.
- 6.4.3 The governing bodies also noted that the management of the selection process of the External Auditor fell within the mandate of the Audit Body. The governing bodies recalled that no valid nominations had been received in response to the Circulars of November 2013 and February 2014 inviting the submission of nominations by Member States. It was also noted that in order to generate interest in the position of External Auditor and to avoid the risk of another unsuccessful process, the governing bodies had allowed for the inclusion of commercial firms in the tender process.
- 6.4.4 The governing bodies noted that there were various stages to the tender process with much of the work involved performed by the Secretariat, on behalf of the Director, who issued the formal invitation to Member States for nominations and invitations to commercial firms. It was further noted that the Secretariat also facilitated the familiarisation process whereby audit organisations could be briefed as to the operation of the IOPC Funds.
- 6.4.5 The governing bodies noted that in order to secure a smooth transition of responsibilities, it would be necessary to recommend the appointment of a new External Auditor at the November 2024 sessions of the governing bodies to audit the Financial Statements for the years 2026 to 2029 inclusive. It was also noted that the tender process would be initiated in late 2023 with a view to recommending a new External Auditor to the November 2024 meeting of the governing bodies, and that the new auditor would 'shadow' BDO through the 2025 audit process to ensure a smooth transition for 2026 and beyond.
- 6.4.6 The governing bodies recalled that, at their October 2014 sessions, they had approved key factors to be considered in the evaluation of candidates for the position of External Auditor of the IOPC Funds, which they had later discussed at their meeting in April 2023, which were attached at the Annex to document IOPC/NOV23/6/4. The governing bodies took note of the timetable of the audit tender evaluation process under section 3.

*Debate*

- 6.4.7 One delegation commented that the External Auditor was required to have an in-depth knowledge of the IOPC Funds' financial and internal regulations and the budgetary process, as well as a clear understanding of the claims-handling process, and that these required factors should be fully reviewed in advance of an appointment. That delegation supported the proposed audit tender evaluation process and timetable and requested that the Director seek Member State and commercial firm nominees for the position of External Auditor of the IOPC Funds.

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

- 6.4.8 The 1992 Fund Assembly and Supplementary Fund Assembly decided to approve the proposed audit tender evaluation process and timetable, and instructed the Director to seek Member State and commercial firm nominees for the position of External Auditor of the IOPC Funds.

6.5	<b>Amendments to Internal Regulations</b> <b>Document IOPC/NOV23/6/5</b>	<b>92A</b>		<b>SA</b>
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- 6.5.1 The governing bodies took note of the information contained in document IOPC/NOV23/6/5.
- 6.5.2 It was recalled that, as reported at the May 2023 sessions of the governing bodies, the Director had introduced a number of changes to the structure of the Secretariat. It was noted that, as a result of those changes, amendments were required to 1992 Fund and Supplementary Fund Internal Regulation 12 in respect of the delegation of authority in the absence of the Director. The governing bodies noted the proposed amendments to the Regulation as set out in the Annex to document IOPC/NOV23/6/5.

***1992 Fund Assembly decision***

- 6.5.3 The 1992 Fund Assembly decided to amend 1992 Fund Internal Regulation 12 in respect of the delegation of authority, as set out at Annex V to this document.

***Supplementary Fund Assembly decision***

- 6.5.4 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly and decided to amend Supplementary Fund Internal Regulation 12 in respect of the delegation of authority, as set out at Annex V to this document.

6.6	<b>Amendments to Financial Regulations</b> <b>Document IOPC/NOV23/6/6</b>	<b>92A</b>		<b>SA</b>
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- 6.6.1 The governing bodies noted that the information contained in document IOPC/NOV23/6/6 regarding amendments to the Financial Regulations of both the 1992 Fund and the Supplementary Fund.
- 6.6.2 It was noted that the proposed amendments were a result of recent changes within the Secretariat, a change to the Internal Investment Guidelines and a suggestion from the IAB.

**1992 Fund Assembly decision**

6.6.3 The 1992 Fund Assembly decided to amend the following 1992 Fund Financial Regulations:

- (i) 9.2 relating to the management of monies;
- (ii) 10.4 regarding the investment of assets; and
- (iii) Annex I relating to the mandate of the joint Investment Advisory Body.

6.6.4 The amended Regulations are set out at Annex V to this document. The amended mandate of the joint Investment Advisory Body is set out at Annex VII to this document.

**Supplementary Fund Assembly decision**

6.6.5 The Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly in respect of its Financial Regulations and decided to make corresponding amendments to the following Financial Regulations of the Supplementary Fund:

- (i) 9.2 relating to the management of monies;
- (ii) 10.4 regarding the investment of assets; and
- (iii) Annex I relating to the mandate of the joint Investment Advisory Body.

6.6.6 The amended Regulations are set out at Annex VI. The amended mandate of the joint Investment Advisory Body is set out at Annex VII to this document.

**7 Secretariat and administrative matters**

7.1	<b>Secretariat matters</b> <b>Document IOPC/NOV23/7/1</b>	<b>92A</b>		<b>SA</b>
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7.1.1 The governing bodies took note of the information contained in document IOPC/NOV23/7/1 regarding the operation of the Secretariat.

7.1.2 The governing bodies noted that there were 36 posts within the structure of the Secretariat, however, there were 24 staff members working in the Secretariat as at 1 September 2023. The governing bodies also noted that there were six vacant posts in the Professional category and six vacant posts in the General Service category as at 1 September 2023.

*Changes to staff members since October 2022*

7.1.3 The governing bodies noted that taking into account Mr Thomas Liebert's medical condition, the Director had decided to transfer him permanently out of the Head, External Relations and Conference Department role to a newly created post of HNS Project Officer. The governing bodies also noted that Mr Liebert was transferred to the role of HNS Project Officer, Office of the Director, with effect from 1 June 2023.

7.1.4 The governing bodies further noted that as the Director only has the authority to create a new post up to the P3 level, the new post of HNS Project Officer was classified at the P3 grade. However, the Director had decided to maintain Mr Liebert's personal grade of D1.

- 7.1.5 The governing bodies noted that further to the transfer of Mr Thomas Liebert, the Director had decided to revise the P5/D1 dual graded Head, External Relations and Conference Department job description and to reclassify it to P4 grade with a new title of External Relations and Conference Manager.
- 7.1.6 The governing bodies also noted that with effect from 1 June 2023, the Director had decided to move the External Relations and Conference functions of the organisation to form a new section of the Administration Department and had appointed Ms Victoria Turner, Information Officer (P3), to the role of External Relations and Conference Manager (P4), Administration Department, with effect from 1 June 2023.
- 7.1.7 The governing bodies noted that the Director had decided to move Ms Ana Cuesta, from her P2 Claims Manager Post to the vacant P3/P4 dual graded Claims Manager post, and in doing so promoted Ms Cuesta to the P3 grade with effect from 1 June 2023.
- 7.1.8 The governing bodies further noted that Ms Julia Sükan del Río had resigned from her position of External Relations and Conference Coordinator with effect from 20 October 2022 and Ms Christine Galvin has been appointed to the position with effect from 1 October 2023.
- 7.1.9 The governing bodies also noted that Ms Dušanka Šupica was appointed to the position of External Relations and Conference Assistant, Administration Department, with effect from 1 February 2023.

#### *Parental leave*

- 7.1.10 The governing bodies noted that following the establishment of a new parental leave framework by IMO, the Director had decided to introduce the corresponding parental leave framework, thereby replacing the current maternity, paternity and adoption leave provisions with a unified parental leave provision of 16 weeks for all parents and an additional period of 10 weeks for the birth parent, effective 1 January 2023.

#### *Provident Fund*

- 7.1.11 The governing bodies noted the Director's inflation protection measure proposal in order to protect mandatory contributions to the Provident Fund (PF1) from negative real interest rates. The governing bodies noted that the Director proposed that when determining the interest applicable to PF1 a comparison is done between PF1 interest and the most recently published United Kingdom Consumer Price Index (CPI) figure. In the event that the CPI rate exceeds the 'PF1 interest rate', interest paid on mandatory contributions would be uplifted to the CPI rate. The governing bodies also noted that interest on voluntary contributions would always be paid at the 'PF1 interest rate'.
- 7.1.12 The governing bodies further noted that the Director proposed that the cost of any uplift of interest paid on mandatory PF1 contributions from the PF1 interest rate to the CPI rate would be funded from the existing appropriations adopted by the 1992 Fund Assembly for that financial year.
- 7.1.13 The governing bodies noted that the Director's proposal would require an amendment to the Staff Rule VIII.5–Provident Fund in order to protect mandatory contributions to PF1 from negative real interest rates.
- 7.1.14 The governing bodies also noted that the Director intends to carry out a full review of the Provident Fund scheme next year.



*Work experience placements policy*

- 7.1.15 The governing bodies noted that the Director had introduced a new work experience placement policy earlier in 2023, to provide current staff member's children, who are at least 16 years of age and who are studying, the opportunity to be introduced to the activities of the IOPC Funds and the Secretariat.

*Debate*

- 7.1.16 One delegation, whilst welcoming the consideration of measures to protect mandatory contributions to PF1 from negative real interest rates, raised concerns that the proposed policy change could introduce a potential adverse impact and exposure for the 1992 Fund's administrative budget. The same delegation stated that since the amendments do not establish any numerical or hard 'cap' on the CPI, which is to be deemed as the default interest rate whenever inflation exceeds the PF1 interest rate, the 1992 Fund may be significantly exposed during periods of high inflation or hyperinflation.
- 7.1.17 The Chief of Finance explained that the 1992 Fund Assembly would have several opportunities to approve or limit the implementation of the new measure. Expenditure incurred under this measure would be reported in Chapter I—Personnel. If expenditure in this Chapter exceeded budget by more than 10%, the 1992 Fund Assembly would need to approve a transfer within the budget from another Chapter. If expenditure as a result of this measure were to cause an overspend on the overall administrative budget, the 1992 Fund Assembly would need to approve that too. In the event of hyperinflation, this measure would be one of many issues which the 1992 Fund Assembly would need to debate as the entire administrative budget would be under pressure.
- 7.1.18 In relation to the composition of the Secretariat, another delegation requested the Director to encourage a wide geographical representation of Member States in future recruitment processes.
- 7.1.19 The Human Resources Manager explained that all vacancies for posts in the Professional and higher categories are sent via circular to all 1992 Fund Member States and all qualified candidates are encouraged to apply. The Director also mentioned that the Secretariat actively tries to have a good representation of Member States, whilst recognising that the IOPC Funds' Secretariat is very small in size.

