



International Oil Pollution
Compensation Funds

Agenda Item 11	IOPC/OCT19/11/1	
Date	31 October 2019	
Original	English	
1992 Fund Assembly	92A24	●
1992 Fund Executive Committee	92EC73	●
Supplementary Fund Assembly	SA16	●

RECORD OF DECISIONS OF THE OCTOBER 2019 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 28 to 31 October 2019)

Governing body (session)		Chair	Vice-Chairs
1992 Fund	Assembly (92A24)	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) (Absent) Mr Samuel Roger Minkeng (Cameroon)
	Executive Committee (92EC73)	Ambassador Antonio Bandini (Italy)	Captain K.P. Jayakumar (India) (Absent)
Supplementary Fund	Assembly (SA16)	Mr Sung-Bum Kim (Republic of Korea)	Mr Andrew Angel (United Kingdom) Mr Emre Dinçer (Turkey)

CONTENTS

	Page
Opening of the sessions	4
1 Procedural matters	4
1.1 Adoption of the Agenda	4
1.2 Election of the Chairs	4
1.3 Examination of credentials — Establishment of the Credentials Committee	5
1.3 Examination of credentials — Interim report of the Credentials Committee	5
1.3 Examination of credentials — Report of the Credentials Committee	5
1.4 Request for observer status	7
2 Overview	7
2.1 Report of the Director	7
3 Incidents involving the IOPC Funds	11
3.1 Incidents involving the IOPC Funds	11
3.2 Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i>	11
3.3 Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i>	13
3.4 Incidents involving the IOPC Funds — 1992 Fund: <i>Hebei Spirit</i>	15
3.5 Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i>	16
3.6 Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i>	18
3.7 Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i>	20
3.8 Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i>	22
3.9 Incidents involving the IOPC Funds — 1992 Fund: <i>Trident Star</i>	23
3.10 Incidents involving the IOPC Funds — 1992 Fund: <i>Nathan E. Stewart</i>	24
3.11 Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i>	27
3.12 Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i>	30
4 Compensation matters	32
4.1 Report of the 1992 Fund Executive Committee on its 71st and 72nd sessions	32
4.2 Election of the members of the 1992 Fund Executive Committee	32
4.3 STOPIA 2006 and TOPIA 2006	32
5 Financial reporting	34
5.1 Submission of oil reports	34
5.2 Report on contributions	36
5.3 Report on investments	37
5.4 Report of the joint Investment Advisory Body	38
5.5 Report of the joint Audit Body	39
5.5 Risk Management — Update on the review of insurance problems	41
5.6 2018 Financial Statements and Auditor's Report and Opinions	44
6 Financial policies and procedures	45
6.1 Appointment of the External Auditor	45
7 Secretariat and administrative matters	47
7.1 Secretariat Matters	47
7.2 Headquarters Agreement	48
7.3 Appointment of members and substitute members of the Appeals Board	49
7.4 Information Services	50
7.5 The European Union General Data Protection Regulation	51

8	Treaty matters	52
8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol	53
8.2	2010 HNS Convention	53
9	Budgetary matters	57
9.1	Budgets for 2020 and assessments of contributions to the General Fund	57
9.2	Assessment of contributions to Major Claims Funds and Claims Funds	59
9.3	Transfer within the budget	60
10	Other matters	60
10.1	Future sessions	60
10.2	Any other business	61
11	Adoption of the Record of Decisions	61

ANNEXES

Annex I	List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
Annex II	1992 Fund Financial Regulation 14 and Supplementary Fund Financial Regulation 14
Annex III	2020 Administrative Budget tables for the 1992 Fund and the Supplementary Fund

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

- 0.1 The Chair of the 1992 Fund Assembly attempted to open the 24th session of the Assembly at 9.30 am but failed to achieve a quorum. At 9.45 am, however, 58 Member States were present and therefore, a quorum was achieved.
- 0.2 The Chair reiterated the importance of Member States being present during the opening of the 1992 Fund Assembly session in order to achieve quorum.

Supplementary Fund Assembly

- 0.3 The Supplementary Fund Assembly Chair opened the 16th session of the Assembly.

1992 Fund Executive Committee

- 0.4 The 1992 Fund Executive Committee Chair opened the 73rd session of the Executive Committee.
- 0.5 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	Adoption of the Agenda Document IOPC/OCT19/1/1	92A	92EC	SA
-----	-----------------------------------------------------------------	------------	-------------	-----------

- 1.1.1 The Chair of the 1992 Fund Assembly referred to document IOPC/OCT19/1/1, the provisional agenda for these sessions. He pointed out that, agenda item 8, Treaty matters, included a matter relating to the review of the 1992 Civil Liability and Fund Conventions, which had originally been the subject of a document submitted by India at the April 2019 session but had been deferred for discussion in October 2019 (document IOPC/APR19/5/2). The Chair explained, however, that the document had not been resubmitted by India at this session and therefore, this item would not be included in the final agenda.
- 1.1.2 The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/OCT19/1/1.

1.2	Election of the Chairs	92A	92EC	SA
-----	-------------------------------	------------	-------------	-----------

- 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)).

1992 Fund Assembly Decision

- 1.2.2 The 1992 Fund Assembly elected the following delegates to hold office until the next regular session of the 1992 Fund Assembly:

Chair: Mr Gaute Sivertsen (Norway)

First Vice-Chair: Professor Tomotaka Fujita (Japan)

Second Vice-Chair: Mr Samuel Roger Minkeng (Cameroon)

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

Supplementary Fund Assembly Decision

- 1.2.4 The Supplementary Fund Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chair: Mr Sung-Bum Kim (Republic of Korea)

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

Second Vice-Chair: Mr Emre Dinçer (Turkey)

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

1.3	Examination of credentials — Establishment of the Credentials Committee Document IOPC/OCT19/1/2	92A	92EC	SA
	Examination of credentials — Interim report of the Credentials Committee Document IOPC/OCT19/1/2/1	92A	92EC	SA
	Examination of credentials — Report of the Credentials Committee Document IOPC/OCT19/1/2/2	92A	92EC	SA

- 1.3.1 The governing bodies took note of the information contained in document IOPC/OCT19/1/2.
- 1.3.2 The governing bodies recalled that at its March 2005 session, the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chair, to examine the credentials of delegations of Member States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.
- 1.3.3 The governing bodies further recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (see documents 92FUND/A.13/25, paragraph 7.9 and SUPPFUND/A.4/21, paragraph 7.11).

1992 Fund Assembly Decision

- 1.3.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Assembly appointed the delegations of the Russian Federation, Sweden, the United Arab Emirates, the United Kingdom and Uruguay as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Interim report of the Credentials Committee

- 1.3.6 In order to facilitate the resolution of an issue regarding the credentials of one particular delegation, the Chair of the Credentials Committee, Mr Mohamed Khamis Saeed AlKaabi (United Arab Emirates), presented an interim report of the Credentials Committee on Tuesday 30 October.
- 1.3.7 The Chair of the Credentials Committee presented the Committee's interim report. It stated that after having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee and the Supplementary Fund, the Credentials Committee reported in document IOPC/OCT19/1/2/1 that credentials had been received from 58 Member States, of which 56 were in order.
- 1.3.8 It was noted that the Director had received two letters of credentials for two separate delegations claiming to represent the Bolivarian Republic of Venezuela. Given the complexity of the issue, the Director had invited Dr Rosalie Balkin AO, former Assistant Secretary-General and Director of the Legal Affairs and External Relations Division of IMO, in her capacity as the 1992 Fund's legal adviser in matters of public international law, to provide assistance to the Credentials Committee during their deliberations. He had also requested the advice of Professor Dan Sarooshi Q.C., the 1992 Fund's legal counsel in public international law.
- 1.3.9 It was also noted that the Credentials Committee was unanimous in its view that it was not the function of the IOPC Funds to decide which was the legitimate government of Venezuela since it considered that to be a political question to be decided in another forum, namely the political organs of the United Nations (the UN General Assembly and the Security Council). The Committee had concluded that the role of the Credentials Committee and the 1992 Fund Assembly was simply to decide which of the two representatives should be accredited as the official representative of Venezuela at these particular sessions of the Funds' governing bodies.
- 1.3.10 The Chair of the Credentials Committee reported that, in considering this issue and the legal advice received, the Committee had noted that there was no consensus within the international community on this matter. Therefore, in light of the extraordinary situation of the Bolivarian Republic of Venezuela and the other considerations contained in document IOPC/OCT19/1/2/1, the Credentials Committee had recommended that the *status quo* should continue and that the letter of credentials of the current delegation of Venezuela issued by H.E. Mrs Maneiro, who had been appointed by President Maduro, should be accepted and that the named individuals therein be deemed the official representatives for the October 2019 sessions of the governing bodies. The Committee had emphasised that this conclusion followed the established practice of the United Nations and other international organisations that allowed the authority that had previously been accepted as representing the State to continue to represent the State pending future developments. The Chair of the Committee pointed out, however, that this position was applicable to this meeting only and it could be susceptible to change in the coming months depending on future developments.

1992 Fund Assembly Decision

- 1.3.11 The 1992 Fund Assembly took note of the interim report of the Credentials Committee and, based on its recommendation, decided to accept the credentials of the delegation headed by H.E. Mrs Rocío Maneiro (Ambassador, Permanent Representative to IMO and other international organisations headquartered in London, appointed by President Nicolas Maduro) as the representative of Venezuela at the October 2019 sessions of the governing bodies.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Final Report of the Credentials Committee

- 1.3.13 After having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee and the Supplementary Fund, the Credentials Committee reported in its final report (document IOPC/OCT19/1/2/2) that credentials had been received from 62 Member States and that all were in order. It was noted that credentials had not yet been submitted by Montenegro and Qatar, but that the Committee expected that this would be rectified by the delegations shortly after the sessions. It was also noted that Madagascar and Saint Vincent and the Grenadines had presented credentials but had not participated in the meeting.
- 1.3.14 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2019 meeting.

1.4	Request for observer status Document IOPC/OCT19/1/3	92A		SA
-----	----------------------------------------------------------------	------------	--	-----------

- 1.4.1 The governing bodies took note of document IOPC/OCT19/1/3 regarding a request for observer status which had been received from the Government of the Republic of Paraguay. It was noted that the Director had been informed that the Government was considering accession to the 1992 Fund Convention and that, in accordance with Rule 4 of the Rules of Procedure, he had invited Paraguay to send observers to the 24th session of the 1992 Fund Assembly. The Director pointed out, however, that shortly before the sessions, the Government of Paraguay had informed him that they wished to have further internal discussions on this matter and requested that consideration of its application for observer status be postponed.

1992 Fund Assembly and Supplementary Fund Assembly

- 1.4.2 The 1992 Fund Assembly and Supplementary Fund Assembly noted that a request for observer status by the Government of the Republic of Paraguay had been received, but that consideration of that request had been postponed to a future session.

2 Overview

2.1	Report of the Director Document IOPC/OCT19/2/1	92A		SA
-----	-----------------------------------------------------------	------------	--	-----------

- 2.1.1 The Director presented to the governing bodies his report contained in document IOPC/OCT19/2/1, providing details on the activities of the organisation over the past year and the key items on the agenda for the meeting ahead.
- 2.1.2 The Director recalled that the Co-operative Republic of Guyana had acceded to the 1992 Fund Convention on 20 February 2019 and that the Convention would enter into force for that State on 20 February 2020.
- 2.1.3 The Director reported that the 1992 Fund was dealing with 11 incidents. Regarding the *Prestige* incident, he said that, in accordance with the judgment of the Spanish Supreme Court, the 1992 Fund had paid EUR 27.2 million into Court and had retained EUR 800 000 to pay those claimants with legal actions pending before the French courts, and EUR 4 800 to pay the Portuguese Government. He added that the 1992 Fund had also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings, which had not yet been distributed by the Court. The Director reported that the Court of Cassation in France had ruled that the American Bureau of Shipping (ABS) could not avail itself of the defence of sovereign immunity in this case. He also said that the case would go back to the Court of First Instance in Bordeaux to consider the merits of the claims of the French Government and the 1992 Fund against ABS and that he had met with the French authorities to coordinate this recourse action.

