



International Oil Pollution
Compensation Funds

Agenda Item 9	IOPC/APR24/9/WP.1/1	
Date	1 May 2024	
Original	English	
1992 Fund Administrative Council	92AC24/92AES28	
1992 Fund Executive Committee	92EC82	●
Supplementary Fund Assembly	SAES12	●

DRAFT

RECORD OF DECISIONS OF THE APRIL 2024 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(continued)

INCIDENTS INVOLVING THE IOPC FUNDS

3 Incidents involving the IOPC Funds

3.1	Incidents involving the IOPC Funds Document IOPC/APR24/3/1		92EC	SAES
-----	--	--	------	------

3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document [IOPC/APR24/3/1](#), which contained information on documents for the April 2024 meeting relating to incidents involving the IOPC Funds.

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

3.2	Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/APR24/3/2		92EC	
-----	---	--	------	--

3.2.1 The 1992 Fund Executive Committee took note of document [IOPC/APR24/3/2](#), relating to the *Agia Zoni II* incident.

Limitation fund claims evaluation procedure

3.2.2 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.

3.2.3 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 took place in 2020 to deal with the eight appeals lodged against the Limitation Fund Administrator's assessments.

3.2.4 It was 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. It was also noted that the 1992 Fund had appealed and that the date for the hearing had been adjourned until September 2024.

Investigation into the cause of the incident

- 3.2.5 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 Marine Accident Investigation Council (ASNA) report considered that the incident was attributed to the deliberate and negligent actions of:
- (i) the shipowner;
 - (ii) the two crew members on board at the time of the incident;
 - (iii) the General Manager of the shipowning company;
 - (iv) the Designated Person Ashore of the shipowning company; and
 - (v) representatives of the salvor/clean-up contracting company.
- 3.2.6 The Executive Committee further 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.
- 3.2.7 It was recalled that in June 2021, the disciplinary tribunal had 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.
- 3.2.8 It was noted that the 1992 Fund's lawyers had recently been provided with a copy of the criminal file for the incident by the District Attorney, which reported a decision of the criminal judges sitting in Council which concluded that there appeared strong indications of criminal liability against five of the nine parties originally examined on the grounds that:
- (a) As per the opinion of all experts, the ship was intentionally sunk in order to cause pollution;
 - (b) According to all experts (except the National Technical University of Athens), the sinking was caused by the opening up from within the ship of the ballast water valves of the bottom starboard ballast tanks 2, 3 and 4, and by leaving open the engine room porthole. This could only have been done by the two crewmen who remained on board (there was no indication of any third-party boarding and leaving covertly);
 - (c) Notwithstanding the progressive starboard list of the ship, the two crewmen did not act or notify anyone;
 - (d) The Greek Coast Guard was first notified at 02:10 hours by another ship close by, without either of the above two crewmen on board, or the Master or the owning company having called earlier;
 - (e) Despite the second clean-up company having previously contacted the shipowning company, and its antipollution vessel had already started operating onsite, the owners of the *Agia Zoni II* awarded the salvage and antipollution contract at 06:30 hours with delay, to the first clean-up company which has no experience in that field of work; and
 - (f) The closing and sealing of the 11 cargo tank covers was achieved by that company, 53 hours after the ship sank, which was considered a very long timeframe.

3.2.9 It was also noted that in view of the above, the two crew members who remained on board, were indicted for intentionally:

- (i) causing malicious maritime pollution that could, and did, damage the environment and third-party properties, by unscrewing the cargo tanks' covers from which oil leaked into the sea following the ship's starboard list, which they caused by intentionally allowing ballast water into the starboard bottom ballast tanks 2, 3 and 4;
- (ii) sinking the ship by illegally opening the starboard valves of the bottom ballast tanks 2, 3 and 4, and opening the engine room porthole which endangered human life; and
- (iii) discharging into the sea, polluting materials.

3.2.10 It was further noted that the Master, the owning company representative and the representative of the first clean-up company were indicted as instigators of all above criminal actions, with the aim of causing extensive maritime pollution in order to benefit from the remuneration for antipollution works.

3.2.11 The Executive Committee noted that the decision of the criminal judges committed the engine room foremaster, the AB seaman, the Master, the shipowning company representative and the representative of the first clean-up company to trial, and also noted that the decision contained negative remarks about the first clean-up company.

3.2.12 The Executive Committee further noted that a date had been set for 24 October 2024, for a full trial (expected to last four to six days) of the five persons listed above, at the end of which, a judgment would be issued.

Claims for compensation

3.2.13 The Executive Committee noted that the 1992 Fund had received 424 claims amounting to EUR 100.21 million and one claim for USD 175 000, that it had approved 418 claims and had paid 192 claims amounting to EUR 16.88 million in compensation. Further offers of compensation and advance payments had been made to a number of claimants whose responses were awaited.

3.2.14 The Executive Committee recalled the details of the claims that had been submitted against the 1992 Fund by clean-up contractors, fishers, claimants in the tourism sector and by the Greek State, the further details of which were included within document [IOPC/APR24/3/2](#).

Statement by the delegation of Greece

3.2.15 The delegation of Greece made the following statement:

'First of all, we would like to thank you for the thorough and enlightening presentation. Having heard the summary on the said incident, I am afraid that there are no further advancements to report as regards this case from our part. This is mainly due to lawyers' abstention from all their court-related duties at a pan-Hellenic level having resulted in all scheduled trials to be postponed, as also mentioned in the document just presented.

With regards to the cause of the investigation of the sinking of the *Agia Zoni II*, namely the criminal proceedings in progress, the judicial development of the case for the incident and the issuance of an irrevocable criminal court decision, the results are still awaited as all the relevant proceedings are still ongoing.'