***1992 Fund Assembly decisions***

- 7.1.20 The 1992 Fund Assembly noted the amendments to the 1992 Fund Staff Rules in respect of Staff Rules: V.2—Special leave, VI.7—Last day for pay purposes, and VIII.2—Parental leave, and also Annex A, Annex C and Annex E of the 1992 Fund Staff Rules.
- 7.1.21 The 1992 Fund Assembly approved the Director's proposal to amend Staff Regulation 19 and Staff Regulation 26(a) as a result of the amendment to Staff Rule VIII.2—Parental leave, as set out in Annex VIII to this document.
- 7.1.22 The 1992 Fund Assembly approved the Director's proposal to introduce an inflation protection measure to protect mandatory contributions to PF1 from negative real interest rates, to be funded from the existing appropriations adopted by the 1992 Fund Assembly for that financial year, and to amend Staff Rule VIII.5—Provident Fund with effect from 1 January 2024, as set out at Annex IX to this document.

**Supplementary Fund Assembly**

- 7.1.23 The Supplementary Fund Assembly noted the information provided and the amendments to the 1992 Fund Staff Rules.

7.2	<b>Information services</b> <b>Document IOPC/NOV23/7/2</b>	<b>92A</b>		<b>SA</b>
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- 7.2.1 The governing bodies noted the information contained in document IOPC/NOV23/7/2 regarding the information services provided by the Secretariat.
- 7.2.2 Key developments in the services it provides were reported to the governing bodies. It was noted in particular, that since the October 2022 meeting of the IOPC Funds' governing bodies, the Secretariat had introduced the facility to register online for the Annual Academy, the Induction Course and the webinar sessions. This has made it a far more efficient service for the participants when registering, and also for the Secretariat in terms of management of the events.
- 7.2.3 It was also noted that the occurrence of the *Princess Empress* incident in February 2023 had prompted the creation of a specific 'Information for Claimants' area of the IOPC Funds' website for that incident, which had proved useful. It was noted that this new page was available in Tagalog, as well as the three official languages of the IOPC Funds and that relevant claim forms were also available in English and Tagalog.
- 7.2.4 Delegations were encouraged to register for an IOPC Funds' document services account to ensure they are kept up to date on IOPC Funds' matters and to facilitate the submission of credentials and registration for meetings. They were also encouraged to follow the organisation on social media via the [@IOPCFunds](#) account on X (formerly Twitter) and the [IOPC Funds' page](#) on LinkedIn.
- 7.2.5 Member States were also encouraged to submit copies of their national legislation relevant to the 1992 Civil Liability and Fund Conventions, and, if applicable, the Supplementary Fund Protocol to the Secretariat for inclusion in their Member State online country profile.
- 7.2.6 It was noted that only 32 1992 Fund Member States had provided information to the Director, in accordance with 1992 Fund Resolution N°4, in respect of the establishment of any EEZ or designated area under Article 3(a)(ii) of the 1992 Fund Convention. It was recalled that, at its 1st session, the 1992 Fund Assembly had recognised that in order to determine the geographical scope of application of the 1992 Fund Convention in respect of a given Member State, it was necessary for the 1992 Fund to know such information.
- 7.2.7 It was noted that the Secretariat had therefore contacted the UN Division for Ocean Affairs and the Law of the Sea (UN DOALOS) to request permission to use the information relevant States had already provided to that office on the same subject, and which already appears on the DOALOS section of the UN website. The Secretariat reported that, in the event that permission was granted, the Secretariat would be able to obtain the information pertaining to many of the States which had not yet provided it to the Director. However, in the meantime, Member States were still kindly requested to directly forward the missing information to the Director in accordance with 1992 Fund Resolution N°4.
- 7.2.8 The governing bodies noted the publications that had been made available since October 2022 and the intention of the Secretariat to continue to assess demand for printed copies of certain publications. It was noted that further publications would likely be made available only in electronic format in the coming year.

- 7.2.9 In order to ensure the data within the organisation's customer relationship management (CRM) system are kept up to date, all delegations were urged to keep the Secretariat informed of any changes in staff, in particular Heads of delegations, or changes in specific contact details, such as email addresses.
- 7.2.10 It was noted that the Secretariat maintained specific records of a Member State's general focal point for IOPC Funds' matters and a separate focal point for oil reporting matters, which may or may not be the same person. The Secretariat thanked all those States who had responded to its recent request for confirmation of a designated general focal point and encouraged all those yet to respond to do so at their earliest convenience. It was noted that, in general, any updates to contact details should be sent to [externalrelations@iopcfunds.org](mailto:externalrelations@iopcfunds.org).

#### *Debate*

- 7.2.11 One delegation thanked the Secretariat for the various information services provided, which it considered had made the IOPC Funds far more accessible.

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

- 7.2.12 The governing bodies noted the information reported regarding the information services provided by the Secretariat.

7.3	<b>Support provided to Member States Document IOPC/NOV23/7/3</b>	<b>92A</b>		<b>SA</b>
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- 7.3.1 The governing bodies noted the information contained in document IOPC/NOV23/7/3 regarding the training, educational and outreach activities delivered by the Secretariat since October 2022 and the activities and support services it is planning to offer to Member States in 2024.
- 7.3.2 It was noted that, since the October 2022 sessions of the governing bodies, the Secretariat had continued to collaborate with and support activities organised under the umbrella of IMO or by other organisations with whom the IOPC Funds work closely. It had also organised a number of in-person customised training activities and contributed to a number of webinars.
- 7.3.3 The Secretariat confirmed that it remained committed to creating awareness of the international liability and compensation regime, and increasing knowledge of the role of the organisation. To that end, it reported on the international and regional conferences it had participated in during 2023 and the various university and educational institutions it had hosted or lectured at during the past year.
- 7.3.4 With specific focus on providing training to Member States, the Secretariat reported that the IOPC Funds' Annual Academy (formerly known as the 'Short Course') had taken place in London during the week of 12 June 2023 with participants from 15 Member States of the 1992 Fund, representing maritime administrations, environment or transport departments and others. It was noted that the dates for the 2024 Academy and the deadline for nomination by governments would be announced later in the year.
- 7.3.5 It was further noted that the IOPC Funds had also run a half-day Induction Course for delegates of 1992 Fund Member States immediately prior to the November 2023 sessions of the governing bodies, on 6 November 2023. It was noted that 19 Member States of the 1992 Fund had taken advantage of this training opportunity by putting forward members of their delegations to participate.

- 7.3.6 It was also noted that in March and July 2023, the Director had hosted informal lunch meetings at the IOPC Funds' offices for the UK-based representatives of States from the European region and from the Latin American and Caribbean region respectively. The Secretariat confirmed that these events provided a valuable occasion to strengthen Member State engagement and that further such meetings for other regions were planned for 2024.
- 7.3.7 The governing bodies noted that the Secretariat had launched a series of short webinars, with a programme of 11 events planned to cover a wide range of topics, from the basic understanding of the Conventions to the financing of the system, the types of claims arising from tanker incidents, and the claims submission process. Each webinar will consist of a short 15-minute presentation followed by a 15-minute Q&A session.
- 7.3.8 It was reported that the first introductory session had successfully taken place on 18 October 2023 attracting participants from governments, industry, insurers, fellow maritime-related organisations, lawyers, oil spill response experts and more, representing a global audience. It was announced that the second webinar in the series, 'Understanding the Conventions – What should be included in your domestic legislation?', would take place on 4 December 2023 and that registration was already open online.
- 7.3.9 In addition to many of the activities described in document IOPC/NOV23/7/3, it was noted that the Director had been personally invited to meetings with a number of governments and that during those visits he had met with key representatives and stakeholders to discuss specific issues or areas of interest. Furthermore, it was reported that the Director had welcomed a number of newly appointed representatives of Member States, fellow organisations and industry representatives to the IOPC Funds' offices in London for valuable meetings during 2023.
- 7.3.10 States were encouraged to contact the Secretariat and take advantage of the different training activities offered by the IOPC Funds or, alternatively, to discuss their training needs with the IMO Technical Cooperation Division, with whom the IOPC Funds continues to work closely.
- 7.3.11 Member States were reminded that the Director and the Secretariat remained available to assist them either through formal training or informal meetings and to provide support as required.

#### *Debate*

- 7.3.12 One delegation thanked the Secretariat for the information provided on both the activities delivered in the past year and also in respect of those planned in 2024. In particular, that delegation thanked the Director for his participation in the Regional Meeting of Directors/Heads of Maritime Administrations (DIHMAR) of the Caribbean, which was held Antigua and Barbuda in June 2023. That delegation expressed the view that such meetings, and the Director's presence at them, will assist with improving Member State's compliance with the relevant Conventions. That delegation stated it that it looked forward to the Director's attendance, if possible, at future DIHMAR meetings.
- 7.3.13 The delegation of Ecuador thanked the Secretariat for the various training activities and events, both in-person and remote, that it had delivered. That delegation commented that the Secretariat's commitment to regularly engaging with Member States was fundamental not only in relation to their capacity building efforts and preparedness to respond to an oil spill, but also in respect of their understanding of the international liability and compensation regime. That delegation thanked the Secretariat for all its work to strengthen the already excellent cooperation between the IOPC Funds and Ecuador and reported that a national workshop was planned with the Secretariat in early 2024 which would focus on the State's national contingency plan and the correct implementation of the relevant Conventions into its national law.

- 7.3.14 The Chair of the 1992 Fund Assembly noted the positive responses to the outreach activities and support provided by the Secretariat to Member States and stated that it was encouraging to hear the impact on Member States' relationships with the organisation and their compliance with their obligations under the 1992 Conventions.

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

- 7.3.15 The governing bodies noted the information relating to the support provided to Member States and the encouragement by the Director to States to contact the Secretariat, should they have any training or support requirements.