- 2.1.4 With respect to the *Hebei Spirit* incident, the Director reported that in April 2019 the 1992 Fund had made an additional payment of KRW 22 billion to the Skuld Club and had set aside a balance of some KRW 3.4 billion to be paid when the legal proceedings had been concluded. He also reported that the 1992 Fund had entered into a bilateral agreement with the Government of the Republic of Korea under which the 1992 Fund would be allowed to transfer the remaining amount available for compensation i.e. some KRW 27.5 billion to the Government for it to pay all remaining claims. He added that in return, the Government had provided the safeguards the 1992 Fund needed to be protected from further actions in the Courts against the 1992 Fund. The Director further reported that the 1992 Fund had brought a recourse action in the Republic of Korea to recover a proportion of the amounts paid for this incident from the Samsung Heavy Industries Co., Ltd (SHI) Limitation Fund. He stated that he would hold a wash-up meeting to discuss the lessons learned from the case and that he would submit a document on the lessons learned at a subsequent meeting of the governing bodies.
- 2.1.5 The Director reported that progress had been made in the assessment of the 373 claims filed against the 1992 Fund in respect of the *Agia Zoni II* incident, with 300 claims approved and compensation payments made which totalled some EUR 11 million paid to date. He added that the assessment of the claims would continue.
- 2.1.6 Regarding the *Bow Jubail* incident in Rotterdam which may involve the 1992 Fund, the Director reported that the shipowner had appealed, to the Court of Appeal in The Hague, the decision of the Rotterdam District Court which ruled that the *Bow Jubail* qualified as a ship as defined under the 1992 Civil Liability Convention (CLC). He reported that a decision by the Court of Appeal was expected in November 2019.
- 2.1.7 In respect of the *Nesa R3* incident, the Director reported that the 1992 Fund had reached a settlement of all the claims with the Government of the Sultanate of Oman and that it was expected that the Omani Government would shortly withdraw from the legal proceedings in Oman. He also reported that the 1992 Fund was taking steps to recover the amount paid in compensation from the shipowner and insurer of the *Nesa R3*.
- 2.1.8 Regarding oil reports and contributions, the Director stated that 101 States had submitted reports for 2018 to the 1992 Fund and that 30 States had submitted reports for 2018 to the Supplementary Fund, representing 97.31% and 99.39% of the expected total contributing oil reported to each Fund, respectively.
- 2.1.9 The Director stated that contributions of some £660 000 due by 1 March 2019 to the 1992 Fund from one contributor in India remained outstanding and that he had requested the assistance of the Indian authorities to enable these outstanding contributions to be paid as soon as possible.
- 2.1.10 The Director referred to contributions due from two contributors in the Russian Federation amounting to some £826 000 which had been written off. He stated that he had requested the cooperation of the authorities of the Russian Federation to obtain the reimbursement of this amount and that he had been informed by the Russian authorities that they were dealing with this matter. He also referred to the outstanding contributions to the 1992 Fund from two other contributors in the Russian Federation and reported that he had been informed by the Russian authorities that the Ministry of Transport had sent follow-up letters in relation to these contributions due from the two contributors.
- 2.1.11 The Director was pleased to report that contributions in the amount of EUR 849 000 had been received in January 2019 from the Islamic Republic of Iran.
- 2.1.12 Regarding the assessment of contributions, the Director invited the 1992 Fund Assembly to consider his proposal to levy £2.3 million to the General Fund. He also invited the Assembly to endorse his proposal not to levy contributions to the *Prestige*, the *Hebei Spirit* and the *Alfa I* Major Claims Funds, and to levy £11.5 million to the *Agia Zoni II* Major Claims Fund with £5 million

payable by 1 March 2020 and £6.5 million, or part thereof, to be invoiced later if it proved necessary; and £3.6 million to the *Nesa* R3 Major Claims Fund, payable by 1 March 2020. The Supplementary Fund Assembly was invited by the Director to decide whether to endorse his proposal to not levy contributions to the General Fund.

- 2.1.13 The Director stated that the current term of the External Auditor, BDO International (BDO), that covered financial years 2016–2019 was coming to an end and added that after a formal review and interview session with BDO in June 2019, the Audit Body had recommended that BDO be re-appointed. The Director also referred to the Audit Body's proposal on the possible selection process of future External Auditors which had been submitted to the governing bodies for their consideration.
- 2.1.14 The Director recalled that Mr Ranjit Pillai (Deputy Director) had decided to stay with the Secretariat until his retirement in June 2022. He announced the departure of Mr Thomas Moran, External Relations and Conference Coordinator, and the appointment of Ms Julia Sukan del Rio to that post. The Director also announced the appointment of Miss Nadja Popović to the position of External Relations and Conference Assistant. The Director explained that following a job classification review, a Claims Administrator post had been reclassified from General Services to Professional Services and that the incumbent, Ms Ana Cuesta, had been promoted with the title of Claims Manager.
- 2.1.15 With regard to the Headquarters Agreement, the Director reported that the Secretariat had continued to meet with representatives of the Foreign and Commonwealth Office (FCO) and the Department for Transport (DfT) of the United Kingdom (UK) Government since October 2018 and that he hoped that the new Headquarters Agreements for the two organisations would be ready for approval at the next sessions of the governing bodies.
- 2.1.16 Regarding the General Data Protection Regulation (GDPR), the Director said that the Secretariat always made every effort to ensure that personal data are protected and managed appropriately and that the Funds should apply the same principles guiding the GDPR. He added that experts in the field would be engaged to review the data management process and procedures within the Secretariat and that he would report on developments at future sessions of the governing bodies.
- 2.1.17 The Director recalled that at the April 2019 sessions of the governing bodies, India had submitted a document, which contained a proposal for a review of the 1992 Civil Liability and Fund Conventions (document IOPC/APR19/5/2). He also recalled that since the delegation of India could not be present at that meeting to introduce the document, the matter had been deferred to the October 2019 meeting of the 1992 Fund Assembly. The Director reported that he had been informed by the Indian delegation that the document would not be resubmitted at the October 2019 meeting. He also stated that although the item was not included in the final agenda for the October 2019 meeting, it may still be raised at a future session.
- 2.1.18 The Director was pleased to announce that in July 2019, South Africa had deposited with the International Maritime Organization (IMO) an instrument of accession to the 2010 HNS Protocol, becoming the fifth Contracting State to the Protocol, joining Canada, Denmark, Norway and Turkey.
- 2.1.19 The Director reported that the ninth IOPC Funds' Short Course in June 2019 had been well attended and thanked IMO, the International Group of P&I Associations (International Group), the UK P&I Club, ITOPF and the International Chamber of Shipping (ICS) for their support. The Director also stated that an Induction Course organised for delegates in October 2019 had also been very well received.
- 2.1.20 The Director reported briefly on the national and regional seminars, workshops, conferences and lectures relating to the international liability and compensation regime that the Secretariat had offered and been involved in worldwide, and which had been delivered to students of universities and institutions since October 2018. He highlighted the three main focuses of the 2019 outreach

activities: (i) promoting the benefits of joining the 1992 Fund and the Supplementary Fund; (ii) supporting States' efforts towards effective implementation of the international liability and compensation regime; and (iii) enhancing the uniform interpretation of the Conventions by the national courts.

- 2.1.21 Looking ahead, the Director stated that the Secretariat would continue to advance the uniform and effective implementation and interpretation of the Conventions in Member States and promote the benefits of the international liability and compensation regime. He thanked the Audit Body for reviewing the risks arising from incidents involving the IOPC Funds and insurers that were not members of the International Group and said the Secretariat would continue working with the Audit Body on the review of this complex issue.
- 2.1.22 The Director stated that the Secretariat would continue to cooperate with other organisations dealing with potential liability issues in case of environmental damage; namely the Secretariat of the Antarctic Treaty and the International Seabed Authority.
- 2.1.23 The Director also stated that the Secretariat would continue to review its objectives and working methods with the aim of making the best possible use of the resources available. He also referred to the work of the Secretariat towards setting up the HNS Fund and preparing the first session of the HNS Fund Assembly in the future.
- 2.1.24 The Director further stated that he had been approached by a number of delegations regarding the timing and procedure for the election of the Director in 2021 and indicated that a document providing relevant information would be presented at the March 2020 sessions.
- 2.1.25 In concluding, the Director thanked all Member States, IMO, P&I Clubs and fellow international organisations with whom the IOPC Funds had worked closely, the oil industry in Member States, and the international shipping community for their help to ensure that the international regime continued to function as intended. He thanked the Secretary-General of IMO, Mr Kitack Lim and IMO staff for their support during the year, and the Chairs and Vice-Chairs of the governing bodies, the members of the Audit Body, the lawyers and experts who work for the Funds, the Investment Advisory Body, the representatives of the External Auditor (BDO) and the staff of the Secretariat.

Debate

- 2.1.26 A number of delegations thanked the Director for his comprehensive report. The delegation of Jamaica expressed its gratitude to the Director and the Secretariat for facilitating a national workshop in Jamaica on the international liability and compensation regime for pollution damage in November 2018, which had been extremely successful. That delegation also thanked the Legal Counsel and the Claims Manager for their invaluable assistance and support in the finalisation of drafting instructions for the legislation incorporating Civil Liability and Fund Conventions and for meeting with contributors to highlight the importance of the timely submission of reports and payments of contributions.
- 2.1.27 The delegation of Nigeria commended the Director for the work of the Funds and also expressed its gratitude for the training workshop that the Secretariat had conducted in Nigeria. That delegation also stated that it had submitted a draft copy of a Standard Operating Procedure for the effective application of the International Oil Pollution Compensation Fund regime in Nigeria to the IOPC Funds for review and the Secretariat had confirmed that it would do so after the October sessions. Nigeria further reported that it would also be submitting the National Price Index at a later date.
- 2.1.28 The delegation of Australia thanked the Director for his report and expressed its appreciation for the successful Short Course conducted by the Secretariat in Sydney in May 2019.

- 2.1.29 The delegation of Mexico thanked the Director for his detailed report and for having participated in the Marine Environment Protection Seminar in Mexico in September. The delegation also referred to the meetings held by the Director with the Mexican authorities and said that they provided an opportunity for Mexico to assess the internal procedures with a view to ratifying the Supplementary Fund Protocol and the HNS Convention.
- 2.1.30 A number of delegations commended the Induction Course for delegates and asked the Director about the possibility of conducting the Course on the Thursday or Friday before the sessions of the governing bodies for members of the delegations to be able to attend. One delegation asked whether consideration could be given to live streaming the Induction Course. The Director responded that he would certainly examine the proposal and would check whether it was technically feasible.
- 2.1.31 The delegation of Greece thanked the Director and the Secretariat for their assistance and efforts made so far in relation to the compensation of the victims of the *Agia Zoni II* incident.
- 2.1.32 The delegation of the United Arab Emirates (UAE) announced that the UAE Federal Transport Authority in cooperation with IMO and the Integrated Technical Cooperation Programme (ITCP) would be hosting a regional workshop on IMO Civil Liability and Compensation Conventions in which the IOPC Funds would also participate. The workshop, which would be held in Dubai from 8–12 December 2019, would focus on the importance and need for improved implementation of the IMO liability conventions, including the CLC, the 1992 Fund Convention and the HNS Convention, among others.