Debate

- 3.2.16 In response to a request by another delegation for details of the claims submitted by the clean-up contractor identified in the criminal proceedings, the Secretariat provided the details requested, noting that before the ASNA report had been published, an advance payment had been made to the salvors, but that no further payments had been made subsequently to that party, pending the conclusion of the criminal proceedings. The Secretariat also confirmed that the shipowner was indicted.
- 3.2.17 Another delegation stated that it noted the recent developments provided in the document regarding the indictment of the various parties including the two crew members and Master of the ship, and expected that through the trial it would become clear whether the sinking of the ship was caused intentionally, and hoped that the judgment of the trial would be reported at the next meeting of the governing bodies.

1992 Fund Executive Committee

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

3.3	Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Document IOPC/APR24/3/3		92EC	
-----	---	--	-------------	--

- 3.3.1 The 1992 Fund Executive Committee took note of document [IOPC/APR24/3/3](#) on the *Bow Jubail* incident.
- 3.3.2 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.
- 3.3.3 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 Civil Liability Convention (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.
- 3.3.4 The Executive Committee recalled that in May 2023, the Supreme Court had confirmed 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.
- 3.3.5 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.
- 3.3.6 The Executive Committee also recalled that following a preliminary review of the amounts claimed, the total provisional amount was close to EUR 60 million, well in excess of the 1992 CLC limit. This amount is also in excess of the indemnity that the shipowner would provide to the 1992 Fund under the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017)^{<1>}.
- 3.3.7 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.

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

- 3.3.8 The Executive Committee further recalled 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.
- 3.3.9 The Executive Committee noted that in October 2023, after the Court had rejected the shipowner’s application to limit its liability to the amount of the 1992 CLC only, the latter had resubmitted a request to limit its liability to the amount of the 1992 CLC, this time including interest.
- 3.3.10 The Executive Committee noted that, in a hearing on 26 April 2024, the Court indicated that it will take a decision whether to accept the shipowner’s application by the end of May 2024.

1992 Fund Executive Committee

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

3.4	Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel Document IOPC/APR24/3/4		92EC
-----	--	--	-------------

- 3.4.1 The 1992 Fund Executive Committee took note of the information regarding the Incident in Israel, as set out in document [IOPC/APR24/3/4](#).
- 3.4.2 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. The Executive Committee also recalled that the Israeli Government believed a spill had occurred in the waters of the Exclusive Economic Zone (EEZ) of Israel. It further recalled that the source of the spill had not been identified.
- 3.4.3 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 which could not have originated from any other source but a passing oil tanker.
- 3.4.4 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 recalled that it had authorised the Director to pay compensation in respect of claims arising out of the Incident in Israel.
- 3.4.5 The Executive Committee noted that 470 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 39.8 million, and noted that 12 claims had been paid for a total of ILS 4.6 million. The Executive Committee also noted that 344 claims for economic losses and property damage had been rejected for lack of supporting information.
- 3.4.6 The Executive Committee noted that further claims had been assessed at ILS 3.6 million and that the claimants had been informed of the assessment but had not yet replied.
- 3.4.7 The Executive Committee also noted that a number of claims, including claims for spill response and clean-up operations carried out by local authorities along the Israeli coastline and for economic losses, had recently been received through the Admiralty Court in Haifa, where a number of claimants whose claims had not yet been settled had commenced legal proceedings against the 1992 Fund, in order to protect their claims from being time-barred.

1992 Fund Executive Committee

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

3.5	Incidents involving the IOPC Funds — 1992 Fund: <i>Princess Empress</i> Document IOPC/APR24/3/5		92EC	
-----	---	--	------	--

- 3.5.1 The 1992 Fund Executive Committee took note of the information regarding the *Princess Empress* incident contained in document [IOPC/APR24/3/5](#).
- 3.5.2 The Executive Committee recalled that on 28 February 2023, the Philippine-flagged *Princess Empress* (508 GT) sank in rough seas off the coast of Naujan, Oriental Mindoro, the Philippines, whilst carrying 800 000 litres of fuel oil as cargo and that subsequently, an oil spill had been detected around the location of the wreck which had extended to other areas, causing pollution damage.
- 3.5.3 It was 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, which is situated south of Mindoro Island, affecting the islands of Semirara and Liwagao.
- 3.5.4 The Executive Committee recalled that the 1992 Fund and the Shipowners' P&I Club had opened a central Claims Submission Office (CSO) in Calapan, Oriental Mindoro, and set up a number of temporary collection centres in different areas, some of which are not easily reachable.
- 3.5.5 It was recalled that claims related to this incident had exceeded the limit of liability of the shipowner under the 1992 CLC. It was also recalled that although the 1992 Fund 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 (as amended 2017) limit of SDR 20 million. It was recalled, however, the STOPIA 2006 (as amended 2017) limit had also been reached.

Claims for compensation

- 3.5.6 The Executive Committee took note of the information on claims for compensation, contained in section 8 of document [IOPC/APR24/3/5](#).
- 3.5.7 It was noted that, after the publication of the document, the fisheries experts had finalised their assessment of some 36 000 claims in the fisheries sector. It was noted that of those, some 23 500 capture fisheries claims had been assessed at PHP 794.2 million. It was also noted that the payment process of the approved amounts had commenced but that given the high volume of claims to be paid and the logistical challenges, it would take several months to complete the payments.