7.4	<b>European Union General Data Protection Regulation Document IOPC/NOV23/7/4</b>	<b>92A</b>		<b>SA</b>
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- 7.4.1 The 1992 Fund Assembly and Supplementary Fund Assembly took note of document IOPC/NOV23/7/4, which contained information on the application of the General Data Protection Regulation (GDPR) of the EU and Directive 2016/680 (Directive) to the IOPC Funds, and on the Secretariat's engagement towards the implementation of the GDPR and the Directive.
- 7.4.2 The governing bodies recalled that the Secretariat had sought 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 applied to the IOPC Funds and that the IOPC Funds could have its own position as to its application.
- 7.4.3 The governing bodies also recalled 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.
- 7.4.4 The governing bodies further recalled 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. They further recalled that on 28 June 2021, the EU Commission adopted two 'adequacy decisions' for the UK, thereby recognising that UK data protection legislation provide an essentially equivalent level of protection to that guaranteed under EU law, and the decisions permitted the free flow of personal data between the UK and the EU and were subject to a review after a period of four years.
- 7.4.5 It was 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.
- 7.4.6 It was also 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 further recalled that the Secretariat had identified personal data held by the IOPC Funds and had also drafted a Data Protection Policy; Data Privacy Notices for claimants; General Data Privacy Notice for all other persons who have had dealings with the IOPC Funds; and a Data Classification and Retention Policy. It was noted that the Secretariat had also considered the provisions necessary to be inserted into various types of contracts which the IOPC Funds conclude, including the experts' contracts which are normally concluded with insurers and experts in the claims-handling process.
- 7.4.7 The governing bodies recalled that the Secretariat had also 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.

- 7.4.8 It was noted that with the assistance of the expert engaged to implement the principles of the GDPR, the staff of the IOPC Funds had received preliminary training on the concept of data protection, which would be expanded upon with further department-specific training using the MIP when fully installed, to ensure each individual was aware of their duties and responsibilities under the IOPC Funds' data protection system.
- 7.4.9 It was also noted that the Secretariat had continued to make substantial progress with the tasks required for implementing the principles of the GDPR, and had recently designed an IT training platform upon which staff would be trained in the last quarter of 2023 and first quarter of 2024, in readiness for the full implementation of the system.

*Intervention by the observer delegation of the International Group of P&I Associations*

- 7.4.10 The observer delegation of the International Group of P&I Associations stated that it welcomed the development that the Secretariat was working on a data protection system and that it would be good practice for the IOPC Funds to ensure that similar policies and procedures, as contained within the GDPR, were put in place.
- 7.4.11 Noting that the delegation worked closely with the Secretariat, and given that the majority of International Group Clubs were headquartered and regulated in jurisdictions subject to GDPR, that delegation stated it looked forward to concluding the work on the expert contract wording in order to reach a mutually agreeable position with regard to GDPR.

**1992 Fund Assembly and Supplementary Fund Assembly**

- 7.4.12 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided on the GDPR, and also noted that cooperation with the P&I Clubs and the safety of personal data was of paramount importance, both in the collection of claimants' data and in relation to oil reports. It was noted 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.

7.5	<b>Appointment of members and substitute members of the Appeals Board</b> <b>Document IOPC/NOV23/7/5</b>	<b>92A</b>		
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- 7.5.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV23/7/5.

*Developments since the November 2021 session of the 1992 Fund Assembly*

- 7.5.2 The 1992 Fund Assembly noted that since their appointment in November 2021, Board member Mr Marios Stephanides (Cyprus), along with substitute members H.E. Ms Geneviève Jean-van Rossum (France) and Mr Jaehyung Ryoo (Republic of Korea), had returned to their capitals and could no longer serve on the Appeals Board.
- 7.5.3 It was also noted that the Director had invited Dr Christos Atalianis (Cyprus), H.E. Mrs Marine de Carné-Trécession (France) and Mr Suho Lee (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*

- 7.5.4 The 1992 Fund Assembly noted that Mrs Fernanda Millicay (Argentina) had agreed to serve as a member of the Appeals Board in place of Mr Marios Stephanides (Cyprus), as she was the longest-serving substitute member.
- 7.5.5 It was also noted that 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 2025.

*Debate*

- 7.5.6 The 1992 Fund Assembly expressed its appreciation to both the outgoing and incoming members and substitute members of the Appeals Board.

**1992 Fund Assembly decision**

- 7.5.7 The 1992 Fund Assembly appointed the following members and substitute members of the Appeals Board to hold office until the November 2025 session of the 1992 Fund Assembly:

## Members:

Mrs Fernanda Millicay (Argentina)  
 Mr Kohichi Yamagishi (Japan)  
 Sir Michael Wood (United Kingdom)

## Substitute members:

Dr Christos Atalianis (Cyprus)  
 H.E. Mrs Marine de Carné-Trécesson (France)  
 Mr Suho Lee (Republic of Korea)

**8 Treaty matters**

8.1	<b>Status of the 1992 Fund Convention and the Supplementary Fund Protocol</b> <b>Document IOPC/NOV23/8/1</b>	<b>92A</b>		<b>SA</b>
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- 8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of document IOPC/NOV23/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.2 It was noted that the 1992 Fund Convention had entered into force for Guinea-Bissau on 12 May 2023, and, therefore, at the time of the November 2023 sessions of the governing bodies, there were 121 Member States of the 1992 Fund.
- 8.1.3 It was further noted that at the time of the November 2023 sessions of the governing bodies, there were 32 Member States of the Supplementary Fund.
- 8.1.4 It was also noted that, as contained in document IOPC/NOV23/8/1, the United Kingdom of Great Britain and Northern Ireland had communicated that it had extended the application of the Supplementary Fund Protocol to the Falkland Islands (Malvinas)<sup><2></sup>, with effect from 2 November 2023.

&lt;2&gt;

A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*First statement by Argentina*

- 8.1.5 The delegation of Argentina made the following statement with regard to paragraph 8.1.4 above:

‘In relation to paragraph 2.2. of document IOPC/NOV23/8/1, I would like to mention that the communication from the United Kingdom of Great Britain and Northern Ireland referred to in that paragraph was circulated only at the end of last week by the Depositary. I must therefore at this Assembly state that the Argentine Republic rejects the alleged extension of the territorial application communicated by the United Kingdom to the Malvinas Islands. As the footnote of the document indicates, there is a sovereignty dispute over the Malvinas, South Georgia and South Sandwich Islands and the surrounding maritime areas recognised as the ‘Question of the Malvinas Islands’ by the United Nations and other international organisations. For this reason, in addition to kindly requesting this intervention be included in the report, I would like to advance that Argentina will reject such alleged extension by note to the Depositary. As indicated before, this declaration also applies to document IOPC/NOV23/2/1.’

*Statement by the United Kingdom*

- 8.1.6 The delegation of the United Kingdom made the following statement:

‘The United Kingdom’s position on the Falkland Islands is already well documented. But for the record, the United Kingdom has no doubt about its sovereignty over the Falkland Islands and South Georgia and South Sandwich Islands and surrounding maritime areas. Indeed, the UK is steadfast in its support for the right of self-determination for Falkland Islanders. This right is enshrined in the UN Charter and in article one of the two UN Covenants on human rights.

It is therefore disappointing that in highlighting the extended application of the Supplementary Fund Protocol to the Falkland Islands by the United Kingdom the IOPC Funds – which is not part of the UN system and is not bound by UN naming conventions – has decided to include a reference here to the sovereignty claim by Argentina.

Chair, the people of the Falkland Islands have chosen to call their home the Falkland Islands, and the UK supports their right to do so. As such, the UK cannot accept the use of the word ‘Malvinas’ to describe the island group.’

*Second statement by Argentina*

- 8.1.7 Following the intervention by the United Kingdom, the delegation of Argentina made an additional statement as follows:

‘The Malvinas, South Georgia and South Sandwich Islands are an integral part of the Argentine national territory, and due to the fact that they are illegally occupied by the United Kingdom, there is a sovereignty dispute over those archipelagoes and the surrounding maritime areas, to which Resolution 2065 (XX) of the United Nations General Assembly and concurrent resolutions apply. Argentina will detail its position in its communication to the Depositary.’

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

- 8.1.8 The governing bodies noted the information presented in document IOPC/NOV23/8/1 and the subsequent interventions by Argentina and the United Kingdom.



8.2	<b>2010 HNS Convention</b> <b>Document IOPC/NOV23/8/2</b>	<b>92A</b>		
8.2.1	The 1992 Fund Assembly noted the information contained in document IOPC/NOV23/8/2 regarding the 2010 HNS Convention <sup>&lt;3&gt;</sup> .			
8.2.2	It was noted that France had deposited an instrument of ratification to the 2010 HNS Protocol in October 2023, bringing the number of contracting States to the Protocol to seven, joining Canada, Denmark, Estonia, Norway, South Africa and Türkiye. It was also noted that a number of States had reported good progress towards ratification and had expressed their intention to become Parties to the 2010 HNS Convention within the next one to two years.			
8.2.3	It was noted that, with this seventh contracting State, the current total of contributing cargo in the General Account was some 17.5 million tonnes out of the 40 million tonnes required under the criteria for the entry into force of the Convention.			
8.2.4	It was reported that the LNG cargo total was 22.5 million tonnes, and that 20 million tonnes is required in order to open that Account when the Convention is in force.			
8.2.5	The Secretariat reported that, in accordance with Resolution 1 of the International Conference on the revision of the HNS Convention which adopted the 2010 HNS Protocol, the IOPC Funds had continued to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and make preparations for the first session of the HNS Fund Assembly.			
8.2.6	The Secretariat also reported that during 2023, it had continued to take opportunities to promote the entry into force of the 2010 HNS Convention, to engage with interested States and other key stakeholders, and to share information with industry representatives through the delivery of training and outreach activities. These included webinars and were often organised in close cooperation with the Technical Cooperation Division of IMO.			
8.2.7	The 1992 Fund Assembly recalled that the IOPC Funds maintains the website ( <a href="http://www.hnsconvention.org">www.hnsconvention.org</a> ), and that the site includes the HNS Finder tool, an online database that allows users to search the list of all HNS as defined by the 2010 HNS Convention. It was noted that the most recent update of the list had been completed with a number of additional improvements on 1 August 2023.			
8.2.8	It was recalled that a workshop, organised by Canada in cooperation with IMO and the IOPC Funds had taken place at the IMO Headquarters in London on 3 and 4 April 2023. It was noted that it was attended, either in person or remotely, by over 200 representatives from States and industry.			
8.2.9	The 1992 Fund Assembly noted the conclusions of the workshop, as set out in document IOPC/NOV23/8/2, noting in particular that, in order to facilitate the entry into force of the Convention, as well as the effective functioning of the HNS Fund once established, it was considered essential that an efficient and jointly approved system for reporting HNS contributing cargo was developed.			