3 Incidents involving the IOPC Funds

3.1	Incidents involving the IOPC Funds Document IOPC/OCT19/3/1		92EC	SA
-----	-----------------------------------------------------------------------	--	-------------	-----------

- 3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/OCT19/3/1, which contained information on documents for the October 2019 meeting relating to incidents involving the IOPC Funds.

- 3.1.2 The Chair of the Supplementary Fund Assembly pointed out that although there were no incidents involving the Supplementary Fund at the time of the sessions, the *Bow Jubail*, *Agia Zoni II* and *Nathan E. Stewart* incidents had all taken place in Supplementary Fund Member States. He stated that although it was unlikely that these incidents would involve the Supplementary Fund, he noted that the number of incidents in Supplementary Fund States was increasing and thus the risk of an oil spill occurring, which would involve the Supplementary Fund, was also increasing. The Assembly noted that being a Member of that Fund would prepare States for these risks.

3.2	Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/OCT19/3/2		92EC	
-----	----------------------------------------------------------------------------------------------------	--	-------------	--

- 3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/2 concerning the *Prestige* incident.

CRIMINAL PROCEEDINGS IN SPAIN

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

- 3.2.4 It was also recalled that the judgment had confirmed its previous decision that the London P&I Club was liable for all the damages caused by the incident, including pure environmental and moral damages, up to the limit of its policy of USD 1 000 million.

Payment into the Court

- 3.2.5 The Executive Committee recalled that the Court in charge of the enforcement of the judgment had ordered the 1992 Fund to pay EUR 28 million, i.e. the limit of its liability after deducting the amounts already paid by the Fund.
- 3.2.6 It was recalled that at its April 2019 session, the Executive Committee had decided to authorise the Director to pay to the Spanish Court EUR 28 million less:
- (i) EUR 800 000 which should be kept available to pay any judgments by French courts; and
 - (ii) EUR 4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.
- 3.2.7 The Executive Committee noted that in April 2019, the 1992 Fund had paid into the Court some EUR 27.2 million. It was noted that the Fund had also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC). It was noted that it was for the Court to distribute the compensation between the claimants.

CIVIL PROCEEDINGS IN FRANCE

- 3.2.8 The Executive Committee noted that there remained 19 actions totalling EUR 1.2 million pending before French courts.

Legal action by France against the American Bureau of Shipping

- 3.2.9 The Executive Committee recalled that in April 2010, the French Government had brought a legal action in the Court of First Instance in Bordeaux against the classification society of the *Prestige*, the American Bureau of Shipping (ABS). It was recalled that the defendants had opposed this action relying on the defence of sovereign immunity and that the Judge had referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings.
- 3.2.10 The Executive Committee noted that, in a judgment rendered in April 2019, the Court of Cassation had recalled that the Court of Appeal in Bordeaux had held that the liability of the ABS organisations, which are private law companies, was raised not for their certification work on behalf of the State of the Bahamas, but for their classification work. This was due to infringements committed in fulfilling obligations to carry out periodical visits and inspections required of them by the agreement ABS had entered into with the owner of the *Prestige*. It was noted that the Court of Cassation had, therefore, upheld the judgment by the Court of Appeal and decided that ABS could not avail itself of the defence of sovereign immunity in this case.
- 3.2.11 It was noted that the case would now go back to the Court of First Instance in Bordeaux to consider the merits of France's claim against ABS.

Legal action by the 1992 Fund against ABS

- 3.2.12 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.

- 3.2.13 It was noted that, following the Court of Cassation's decision on sovereign immunity, the Court of First Instance in Bordeaux will now have to consider the merits of the 1992 Fund's claim against ABS.

1992 Fund Executive Committee

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

3.3	Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i> Document IOPC/OCT19/3/3		92EC	
-----	---------------------------------------------------------------------------------------------------	--	-------------	--

- 3.3.1 The 1992 Fund Executive Committee took note of document IOPC/OCT19/3/3 which contained information relating to the *Solar 1* incident.
- 3.3.2 The Executive Committee recalled that some 32 466 claims had been received and payments totalling PHP 987 million had been made in respect of 26 870 claims mainly in the fisheries sector.
- 3.3.3 The Executive Committee also recalled that three claims remained outstanding, all of which were subject to legal proceedings in the Philippines.

Legal proceedings by the Philippine Coast Guard

- 3.3.4 In respect of the claim in the amount of PHP 104.8 million by the Philippine Coast Guard (PCG), the Executive Committee further recalled that the Solicitor General and the PCG had agreed to settle the PCG claim in the amount assessed by the 1992 Fund. It was recalled that in February 2016, one of the PCG lawyers and the lawyers representing the 1992 Fund and The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), signed the compromise agreement, thereby formally recognising the PCG's agreement to accept the figure of PHP 104.8 million in full and final settlement of the PCG claim, and their agreement to dismiss the legal proceedings which had been commenced by the PCG. It was also recalled that the parties still awaited the signature of the Solicitor General.
- 3.3.5 It was further recalled that in February 2017, the claimant and the 1992 Fund's lawyers appeared at court for a Judicial Dispute Resolution (JDR) procedure where the Court exercised its power to try to aid the parties to finally arrive at a settlement, and that the main issue discussed was whether Congressional approval was required for the compromise agreement. The Executive Committee recalled that the Judge had warned the PCG that continued delay would constrain him to act favourably on a motion to dismiss the case for failure to prosecute.
- 3.3.6 The Executive Committee also recalled that the PCG had applied for Congressional approval of the compromise agreement and the agreement of both the Lower and Upper Houses of Representatives was currently awaited.
- 3.3.7 The Executive Committee further recalled that through February and April 2018, further court hearings took place at which the PCG updated the Court as to the progress of the Congressional approval, and that in May 2018, the PCG indicated that it was also seeking the endorsement of the Philippine President to the compromise agreement, meaning that Congressional approval would still be required. The case was reset to 30 August 2018, and at a subsequent hearing in September 2018, the PCG's lawyers confirmed to the Court that they were coordinating with Congress to fast-track the approval of the settlement which they hoped would be concluded before the end of 2018.
- 3.3.8 The Executive Committee noted that in May 2019, the PCG had confirmed to the Court that it would seek Congressional approval for a settlement offer of PHP 104 million and not for a higher amount and that they would only settle the claim when they had obtained Congressional approval to do so.

Legal proceedings by 967 fisherfolk

- 3.3.9 It was recalled that a civil action was filed in August 2009 by a law firm in Manila that had previously represented a group of fisherfolk from Guimaras Island. The suit pertained to claims from 967 of these fisherfolk totalling PHP 286.4 million for property damage as well as economic losses. It was also recalled that the claimants had rejected the 1992 Fund's assessment of a 12-week business interruption, as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without, however, providing any evidence or support. It was further recalled that the 1992 Fund had filed defence pleadings in response to the civil action, noting that under the law of the Philippines, the claimants must prove their losses but that to date, had not done so and the Judge, therefore, ordered the case to proceed through to trial.
- 3.3.10 The Executive Committee recalled that in January 2018, the claimants again failed to submit revised judicial affidavits and that the Court had admonished them to submit the revised affidavits at the next hearing, failing which their right to present evidence for all claimants would be waived. The hearing of the case was reset for May 2018.
- 3.3.11 The Executive Committee also recalled that in May 2018, after a further failure to present the correct number of witnesses, the claimants were ordered to pay a fine and the hearing was reset for December 2018.
- 3.3.12 The Executive Committee noted that through 2019, a number of witnesses were presented by the claimants' lawyers, but their claims were proved to have no factual or legal basis, and further court hearings were set for July and August of 2019.

Legal proceedings by a group of municipal employees

- 3.3.13 The Executive Committee recalled that 97 individuals, employed by a municipality on Guimaras during the response to the incident, had taken action in court against the mayor, the ship's captain, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having been paid for their services and that, after a thorough review of the legal documents received, the 1992 Fund had filed pleadings of defence in court, noting in particular that the majority of claimants were engaged in activities in principle not admissible for compensation.
- 3.3.14 The Executive Committee also recalled that further hearings took place throughout 2016 and 2017 to continue the examination of the witnesses submitted by the claimants and that a further hearing date was set for August 2017 to continue the re-examination of witnesses by the claimants' lawyer.
- 3.3.15 The Executive Committee further recalled that after a series of inconclusive hearings, in February 2018 another witness was presented, but upon cross-examination, her claim was proved to be exaggerated and without basis. The case was reset to December 2018, and at further hearings in 2019, a limited number of witnesses were presented by the claimants' lawyers, but in every case, the 1992 Fund's lawyers were able to show the Court that their claims for compensation had no basis.

Intervention by the delegation of the Philippines

- 3.3.16 The delegation of the Philippines stated that since the legal process was ongoing, it stood ready to update the Secretariat of any significant developments in due course.

1992 Fund Executive Committee

- 3.3.17 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 Executive Committee.

3.4	Incidents involving the IOPC Funds — 1992 Fund: <i>Hebei Spirit</i> Document IOPC/OCT19/3/4		92EC	
-----	--------------------------------------------------------------------------------------------------------	--	-------------	--

3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/4 relating to the *Hebei Spirit* incident.

3.4.2 The Executive Committee recalled that all claims had been finalised by either mediation or judgment and that a total of KRW 432.9 billion had been awarded.

3.4.3 The Executive Committee further recalled that the total amount available for compensation under the 1992 Fund Convention was KRW 321.6 billion including the amount of KRW 186.8 billion paid by the shipowner's insurer, Assurancéföreningen Skuld (Gjensidig) (Skuld Club).

3.4.4 The Executive Committee recalled that in November 2018, the Limitation Court in Seosan issued the CLC distribution table for this incident. The Executive Committee also recalled that the amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion, which included KRW 139.4 billion of principal and KRW 91.5 billion of interest.

Balancing payment to the Skuld Club

3.4.5 The Executive Committee recalled that, based on the exchange rate applied by the Limitation Court, the Skuld Club had paid KRW 47.5 billion in excess of its limit (KRW 139.4 billion). The Executive Committee also recalled that the 1992 Fund had made provisional balancing payments totalling KRW 44 billion on account of the amount due, setting aside a balance of KRW 3.4 billion to be paid when the final reconciliation of costs for this incident is concluded.

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

3.4.6 The Executive Committee recalled that the 1992 Fund had paid a total of KRW 107.3 billion in compensation to the Government of the Republic of Korea, of which KRW 67.3 billion was in subrogation at a level of payment of 60% and KRW 40 billion as an advance payment.

3.4.7 The Executive Committee noted that, following the decision by the Executive Committee in April 2019, the Director and the Government of the Republic of Korea had agreed the terms of a bilateral agreement by which the 1992 Fund would transfer the remaining amount available for compensation to the Government for it to pay all remaining claims in exchange for a hold harmless agreement by the Government. The Executive Committee further noted that, following the conclusion of the agreement, the 1992 Fund had paid the balance of compensation, totalling KRW 27 486 198 196 to the Government of the Republic of Korea.

Separate lawsuits against the 1992 Fund

3.4.8 The Executive Committee recalled that 117 504 claimants had initiated separate legal proceedings against the Fund to protect their rights and that these lawsuits were stayed by the Seosan Court pending the result of the limitation proceedings.

3.4.9 The Committee noted that, by the end of September 2019, all lawsuits had been withdrawn or dismissed by the Seosan Court except for eight, seven of which were from local authorities, which were expected to be withdrawn in the near future. It was noted that the remaining lawsuit had been activated by the claimant, but it was expected to be dismissed by the Court.