Statement by the delegation of the Philippines

- 3.5.8 The delegation of the Philippines made the following statement:

'The offshore and shoreline response operations in relation to the oil spill incident brought by the sinking of the *Princess Empress* in the waters off Naujan, Oriental Mindoro last 28 February 2023 were demobilised as of 25 July 2023 after the series of final surveys initiated by the Incident Management Team. All government agencies and the local government units involved in the Command post participated in the survey. However, continued monitoring of the affected sites must continue.

The PCG and other government agencies are now concentrating on the rehabilitation of the affected areas.

The PCG and other agencies are preparing the documents to claim against the IOPC Funds.

The Philippines is doing its utmost to communicate to potential claimants the IOPC Funds compensation regime. There is also close coordination between the Government and the IOPC Funds through the CSO as regards claims.

In the meantime, we thank the IOPC Funds' Secretariat and all relevant partners and stakeholders for all their efforts and assistance to the Philippines and to the claimants, especially the fisherfolks.'

1992 Fund Executive Committee

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

3.6	Incidents involving the IOPC Funds — 1992 Fund: Incident in Trinidad and Tobago Documents IOPC/APR24/3/6 and IOPC/APR24/3/6/1		92EC	
-----	--	--	-------------	--

3.6.1 The 1992 Fund Executive Committee took note of document [IOPC/APR24/3/6](#) submitted by the Secretariat, and document [IOPC/APR24/3/6/1](#) submitted by the Government of the Republic of Trinidad and Tobago.

Document IOPC/APR24/3/6 submitted by the Secretariat

3.6.2 The 1992 Fund Executive Committee noted that the articulated barge *Gulfstream*, towed by the tug *Solo Creed*, had capsized on 5/6 February 2024, some 16 km off the coast of Tobago and had lodged on a reef some 150 metres off Canoe Bay on the South Eastern coast of Tobago, spilling an unknown quantity of its 4 652 mt of persistent Bunker Fuel C cargo, which had polluted some 15 km of the coastline of Tobago. Subsequently, traces of oil and tar balls were washed up on the coast of Bonaire (Kingdom of the Netherlands), which were cleaned up by the local authorities.

3.6.3 The Executive Committee also noted that the barge was on a voyage from Pozuelo Bay, Venezuela to Guyana and that the Tobago Emergency Management Agency (TEMA) had triggered the national Oil Spill Contingency Plan to manage the response to the spill.

3.6.4 The Executive Committee further noted that the 1992 Fund had mobilised ITOPF to provide assistance to the authorities, and that in early March 2024, the Deputy Director/Head of Claims Department and a Claims Manager had visited Trinidad and Tobago for a fact-gathering visit and to meet with representatives from the Ministry of Energy and Energy Industries (MEEI).

3.6.5 It was noted that two salvage and environmental companies had been retained to remove any further oil which remained inside the wreck; an unknown quantity of oil, possibly up to 25 000 barrels of the original cargo of 35 000 barrels remained within the capsized barge.

3.6.6 It was also noted that clean-up operations were continuing with upwards of 150 workers and volunteers.

3.6.7 It was further noted that the oil carried onboard the barge was persistent and that the barge had been engaged in sea-going voyages for many years in the company of a push-tug *Marlin*.

3.6.8 The Executive Committee noted that online databases indicate that the barge *Gulfstream* was classed with the American Bureau of Shipping (ABS) until 31 December 2018 but that no further registration

details were available. It was also noted that it appeared that the vessel had not been reclassified or registered for a number of years.

- 3.6.9 The Executive Committee recalled that there have been a number of incidents in which the IOPC Funds' governing bodies have accepted that a vessel which traded regularly at sea was a 'sea-going' vessel satisfying the definition of 'ship' within Article I(1) of the 1992 CLC, including the *Victoriya* (2003), *Al Jaziah 1* (2000) and *Pontoon 300* (1998) incidents.
- 3.6.10 The Executive Committee further noted that in March 2023, the barge *Gulfstream* had been docked in Colón, Panama and was according to Court records in a damaged condition which required pumping to prevent it from sinking. In June 2023, it had been auctioned for sale before being laid up aground on a beach for seven months.
- 3.6.11 It was noted that on 30 December 2023, the tug *Solo Creed* moved the barge to anchor in the harbour at Colón, Panama, and that the barge was then towed to Venezuela.
- 3.6.12 It was also noted that an online database revealed the *Solo Creed* and *Gulfstream* offshore near Amuay, Venezuela before the tug and barge were observed in Pozuelo Bay, Venezuela between 27 and 31 January 2024.
- 3.6.13 It was further noted that on 3 February 2024, after leaving Pozuelo Bay, satellite imagery showed the tug and barge heading northeast with the barge on a long tow. The images show the barge to be leaking an oily substance, leaving behind a slick that stretched for at least 40 km. This indicated that it was likely that the *Gulfstream* took on a cargo from Venezuela in Pozuelo Bay, possibly via a ship-to-ship transfer (STS).
- 3.6.14 The Executive Committee noted that satellite imagery revealed that the *Gulfstream* barge had capsized approximately 16 km southeast of Tobago, and that the tug *Solo Creed* had seemingly released the tow wire and fled. Despite searches made by the local authorities, and enquiries made of neighbouring States and various ship registries, the location of the tug has not been determined.
- 3.6.15 The Executive Committee also noted that according to a document purportedly showing a request to book a pilot for the tug *Solo Creed* and its barge tow *Culie Boy*, the cargo was destined for Guyana Power and Light, Guyana's state-owned electric utility. It was noted that Guyana Power and Light had denied any involvement with the incident, but that the existence of further additional contracts providing oil to entities in Guyana could not be discounted.
- 3.6.16 The Executive Committee further noted that ship registration documents provided by the Zanzibar Maritime Authority indicated that the listed owner of the *Solo Creed* during its voyage towing the barge *Gulfstream* was an officer of a company based in Panama, and that several directors of that company were shared with three other companies which owned several other vessels which transited between Caribbean, Colombian and Venezuelan ports, often appearing to sail 'dark' with the automatic identification system (AIS) tracking data disabled.
- 3.6.17 It was noted that an independent investigative agency had made contact with a person in Nigeria who claimed to have purchased both the tug and barge in August 2023 (providing an unnotarised Bill of Sale for the mis-named barge *Gulf Stream*), and who claimed that both vessels were en route to Nigeria when the incident occurred, that they were not insured, and that the tug *Solo Creed* was still en route to Nigeria.
- 3.6.18 It was also noted that a new certificate of registration had been provided by the Zanzibar Maritime Authority dated 13 February 2024 listing a new owner based in Georgetown, Guyana, but that it had not been possible to locate that company in the Guyana Commercial Registry, and further enquiries continued by the Trinidad and Tobago authorities.