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<sup><3></sup> The original International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 is often referred to as the HNS Convention. The additional adopted Protocol to that Convention is referred to as the 2010 HNS Protocol. Once the Protocol enters into force, the consolidated Convention and Protocol will be referred to as the 2010 HNS Convention.

- 8.2.10 The Secretariat indicated that the definition of 'Receiver' in Article 1.4(a) was causing difficulties, so it was suggested that using the definition of 'Receiver' under the Article 1.4(b) provision would simplify the reporting process, as States can rely on the physical receiver only, and not use the Agent/Principal option within Article 1.4(a).
- 8.2.11 It was noted that, looking ahead, the Secretariat would continue to work with motivated States and the industry to make further progress on an improved set of guidelines to facilitate the reporting process.
- 8.2.12 The Secretariat confirmed that another workshop would be organised immediately after the April 2024 sessions of the IOPC Funds' governing bodies and that it would focus exclusively on the finalisation of the required improvements to the HNS Reporting Guidelines.
- 8.2.13 It was noted that the task of developing and implementing an online HNS reporting and financial management system would be complex and would require detailed exploration and discussion before significant progress could be made. It was also noted that the intention was to develop an in-house tool, similar to the one developed recently for the IOPC Funds' ORS and that, as a consequence, the work to be undertaken for HNS would facilitate a merging with the current ORS, including the movement towards a paperless system and the removal of electronic signatures.
- 8.2.14 The Secretariat reported that it continued to work with a number of relevant organisations, namely IMO, Cedre, ICS, the International Group and ITOPF, to develop a draft HNS Convention Claims Manual. It was noted that the draft text was at an advanced stage and that, once complete, it would be circulated for comments among contracting States to the 2010 HNS Convention.
- 8.2.15 It was recalled that the Claims Manual is one of the documents that will be presented for the approval of the HNS Fund Assembly at its first session. It was noted that the additional documentation that the Secretariat will prepare for consideration at that session includes the Rules of Procedure of the HNS Fund Assembly, and the Internal and Financial Regulations of the HNS Fund.
- 8.2.16 It was recalled that an appropriation of £135 000 was approved for 2023 to cover a larger number of activities and additional administrative tasks in respect of these activities. It was noted that some of those activities would be delayed until 2024, and therefore the full appropriation for 2023 would not be required.
- 8.2.17 It was noted that costs will be incurred in 2024 relating to the work of the IOPC Funds Secretariat as well as development costs. The subject of costs was reported in further detail in document IOPC/NOV23/8/2/1.

*Debate*

- 8.2.18 The delegation of France confirmed that it had ratified the 2010 HNS Protocol on 23 October 2023 and encouraged other States considering ratification to do so promptly. That delegation indicated that France had developed a system for online submission to help contributors to submit their reports. It also thanked the Secretariat for its help during that process and hoped that other States would follow the same approach.

- 8.2.19 The delegation of Belgium reminded the 1992 Fund Assembly that its relevant legislation had been adopted in 2022 and that was working closely with the Netherlands and Germany towards a joint ratification in 2024. It encouraged other States considering preparing for a simultaneous ratification of the Protocol to join them. In addition, it was reported that Belgium had developed a national reporting system and had implemented the thresholds of quantities to be reported, as set out in the current reporting guidelines. That delegation stated that it found those thresholds to be practical, limiting the administrative burden of those companies required to report, and also useful for the State to have an indication of those contributors who were close to the contributing thresholds.
- 8.2.20 Regarding the reporting rules, Belgium indicated that it had opted for the use of Article 1.4(a) but that it was open to further discussion, if required. It also indicated that it had received agreements of cooperation from industry and the shipping sector, which facilitated the management of HNS reporting.
- 8.2.21 The delegation of the Netherlands thanked the Secretariat for the document presented and congratulated France on its ratification of the 2010 HNS Protocol, noting that this was an important step towards the entry into force of the Convention.
- 8.2.22 That delegation reported that the Netherlands was still working on ratification of the 2010 HNS Protocol and that its draft legislation was being dealt with by Parliament and should be adopted in the spring of 2024. It confirmed that the State was therefore still on target to ratify the 2010 HNS Protocol, together with Belgium and Germany, in 2024.
- 8.2.23 That delegation informed the 1992 Fund Assembly that, in 2023, it had produced its first 'mock-report' in the Netherlands in order to enable those companies that would be required to report in the future to familiarise themselves with a self-reporting system. It was reported that several information sessions held during the year had given companies time to submit their reports and that 29% of the companies that were obliged to report under the 2010 HNS Protocol had actually done so. It was reported that, taking into account the total amount of HNS goods calculated in 2021, this indicated that around 31% of the received HNS goods in the Netherlands had been reported that year.
- 8.2.24 That delegation stated that, in its view, this demonstrated that increasing knowledge on the 2010 HNS Convention in the industry and the reporting obligations was of utmost importance. That delegation confirmed that several information sessions would be held with industry organisations and companies during the next reporting phase in 2024 and that a dedicated HNS information page on their government website would be established.
- 8.2.25 The delegation of the Netherlands expressed its support for the organisation of an HNS workshop in April 2024, which focused on the finalisation of the required improvements to the HNS Reporting Guidelines. It considered that such meetings were instrumental for States working together on the ratification and implementation of the 2010 HNS Convention.
- 8.2.26 The delegation of Canada congratulated France on its ratification of the 2010 HNS Protocol. It also thanked the Secretariat for its continuous work to prepare for the entry into force of the Convention and to ensure its success. That delegation reported that Canada had held a recent positive conversation with the Secretariat regarding the future online reporting system and that it remained available to continue its collaboration. That delegation expressed its support for the workshop planned in April 2024 and offered to provide assistance if required.
- 8.2.27 The delegation of Malaysia referred to technical cooperation and suggested the possible organisation of a national and/or regional workshop in 2024, with a focus on reporting requirements, which it considered continued to be a complicated issue.

- 8.2.28 The delegation of Namibia confirmed that it was still committed to ratifying the 2010 HNS Protocol, notably because of the expected transition from carbon-based sources of energy to fuels such as hydrogen and ammonia, which are classified as HNS, raising the risk of incidents involving these types of products. That delegation confirmed that Namibia was actively working on the ratification of this Protocol and indicated that the next HNS workshop in 2024 would be useful in helping the State finalise its preparations.
- 8.2.29 The observer delegation of the International Group of P&I Associations indicated that the ratification by France showed great progress towards the entry into force of the Convention. That delegation referred to the International Group's contribution to the development of the draft HNS Convention Claims Manual, particularly the chapters related to loss of life and personal injury claims and confirmed it had experts in those types of claims.
- 8.2.30 That delegation reminded the 1992 Fund Assembly that, among the tools to be developed, the drafting of a Memorandum of Understanding between the International Group and the HNS Fund as well as an agreement on interim payments would be required prior to the entry into force of the Convention. That delegation confirmed its availability to help on those items.
- 8.2.31 The observer delegation of ICS reminded the 1992 Fund Assembly that it actively supported the entry into force of the 2010 HNS Convention and noted that France was an important example to others, in particular among European States.
- 8.2.32 The observer delegation of IMO positively supported the document presented by the Secretariat. That delegation reported that following a request at the May 2023 session of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, all contracting States to the 2010 HNS Protocol had fulfilled their obligation to submit 2022 reports, as set out in IMO Circular HNS.2/Circ.11. That delegation also congratulated France on its ratification of the Protocol and noted that this was a further step towards entry into force of the Convention.

8.3	<b>2010 HNS Convention — HNS development budget for 2024</b> <b>Document IOPC/NOV23/8/2/1</b>	<b>92A</b>		
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- 8.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV23/8/2/1 in respect of the cost of financing activities undertaken to make progress towards the entry into force of the 2010 HNS Convention.
- 8.3.2 The 1992 Fund Assembly noted that, since 2002, loans have been provided to the HNS Fund from the 1992 Fund General Fund to continue administrative preparations for the setting up of the HNS Fund and the costs, including interest, would be reimbursed to the 1992 Fund by the HNS Fund when the 2010 HNS Convention entered into force.
- 8.3.3 It was further noted that as at 30 June 2023, the total amount appropriated since 2002 amounted to £1 425 000, of which £543 024 (including interest) had been used.
- 8.3.4 It was also noted that an increased appropriation of £135 000 had been approved for 2023 activities as recognition of the increase in volume of activities undertaken to assist States in their work towards ratification of the 2010 HNS Protocol.
- 8.3.5 The 1992 Fund Assembly noted that the increase in volume of activities undertaken to assist States in their work towards ratification of the 2010 HNS Protocol, as well as work associated with establishing a system for HNS reporting and invoicing of contributions, had given rise to increased levels of staff participation across the IOPC Funds' Secretariat.
- 8.3.6 It was further noted that the Director had established an additional post in the IOPC Funds' Secretariat, the HNS Project Officer, to provide expertise on HNS policy matters, with a proposal that the cost of this post be included in the HNS Fund appropriation for 2024.

- 8.3.7 The 1992 Fund Assembly also noted the Director's proposal that a management fee be paid by the HNS Fund to the 1992 Fund in respect of the costs incurred by the Secretariat to promote the entry into force of the 2010 HNS Convention, and noted the proposed fee of £147 000, based on an estimate of the cost of seven working days of the Secretariat as a whole.
- 8.3.8 The 1992 Fund Assembly noted that work will commence to develop a set of requirements for an online reporting system to enable HNS Fund Member States to report receipts of contributing cargo by parties in their State, and that initial costs for this were estimated at £50 000. It further noted that an appropriation of £110 000 was proposed to cover ongoing activities such as maintaining the dedicated HNS website, the HNS Finder and the provision of training and support to States.