*Recourse action against the bareboat charterer of the *Marine Spread**

3.4.10 The Executive Committee recalled that in March 2009, the Seoul Central District Court (Samsung Heavy Industries Co., Ltd (SHI) Limitation Court) had rendered the order for the commencement of the limitation proceedings of the bareboat charterer of the *Marine Spread* (the crane barge, the

two tugs and the anchor boat), SHI, and had set the Limitation Fund at KRW 5.6 billion including legal interest. The Executive Committee recalled that the SHI Limitation Court had decided to wait to distribute the Limitation Fund until after the assessment decision was issued by the Seosan Court.

- 3.4.11 The Executive Committee noted that, in July 2019, the 1992 Fund submitted a claim in the limitation proceedings for the amount paid by the 1992 Fund in compensation, i.e. KRW 134 787 509 429, plus any interest accrued as per Korean law.

Lessons learned from the Hebei Spirit incident

- 3.4.12 The Executive Committee noted that, as per the 1992 Fund's practice after all claims arising out of a major incident had been assessed, the Director intended to hold a meeting with all those involved in the handling of the incident, to discuss what lessons could be learned, so as to enable the 1992 Fund to deal with claims more efficiently in the future. The Executive Committee noted that the Director would submit a report of that meeting for consideration at a subsequent session of the governing bodies.

Intervention by the Republic of Korea

- 3.4.13 The delegation of the Republic of Korea confirmed that the last remaining Government claims would be withdrawn sometime in November 2019, which would mean that all legal proceedings in respect of the *Hebei Spirit* would be finished within approximately 12 years from the date of the incident. That delegation remarked that, in view of the complexity and of the numbers involved in this case, this outcome could not have been achieved successfully without the cooperation of the Skuld Club and the 1992 Fund, in particular through the Second Cooperation Agreement and the bilateral agreement. That delegation further expressed its gratitude to the Fund and the Skuld Club for the cooperation and support and stated that it looked forward to participating in the meeting to discuss the lessons learned from the incident.

Debate

- 3.4.14 The Chair of the Executive Committee remarked that this was a momentous event, in that two of the 1992 Fund's major incidents, the *Prestige* and the *Hebei Spirit*, were drawing to a close. He noted that it was encouraging to see that the Courts of the Republic of Korea had followed the Fund's criteria, either directly or indirectly, in determining the admissibility of the claims. He further remarked that, even if 12 years may seem a long time, considering the extraordinary number of legal actions arising out of this incident, the Courts in the Republic of Korea had been extraordinarily efficient in dealing with them in such a relatively expedited manner.

1992 Fund Executive Committee

- 3.4.15 The 1992 Fund Executive Committee noted that the total amount available for compensation for this incident had been paid by the 1992 Fund and that the Director would report any further developments on the recourse action at future sessions of the Committee.

3.5	Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i> Document IOPC/OCT19/3/5		92EC	
-----	----------------------------------------------------------------------------------------------------	--	-------------	--

- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/OCT19/3/5 which contained information relating to the *Redfferm* incident.
- 3.5.2 The Executive Committee recalled that in January 2012, the Secretariat was informed of an incident which occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the barge *Redfferm* sank following a transshipment operation from the tanker *MT Concep*. The barge sank, spilling an unknown quantity/residue of cargo of low pour fuel oil (LPFO) into the waters surrounding the site,

which then impacted upon the neighbouring Tin Can Island area. The oil remaining on board amounted to approximately 100 tonnes of LPFO, and it was this residue that was spilled.

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

Reasons for rejection of claims

- 3.5.4 It was recalled that in February 2014, the 1992 Fund rejected the claims submitted for the following reasons:

- (a) The barge *Redfferm* was not a 'ship' under Article I(1) of the 1992 CLC;
- (b) there were a large number of discrepancies between the claimed losses and other sources of information on the number of items of fishing gear in the Lagos lagoon area; and
- (c) there was a lack of information submitted to prove the claimants' identities and occupations.

Legal proceedings

- 3.5.5 The Executive Committee also recalled that in March 2012, a claim for USD 26.25 million was filed by 102 communities against the owner of the *MT Concep*, the owner of the *Redfferm*, the agent of both the *MT Concep* and the *Redfferm*, and the 1992 Fund.
- 3.5.6 The Executive Committee further recalled that in February 2013, the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rested with the owner of the *Redfferm*. It was recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.
- 3.5.7 It was also recalled that on a number of occasions throughout 2014 and 2015, the 1992 Fund's lawyers had written to the Registrar of the Court of Appeal, requesting that the 1992 Fund's appeal against the first instance ruling be listed for a hearing date and that a date was set for May 2016. Thereafter, the legal proceedings continued very slowly, until October 2017, when the Nigerian Court of Appeal referred the case back to the Federal High Court.
- 3.5.8 It was further 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 recalled that the Court of Appeal had subsequently adjourned the hearing of the application until January 2019.
- 3.5.9 The Executive Committee also 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. 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. The Executive Committee noted that during 2019, no further substantive developments had taken place in the legal proceedings but that dates were awaited to hear the agent of the owner of the barge *Redfferm*'s application at the Court of Appeal, and for the continuation of the trial at the Federal High Court.

Intervention by the delegation of Nigeria

- 3.5.10 The delegation of Nigeria noted that the case was ongoing and stated that it would continue to cooperate with the Secretariat and provide an update at a future session.

1992 Fund Executive Committee

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

3.6	Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i> Documents IOPC/OCT19/3/6 and IOPC/OCT19/3/6/1		92EC	
-----	--------------------------------------------------------------------------------------------------------------------------------	--	-------------	--

- 3.6.1 The Executive Committee took note of documents IOPC/OCT19/3/6 and IOPC/OCT19/3/6/1, which contained information relating to the *Haekup Pacific* incident.
- 3.6.2 The Executive Committee recalled that in April 2013 the Secretariat was notified of an incident which took place in April 2010 in the Republic of Korea when the *Haekup Pacific*, an asphalt carrier of 1 087 GT, was involved in a collision with the *Zheng Hang*, as a result of which the *Haekup Pacific* sank in waters of approximately 90 metres in depth off Yeosu, Republic of Korea.
- 3.6.3 The Executive Committee also recalled that the *Haekup Pacific* was entered with the UK P&I Club and that it was a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and that, therefore, STOPIA 2006 would apply. The Executive Committee further recalled that, shortly after sinking, a small spill of some 200 litres of oil had occurred resulting in some minor pollution.
- 3.6.4 It was recalled that in September 2013, the Yeosu City and Marine Police had requested the shipowner to provide a plan for the removal of the wreck and that in April 2014, a further request was made.
- 3.6.5 It was also recalled that a number of further meetings had taken place with the Yeosu City and Marine Police at which the shipowner had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

Civil proceedings

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

- 3.6.10 It was recalled that the 1992 Fund had received service of the claim for USD 46.9 million through diplomatic channels but had not yet been served with the amended claim form for USD 25.13 million in accordance with the STOPIA 2006 arrangement.
- 3.6.11 The Executive Committee also recalled that in April 2017 following an agreement reached between the UK P&I Club and the 1992 Fund, the Courts of the Republic of Korea had stayed the proceedings. The Executive Committee also recalled, however, that the Courts could, of their own volition, resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wished a further stay of the proceedings.
- 3.6.12 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.
- 3.6.13 It was recalled that since the shipowner of the *Haekup Pacific* was currently still obliged to remove the vessel, the Seoul High Court had ruled that it was reasonable to deem that the damages of the wreck removal costs had in fact arisen. It was further noted that the shipowner/insurer of the *Zheng Hang* had appealed against the Seoul High Court's judgment and the matter was now pending at the Supreme Court of the Republic of Korea.
- 3.6.14 The Executive Committee noted that the 1992 Fund's lawyers had advised that because the *Haekup Pacific* shipowner/insurer's litigation against the 1992 Fund was dependent on the result of the related litigation between the colliding vessels, the 1992 Fund should wait for the Supreme Court of the Republic of Korea to issue its judgment in the related litigation and should agree to any further requests to stay the litigation with the shipowner/insurer of the *Haekup Pacific*, should these be requested.
- 3.6.15 The Executive Committee also noted that the 1992 Fund's lawyers had also advised that since the appeal was filed in 2017, they were hopeful that a judgment might be rendered by the end of 2020.
- 3.6.16 The Executive Committee further noted that in September 2019, the Yeosu City had requested the shipowner/insurer to implement the wreck and oil removal orders and to submit a document to the Yeosu City by 10 February 2020, containing information upon the current situation of the ship and the shipowner/insurer's plans for:
- the removal of oil residue and the cargo;
 - the wreck removal operation; and
 - the prevention of possible oil pollution that might occur during the removal operations.
- 3.6.17 The Executive Committee noted that the Yeosu City would take a further decision once the shipowner/insurer's document was submitted.

Intervention by the delegation of the Republic of Korea

- 3.6.18 The delegation of the Republic of Korea stated that it recognised that it was unfortunate that after the Yeosu City's oil and wreck removal orders had been issued in April 2014, the matter had been prolonged without any follow-up measures such as execution or withdrawal, and that the shipowners had not yet implemented the oil and wreck removal orders. That delegation stated that to deal with the situation, in August 2019, the Yeosu City, Ministry of Oceans and Fisheries, the

Korean Coast Guard and other relevant agencies had participated in a meeting, and the Yeosu City had subsequently requested the shipowner to submit a detailed plan for the oil removal from the wreck. It was explained that when the plan was submitted, the Yeosu City would make a decision on the removal of the residue depending on necessity and would then make a further decision on whether the wreck should be removed. That delegation stated that it would monitor the situation and report any developments.

Debate

- 3.6.19 Another delegation noted that the survey undertaken in November 2015 had concluded that the wreck did not pose a hazard to the environment and questioned whether the wreck removal operation was, in fact, a question of removing a hazard to navigation. That delegation further noted that, in this case, in its view, the 1992 Fund would not be liable for the wreck removal but only for the costs to prevent oil pollution that might occur during removal operations. In response, the Director stated that based on the limited information available, it was his understanding that the issue was that of removing the bunkers, not the cargo of asphalt, which did not pose an environmental threat.
- 3.6.20 Responding to another delegation's questions regarding the time bar and whether the Yeosu City was aware of the 1992 Fund's criteria on the removal of oil from wrecks, the Director stated that since legal proceedings had been commenced before the expiry of the time bar, the issue of a time bar did not arise, and that the matter of oil removal from wrecks was a matter to be raised subsequently. The Director stated that further updates would be provided at the next session of the 1992 Fund Executive Committee.

1992 Fund Executive Committee

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

3.7	Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i> Document IOPC/OCT19/3/7		92EC	
-----	--------------------------------------------------------------------------------------------------------	--	-------------	--

- 3.7.1 The 1992 Fund Executive Committee took note of document IOPC/OCT19/3/7 which contained information relating to the *Alfa I* incident.
- 3.7.2 The Executive Committee recalled that since no limitation fund had been established, the insurer was liable for the full amount claimed, i.e. for EUR 15.8 million. It was also recalled that in February 2018, the Bank of Greece had revoked the insurer's license and placed the company into liquidation for failure to maintain the necessary solvency capital requirements under Greek law. It was further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.
- 3.7.3 The Executive Committee noted that in June 2019, the insurer had filed an appeal to the Supreme Court against the March 2018 judgment issued by the Piraeus Court of Appeal which had distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 CLC limit applied), from the case of carriage of less than 2 000 tonnes of oil and held that, in either case, there was an obligation to insure and a right of direct action against the insurer. The Executive Committee also noted that the 1992 Fund had also filed an appeal to the Supreme Court supporting the obligatory insurance provisions under Article VII of the 1992 CLC and that the appeal was set to be heard in February 2021.
- 3.7.4 The Executive Committee further recalled that the 1992 Fund had filed applications for prenotated mortgages against buildings owned by the insurer in an attempt to secure its claim for the return of the 1992 CLC Limitation Fund amount, but that only the land registry in Thessaloniki had

accepted the 1992 Fund's application and granted the registration on two properties owned by the insurer as security for EUR 851 000.