- 3.6.19 It was further noted that offshore clean-up and containment began on 8 February 2024 involving over 200 people, but that due to spring tides the oil was pushed beyond the usual high water mark leaving many areas with oil stains. It was also noted that the wave action of the next spring tides would assist in naturally cleaning many areas which were contaminated.
- 3.6.20 The Executive Committee noted that oil removal operations had been due to commence in the week of 1 April 2024 but had been hampered due to bad weather.
- 3.6.21 The Executive Committee also noted that as at 4 April 2024, some 8 255 m³ of liquid waste and 15 926 m³ of solid waste had been collected.
- 3.6.22 The Executive Committee further noted that no claims for compensation had yet been presented and that enquiries were continuing to locate the owners of the barge *Gulfstream*.
- 3.6.23 It was noted that the incident involved a barge which appeared to have no insurance, was in poor condition, for which no registered owner had yet been identified, and which appeared to be leaking oil at the start of its voyage suggesting the vessel was unseaworthy before and at the commencement of the voyage.

Document IOPC/APR24/3/6/1 submitted by the Government of the Republic of Trinidad and Tobago

- 3.6.24 The 1992 Fund Executive Committee also took note of document [IOPC/APR24/3/6/1](#) submitted by the Government of the Republic of Trinidad and Tobago, which detailed that the barge *Gulfstream* reportedly has a capacity of 60 000 barrels of cargo and an alleged consignment of 35 000 barrels allegedly bound for the Republic of Guyana. The Executive Committee further noted that the Tanzanian authorities had advised that the registration certificate was fraudulent.
- 3.6.25 It was noted that the local authorities were in pursuit of the *Solo Creed* worldwide, and that official correspondence had been dispatched to Panama and Tanzania seeking any relevant information regarding the two vessels. It was also noted that the Maritime Services Division (MSD) of the Ministry of Works and Transport had been contacted by a Nigerian lawyer representing the purported owner of the tug and barge, and that the MSD was scrutinising the validity of the claims having initiated inquiries to the Nigerian Government.
- 3.6.26 It was further noted that the Trinidad and Tobago Coast Guard (TTCG) had been working closely with the Guyana Coast Guard, the Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS) and IR Consilium who are working with CARICOM IMPACS in an effort to identify the vessels involved or responsible for the oil spill in Tobago.
- 3.6.27 The Executive Committee noted that initial estimates of the cost of response to the oil spill were in the region of USD 23.5 million, with USD 12.5 million having been spent as at 6 April 2024. The Executive Committee also noted that bulk clean-up operations were completed in March 2024, and shoreline clean-up was expected to be completed in April 2024, with oil removal from the wreck expected to be completed in mid-May 2024.
- 3.6.28 The Executive Committee further noted that the Government of Trinidad and Tobago intended to take all and any necessary legal actions against the owner of the barge, the owner of the cargo and/or the owner of the tug in order to recover the monies spent on the oil spill prevention and clean-up efforts, and that they intended to utilise the Bunker Fuel C collected from the vessel in order to defray costs.
- 3.6.29 The Executive Committee noted the response actions undertaken by the local authorities as detailed within the document. It also noted that in relation to the search for the *Solo Creed*, CARICOM IMPACS had advised that a legal firm for the charterer of a barge had informed the Guyana power plant believed to have been the intended recipient of the cargo, that due to unforeseen circumstances it could not

honour the contract to provide fuel and could not say when it would be able to do so. It was also noted that the barge was not named in the correspondence and indicated that the volume of heavy fuel oil on board was 75 000 barrels, not 35 000 barrels as listed in the pilotage document obtained from the Guyana Maritime Authority, which had mentioned a barge *Culie Boy*, whose IMO number detailed in the pilotage document matched that of the barge *Gulfstream*, based on online sources.

- 3.6.30 It was further noted that assistance had been sought from CARICOM IMPACS to contact Panama and Aruba to ascertain whether there were any photos of *Solo Creed* and its barge. Photos were provided showing the tug towing a barge which matched the barge shown sinking in videos made available to the Trinidad and Tobago authorities.
- 3.6.31 The 1992 Fund Executive Committee noted that the MSD had written to IMO for the provision of a consultant to assist with the investigation, and that IMO was actively engaged in identifying one. The Executive Committee also noted that it was the intention of the Government of Trinidad and Tobago to take legal action against the owner of the barge *Gulfstream* and/or the owner of the tug *Solo Creed* under the applicable Trinidad and Tobago legislation.
- 3.6.32 The delegation of Trinidad and Tobago gave a detailed statement on this incident which is included in its entirety and is attached at the Annex.