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

- 8.3.9 The 1992 Fund Assembly decided to consider costs associated with the position of HNS Project Officer (P3) as an expense in respect of the preparations for the entry into force of the 2010 HNS Convention.
- 8.3.10 The 1992 Fund Assembly decided that the 1992 Fund should receive a management fee to cover additional administrative expenses incurred in respect of the preparations for the entry into force of the 2010 HNS Convention.
- 8.3.11 The 1992 Fund Assembly took note of the proposed HNS Fund appropriation of £424 000, presented to the 1992 Fund Assembly for approval in document IOPC/NOV23/9/1/1.

### **9 Budgetary matters**

9.1	<b>Budgets for 2024 and assessment of contributions to the General Funds (1992 Fund and Supplementary Fund) Documents IOPC/NOV23/9/1, IOPC/NOV23/9/1/1 and IOPC/NOV23/9/1/2</b>	<b>92A</b>		<b>SA</b>
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- 9.1.1 The governing bodies took note of the information contained in documents IOPC/NOV23/9/1, IOPC/NOV23/9/1/1 and IOPC/NOV23/9/1/2.
- 9.1.2 The 1992 Fund Assembly considered the draft 2024 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/NOV23/9/1/1.
- 9.1.3 The Supplementary Fund Assembly considered the draft 2024 budget and the assessment of contributions to the General Fund of the Supplementary Fund in document IOPC/NOV23/9/1/2.
- 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 to 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 5.7% in the draft 2024 joint Secretariat budget compared to the 2023 budget, due to an increase in costs under the Personnel Chapter. Budgets for all other chapters have reduced or remained the same as 2023.

- 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 in 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 2010 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 2024.
- 9.1.10 The 1992 Fund Assembly noted the Director's proposal to levy 2023 contributions to the General Fund of £10 million payable by 1 March 2024.

*Debate*

- 9.1.11 One delegation expressed appreciation for the work done on the budget and support for the proposals.

***1992 Fund Assembly decisions***

- 9.1.12 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 £264 000, based on the 2024 budget).
- 9.1.13 The 1992 Fund Assembly renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.
- 9.1.14 The 1992 Fund Assembly adopted the budget for 2024 for the 1992 Fund joint Secretariat administrative expenses of £5 382 018 and the 1992 Fund's external audit fee of £74 290, as set out at Annex X to this document.
- 9.1.15 The 1992 Fund Assembly approved the management fee payable by the Supplementary Fund to the 1992 Fund of £42 000.
- 9.1.16 The 1992 Fund Assembly approved the Director's estimate of the expenses to be incurred in 2024 in respect of the preparation for the entry into force of the 2010 HNS Convention, i.e. £424 000.
- 9.1.17 The 1992 Fund Assembly decided to maintain the working capital of the 1992 Fund at £15 million in the budget year 2024.
- 9.1.18 The 1992 Fund Assembly approved the Director's proposal to levy 2023 contributions of £10 million, payable by 1 March 2024.

***Supplementary Fund Assembly decisions***

- 9.1.19 The Supplementary Fund Assembly adopted the budget for 2024 for the administrative expenses of the Supplementary Fund for a total of £58 100 (including the management fee of £42 000 payable to the 1992 Fund, and the cost of the external audit) as set out at Annex X to this document.

9.1.20 The Supplementary Fund Assembly decided to maintain the working capital of the General Fund at £1 million.

9.1.21 The Supplementary Fund Assembly approved the Director's proposal that there should be no levy of 2023 contributions to the General Fund.

9.2	<b>Assessment of contributions to Major Claims Funds (1992 Fund) and Claims Funds (Supplementary Fund) Documents IOPC/NOV23/9/2, IOPC/NOV23/9/2/1 and IOPC/NOV23/9/2/2</b>	<b>92A</b>		<b>SA</b>
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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/NOV23/9/2, IOPC/NOV23/9/2/1 and IOPC/NOV23/9/2/2.

9.2.2 The 1992 Fund Assembly noted that, in the Director's view, it would not be necessary to levy 2023 contributions for the *Prestige*, *Agia Zoni II* and Incident in Israel Major Claims Funds.

9.2.3 The 1992 Fund Assembly also noted that in the Director's view it would not be necessary to levy 2023 contributions to the *Alfa I* and *Nesa R3* Major Claims Funds and that any expenditure exceeding the balance available in those Major Claims Funds should 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 1992 Fund Assembly further noted the Director's proposal to levy 2023 contributions of £20 million to the *Bow Jubail* Major Claims Fund and £10 million to the *Princess Empress* Major Claims Fund, payable by 1 March 2024.

#### *Debate*

9.2.5 One delegation expressed support for the proposed levies.

9.2.6 The delegation of Greece made the following statement:

'This delegation would like firstly to thank the Secretariat for all the background information provided in document IOPC/NOV23/9/2/1 in respect of the *Alfa I* and *Agia Zoni II* Major Claims Funds.

Greece, as a contracting member to the Civil Liability and Fund Conventions, fully respects the rules and procedures upon which the Fund is functioning. In this context, with regard to the Director's proposal for non-levying of 2023 contributions to the *Agia Zoni II* Major Claims Fund, Greece would kindly like to be informed whether there would exist an alternative source of funding to make payments from the *Agia Zoni II* Major Claims Fund, should any requirement arise for these remaining £5.2 million to be paid to claimants, until 1 March 2025, taking into account that prompt compensation to the persons who suffer damage from all oil pollution incidents is one of the main principles that governs the operation of the Fund.'

9.2.7 In response, the Chief of Finance, Ms Claire Montgomery, stated that, should compensation payments in respect of the *Agia Zoni II* Major Claims Funds exceed the available balance, the 1992 Fund would facilitate a loan from either the General Fund or another Major Claims Fund to ensure timely payment of compensation.

**1992 Fund Assembly decisions**

- 9.2.8 The 1992 Assembly decided not to levy 2023 contributions in respect of the *Prestige*, *Alfa I*, *Agia Zoni II*, *Nesa R3* and Incident in Israel Major Claims Funds.
- 9.2.9 The 1992 Fund Assembly decided to levy 2023 contributions of £20 million to the *Bow Jubail* Major Claims Fund, payable by 1 March 2024.
- 9.2.10 The 1992 Fund Assembly decided to levy 2023 contributions of £10 million to the *Princess Empress* Major Claims Fund, payable by 1 March 2024.

**Supplementary Fund Assembly**

- 9.2.11 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.

9.3	<b>Transfer within the 2023 Budget — 1992 Fund Document IOPC/NOV23/9/3</b>	<b>92A</b>		
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- 9.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV23/9/3.
- 9.3.2 It was noted that the 2023 budget appropriation for Chapter VII (External Audit Fees) would not cover the cost to the Secretariat for the 2023 audit.
- 9.3.3 The Director proposed that he should be authorised to make the necessary transfer to meet any shortfall to the budget appropriation of Chapter VII (External Audit Fees) from Chapter IV (Travel).

**1992 Fund Assembly decision**

- 9.3.4 The 1992 Fund Assembly decided to authorise the Director to make the necessary transfer from Chapter IV (Travel) to Chapter VII (External Audit Fees) within the 2023 budget.

**10 Other matters**

10.1	<b>Future sessions</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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**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 4 November 2024.
- 10.1.2 The governing bodies also decided that their next extraordinary sessions would take place during the week of 29 April 2024.

**1992 Fund Executive Committee decision**

- 10.1.3 The 1992 Fund Executive Committee decided to hold its 82nd session during the week of 29 April 2024.



10.2	<b>Any other business</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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*Update on Mr Thomas Liebert, HNS Project Officer*

- 10.2.1 Mr Thomas Liebert, HNS Project Officer, informed delegations that, as many of them were aware, he had been unwell for the past two years and had been battling a brain tumour. He announced, with great pleasure, that he had successfully overcome that illness and that he was now in recovery and good health. He thanked delegations who had expressed their support to him over this difficult period and also referred to the invaluable support of his family, friends and colleagues. He confirmed that he was very much looking forward to focusing on HNS matters and working with Member States and industry to prepare for the entry into force of the 2010 HNS Convention.
- 10.2.2 The governing bodies applauded this announcement. Many delegations expressed their delight at this good news and congratulated Mr Liebert on his return to good health. Several delegations commented that they were glad to see Mr Liebert back on the podium and, in particular, that he would be able to return to working with them on the important issue of the 2010 HNS Convention.

*Farewell to Mr David Baker of the International Group of P&I Associations*

- 10.2.3 The Director announced that he had learned that Mr David Baker was attending the sessions of the IOPC Funds' governing bodies for the last time since he would soon be leaving the Secretariat of the International Group.
- 10.2.4 He described the International Group as the IOPC Funds' partner in the liability and compensation regime and a crucial voice at IOPC Funds meetings. He thanked Mr Baker for providing that voice for over 20 years and for his contribution to the meetings, during which he had often provided invaluable guidance within many key discussions in a calm, eloquent and wise way.
- 10.2.5 The Director explained that members of the IOPC Funds' Secretariat had come to know him well, either through meetings on drafting guidance texts, policy matters, or through holding joint workshops, training activities or attending conferences and sharing exhibition stands.
- 10.2.6 The Director thanked Mr Baker on behalf of the organisation for his dedication, his continued contribution to and support of the organisation and, on behalf of the members of the Secretariat, for his excellent cooperation and friendship, and wished him all the best in his next chapter.