Applications for prenotated mortgages — Thessaloniki

- 3.7.5 It was recalled that in July 2017, the insurer had requested the deletion of the prenotated mortgages recorded on its Thessaloniki properties on the grounds that the first instance judgment of the Court of Piraeus could not be considered a title for the prenotated mortgages since it was issued in 2015. It was noted that in late 2018, the Thessaloniki Court of First Instance had issued a judgment dismissing the insurer's request.

Applications for prenotated mortgages — Athens

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

Applications for prenotated mortgages — Piraeus

- 3.7.7 It was recalled that following an appeal by the 1992 Fund, the Piraeus Court of Appeal had issued its judgment, finding in favour of the 1992 Fund and accepting the opposite views from those accepted by the Athens Court of Appeal.

Legal considerations

- 3.7.8 It was also recalled that the 1992 Fund's lawyers had advised that if the judgment from the Athens Court of Appeal was overturned at the Supreme Court (and by implication, the Piraeus Court of Appeal was upheld), this would permit the 1992 Fund the right to record prenotated mortgages against the insurer's properties and would raise the 1992 Fund up the list of creditors above other claimants with insurance claims^{<1>}.
- 3.7.9 It was noted that the insurer had also appealed the decision from the Piraeus Court of Appeal to the Supreme Court, and a hearing date had been set for 24 February 2020.

Debate

- 3.7.10 One delegation noted that the provisions of Article 9 of law 314/1976, which ratified the 1992 CLC in Greece, imposed a similar obligation of insurance for vessels carrying up to 2 000 tonnes of oil with a right to limit at SDR 600 X GRT, with all remaining provisions of the 1992 CLC remaining applicable, and stated that if this meant that the shipowner could limit liability at this lower level, this appeared to be incompatible with Article V(1)(a) of the 1992 CLC. That delegation also stated that if, however, the statement related to compulsory insurance under Greek law for less than 2000 tonnes of oil, then there was no incompatibility with the 1992 CLC, but that delegation thought the document was misleading.
- 3.7.11 In response to that delegation's request for clarity, the Secretariat stated that this matter had been discussed with the 1992 Fund's Greek lawyers who had advised that the Article appeared to touch upon both the shipowner's and insurer's limit of liability, which appeared to be in contravention of the 1992 CLC. With this in mind, the 1992 Fund's lawyers had advised filing an appeal to the

<1> At present, as a creditor, the 1992 Fund's claim will rank in order and be paid *pro rata* with all other insurance claims.

Supreme Court in support of the application of the Conventions, since Article 28 of the Greek Constitution stated that the terms of the Convention should prevail over domestic law.

- 3.7.12 That delegation thanked the Secretariat for the response and stated that it hoped the Greek Courts would apply Article 28 and that it was still desirable to have domestic legislation in place to reflect the Conventions and requested the Secretariat to undertake further work on promoting the proper implementation of the Conventions.

1992 Fund Executive Committee

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

3.8	Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/OCT19/3/8		92EC	
-----	---------------------------------------------------------------------------------------------------	--	-------------	--

- 3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/8 relating to the *Nesa R3* incident.
- 3.8.2 The Executive Committee recalled that, at its October 2013 session, it had authorised the Director to make payments of compensation in respect of the *Nesa R3* incident and to claim reimbursement from the shipowner/insurer.
- 3.8.3 The Executive Committee noted that the excellent working relationship with the Government of the Sultanate of Oman had been paramount in resolving the claims arising from the incident. It was recalled that 33 claims had been received by the 1992 Fund and that 28 claims totalling OMR 3 521 364.39 and BHD 8 419.35 had been settled. It was also recalled that the remaining claims had been rejected.
- 3.8.4 The Executive Committee further 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 recalled that the shipowner/insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Executive Committee also recalled that the Omani Government had commenced legal proceedings against the shipowner and its insurer in the Court of Muscat and that in February 2016, the 1992 Fund had joined in the legal proceedings.
- 3.8.5 The Executive Committee recalled that in December 2017, the Court of Muscat rendered a judgment finding that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the 1992 Fund and the Omani Government totalling, respectively, OMR 1 777 113.44 plus BHD 8 419.35 and OMR 4 154 842.80, i.e. the amounts paid by the 1992 Fund at the time of the judgment and the balance of the amount claimed by the Omani Government. The Executive Committee also recalled that this judgment was appealed by both the Omani Government and the 1992 Fund and that the appeal proceedings were still ongoing.
- 3.8.6 The Executive Committee further 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.
- 3.8.7 The Executive Committee noted that the 1992 Fund intended to continue to pursue recovery of the compensation from the shipowner and insurer of the *Nesa R3*, which would mean bringing legal proceedings against the shipowner in the United Arab Emirates and against the insurer in Sri Lanka.
- 3.8.8 The Executive Committee also noted that the legal proceedings had progressed slowly due to the fact that it had been difficult to contact the insurer, who had from the beginning refused to pay compensation. It was further noted that the Court of Muscat had postponed its hearings several times to allow time for attempts to contact the insurer.

1992 Fund Executive Committee

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

3.9	Incidents involving the IOPC Funds — 1992 Fund: <i>Trident Star</i> Document IOPC/OCT19/3/9		92EC	
-----	--------------------------------------------------------------------------------------------------------------	--	-------------	--

- 3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/9 concerning the *Trident Star* incident.
- 3.9.2 The Executive Committee recalled that on 24 August 2016, the tanker *Trident Star* had spilled an unconfirmed quantity of marine fuel oil in the ATT Tanjung Bin (ATB) oil terminal, Port of Tanjung Pelepas (PTP), during loading operations.
- 3.9.3 It was recalled that the oil had drifted across the mouth of the Pulai River to the PTP container terminal and that approximately 3.5 kilometres of the container terminal wharf had been oiled. It was also recalled that several cargo vessels and tugs had been affected by the pollution following the incident. It was further recalled that some of the container terminal's berths had been closed or experienced disruption of their normal activity for about three weeks.
- 3.9.4 The Executive Committee recalled that the ship was insured with the Shipowners' Club. It was also recalled that the limitation amount applicable to the *Trident Star* in accordance with the 1992 CLC was SDR 4.51 million, but that since the shipowner of the *Trident Star* was a party to STOPIA 2006, the shipowner would indemnify the 1992 Fund for the difference between the limitation amount applicable to the *Trident Star* under the 1992 CLC and the amount of compensation paid by the 1992 Fund, up to a limit of SDR 20 million. It was noted that it was unlikely that the total losses in respect of this case would exceed SDR 20 million.

Claims for compensation

- 3.9.5 The Executive Committee took note of the update on the claims situation provided in section 4 of document IOPC/OCT19/3/9.
- 3.9.6 The Executive Committee noted that the claims for pollution damage arising from the *Trident Star* incident exceeded the 1992 CLC limit applicable to the *Trident Star* and that, therefore, the 1992 Fund would be liable to pay compensation in respect of this incident. It was noted, however, that all payments would be later recovered from the shipowner's insurer under STOPIA 2006.

Limitation proceedings

- 3.9.7 It was recalled that nine actions had been filed in the limitation proceedings. It was noted, however, that following the out-of-court settlement reached with one of the claimants, it was expected the claimant would withdraw its action in the limitation proceedings.
- 3.9.8 It was noted that, since it is clear the 1992 Fund will have to pay compensation in this case, the Director recommended that he be authorised to make final settlements of all claims arising from this incident to the extent that they do not give rise to issues of principle not previously considered by the IOPC Funds' governing bodies.

Debate

- 3.9.9 All the delegations that spoke supported the Director's proposal to authorise him to make final settlements of all claims arising from this incident to the extent that they do not give rise to issues of principle not previously considered by the IOPC Funds' governing bodies.

1992 Fund Executive Committee Decision

3.9.10 The 1992 Fund Executive Committee decided to authorise the Director to make final settlements of claims arising from the *Trident Star* incident to the extent that they do not give rise to issues of principle not previously considered by the IOPC Funds' governing bodies.

3.10	Incidents involving the IOPC Funds — 1992 Fund: <i>Nathan E. Stewart</i> Document IOPC/OCT19/3/10		92EC	
------	--------------------------------------------------------------------------------------------------------------------	--	-------------	--

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/10 concerning the *Nathan E. Stewart* incident.

3.10.2 The Committee recalled that on 13 October 2016, the articulated tug-barge (ATB) composed of the tug *Nathan E. Stewart* and the tank barge *DBL 55* had run aground at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia, Canada. It was also recalled that the tug's hull had eventually been breached and that approximately 107 552 litres of diesel bunker oil and 2 240 litres of lubricants had been released into the environment.

3.10.3 It was further recalled that at the time of the incident the barge *DBL 55* was in ballast and that on its previous voyage, the *DBL 55* had been loaded with jet fuel and gasoline.

3.10.4 The Committee noted that the ATB was insured by Starr Indemnity & Liability Company (a fixed premium insurer).

Applicability of the Conventions

3.10.5 The Committee recalled that the application of the Conventions was not clear in this case for the following reasons:

- There is a question over whether the *Nathan E. Stewart/DBL 55* ATB falls within the definition of 'ship' under Article I(1) of the 1992 CLC.
- 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.

3.10.6 It was noted that if the ATB carried non-persistent oil on previous voyages, the Civil Liability and Fund Conventions would not be applicable and that, since the spilled oil was bunkers, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) should apply instead.

Claims for compensation

3.10.7 The Committee noted that the 1992 Fund had not received any claims in relation to this incident.

3.10.8 It was noted that a first nation community consisting of five tribes alleged to have incurred (i) operational expenses in the course of the incident response and the subsequent environmental impact assessments which had not been fully compensated by the shipowners; and (ii) losses resulting from the loss of marine resources based on (a) aboriginal rights to be established in civil proceedings, (b) commercial licences rights and (c) public rights to fish.

3.10.9 It was noted that, in addition to supporting all the costs of the incident response, including costs incurred by the Canadian agencies, the shipowners had made some payments to the first nation

community and the Ship-source Oil Pollution Fund (SOPF) had also provided undertakings to these parties.

Civil proceedings

3.10.10 The Committee recalled that in October 2018, the first nation community had brought a legal action against the owners, operators, the master and an officer of the *Nathan E. Stewart/DBL 55* ATB in the Supreme Court of British Columbia. It was also recalled that the claimants had also included as third parties SOPF, the 1992 Fund and the Supplementary Fund.

3.10.11 It was further recalled that the claimants alleged to have aboriginal title and sovereign rights in the affected area.

3.10.12 The Committee recalled that the claimants argued for the application of the Bunkers Convention 2001 or, as an alternative, the 1992 CLC, and, in the latter case, seek from the 1992 Fund and the Supplementary Fund any damage in excess of the 1992 CLC.

3.10.13 It was noted that the shipowners had filed an application to stay the proceedings at the Supreme Court of British Columbia, maintaining that the Federal Court of Canada was a more suitable forum for those claims to be adjudicated.

Limitation proceedings

3.10.14 The Committee noted that in May 2019, the shipowners had filed an action before the Federal Court of Canada to establish a limitation fund and stay the Supreme Court of British Columbia proceedings.

3.10.15 It was also noted that the first nation community had filed a notice of motion objecting to the jurisdiction of the Federal Court over the limitation action.

3.10.16 The Committee further noted that the owner of the barge *DBL 55* was an affiliate of the owner of the tug *Nathan E. Stewart*. It was noted that the shipowners alleged that, notwithstanding the use of a coupling system, the tug and the barge remained two separate vessels.