Statement by the delegation of the Republic of Korea

- 3.6.33 The delegation of the Republic of Korea made the following statement:

‘First of all, we would like to express our appreciation to the Secretariat and the Republic of Trinidad and Tobago for providing relevant information and submitting the documents on the incident in Trinidad and Tobago, which occurred in early February this year.

This incident is of significant importance to the implementation of the 1992 Civil Liability and Fund Conventions, which form the foundation of the IOPC Funds, and the issues revealed in the documents are all related to non-compliance with key obligations under these Conventions.

In particular, as specified in the documents, the incident is suspected to be linked to deliberate illegal actions such as intentional vessel registration avoidance by some shipowners in specific areas. There were also problems in identifying shipowners due to a lack of registration-related information regarding the ships involved in the incident, along with matters of classification.

Moreover, it is evident that the barge in question had serious maintenance and seaworthiness issues before the incident, which is an action that potentially and greatly increases the risk of oil spills. Consequently, the intervention of the IOPC Funds becomes inevitable, leading to an increase in the contribution of the Member States.

Furthermore, shipowners in all Member States are obliged to have liability insurance under the 1992 CLC. However, in the current situation, it is believed that the unidentified shipowner of the barge in this case has failed to fulfil its obligation in accordance with the Convention. Even if the shipowner is identified later, it is anticipated that the 1992 Fund may incur financial losses if the shipowner does not have insurance as per the Convention. The Republic of Korea expresses serious concern that this will be directly placing a burden on Member States.

During previous IOPC Funds' meetings, the IOPC Funds' governing bodies have accepted that a vessel which traded regularly at sea, including a barge transporting oil in bulk as cargo from one place to another, was a 'sea-going' vessel satisfying the definition of 'ship' within the 1969 and 1992 Civil Liability Conventions. Since this incident is to be interpreted as a similar case, it is believed that payment of compensation is inevitable, so the Republic of Korea agrees to pay compensation in respect of claims arising from this incident.

However, this delegation expresses serious concerns about the high probability of similar incidents occurring in the future. Given the continuous sharing of cases concerning interpretations of the definition of 'ship', intentional incidents, and under-insurance falling short of the shipowner's liability, the Republic of Korea is concerned about the negative impact on the IOPC Funds and Member States due to ongoing issues of compliance with the 1992 Conventions.

In particular, the unlawful practices associated with the fraudulent registries of ships which is the main issue identified in this case, was discussed at the IMO Legal Committee last week, and the matter is directly related to the IOPC Funds as it is related to the identification of the shipowners.

Therefore, the Republic of Korea requests all Member States to fulfil their obligations under the Conventions, including management and supervision obligations of the Flag States, to protect the interests of the IOPC Funds and Member States.

In addition, this delegation also kindly requests the Secretariat to actively engage in this matter, including taking all necessary and reasonable legal remedies regarding the incident, to ensure that Member States comply with their obligations under the Convention, by cooperating with the IOPC Funds' Secretariat in the future.'

Statement by the delegation of the Kingdom of the Netherlands

3.6.34 The delegation of the Kingdom of the Netherlands made the following statement:

'We firstly would like to thank Trinidad and Tobago and the IOPC Funds for the steps already taken in this incident and the efforts that already have been made to identify the shipowner of the vessel. The Kingdom of the Netherlands is pleased to hear members of the Executive Committee stating that the 1992 Conventions should apply to this incident, since oil and tar balls also washed up on the coast of Bonaire which resulted from this incident. Beaches and mangrove areas were polluted, but luckily cleaned up quite quickly by the Dutch authorities. There is a yearly training on oil spill response in Bonaire, which proved to be very effective in this situation. However, despite this effective response, pollution has been experienced and therefore claims will arise from this incident.

We do also support the concerns that were expressed by other Member States that the unclarity about the ownership and insurance of vessels in these type of incidents, could undermine the workings of the IOPC Funds' system. We very much welcome the proposal to discuss this issue further.

On our part, we additionally would like to highlight the importance of good cooperation among States that are involved in such an incident. In the case of the Trinidad and Tobago incident, due to the oil washed up on the coast of Bonaire, the Kingdom of the Netherlands has also offered help to Trinidad and Tobago in removing the wreck in order to prevent any further possible ecological damage to the wider Caribbean area and also to explore possibilities to cooperate in obtaining compensation from the owner of the vessel.'

Debate

- 3.6.35 One delegation stated that this incident emphasised the need to improve the control of shipping in order to minimise the possibility of similar vessels which presented significant risks of damage to coasts and the environment, and emphasised the importance of the support provided by the IOPC Funds and the reasons for being a Member of the 1992 Fund.
- 3.6.36 A significant number of delegations agreed that the 1992 Civil Liability and Fund Conventions applied to this incident, and authorised the Director to make payment of compensation in respect of claims arising from this incident, and that efforts should continue to identify the shipowner and to pursue a recourse action for the 1992 CLC portion.
- 3.6.37 Several delegations stated that they appreciated the efforts made to recover more information and to identify the shipowner, but noted that despite the efforts of the Secretariat and the Government of Trinidad and Tobago, the identity of the owner had still not been ascertained, and commented that even if found, it was unlikely that the vessel involved was insured. This raised serious concerns and undermined the integrity of the compensation regime.
- 3.6.38 Several delegations supported further discussion in the 1992 Fund Assembly, and one delegation stated that this matter should be brought to the attention of the IMO Legal Committee.
- 3.6.39 One delegation noted the difficulty of identifying the shipowner even with the availability of modern satellite coverage, and another delegation, noting that it was not a member of the Executive Committee, shared the concerns expressed by the Director regarding the threat to the marine environment and the stability of the compensation regime posed by substandard vessels sailing with insufficient or no insurance.
- 3.6.40 That delegation noted that document [IOPC/APR24/3/6](#) provided ample legal grounds and precedents to conclude that the barge and the oil laden onboard complied with the 1992 CLC definitions of 'ship' and 'oil', and also noted that previously the 1992 Fund Assembly had established the 7th Intersessional Working Group on the definition of 'ship', whose final report was contained in document [IOPC/APR15/8/2](#), and which in paragraph 12.2.7.3 analysed this exact scenario, and reached the same conclusions.