*Presentation of recognition of service to Mr Samuel Soo, outgoing Chair of the 1992 Fund Executive Committee*

- 10.2.7 Before the closing of the sessions, the Director presented Mr Samuel Soo with an inscribed glass ornament in recognition of his two years' service as Chair of the 1992 Fund Executive Committee. He recognised Mr Soo's skilful chairing of complex issues arising out of some of the incidents, and the concise and accurate manner in which he was able to conclude debates, including the most difficult ones. The Director passed on the appreciation of the organisation to Mr Soo for having continued as Chair despite having changed job roles and having relocated from London back to Singapore during that time. He also thanked the Government of Singapore for allowing Mr Soo to continue as Chair despite those changes. Finally, he expressed his personal gratitude to Mr Soo and that of his colleagues in the Secretariat.
- 10.2.8 Mr Soo expressed his thanks for the great privilege of having been elected as Chair of the Executive Committee. He noted that the smooth chairing of the meetings would not have been possible without the cooperation of his two fellow Chairs, his Executive Committee Vice-Chairs, and the hard work of the Secretariat. Lastly, he thanked the delegations attending the meetings for the professional manner in which their debates were carried out, highlighting the cooperation that was fundamental to the IOPC Funds.

*Other matters*

10.2.9 No further items were raised under this agenda item.

**11 Adoption of the Record of Decisions**

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

The draft Record of Decisions of the November 2023 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/NOV23/11/WP.1 and IOPC/NOV23/11/WP.1/1, was adopted, subject to certain amendments.

\* \* \*

## ANNEX I

### 1.1 Member States present at the sessions

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

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

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
27	Italy	•		•
28	Jamaica	•	•	
29	Japan	•	•	•
30	Kenya	•		
31	Latvia	•		•
32	Liberia	•		
33	Luxembourg	•		
34	Malaysia	•		
35	Maldives	•		
36	Malta	•		
37	Marshall Islands	•		
38	Mauritius	•		
39	Mexico	•		
40	Monaco	•		
41	Morocco	•		•
42	Namibia	•		
43	Netherlands	•		•
44	New Zealand	•	•	•
45	Nigeria	•		
46	Norway	•		•
47	Oman	•		
48	Panama	•		
49	Philippines	•		
50	Poland	•		•
51	Portugal	•		•
52	Qatar	•		
53	Republic of Korea	•	•	•
54	Russian Federation	•		
55	Saint Kitts and Nevis	•		

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
56	San Marino	•		
57	Senegal	•		
58	Seychelles	•		
59	Singapore	•	•	
60	South Africa	•	•	
61	Spain	•		•
62	Sri Lanka	•		
63	Sweden	•		•
64	Switzerland	•		
65	Thailand	•	•	
66	Trinidad and Tobago	•		
67	Tunisia	•		
68	Türkiye	•		•
69	United Arab Emirates	•		
70	United Kingdom	•	•	•
71	Uruguay	•		
72	Venezuela (Bolivarian Republic of)	•		

## 1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Brazil	•	•
2	Chile	•	•
3	Peru	•	•
4	Ukraine	•	•

### 1.3 Intergovernmental organisations

		<b>1992 Fund</b>	<b>Supplementary Fund</b>
1	European Commission	•	•
2	International Maritime Organization (IMO)	•	•

### 1.4 International non-governmental organisations

		<b>1992 Fund</b>	<b>Supplementary Fund</b>
1	Cedre	•	•
2	Comité Maritime International (CMI)	•	•
3	International Association of Classification Societies Ltd (IACS)	•	•
4	International Chamber of Shipping (ICS)	•	•
5	International Group of P&I Associations	•	•
6	International Union of Marine Insurance (IUMI)	•	•
7	ITOPF	•	•
8	Oil Companies International Marine Forum (OCIMF)	•	•
9	Sea Alarm Foundation (Sea Alarm)	•	•
10	World LPG Association (WLPGA)	•	•

\* \* \*

## ANNEX II

### Resolution N°13 of the 1992 Fund

Adopted on 10 November 2023

#### **Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted**

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

**RECALLING** that the International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund) was established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund Convention) in order to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

**NOTING** the obligation of States Parties pursuant to Article 15 of the 1992 Fund Convention to communicate to the Director of the Fund (the Director), at a time and in the manner provided in the Internal Regulations, the name and address of any person who in respect of those States is liable to contribute to the 1992 Fund pursuant to Article 10 of the 1992 Fund Convention, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year (oil reports),

**MINDFUL** that the IOPC Funds' governing bodies have expressed significant concern that a number of States Parties have not complied with this specific obligation to submit oil reports and that this has been a long-standing issue despite considerable efforts on the part of the Secretariat to engage the States Parties concerned,

**REITERATING** the duty of States Parties pursuant to Article 13.2 of the 1992 Fund Convention to ensure that any obligation to contribute to the 1992 Fund arising out of the Convention in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

**CONSIDERING** that the failure or omission by some States Parties, as well as by some contributors, to abide by their obligations to submit oil reports places an unfair burden on those States Parties and contributors which do comply with these obligations,

**BEARING IN MIND** that the 1992 Fund cannot carry out its mandate nor operate effectively unless accurate oil reports and contributions are received in a timely manner,

**NOTING FURTHER** that, whereas in the past it had been decided that it was not practicable to determine the quantities of oil receipts of individual contributors on the basis of information available to the 1992 Fund but that, since then, the quality and reliability of available information from a variety of sources has improved significantly,

**RECALLING FURTHER** the governing bodies' instruction to the Director at their October 2019 sessions to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors on the basis of estimated oil receipts if no oil reports are submitted,

**RECALLING ALSO** the governing bodies' instruction to the Director at their October 2022 sessions to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments to the Internal Regulations to enable him to issue invoices to contributors based on estimates if no oil reports were submitted,

**CONSIDERING FURTHER** that, while no specific reference exists, nevertheless there is a clear and firm legal basis pursuant to Article 12.2 read with Article 13.3 of the 1992 Fund Convention for the Director to issue, and for the 1992 Fund Assembly to authorise the Director to issue, invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods,

**BEING OF THE VIEW** that this Resolution would further strengthen the Director's ability to take action against States Parties which have not complied with their legal obligations under the Convention by issuing invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods, and would provide support for the Director's action in the event that a legal challenge were to be pursued in a national court,

**BELIEVING** that this Resolution would constitute an important tool to encourage the prompt and accurate reporting of contributing oil,

**BELIEVING MOREOVER** that this Resolution would be a clear expression by States Parties of the fundamental importance of the reporting obligation to the entire International Oil Pollution Compensation Funds system,

**AFFIRMING** that the Secretariat would continue its efforts to assist States Parties to fully implement the Convention including with respect to their reporting obligations,

**MINDFUL ALSO** of Resolution N°12 of the 1992 Fund—Measures in respect of outstanding oil reports and outstanding contributions (April 2016),

1. **ENDORSES** the current efforts of the Director to follow-up on arrears of oil reports and contributions;
2. **CALLS ON** all receivers of contributing oil to discharge their obligations under the 1992 Fund Convention in a timely manner;
3. **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations; and to report to the Director on the measures taken in this regard;
4. **FURTHER URGES** all States Parties to fulfil their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, in particular, to provide oil reports in a timely manner and to ensure payment of contributions;
5. **REMINDS** States Parties of the option expressed in Article 14.1 of the 1992 Fund Convention whereby a State Party may at any time declare that it assumes the obligation to make contributions to the 1992 Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Convention;



6. **REQUESTS** those States Parties which have outstanding oil reports or which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress these situations;
7. **AUTHORISES** the Director, in the event that no oil reports are submitted by States Parties in breach of their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, to issue invoices on the basis of estimated oil receipts to persons who are liable to contribute to the 1992 Fund pursuant to Article 10 of the 1992 Fund Convention, including retrospectively in relation to past periods;
8. **INSTRUCTS** the Director, whenever invoices are issued in accordance with paragraph 7 above, to:
  - (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued,
  - (b) report fully at each regular session of the 1992 Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued, and
  - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued;
9. **FURTHER INSTRUCTS** the Director to prepare the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices on the basis of estimated oil receipts including retrospectively in relation to past periods, in the event that the oil reports referred to in paragraphs 4, 6 and 7 above have not been submitted;
10. **DIRECTS** the Audit Body to:
  - (a) monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions, and
  - (b) report to the 1992 Fund Assembly on its findings, including recommendations for further measures, as may be warranted.

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## ANNEX III

### Supplementary Fund Resolution N°5

Adopted on 10 November 2023

#### **Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted**

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

**RECALLING** that the International Oil Pollution Compensation Supplementary Fund, 2003 (the Supplementary Fund) was established by the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol) in order to ensure that victims of oil pollution damage from ships are compensated in full for their loss or damage in cases where there is a risk that the amount of compensation available under the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

**NOTING** the obligation of States Parties under Article 13.1 of the Supplementary Fund Protocol to communicate to the Director of the Supplementary Fund (the Director) information on oil receipts, provided, however, that communications made to the Director of the 1992 Fund under Article 15.2 of the 1992 Fund Convention (on oil receipts) shall be deemed to have been made also under Article 13.1 of the Supplementary Fund Protocol,

**MINDFUL** that the IOPC Funds' governing bodies have expressed significant concern that a number of States Parties have not complied with this specific obligation to submit oil reports and that this has been a long-standing issue despite considerable efforts on the part of the Secretariat to engage the States Parties concerned,

**REITERATING** the duty of States Parties pursuant to Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Supplementary Fund arising under the Protocol in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

**CONSIDERING** that the failure or omission by some States Parties, as well as by some contributors, to abide by their obligations to submit oil reports places an unfair burden on those States Parties and contributors which do comply with these obligations,

**BEARING IN MIND** that the Supplementary Fund cannot carry out its mandate nor operate effectively unless accurate oil reports and contributions are received in a timely manner,

**NOTING FURTHER** that, whereas in the past it had been decided that it was not practicable to determine the quantities of oil receipts of individual contributors on the basis of available information but that, since then, the quality and reliability of available information from a variety of sources has improved significantly,

**RECALLING FURTHER** the governing bodies' instruction to the Director at their October 2019 sessions to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors on the basis of estimated oil receipts if no oil reports are submitted,

**RECALLING ALSO** the governing bodies' instruction to the Director at their October 2022 sessions to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices to contributors based on estimates if no oil reports were submitted,

**CONSIDERING FURTHER** that, while no specific reference exists, nevertheless there is a clear and firm legal basis pursuant to Article 12 of the Supplementary Fund Protocol read with Articles 12.2 and 13.3 of the 1992 Fund Convention for the Director to issue, and for the Supplementary Fund Assembly to authorise the Director to issue, invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods,