3.10.17 It was noted that the shipowners had argued that the 1992 CLC was not applicable in this case, as neither the tug nor the barge fell within the definition of ‘ship’ under the 1992 CLC on the following basis:

- The barge is not a ‘ship’ because at no time did it carry any type of persistent oil as cargo.
- The tug and the barge are to be considered as two separate ships for the purposes of a limitation of liability analysis. The tug is not a ‘ship’ because it was not capable of carrying oil as cargo. The diesel fuel and lubricants that were released during the incident were bunkers used solely for the operation or propulsion of the tug.

3.10.18 The Committee noted that the claimants did not assert the ATB was carrying persistent oil as cargo, which is what would engage the CLC, but were relying instead on the Bunkers Convention 2001. It was noted that only as a precaution had the claimants pleaded—as a matter of law, not as a matter of fact—the application of the 1992 CLC as the alternative.

Judgment by the Federal Court of Canada in July 2019

3.10.19 It was noted that the Federal Court of Canada had rendered a decision in July 2019, which granted the shipowners’ motion and ordered that any claimants were precluded from commencing or continuing before any court other than the Federal Court, proceedings against the shipowners until the limitation action had been determined. It was also noted, therefore, that the first nation could

not continue its action in the Supreme Court of British Columbia against the shipowners. It was further noted that the Court had decided that a limitation fund should be constituted pursuant to the Bunkers Convention 2001 and the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96), on the basis of the combined tonnage of the tug and barge. The Committee noted that the Court had concluded that there was no factual basis upon which a CLC fund could be constituted at that time.

3.10.20 It was noted that, following the Court's decision, the shipowners had filed with the Court a bank guarantee in the amount of CAD 5 568 000.

3.10.21 The Committee also noted that eventually the shipowners would be subject to discovery and would have to communicate all relevant information including details about the nature of the substances carried on board the tug and the barge, and that this should enable the Court to reach a decision on whether or not the incident falls within the scope of the 1992 CLC.

3.10.22 It was further noted that it was very unlikely that the IOPC Funds would remain involved in this case. The Committee noted that the IOPC Funds were taking steps to obtain a clear confirmation of the product carried by the barge so as to obtain a declaration, by consent or by determination of the Court, that the IOPC Funds are no longer interested parties to these claims. It was noted, however, that until such a declaration is made, the IOPC Funds would still be deemed interested parties in the proceedings, and therefore the Director would continue to monitor this case.

Intervention by the delegation of Canada

3.10.23 The delegation of Canada thanked the Secretariat for the document. That delegation stated that the Canadian Government was aware of the case as they were a defendant in the action brought by the first nation in the Supreme Court of British Columbia and also in a counterclaim brought in the Federal Court. That delegation confirmed that the Canadian Government had submitted defence pleadings in the Federal Court. That delegation also confirmed that there was no further information on the nature of the product carried in the barge, but that this was an issue for the shipowners to demonstrate before the Federal Court and for the court to determine which Convention applies. The delegation also confirmed that for the time being the limitation regime applicable in this case was the LLMC until the Court decided differently. That delegation also stated that the Canadian Government was also monitoring the challenge brought by the claimants of the shipowner's right to limit under the LLMC. The delegation added that an environmental impact assessment was being finalised by the shipowner, which would help to determine the damage caused by the incident.

3.10.24 The administrator of the SOPF, part of the Canadian delegation, then took the floor and explained that SOPF was a Canadian national fund that had been in existence for 30 years. The administrator further explained that SOPF was involved in this case in two ways. Firstly, to pay compensation for damage above the shipowner's liability, or when the shipowner is not financially able to pay compensation and there is no adequate insurance in place or when the shipowner is exempt from liability, independently of the type of ship or oil involved. If the damage paid for by SOPF is covered by the 1992 Fund, SOPF would subrogate the claimant's rights against the 1992 Fund. The delegation stated that if the Fund Convention does not apply to this incident, SOPF will still be involved in the incident. Secondly, it compensates for damages not covered under the International Conventions. These damages are listed in Article 107 of the corresponding law, which had never been invoked before. In that respect, the administrator informed the Committee that SOPF had just received a claim under Article 107 from the first nation for damages that the Court might rule are not admissible under the International Conventions. For reference, the first nation Court claim notably includes cultural damages and future losses.

1992 Fund Executive Committee

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

3.11

Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/OCT19/3/11		92EC	
---------------------------------------------------------------------------------------------------------	--	-------------	--

3.11.1 The 1992 Fund Executive Committee took note of document IOPC/OCT19/3/11 containing information relating to the *Agia Zoni II* incident.

3.11.2 The Executive Committee recalled that the *Agia Zoni II* sank at 0200 hours on 10 September 2017, close to Salamina island just outside the northern part of the designated Piraeus anchorage area in the Saronic Gulf, Greece.

3.11.3 The Executive Committee also recalled that the tanker was loaded with approximately 2 580 metric tons (mt) of oil, bunkers and chemicals and that an estimated 500 tonnes of oil were spilled when the tanker sunk, which contaminated four kilometres of the coastline of Salamina island and 20–25km of the coastline south of Piraeus port and Athens.

3.11.4 It was noted that clean-up operations continued ashore and at the wreck site to clean the seabed of debris, with operations scaled down to patrolling once the oil removal operations were completed in December 2017/January 2018, with additional beach material replacement operations continuing through January and February 2018, and at times of heavy weather.

3.11.5 It was also noted that the refloated wreck was towed to the salvor's shipyard on Salamina island and was berthed alongside several other vessels, awaiting inspection by the Public Prosecutor.

3.11.6 It was further noted that the vessel had been placed under arrest by the Public Prosecutor shortly after it was lifted and the salvor was subsequently appointed as the party holding possession of the vessel on behalf of the authorities.

Investigation into the cause of the incident

3.11.7 The Executive Committee noted that the Technical University of Athens, School of Naval Architecture and Marine Engineering had published its report into the cause of the incident, concluding that the *Agia Zoni II* had sunk after an explosion which flooded the starboard ballast tanks, causing adverse heel and trim, leading to seawater flooding the engine room and loss of stability and sinking.

3.11.8 The Executive Committee also noted that another investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had concluded that the *Agia Zoni II*, although 45 years old, was considered to be seaworthy prior to the incident, and the shipowners had an incentive not to renew the vessel's certificates. The Executive Committee also noted that according to the same investigation, the sinking of the *Agia Zoni II* could only have been caused by the opening of the seawater ballast valves and that the escape of oil from the *Agia Zoni II* was attributed to the undue opening of the cargo tank seals or manifolds (which had been tied shut and sealed by the customs authorities upon departure following loading at the oil terminal) and which could only have been done from on board the vessel.

3.11.9 It was also noted that the ASNA Council had decided unanimously that the accident was attributed to the deliberate and negligent actions of:

- The shipowner;
- the general manager of the owning company;
- the Designated Person Ashore (DPA) of the owning company;

- the two crew members on board at the time of the incident; and
- representatives of the salvors and one of the clean-up contracting companies.

Investigation by the Public Prosecutor into the terms of the clean-up contracts

3.11.10 The Executive Committee recalled that in July 2018, the 1992 Fund had been informed that the Public Prosecutor was investigating the terms of the granting of the antipollution services agreement to the clean-up contractors. It was further recalled that, to date, no further details had been provided and the 1992 Fund and its lawyers awaited further developments.

Claims for compensation

3.11.11 It was noted that the 1992 Fund had received 373 claims amounting to EUR 94.64 million and USD 175 000 and that the 1992 Fund's experts had assessed 312 claims and had approved 307 claims amounting to over 83% of the total claims submitted to date. It was also noted that the 1992 Fund had paid some EUR 11.27 million in compensation to 136 claimants. It was further noted that the 1992 Fund's experts intended to complete the assessments for the high-value shoreline clean-up operations by November 2019 and were continuing to assess a large number of other claims and to seek further information from many claimants, which, when provided, would enable further assessments to be completed.

3.11.12 The Executive Committee noted that broadly speaking there was a close correlation between the Limitation Fund Administrator's assessments which had recently been published and those of the 1992 Fund. The Executive Committee also noted that every claimant with a claim against the Limitation Fund could decide whether to accept that assessment or to appeal against the provisional assessment by the end of September 2019.

Environmental monitoring

3.11.13 The Executive Committee further noted that the Hellenic Centre for Marine Research had published its report which concluded that marine organisms were unaffected after December 2017 and there was no evidence of bioaccumulation or residues detected in the 3–20 metre zone following the conclusion of the clean-up operations.

Civil proceedings

3.11.14 It was noted 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 respectively after deducting the advance payments made so far.

3.11.15 It was also noted that in September 2019, legal proceedings against the 1992 Fund had been filed by 78 fisherfolk, some 39 of whom had not filed claims against either the Limitation Fund or the 1992 Fund previously. Their claims totalled EUR 2.18 million.

Statement by the delegation of Greece

3.11.16 The delegation of Greece made the following statement:

'Claims for compensation

This delegation would like, firstly, to thank the Director and the Secretariat for all endeavours made on behalf of the 1992 Fund aiming at ensuring that the victims of the *Agia Zoni II* incident are compensated properly and as promptly as possible. Secondly, to express the high appreciation of Greece for this effort.

Following the Secretariat's presentation of the document, please allow this delegation to make a few remarks on the following.

It seems that, in some claim categories contained in the table of the document, especially those of the fisheries and tourism sectors, an obvious disproportion is observed between the submitted claims and the amount approved and paid so far. In this respect, we also need to take into account that, as we were informed by the Secretariat, the column of approved claims includes the rejected ones, as well.

In light of the above, we would like kindly to ask the Secretariat to provide us with the following:

- first, an analysis for all claims: a) submitted; b) assessed, both approved as well as the rejected ones; and c) the amount of compensation paid for each one approved;
- second, it is considered essential that we are provided with the qualitative and quantitative criteria upon which the outcome of each assessment was based.

We firmly believe that the above set of requests is of critical importance to us, so as to obtain a clear view of the assessment process taken place so far.

Having said this, allow this delegation once again to underline our commitment and full respect to the principles upon which the 1992 Fund is functioning.

Limitation proceedings

With regard to the limitation proceedings, we would like to inform the Executive Committee that, in September 2019, the Greek State appealed the provisional assessments published by the Limitation Fund Administrator, according to applicable national law, against a number of claims accepted by him.

Investigation into the cause of the incident

Moving further to the incident itself, with regard to the course of the investigation on the reasons for *Agia Zoni II* sinking, we would like to inform you that the finalisation of the legal procedure run by the Public Prosecutor is still pending.

Once we are informed of the outcome, our Administration will let you know accordingly without any delay.

With regard to the investigations concluded by the Technical University of Athens and the third Marine Accident Investigation Council (ASNA), this delegation wishes to note that these reports constitute part of the legal procedure run by the Public Prosecutor, who has not reached his final conclusion, as he is taking into account all the evidence collected. It is up to him to decide how much weight to apportion to each of these reports together with other outstanding reports.

In addition, especially regarding the ASNA report, we consider it necessary to note that, according to applicable national legislation (Law no.712/1970), the report of the ASNA is not binding upon the Judge who assesses it together with the other evidence. Having said that and being cognisant of the need for the cause of the incident to come to light, this delegation fully supports the Director's consideration that it is too early to draw any conclusions over the cause of the incident, taking into account that a number of investigations are still pending.'