1992 Fund Executive Committee decisions

- 3.6.41 The 1992 Fund Executive Committee decided:
- (a) that the 1992 Civil Liability and Fund Conventions would apply to this incident; and
 - (b) to authorise the Director to make payments of compensation in respect of claims arising from this incident.

* * *

ANNEX

Statement by the delegation of the Republic of Trinidad and Tobago

I bring you greetings as the Head of Delegation for the Republic of Trinidad and Tobago, a Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. By way of introduction allow me to introduce myself, I am Stuart Young, Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister of the Government of the Republic of Trinidad and Tobago. As part of my ministerial portfolio, I have the responsibility to oversee the management of the Energy Sector of Trinidad and Tobago, which includes the overall management of National Oil Spills in accordance with the National Oil Spill Contingency Plan of Trinidad and Tobago.

I would like this statement to be recorded in your final decision.

By way of brief introduction, Trinidad and Tobago is a small twin island state at the southernmost tip of the Caribbean chain of islands. We are seven miles off the coast of Venezuela. The land size of both of our islands is approximately 5 131 km²; of that total, Tobago is approximately 300 km². It is essential to note that Tobago's domestic economy is completely dependent on tourism and in particular, its pristine white coral sand beaches and crystal blue waters.

This unfortunate and tragic oil spill hit the island of Tobago without warning on 7 February 2024 and immediately threatened the lives and livelihood of the people of Tobago. The area where this overturned and unmanned vessel ran aground in Tobago is literally a few kilometers away from the most important beaches in Tobago for tourism. Had the tides and currents not favoured us this oil spill could have destroyed the economy and livelihood of Tobago. We had no warning, we had no owner come forward, we had no one take responsibility for this vessel and the outflow of hydrocarbons onto our reef and 15 km of coastline. This literally was a 'thief in the night' that has battered and assaulted us and is costing us millions of US dollars through absolutely no fault of ours or anyone associated with Trinidad and Tobago. The vessel had no connection or business with Trinidad and Tobago.

The importance of this matter and our submission to you prompted the Cabinet of Trinidad and Tobago to task me with the heavy and important responsibility of appearing before you to make our case, to plead our case, for your assistance and coverage in not only recovering the rising costs of dealing with this tragic oil spill but also in tracking and locating those responsible for this disaster and holding them accountable. I immediately give you the assurance that we will work closely with you to find those responsible so that ultimately the 1992 Fund will be able to recover costs from them. The State will fully cooperate with the 1992 Fund to recover all coverage provided to Trinidad and Tobago.

As you may all be aware, Trinidad and Tobago submitted a document [IOPC/APR24/3/6/1](#) at the invitation of the IOPC Funds' Secretariat due to the unfortunate oil spill incident that impacted the island of Tobago.

I am respectfully presenting the request of the people of Trinidad and Tobago to our fellow Member States of the 1992 Fund and asking that you grant the Director of the IOPC Funds authorisation to access the 1992 Fund to pay reasonable compensation for the severe financial losses incurred to respond to this spill and to put in place the necessary preventative measures. Without the Fund's coverage we will struggle as the significant costs being incurred were not budgeted for and will put us under strain.

The 'vessel' and oil spill

It was on the 7 February 2024, when various ministries and agencies of the Government of the Republic of Trinidad and Tobago (Trinidad and Tobago) first became aware of oil spill impacts to the Atlantic shoreline of the island of Tobago and to the marine environment caused by a capsized and grounded barge named *Gulfstream*, lodged just off the coast of Cove Estate. We are aware that this name is a former name of the said vessel, but its current name is yet to be definitively determined. Approximately 15 km of coastline in Tobago was impacted, on the Atlantic side of the island. The incident affected beaches, rivers, mangrove areas, rocky areas, hotels, fishers and wildlife, and even caused the temporary closure of some schools.

Clean-up operations were coordinated under the direction of the Ministry of Energy and Energy Industries (MEEI) and the Tobago Emergency Management Agency (TEMA), the disaster management agency on the island of Tobago. Both the Tobago Oil Spill Contingency Plan and the National Oil Spill Contingency Plan were immediately activated.

The MEEI secured the services of the State-owned national oil company, Heritage Petroleum Company Limited (HPCL), to assist with shoreline clean-up in the majority of coastal areas, while TEMA coordinated shoreline clean-up in other shoreline areas utilising various oil spill response contractors. Through HPCL, Oil Spill Response Limited (OSRL) was mobilised to provide technical assistance for our response. The shoreline clean-up operations utilised a combination of mechanical equipment, oil spill contractors, government clean-up crews, and volunteers. Generally, at peak, about 200 personnel daily were used for the clean-up.

I personally visited Tobago along with my cabinet colleague, the Minister of Works and Transport, on 9 February 2024 and met with the Chief Secretary of the Tobago House of Assembly to get a first-hand account of the effects and responses to this disaster. A week later, the Honourable Prime Minister of Trinidad and Tobago led a delegation which included the Minister of Works and Transport and myself to Tobago to get a briefing and to speak to the nation about the works taking place to contain the oil spill, clean it up and to deal with the ill effects, so important and critical was this incident to us nationally.