**BEING OF THE VIEW** that this Resolution would further strengthen the Director's ability to take action against States Parties which have not complied with their legal obligations under the Supplementary Fund Protocol, by issuing invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods, and would provide support for the Director's action in the event that a legal challenge were to be pursued in a national court,

**BELIEVING** that this Resolution would constitute an important tool to encourage the prompt and accurate reporting of contributing oil,

**BELIEVING MOREOVER** that this Resolution would be a clear expression by States Parties of the fundamental importance of the reporting obligation to the entire International Oil Pollution Compensation Funds system,

**AFFIRMING** that the Secretariat would continue its efforts to assist States Parties to fully implement the Protocol including with respect to their reporting obligations,

**MINDFUL ALSO** of Supplementary Fund Resolution N°3 - Measures in respect of outstanding contributions (April 2016),

1. **ENDORSES** the current efforts of the Director to follow-up on arrears of oil reports and contributions;
2. **CALLS ON** all receivers of contributing oil to discharge their obligations under the Supplementary Fund Protocol in a timely manner;
3. **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations; and to report to the Director on the measures taken in this regard;
4. **FURTHER URGES** all States Parties to fulfil their obligations under Article 13.1 of the Supplementary Fund Protocol, in particular, to provide oil reports in a timely manner and to ensure payment of contributions;
5. **REMINDS** States Parties of the option expressed in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may assume the obligation to pay contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;

6. **REQUESTS** those States Parties which have outstanding oil reports or which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress these situations;
7. **AUTHORISES** the Director, in the event that no oil reports are submitted by States Parties in breach of their obligations under Article 13.1 of the Supplementary Fund Protocol, to issue invoices on the basis of estimated oil receipts to persons who are liable to contribute to the Supplementary Fund pursuant to Article 10 of the Supplementary Fund Protocol, including retrospectively in relation to past periods;
8. **INSTRUCTS** the Director, whenever invoices are issued in accordance with paragraph 7 above, to:
  - (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued;
  - (b) report fully at each regular session of the Supplementary Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued; and
  - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued;
9. **FURTHER INSTRUCTS** the Director to prepare the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices on the basis of estimated oil receipts including retrospectively in relation to past periods, in the event that the oil reports referred to in paragraphs 4, 6 and 7 above have not been submitted;
10. **DIRECTS** the Audit Body to:
  - (a) monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions, and
  - (b) report to the Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

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## ANNEX IV

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

*(as amended by the 1992 Fund Assembly at its 28th session  
held from 7 to 10 November 2023)*

#### Regulation 4

##### *Reports on Contributing Oil Receipts*

- 4.1 Each Member State shall forward annually to the Director reports on contributing oil receipts, using the form annexed to these Internal Regulations or the form on the Online Reporting System (ORS). The reports shall reach the Director not later than 30 April each year. They shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the 1992 Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year.
- 4.2 The reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form or on the ORS referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official. If the reports are forwarded to the Director using the ORS, the Member State shall ensure that the reports are *prima facie* evidence in that State.
- 4.3 Each State in respect of which the Convention enters into force after 30 April of any year shall, on or before the date of entry into force of the 1992 Fund Convention for that State, submit a report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.
- 4.4 If no person in a Member State has received contributing oil in sufficient quantities for a report to be submitted, the State shall notify the Director accordingly.
- 4.4bis In situations where a Member State fails or omits to submit a report on contributing oil receipts in accordance with Internal Regulation 4.1-4.3 above in breach of its obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, the Director may make an estimate of oil received within the territory of the Member State concerned in respect of which contributions are liable to be paid pursuant to Article 10 of the 1992 Fund Convention. The Director may issue an invoice for such contributions based on the estimate of contributing oil, including retrospectively in relation to past periods.
- 4.5 The Director shall, not later than 15 January of each year, invite Member States to submit the reports referred to in Internal Regulation 4.1.
- 4.6 The Director shall provide Member States with a list of the States in respect of which the 1992 Fund Convention was in force on 1 January of that year, with an indication of the date on which the 1992 Fund Convention entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the 1992 Fund Convention ceased to be in force for any State during the course of that year.
- 4.7 The Director shall ascertain whether, as a result of the coming into force of the 1992 Fund Convention for a State during the course of any given year, some quantities of contributing oil have been reported to the 1992 Fund under Internal Regulation 4.1 by more than one State. Where any such double reporting is found, the Director shall amend the reports submitted by the Member States concerned accordingly and inform these States.

- 4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1 or estimated in accordance with Internal Regulation 4.4*bis*, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the 1992 Fund Convention utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her right to reimbursement of the balance on his or her account.
- 4.9 Where, pursuant to Article 14 of the 1992 Fund Convention, a Member State assumes itself the obligations of any person who is liable to contribute to the 1992 Fund in respect of oil received within the territory of that State, such a State shall, when submitting its reports on contributing oil received, specify therein the names and addresses of the persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.

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

*(as amended by the Supplementary Fund Assembly at its 20th session  
held from 7 to 10 November 2023)*

Regulation 4

*Reports on Contributing Oil Receipts*

- 4.1 Since, under Article 13.1 of the Supplementary Fund Protocol, reports on contributing oil receipts made to the 1992 Fund under the 1992 Fund Convention shall be deemed to have been made also under the Protocol, special reports, using the form annexed to these Internal Regulations or the form on the Online Reporting System (ORS), in respect of the Supplementary Fund shall be forwarded to the Director only in respect of contributing oil received in a Member State by means of transport other than by sea which has previously been received by sea in another State Member of the 1992 Fund but not Member of the Supplementary Fund. Such reports shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned such oil in respect of which contributions are liable to be paid in accordance with Article 10 of the Supplementary Fund Protocol together with details of the quantities of contributing oil received by all such persons during that year.
- 4.2 The special reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form or on the ORS referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official. If the reports are forwarded to the Director using the ORS, the Member State shall ensure that the reports are *prima facie* evidence in that State.
- 4.3 Each State in respect of which the Supplementary Fund Protocol enters into force after 30 April of any year shall, on or before the date of entry into force of the Protocol for that State, submit a special report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.
- 4.4 If no person in a Member State has received contributing oil in sufficient quantities for a special report to be submitted, the State shall notify the Director accordingly.
- 4.4bis In situations where a Member State fails or omits to submit a report on contributing oil receipts in accordance with Internal Regulations 4.1- 4.3 above in breach of its obligations under Article 13.1 of the Supplementary Fund Protocol, the Director may make an estimate of oil received within the territory of the Member State concerned in respect of which contributions are liable to be paid pursuant to Article 10 of the Supplementary Fund Protocol. The Director may issue an invoice for such contributions based on the estimate of contributing oil, including retrospectively in relation to past periods.
- 4.5 The Director shall, not later than 15 January of each year, invite Member States to submit the special reports referred to in Internal Regulation 4.1.
- 4.6 The Director shall provide Member States with a list of the States in respect of which the Supplementary Fund Protocol was in force on 1 January of that year, with an indication of the date on which the Protocol entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the Protocol ceased to be in force for any State during the course of that year.

- 4.7 The Director shall ascertain whether, as a result of the coming into force of the Supplementary Fund Protocol for a State during the course of any given year, some quantities of contributing oil have been reported to the Supplementary Fund under Internal Regulation 4.1 by more than one State. Where any such double reporting is found, the Director shall amend the reports submitted by the Member States concerned accordingly and inform these States.
- 4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1 or estimated in accordance with Internal Regulation 4.4*bis*, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 11 of the Supplementary Fund Protocol utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her right to reimbursement of the balance on his or her account.
- 4.9 Where, pursuant to Article 12.2 of the Supplementary Fund Protocol in conjunction with Article 14 of the 1992 Fund Convention, a Member State assumes itself the obligations of any person who is liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State, such a State shall, when submitting its reports on contributing oil received, specify therein the names and addresses of the persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.
- 4.10 As regards Member States in which the aggregate quantity of contributing oil reported as received or estimated in accordance with Internal Regulation 4.4*bis* in any calendar year is less than 1 million tonnes, the quantity of contributing oil in respect of which a Member State is under obligation to pay contributions pursuant to Article 14.2 of the Supplementary Fund Protocol shall be determined by the Director as the difference between 1 million tonnes and the reported aggregate quantity of contributing oil received in that State or the difference between 1 million tonnes and the aggregate quantity of contributing oil estimated in accordance with Internal Regulation 4.4*bis*. The Director shall inform the State concerned of the result of this calculation.

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## **ANNEX V**

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

*(as amended by the 1992 Fund Assembly at its 28th session  
held from 7 to 10 November 2023)*

#### Regulation 12

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

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

If neither of the said senior members of the Secretariat are available to assume the function of the Director, the Chair of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until the Director or either of the said senior members of the Secretariat has been able to resume their responsibilities.

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

*(as amended by the Supplementary Fund Assembly at its 20th session  
held from 7 to 10 November 2023)*

**Regulation 12**

*Delegation of authority in the absence of the Director*

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

If neither of the said senior members of the Secretariat are available to assume the function of the Director, the Chair of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraph, to carry out this function until the next regular or extraordinary session of the Assembly or until the Director or either of the said senior members of the Secretariat has been able to resume their responsibilities.

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## ANNEX VI

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

*(as amended by the 1992 Fund Assembly at its 28th session held from 7 to 10 November 2023)*

#### Regulation 9

##### *Management of Monies*

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

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

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

Category A      Director, Deputy Director/Head of the Claims Department and the Head of the Administration Department

Category B      Chief of Finance and Finance Manager

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

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

*(as amended by the Supplementary Fund Assembly at its 20th session held from 7 to 10 November 2023)*

Regulation 9

*Management of Monies*

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

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

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

Category A      Director, Deputy Director/Head of the Claims Department and the Head of the Administration Department

Category B      Chief of Finance and Finance Manager

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

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

*(as amended by the 1992 Fund Assembly at its 28th session held from 7 to 10 November 2023)*

Regulation 10

*Investment of Assets*

- 10.4 The assets of the 1992 Fund shall be held and invested by the Director in accordance with Financial Regulation 10.1 and the following principles:
- (a) the 1992 Fund's assets shall be held in pounds sterling or, if the Director considers it appropriate, in other currencies to meet claims and claims-related expenses;
  - (b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;
  - (c) the maximum investment in any bank or building society of the 1992 Fund's and the Supplementary Fund's combined assets shall not normally exceed 25% of these assets or £10 million, whichever is the higher;
  - (d) the maximum investment in any bank or building society by the 1992 Fund and the Supplementary Fund shall not together normally exceed £15 million or £20 million in respect to the Funds' house bank(s) or not normally exceed £25 million when the two Funds' combined assets exceed £300 million;
  - (e) any exceptions to the normal limit in Financial Regulation 10.4(c) and (d), shall be reported to the Assembly at its next regular session.