Debate

- 3.11.17 In his response to that delegation, the Director stated that this incident had involved substantial claims for clean-up operations but that overall the impact upon the fisheries and tourism sectors had been limited and that the claims submitted had been assessed in accordance with the criteria contained within the Claims Manual. The Director also stated that the low figures paid in relation to claims in the fisheries sector reflected the experts' views that the actual impact of the incident upon fish catches was minimal and also that there was a minimal impact upon the demand for fish from the market.
- 3.11.18 Further responding to that delegation and following a comment from another delegation, the Director stated that it was not the Fund's practice to divulge details of claimants and their individual claims but that the Secretariat was willing to explain the procedures to the State to ensure that there was full understanding. The Greek delegation explained that it did not seek information on individual claims, but on how groups of claims had been assessed. The Director stated that the Secretariat was happy to cooperate with the Greek State.
- 3.11.19 In response to another delegation that raised a question regarding the assets of the shipowner and whether the insurer would walk away, the Director stated that Member States should not be optimistic in expecting to make a recovery from the shipowner, or of the shipowner being able to pay the claims submitted, should it be held unable to limit its liability by the Greek courts, as its assets were believed to be minimal, and that delegations should also not be optimistic regarding the insurer.
- 3.11.20 Another delegation questioned why the 1992 Fund was liable in cases of possible negligence by third parties, commenting that Article 4.3 of the 1992 Fund Convention appeared to provide a loophole or omission in such cases. The Director stated that the situation under the 1992 CLC and the 1992 Fund Conventions was different, with the shipowner potentially being exempt from liability under Article III(3) of the 1992 CLC, in such cases, but there being no such exoneration for the 1992 Fund with regard to preventive measures under Article 4.3 of the 1992 Fund Convention. The Director further commented that such difference was likely deliberate at the drafting stage of the Conventions in order to ensure that the environment was cleared up quickly.
- 3.11.21 One delegation agreed with the Director's considerations that it was too early to draw conclusions but noted that the peculiarities of the incident raised a number of issues arising from the conclusions of the ASNA report. That delegation stated that if it was to trust those conclusions, that delegation would find it difficult to justify the full amount of the salvor's and one of the clean up contractor's claims as preventive measures, and therefore it advised caution in making further advanced payments to those claimants. The Director responded stating that the 1992 Fund was indeed cautious and would revert to the Executive Committee at its next session with a recommendation regarding further advance payments to the salvors.

1992 Fund Executive Committee

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

3.12	Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Document IOPC/OCT19/3/12		92EC	
------	-------------------------------------------------------------------------------------------------------	--	-------------	--

- 3.12.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT19/3/12 concerning an incident that might involve the 1992 Fund.
- 3.12.2 The Executive Committee recalled that on 23 June 2018, the oil and chemical tanker *Bow Jubail* had collided with a jetty in a terminal in Rotterdam, the Netherlands, resulting in a spill of bunker oil

into the harbour. The Committee also recalled that the pollution damage claims submitted could be over USD 50 million.

Applicability of the Conventions

- 3.12.3 The Committee recalled that, at the time of the incident, the *Bow Jubail* was in ballast and that the oil spilled was bunker oil, which was persistent. It was also recalled that the Rotterdam District Court had decided that the shipowner had not proved that there were no residues left of previous cargoes of persistent oil on board. It was further recalled that the burden of proof that there were no residues on board laid with the shipowner and that the relevant test would be the one applied by local law, in this case, the law of the Netherlands.
- 3.12.4 The Committee recalled that if the shipowner could not prove that the *Bow Jubail* had no residues of oil in bulk on board, the 1992 CLC would apply, and that since the total pollution damage would likely exceed the limit that would apply to the ship under the 1992 CLC, both the 1992 Fund Convention and the Supplementary Fund Protocol could apply to this incident.
- 3.12.5 It was further recalled that the ship was insured with the Gard P&I (Bermuda) Ltd and that the limitation amount applicable to the *Bow Jubail*, if the 1992 CLC was to apply, would be SDR 15 991 676, but that the owner of the *Bow Jubail* was a party to STOPIA 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.
- 3.12.6 The Executive Committee recalled, however, that if the shipowner was successful in proving that there were no such residues on board, the incident would fall under the Bunkers Convention 2001 and the 1992 Fund and the Supplementary Fund would not be involved in this case. It was also recalled that the liability limit under the Bunkers Convention 2001 would be SDR 14 312 384.
- 3.12.7 It was noted that the shipowner had appealed to the Court of Appeal in The Hague and that the judgment was expected in November 2019.

Intervention by the delegation of the Netherlands

- 3.12.8 The delegation of the Netherlands thanked the Secretariat for the document. That delegation reported that there was no news on the incident but that they would inform the Secretariat of any new developments on this case. That delegation also confirmed that the Court's decision was expected on 22 November 2019.
- 3.12.9 One delegation wondered how clean a vessel had to be in order not to qualify as a 'ship' under the 1992 CLC.
- 3.12.10 The Director stated that this was a difficult question which would have to be decided by the Court. He also stated that in this case there was no doubt that the *Bow Jubail* had been a 'ship' on some occasions in accordance with the 1992 CLC, since the vessel had carried persistent cargoes, but that the shipowner had reportedly cleaned the ship to a high standard in order to be ready to load a non-persistent cargo. He also mentioned that if the 1992 CLC applied, that would be advantageous for claimants since they would benefit from the additional compensation provided by the 1992 Fund and the Supplementary Fund.

1992 Fund Executive Committee

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

4 **Compensation matters**

4.1	Report of the 1992 Fund Executive Committee on its 71st and 72nd sessions	92A		
-----	----------------------------------------------------------------------------------	------------	--	--

The 1992 Fund Assembly noted the reports of the 71st and 72nd sessions of the 1992 Fund Executive Committee (see documents IOPC/OCT18/11/1 and IOPC/APR19/9/1) and expressed its gratitude to the Executive Committee's Chair, its Vice-Chair and its members for their work.

4.2	Election of the members of the 1992 Fund Executive Committee Document IOPC/OCT19/4/1	92A		
-----	-------------------------------------------------------------------------------------------------	------------	--	--

- 4.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT19/4/1.

1992 Fund Assembly Decision

- 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 France Japan Republic of Korea Singapore Thailand United Kingdom	China Georgia Ghana Jamaica Mexico South Africa Turkey United Arab Emirates

- 4.2.3 The governing bodies recalled the procedure adopted in April 2015 for the election of the Chair and Vice-Chair of the 1992 Fund Executive Committee, by which the incoming Chair and Vice-Chair of the 1992 Fund Executive Committee would be elected at the same time as the incoming Executive Committee was elected (document IOPC/APR15/9/1, paragraph 6.1.6 (i)).
- 4.2.4 It was noted that the incoming Chair and Vice-Chair would assume their positions as soon as the sessions had concluded and the Record of Decisions had been adopted, and until the end of the next regular session of the Assembly.
- 4.2.5 The 1992 Fund Executive Committee elected, by acclamation, the following delegates to hold office until the end of the next regular session of the 1992 Fund Assembly:

Chair: Ms Gillian Grant (Canada)

Vice-Chair: Ms Azara Prempeh (Ghana)

- 4.2.6 The elected Chair thanked, also on behalf of the Vice-Chair, the 1992 Fund Executive Committee for the confidence shown in them.

4.3	STOPIA 2006 and TOPIA 2006 Document IOPC/OCT19/4/2	92A		SA
-----	---------------------------------------------------------------	------------	--	-----------

- 4.3.1 The governing bodies took note of the information contained in document IOPC/OCT19/4/2 regarding the recent information on the Small Tanker Oil Pollution Indemnification Agreement 2006

(as amended 2017) (hereinafter 'STOPIA 2006') and the Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) (hereinafter '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 2019 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 2018	6 758	116	6 874	98.3
20 August 2019	6 578	108	6 686	98.4

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

Number of relevant ships not entered in TOPIA 2006

- 4.3.4 The Supplementary Fund Assembly noted that the International Group had reported that as at 20 August 2019, the number of relevant ships without being entered in TOPIA 2006 was nil, and the number of ships entered in TOPIA 2006 (whether as a Relevant Ship or by an independent written agreement between the owner and its Club) and which ceased to be in TOPIA 2006 while remaining insured by the Club, was also nil.
- 4.3.5 The Supplementary Fund Assembly also noted that the International Group is not required to provide the list of ships entered in TOPIA 2006 under the Memorandum of Understanding between the International Group and the IOPC Funds.

Situation in respect of coastal ships

- 4.3.6 The governing bodies noted that, as at 20 August 2019, 347 ships entered in one of the International Group Clubs were not Relevant Ships because they had not been reinsured through the Group's pooling arrangements. However, 239 ships in this category had been entered in STOPIA 2006 by independent written agreements. These 239 ships were not entered in TOPIA 2006 because the size of these coastal tankers was generally so small that it was considered most unlikely that the cost of claims for pollution damage arising from such a ship would exceed the 1992 Fund compensation limit (SDR 203 million).

Director's considerations

- 4.3.7 The governing bodies noted that the Director is satisfied with the STOPIA 2006 data, which shows that the equitable sharing of the burden of compensation between shipowners and oil receivers is maintained. The governing bodies also noted that the Director is currently discussing the difference between the data provided on STOPIA 2006 and TOPIA 2006 with the International Group and that the Director will report the developments at future sessions of the governing bodies.

Intervention by the observer delegation of the International Group

- 4.3.8 The observer delegation of the International Group provided clarification to the governing bodies on some points made in the document. Firstly, the International Group highlighted that the difference referred to in paragraph 4.2 of document IOPC/OCT19/4/2, between the STOPIA 2006 data and TOPIA 2006 data that it provides annually to the IOPC Funds, can be attributed to the 2006 Memorandum of Understanding between the International Group and the IOPC Funds. It explained that this resulted from the different reporting requirements for the two agreements and that such difference had, therefore, been reflected in all submissions on this matter to the governing bodies since 2006.
- 4.3.9 The International Group also pointed out that, following discussions, it had agreed with the Director that, when providing the relevant data each year, it would also provide the Secretariat with the number of tankers not entered in TOPIA 2006 and a statement confirming that all other tankers that are relevant ships are entered in TOPIA 2006, unless otherwise notified.
- 4.3.10 The International Group further commented that the outcome of the *Bow Jubail* incident might affect the STOPIA data provided in the future if it were to result in any change to the IOPC Funds' policy on the definition of 'ship'.

Debate

- 4.3.11 In response to the comments made by the International Group, the Director confirmed that he was holding discussions with the International Group in accordance with the instructions given to him by the governing bodies to monitor the application of STOPIA 2006 and TOPIA 2006. He expressed the view that having more information on TOPIA 2006 would give the Supplementary Fund a clearer understanding of its application. The Director informed the governing bodies that he would continue the discussions and report any developments at future sessions of the governing bodies.

1992 Fund Assembly and Supplementary Fund Assembly

- 4.3.12 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information contained in document IOPC/OCT19/4/2. The governing bodies further noted that the Director would monitor the application of both STOPIA 2006 and TOPIA 2006, and that he would continue discussions with the International Group in order to have a clearer understanding of the application of TOPIA 2006 and would report any developments at future sessions of the governing bodies.

5 Financial reporting

5.1	Submission of oil reports Document IOPC/OCT19/5/1	92A		SA
-----	--------------------------------------------------------------	------------	--	-----------

- 5.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT19/5/1 in respect of the submission of oil reports.
- 5.1.2 The 1992 Fund Assembly noted that at the time of its October 2019 sessions, the reports already submitted by Member States totalled 97.31% of expected contributing oil for the 2018 calendar year.
- 5.1.3 The 1992 Fund Assembly also noted that out of the 17 States with outstanding reports for the 1992 Fund, eight States recorded outstanding reports for one year only; one State had three years of outstanding reports; and five States had not submitted reports for four years or more. In particular, it was noted that two of those States had never submitted any reports: the Dominican Republic (20 years) and the Syrian Arab Republic (10 years). It was also noted that reports had not been submitted by Sint Maarten (Kingdom of the Netherlands) (15 years) or Bonaire and St Eustatius (Kingdom of the Netherlands) for 5 years (2004–2009).