TEMA initially hired contractors to contain the spill from the wreckage. As this was unsuccessful, thereafter, the MEEI coordinated these operations when the international salvage contractor T&T Salvage LLC/QT Environmental Inc. was engaged.

Attempts to determine ownership of the ship/vessel

Remote operated vehicle footage and underwater photography of the wreck found the name *Gulfstream* embossed on the starboard bow, in an attempt to determine the name of the vessel and the vessel specifications. Based on a search conducted of vessels with the name *Gulfstream* and matching the dimensions and description, vessel specifications were obtained by the MEEI's salvage contractor T&T Salvage LLC from the United States Coast Guard, which indicated that the vessel named *Gulfstream* was manufactured by Kelso Marine in the USA, and formerly traded along the seacoast of the USA, but over time underwent many modifications, in particular, to the cargo tanks. The length and width of the vessel are comparable with the original dimensions of the original *Gulfstream* barge. The barge reportedly has a capacity of 60 000 barrels of cargo, and had an alleged consignment of 35 000 barrels of Bunker Fuel C oil which it appears was bound for the Co-Operative Republic of Guyana (Guyana). It is possible that the tank barge is now going by the name *Culie Boy*, allegedly registered in the shipping register of Zanzibar and flying the flag of the United Republic of Tanzania (Tanzania). However, the Tanzanian authorities have advised that the registration certificate bearing the flag as Tanzanian is fraudulent. The name of the barge is therefore unconfirmed. The Tanzanian Government has confirmed that a vessel, a tug named *Solo Creed* which is believed to have towed the barge, is on their registry. The vessel is currently undergoing de-inventory and it has been determined that the vessel has 12 cargo tanks with attendant ballast tanks which had varying amounts of oil in them. To date, despite all reasonable attempts by us, we have been unable to locate the owner(s) of this vessel and the tug that was towing it prior to this disaster. We have engaged an international satellite company to assist us in locating the tug. But, to date they were not able to do so.

Analysis of the oil, collected directly from the vessel, was conducted by the Institute of Marine Affairs (IMA), a government scientific agency of the Ministry of Planning and Development using Gas Chromatography – Mass Spectrometry (GC-MS) analysis. The analysis indicated that the oil was indeed Bunker Fuel C and was persistent. We are going to seek to find out if any refineries in the region have a match to this fuel to assist us in finding those responsible.

The Republic of Trinidad and Tobago is currently in pursuit of the *Solo Creed*, the tug that is believed was towing the barge at all ports across the region, and worldwide. This tug is believed to be flying the flag of the United Republic of Tanzania. This initiative stems from the information shared by the Guyana Maritime

Authority (GMA) regarding an arrival notification they received for the cargo on the barge being towed by the *Solo Creed*.

Official correspondence has been dispatched through the Ministry of Foreign and CARICOM Affairs (MoFCA) to Panama and Tanzania seeking any relevant information regarding the *Solo Creed* and its associated barge. Panama has advised that based on their research the *Solo Creed* flies the flag of Tanzania. We are awaiting responses from Tanzania and an additional response from Panama as to whether the *Solo Creed* departed Panamanian waters in January 2024.

Some days after the incident, the maritime authority of Trinidad and Tobago, the Maritime Services Division (MSD) of the Ministry of Works and Transport (MOWT) was approached by a Nigerian lawyer representing the purported owner of the barge responsible for the oil spill off the coast of Tobago. The lawyer conveyed that his client lacks the financial means to travel to Trinidad and Tobago and is besieged by creditors seeking repayment for investments made in the barge, which was uninsured. MSD is currently scrutinising the validity of these claims, having initiated inquiries through the MoFCA to the Nigerian Government. Further, the government of Nigeria has advised that the attorney is registered as a legal practitioner and member of the Nigerian Bar Association. The Nigerian Government further advised that with respect to the Nigerian citizenship of the purported owner of the capsized vessel, they have engaged the relevant authorities and will convey any information provided on this to the Government of the Republic of Trinidad and Tobago. We are awaiting responses. I believe that this letter is a ruse meant to misdirect us in our attempt to find those who are responsible.

The MSD has written to the International Maritime Organization (IMO) for the provision of a consultant to assist with our investigation. IMO indicated that they are actively engaged in the process of identifying one. We are awaiting positive feedback on this request.

The Trinidad and Tobago Coast Guard (TTCG) has been working closely with the Guyana Coast Guard, the Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS), and IR Consilium who is working with CARICOM IMPACS in an effort to locate the tug involved in the oil spill in Tobago.

We have been utilising all reasonable means to track, trace, identify and locate those who are responsible for this incident. To date, what has become obvious is that those responsible are avoiding us and no one is legitimately taking responsibility for this vessel which was carrying hydrocarbons when it got into difficulty, capsized and ended up on a reef in Tobago.

Dealing with the oil spill

Initial estimates of the cost of the response to the oil spill, inclusive of oil removal from the wreck so far, are conservatively in the region of USD 35 million (TTD 238 million). So far it is estimated that USD 12.5 million (TTD 85 million) has been spent as of 6 April 2024. Further costs and claims for economic losses are expected. We have receipts/invoices and supporting evidence to substantiate our claim.