These principles shall be reviewed from time to time.

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

*(as amended by the Supplementary Fund Assembly at its 20th session held from 7 to 10 November 2023)*

Regulation 10

*Investment of Assets*

- 10.4 The assets of the Supplementary Fund shall be held and invested by the Director in accordance with Financial Regulation 10.1 and the following principles:
- (a) the Supplementary Fund's assets shall be held in pounds sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future;
  - (b) the assets shall be placed on term deposit or by purchase of Certificates of Deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;
  - (c) the maximum investment in any bank or building society of the 1992 Fund's and the Supplementary Fund's combined assets shall not normally exceed 25% of these assets or £10 million, whichever is the higher;
  - (d) the maximum investment in any bank or building society by the 1992 Fund and the Supplementary Fund shall not together normally exceed £15 million or £20 million in respect to the Funds' house bank(s) or not normally exceed £25 million when the two Funds' combined assets exceed £300 million;
  - (e) any exceptions to the normal limit in Financial Regulation 10.4(c) and (d), shall be reported to the Assembly at its next regular session.

These principles shall be reviewed from time to time.

\* \* \*

## **ANNEX VII**

### **ANNEX I OF THE FINANCIAL REGULATIONS OF THE 1992 FUND AND OF THE SUPPLEMENTARY FUND**

#### **MANDATE OF THE JOINT INVESTMENT ADVISORY BODY OF THE 1992 FUND AND THE SUPPLEMENTARY FUND**

**(REVISED IN NOVEMBER 2023)**

- 1 The Investment Advisory Body of the International Oil Pollution Compensation Fund 1992 and the International Oil Pollution Compensation Supplementary Fund is composed of three persons appointed by the Assembly of the International Oil Pollution Compensation Fund 1992 for three years.
- 2 The mandate of the Investment Advisory Body is:
  - (a) to advise the Director in general terms on investment matters;
  - (b) in particular, to advise the Director on the tenor of the Funds' investments and the suitability of institutions used for investment purposes;
  - (c) to draw the Director's attention to any developments which may justify a revision of the Funds' investment policy as laid down by the governing bodies;
  - (d) to advise the Director on the management of currency exposure relating to incidents; and
  - (e) to advise the Director on any other matters relevant to the Funds' investments.
- 3 The Body shall meet at least three times a year. The meetings shall be convened by the Director. Any member of the Body may request a meeting to be held. The Director, the Head of the Administration Department, the Chief of Finance and the Finance Manager shall be present at the meetings.
- 4 The members of the Body shall be available for informal consultations with the Director in case of need.
- 5 The Body shall submit, through the Director, to each regular autumn session of the governing bodies, a report on its activities since the previous regular sessions of the governing bodies.

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## **ANNEX VIII**

### **STAFF REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992**

*(as amended by the 1992 Fund Assembly at its 28th session held from 7 to 10 November 2023)*

#### Regulation 19

##### *Leave*

Members of the Secretariat shall be allowed annual leave, sick leave, parental leave and home leave, and may be allowed special leave with or without pay under the conditions specified in the Staff Rules.

#### Regulation 26

##### *Social Security*

- (a) The Director shall establish a scheme of social security for staff members, including provisions for health protection, sick leave and parental leave, and compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Funds.

\* \* \*



## ANNEX IX

### STAFF RULES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992

*(as amended by the 1992 Fund Assembly at its 28th session held from 7 to 10 November 2023)*

#### STAFF RULE VIII.5

##### Provident Fund

- (a) A Provident Fund shall be established within the 1992 Fund with effect from 16 May 1998.
- (b) All staff members as defined in sub-clause VIII.5(h) shall participate in the 1992 Fund Provident Fund which shall consist of:
  - (i) contributions of 7.9% of the pensionable remuneration of all staff members payable by them as from the dates of commencement of their services with the 1992 Fund respectively;
  - (ii) contributions of 15.8% of the pensionable remuneration of staff members to be made by the 1992 Fund as from the date of commencement of their services with the 1992 Fund respectively;
  - (iii) any amount transferred to the Provident Fund of the 1992 Fund at the staff member's request from his or her share as at 15 May 1998 of the Provident Fund of the 1971 Fund, including interest thereon;
  - (iv) the additional voluntary contributions of up to 23.7% of the pensionable remuneration of staff members from the commencement of their services with the 1992 Fund or at a future agreed date. The Organisation's contribution would be retained at 15.8% of pensionable remuneration;
  - (v) the interest accrued from the investment of amounts referred to in (i)-(iv), and any inflation protection measure applicable to amounts referred to in (i) and (ii) as specified by an administrative directive issued by the Director.
- (c) Payment of contributions to the 1992 Provident Fund shall be effected monthly.
- (d) The administration, investment and control of the Provident Fund is the responsibility of the Director.
- (e) The share of the staff member in the Provident Fund shall, at the discretion of the Director, be payable upon separation of the staff member from the 1992 Fund or to his or her nominated beneficiary on his or her death. A staff member whose contract is terminated within or at the end of a probationary period shall be entitled only to that part of his or her share of the Provident Fund contributed by himself or herself plus the interest accruing thereon, unless such separation is in the opinion of the Director due to health reasons; the

Fund's contribution under paragraph (b)(ii) of this Rule plus interest thereon shall revert to the Fund.

- (f) The final date used for the calculation of payment of the staff member's share in the Provident Fund shall be determined by the application of Rule VI.7.
- (g) The auditing of the Provident Fund shall be carried out in conjunction with the annual auditing of the accounts of the 1992 Fund.
- (h) For the purpose of this Rule "staff member" means a person holding a fixed-term contract with the 1992 Fund for a period exceeding six months.
- (i) The share of a staff member in the Provident Fund shall be the contributions referred to in paragraphs (b) (i), (ii) and (iv) of this Rule and any amount transferred pursuant to paragraph (b) (iii) together with interest thereon less a proportion of any administrative expenses or banking charges incurred in respect of the Provident Fund.
- (j) The share of a staff member in the Provident Fund may be lent as a housing loan to the staff member concerned in conformity with the terms and conditions specified by an administrative directive issued by the Director. The Director shall report such administrative directives and amendments thereto to the Assembly.

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**ANNEX X**  
**2024 Administrative Budget for 1992 Fund**

STATEMENT OF EXPENDITURE	Actual 2022 expenditure for 1992 Fund	2022 budget appropriations for 1992 Fund	2023 budget appropriations for 1992 Fund	2024 budget appropriations for 1992 Fund
	£	£	£	£
<b>I Personnel</b>				
(a) Salaries	2 160 427	2 241 908	2 333 382	2 636 425
(b) Separation and recruitment	197 020	120 000	135 000	120 000
(c) Staff benefits, allowances and training	850 797	913 968	1 014 746	1 055 844
(d) Service award	950	20 000	400	1 250
<b>Sub-total</b>	<b>3 209 193</b>	<b>3 295 876</b>	<b>3 483 528</b>	<b>3 813 519</b>
<b>II General services</b>				
(a) Rent of office accommodation (including service charges and rates)	180 002	192 902	184 177	205 999
(b) IT (hardware, software, maintenance and connectivity)	431 019	448 000	457 000	457 500
(c) Furniture and other office equipment	30 619	21 000	36 000	20 500
(d) Office stationery and supplies	3 216	9 000	7 000	6 000
(e) Communications (courier, telephone, postage)	9 387	28 000	21 000	19 500
(f) Other supplies and services	18 531	22 000	22 000	22 000
(g) Representation (hospitality)	26 451	20 000	20 000	15 000
(h) Public information	85 587	98 000	96 000	93 000
<b>Sub-total</b>	<b>784 812</b>	<b>838 902</b>	<b>843 177</b>	<b>839 499</b>
<b>III Meetings</b>				
Sessions of the 1992 Fund and Supplementary Fund governing bodies and intersessional Working Groups	73 897	130 000	122 000	112 000
<b>IV Travel</b>				
Conferences, seminars and missions	104 977	100 000	150 000	150 000
<b>V Other expenditure</b>				
(a) Consultants' and other fees	32 945	150 000	100 000	100 000
(b) Audit Body	200 326	200 000	245 000	210 000
(c) Investment Advisory Body	86 167	81 000	90 000	97 000
<b>Sub-total</b>	<b>319 438</b>	<b>431 000</b>	<b>435 000</b>	<b>407 000</b>
<b>VI Unforeseen expenditure (such as consultants and lawyers' fees, cost of extra staff and cost of equipment)</b>	-	60 000	60 000	60 000
<b>Total joint Secretariat expenditure I–VI</b>	<b>4 492 318</b>	<b>4 855 778</b>	<b>5 093 705</b>	<b>5 382 018</b>
<b>VII External audit fee (1992 Fund only)</b>	65 908	53 600	54 940	74 290
<b>Total Expenditure I–VII</b>	<b>4 558 225</b>	<b>4 909 378</b>	<b>5 148 645</b>	<b>5 456 308</b>

**2024 Administrative Budget for Supplementary Fund**

*(Figures in Pounds Sterling)*

STATEMENT OF EXPENDITURE		ACTUAL 2022 EXPENDITURE	2022 BUDGET APPROPRIATIONS	2023 BUDGET APPROPRIATIONS	2024 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	36 000	36 000	40 000	42 000
II	Administrative expenses (including external audit fees)	5 433	14 400	14 510	16 100
<b>Supplementary Fund budget appropriation</b>		<b>41 433</b>	<b>50 400</b>	<b>54 510</b>	<b>58 100</b>