Bulk oil clean-up operations were completed in March 2024 and the majority of shoreline clean-up operations was completed in April 2024. Based on the advice of ITOPF, there are still some areas that are yet to be cleaned to acceptable criteria utilising mainly low-pressure high-volume water flushing of rocky areas which is expected to take a few more months. In addition, the waste management of collected oil and contaminated beach sand, which is stored temporarily at the Studley Park Landfill, Tobago, needs to be addressed likely utilising incineration for liquid waste and bioremediation for oil-contaminated sand. Over 50 000 barrels of liquid waste and over 20 000 cubic yards (about 16 000 cubic metres) of beach material was collected and stored at Studley Park. The oil removal from the wreck is expected to be completed by mid-May 2024, after which it will be transported to Trinidad. The de-inventory process involves the pumping of the oil to land, storage in frac tanks, transfer to road tanker wagons, then transport to the Port of Scarborough in Tobago and offloading to a bunkering vessel which has a capacity of 25 000 barrels and will transport the oil to a 400 000-barrel storage tank at the Paria Fuel Trading Company in Pointe-à-Pierre, Trinidad.

The Republic of Trinidad and Tobago reported this incident to the IOPC Funds on 22 February 2024 and on 26 February 2024, the IOPC Funds' Secretariat mobilised ITOPF to Tobago providing technical advice to Trinidad and Tobago on oil spill response measures. Representatives of the IOPC Funds' Secretariat visited Trinidad and Tobago in March 2024. I would like to sincerely thank the Secretariat for all of the assistance and guidance provided to date and to also thank ITOPF and its personnel for the invaluable assistance and guidance provided at 'ground zero'. I thank both the Deputy Director and the Claims Manager for taking the time and having sufficient interest to come to Tobago to personally visit and support us.

Trinidad and Tobago intends to take **any and all necessary** legal action against the owner of the barge, the owner of the cargo and/or the owner of the tug that was towing the barge in order to recover monies spent on the oil spill prevention and clean-up efforts. I also give our assurance to you, the 1992 Fund, that we will work with you to recover your indemnification of our costs against those responsible.

Trinidad and Tobago will look into the utilisation of the Bunker Fuel C oil that was collected from the vessel in order to defray some costs, if this is in fact possible.

Trinidad and Tobago's position

As indicated, Trinidad and Tobago is a Party to the 1992 Civil Liability and Fund Conventions. Trinidad and Tobago is also up-to-date with oil reporting to the IOPC Funds' Secretariat. The last oil report filed was for 2023. The oil was sampled from the beach, in the water close to the wreck and from Tank 6 starboard side. The samples were analysed by the IMA using GC-MS. The samples from the beach and the water indicated that the oil is Intermediate Fuel Oil. However, the sample taken directly from the vessel showed that the oil is Bunker Fuel C oil. The variation suggests that the beach sample was weathered and the water sample had some of its chemical components removed. As such, the oil can be deemed to qualify as persistent oil. The schematics for the vessel *Gulfstream* manufactured by Kelso Marine Inc. were obtained from the United States Coast Guard by T&T Salvage LLC. The barge which spilled the Bunker Fuel C oil has 12 cargo tanks. As of 23 April 2024, 8 out of 12 cargo tanks were hot-tapped and gauged and the total volume estimated is 27 000 barrels on-board the vessel *Gulfstream*, which was reported to be carrying 35 000 barrels of Bunker Fuel C oil just prior to the incident with 8 150 barrels of oil removed from the wreck.

Therefore, it is believed that the vessel was in the business of the carriage of oil as cargo and thereby operating as a tanker. As such, **it is believed that the vessel qualifies as a 'ship' as defined by Article 1(1) of the 1992 CLC**. As you would be aware, the 1992 Fund has considered similar types of situations in the past and found that similar vessels qualified as a 'ship' as per the 1992 CLC and I implore you to so find in the present circumstances.

Access to the 1992 Fund

Through you Chair, the 1992 Fund Executive Committee is invited to strongly consider and accept the submission of Trinidad and Tobago that this incident involving the vessel called *Gulfstream*, is an incident that could occur in any 1992 Fund Member State, especially in these times, and should qualify for accessing the 1992 Fund. It is submitted that the vessel qualifies as a 'ship' and the 'oil' is persistent oil within the definitions of Article 1(l) and Article 1(5) respectively of the 1992 CLC. The barge was engaged in the carriage of persistent oil and was en-route to complete a Bunker Fuel C transaction allegedly with a company from another 1992 Fund Member State. Trinidad and Tobago is in good and regular standing with the IOPC Funds. Trinidad and Tobago is up-to-date on its oil reporting requirements and its contributions to the IOPC Funds over the years when the only refinery in Trinidad and Tobago was in operation up until 2018. Trinidad and Tobago welcomed the presence and recommendations from ITOPF throughout the response. As such, Trinidad and Tobago would expect Member States to recognise Trinidad and Tobago as a Member State deserving of access to the IOPC Funds to compensate the State for this major oil spill incident.

Members, it is our respectful submission that the causes of this disaster are in no way the responsibility of Trinidad and Tobago, we are not at fault in any way whatsoever. We have done all that can be reasonably expected to date to locate the owner(s) of the capsized ship that was carrying this oil as well as the tug and

will continue to do so to hold them responsible. The costs associated with containing, cleaning up and removing the oil from the ship are significant for us in the range of approximately USD 35 million. We have followed the advice of the IOPC Funds and ITOPIF and are grateful for same. Accordingly, in conclusion, I look forward to your confirmation that the 1992 Civil Liability and Fund Conventions apply to this incident and your decision authorising the Director to make payments of compensation in respect of our claims arising from this incident. I thank you and remain available to address any questions you may have.'

Stuart R. Young, M.P.

Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister, Government of the Republic of Trinidad and Tobago

29 April 2024

DRAFT