5.1.4 With regard to the Supplementary Fund, it was noted that one Member State had outstanding reports for one year only (Barbados) and that one Member State had outstanding reports for four years (Morocco).

5.1.5 It was also noted that the financial consequences of the missing 2018 reports could not be determined, however, the Member States that had submitted their reports for 2018 represented approximately 97% of the total contributing oil expected to be reported to the 1992 Fund and more than 99% of the total contributing oil expected to be reported to the Supplementary Fund.

Online Reporting System (ORS)

5.1.6 It was recalled that the Secretariat had been developing the Online Reporting System (ORS) to assist Member States to more efficiently submit contributing oil data to the Secretariat and that, at the April 2018 sessions, Internal Regulation 4 had been amended by the governing bodies to allow for the submission of oil reports by electronic means. The amended Regulation 4 had come into effect from 1 January 2019.

5.1.7 The governing bodies noted that the Secretariat had completed development work to allow Member States to upload their reports in PDF and JPEG formats against individual contributor records on the ORS, allowing for fully electronic submissions.

5.1.8 The governing bodies noted that additional development work on the ORS had been postponed until the Secretariat's new Enterprise Resource Planning (ERP) system had been fully implemented, as the Secretariat expected some of the required functionality would be available as standard in the ERP system. It was further noted that the Secretariat expected the work to integrate the ORS and the ERP would be completed in 2021.

5.1.9 The governing bodies also noted that 26 of the 53 Member States that had registered for an account on the ORS had submitted 2018 reports online, which represented some 69% of the total volume of contributing oil reported to the 1992 Fund and 70% reported to the Supplementary Fund.

5.1.10 The Director expressed his gratitude for the engagement and cooperation of Member States with regards to the submission of reports and he further expressed his concern that five Member States had outstanding reports for four years or more.

5.1.11 The Director assured the governing bodies that he would continue his efforts to obtain the outstanding reports and to ensure that Member States continued to fulfil this very important treaty obligation.

Debate

5.1.12 One delegation expressed its appreciation for the work carried out by the Secretariat to ensure Member States submit their reports. However, that delegation also noted with concern that several Member States had failed to submit their reports, as the submission of reports was a fundamental basis for the fair and efficient functioning of the IOPC Funds system. That delegation urged the Secretariat not to overlook non-submission of reports, as this could be used to avoid payment of contributions by oil receivers and requested that the Director examine ways that would incentivise Member States to submit reports, and to present a proposal at a future meeting of the governing bodies.

5.1.13 Another delegation expressed its dissatisfaction that there were several Member States with outstanding reports for four or more years. That delegation supported the request for the Director to examine the possibility as to whether the Secretariat could, for those Member States that had not submitted reports for many years, issue invoices for contributions based on an estimate of contributing oil received.

- 5.1.14 Other delegations noted that in their view it was unacceptable that there were some Member States who had been Members for many years but had never submitted a report.
- 5.1.15 The Director welcomed the suggestions made by the delegations to examine ways that could incentivise Member States to submit oil reports in a timely manner and to present proposals to the next meeting of the governing bodies.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.1.16 The governing bodies emphasised the importance of submitting reports in a timely manner. They instructed the Director to continue his efforts to obtain the outstanding reports and to continue to bring the matter of the submission of oil reports to each regular session. They also urged delegations to cooperate with the Secretariat in order to ensure that States fulfil their obligations in this regard.
- 5.1.17 The governing bodies further instructed the Director to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates in the event that no reports were submitted, and to report back to the governing bodies at their next sessions.

5.2	Report on contributions Document IOPC/OCT19/5/2	92A		SA
-----	------------------------------------------------------------------	------------	--	-----------

- 5.2.1 The governing bodies took note of the information on contributions contained in document IOPC/OCT19/5/2.
- 5.2.2 The 1992 Fund Assembly recalled that at its session in October 2017, it had decided to write off contributions due from two contributors in the Russian Federation, after the authorities in the Russian Federation had provided oil reports which contained incorrect information and had not rectified errors in the oil reports in a timely manner. It was noted that since then, the Director had held meetings with representatives from the Russian Federation following his letter in January 2019 reiterating his view of the Russian Federation's obligation under Article 15.4 of the 1992 Fund Convention. The Director had received a response informing him that the Russian authorities had set up an interagency working group to deal with the matter.
- 5.2.3 The 1992 Fund Assembly noted that a contributor in Venezuela had outstanding contributions of some £586 000 corresponding to 2006 to 2018.
- 5.2.4 The 1992 Fund Assembly also noted that the Director would continue his dialogue with the authorities in Ghana about the outstanding contributions due.
- 5.2.5 The 1992 Fund Assembly welcomed the news that all outstanding contributions from a contributor in Malaysia have been received including an amount outstanding from one contributor since March 2014.
- 5.2.6 It further noted that, as reported by the Director at the April 2019 sessions of the governing bodies, outstanding contributions in the amount of EUR 849 000 had been received in January 2019 from the Islamic Republic of Iran, which had been deposited in the 1992 Fund's bank account in Spain.
- 5.2.7 The 1992 Fund Assembly recalled that contributions were due from four contributors based in Denmark, Morocco, Switzerland (oil received in France), and the United Kingdom which had gone into liquidation. Pursuant to its decision at the October 2014 session, the 1992 Fund Assembly recalled that any balance due would be written off in the Financial Statements on receipt of final settlement.

Intervention by the delegation of the Russian Federation

- 5.2.8 The delegation of the Russian Federation expressed its gratitude to the Director for his help in resolving the issue of outstanding contributions due from contributors in the Russian Federation written off by the Assembly in 2017. That delegation reassured the Assembly that the Government of the Russian Federation was keeping the issue under direct control. In particular, an interagency working group had been established and it had become clear that more time would be needed for a thorough analysis of the background and past decisions by all parties regarding the outstanding contributions that were written off by the 1992 Fund.

Intervention by the delegation of Ghana

- 5.2.9 The delegation of Ghana informed the Assembly that the authorities in Ghana had engaged positively with the contributor which had recently emerged from a prolonged period of financial difficulty. That delegation hoped that the contributor would soon be in a position to provide the Secretariat with a payment plan for the outstanding contributions.

Debate

- 5.2.10 One delegation recommended that the 1992 Fund should ensure that claims for outstanding contributions should not become time-barred in the country from which they are due in the event that legal action needs to be taken to receive outstanding contributions. In response, the Director informed the Assembly that the Secretariat always considered the protection of the IOPC Funds' legal rights to receive contributions but that, in his view, taking legal action was costly and that obtaining assistance from Member States would be his preferred option.

1992 Fund Assembly and Supplementary Fund Assembly

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

5.3	Report on investments Document IOPC/OCT19/5/3	92A		SA
-----	----------------------------------------------------------------	------------	--	-----------

- 5.3.1 The governing bodies took note of the information on the IOPC Funds' investments for the period 1 July 2018 to 30 June 2019 contained in document IOPC/OCT19/5/3. The governing bodies also noted the number of institutions used by the Funds for investment purposes and the amounts invested by each Fund during that period.
- 5.3.2 The governing bodies noted that the Bank of England, the United States Federal Reserve and the Bank of Korea had all increased base rates during the reporting period which had resulted in a positive impact on yields achieved by the Funds.
- 5.3.3 It was noted that the joint Investment Advisory Body had made no recommendations to change the lending limits in the Internal Investment Guidelines due to the credit markets remaining stable during the reporting period.
- 5.3.4 It was also noted that Barclays Bank plc, HSBC Bank plc and Lloyds Bank plc had been the Funds' designated house banks during the reporting period and that BNP Paribas, International Nederlanden Bank (ING Bank NV), KEB Hana Bank and KDB Bank (Korea Development Bank) had been designated as temporary house banks since they had been used to hold currencies for incidents.
- 5.3.5 It was further noted that investments with the house bank Barclays Bank plc had exceeded the normal limit on one occasion by only four days.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.3.6 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided on the investments held by the 1992 Fund and the Supplementary Fund.

5.4	Report of the joint Investment Advisory Body Document IOPC/OCT19/5/4	92A		SA
-----	---------------------------------------------------------------------------------	------------	--	-----------

- 5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund, contained at the Annex to document IOPC/OCT19/5/4 and the verbal presentation made by Mr Brian Turner. The governing bodies noted that the format of the IAB report had been changed and included an economic summary and information on credit markets and hedging currency risk.
- 5.4.2 The governing bodies also noted that the IAB had kept under review the holding of currencies other than pounds sterling for incidents as part of the IOPC Funds' normal assets. It was further noted that in respect of the *Prestige* incident, the Fund's liability had been settled, with a small balance of euros held for future costs. It was also noted that during the year, the hedging ratio on the outstanding balance had gradually risen from 78% to 100% to remove the risk of any adverse currency movements during the final stages of settlements. In respect of the *Agia Zoni II* incident, the governing bodies noted that the Fund's future liability was estimated to be approximately EUR 45 million; of which approximately EUR 17 million was being held by the 1992 Fund, representing 38% of the liability and 53% of the amount which had been levied to date. It was also noted that in respect of the *Hebei Spirit* incident, the Fund's final balance to be paid was slightly less than KRW 3.5 billion; and that it had been anticipated that the equivalent of that amount would be paid to the Skuld Club in US dollars and that USD 2.8 million had been purchased towards this payment.
- 5.4.3 The governing bodies noted that the volatility in currency markets had continued during the period under review and had favoured the US dollar against the euro and the pound sterling.
- 5.4.4 The governing bodies noted that the IAB had continued to review the IOPC Funds' financial risks during the last year. It was also noted that the IAB continuously monitored the United Kingdom's withdrawal from the European Union (Brexit), which had been identified by the Secretariat in the past as an ongoing risk. It was noted that the Government of the UK had agreed a revised Brexit deal with the EU and that Members of Parliament had voted to allow the Government's Bill on the deal to go forward to the next stage in the Parliamentary process. However, the UK Government's proposed rapid timetable of only three days of debate in the House of Commons was rejected and a further extension until 31 January 2020 was requested to the EU, which was subsequently agreed. It was also noted that the IAB considered that those events would not have an adverse impact on the IOPC Funds' assets.
- 5.4.5 It was further noted that USD 7.6 million was held as part of the working capital of the 1992 Fund and that those US dollars had been purchased at an average rate of £1 = USD 1.3238.
- 5.4.6 The governing bodies noted that the IAB had continued to monitor the creditworthiness of the Funds' counterparty banks in accordance with the approved investment guidelines and that the changes affecting those financial institutions had been provided to the Secretariat by the IAB each quarter.
- 5.4.7 The governing bodies noted that Barclays Bank plc and HSBC Bank plc continued to be the Funds' operational house banks and that the Lloyds Bank plc had been added to that list. It was also noted that the KDB Bank, the KEB Hana Bank and the ING Bank NV were no longer needed as temporary house banks and that the Santander UK had been added to the list of temporary house banks for euro deposits, underlying the difficulty in placing deposits in euros in a negative interest rate environment.

- 5.4.8 The governing bodies further noted that the IAB had met with a representative of the External Auditor, BDO International in March 2019 for a full review of its activities and had discussed the IAB's approach to the management of currency exposure and the implementation of the hedging policy at the April 2019 Audit Body meeting.
- 5.4.9 The governing bodies noted that the IAB would continue to monitor the valuation of Provident Fund 2 (PF2) and would continue to provide support and advice to the Secretariat on a day-to-day basis and solutions to help optimise the returns on the Funds' investments. It was also noted that the IAB members would continue to act with diligence, caution and prudence.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.4.10 The 1992 Fund Assembly and Supplementary Fund Assembly expressed their gratitude to the joint Investment Advisory Body for their important contribution in safeguarding the assets of the 1992 Fund and the Supplementary Fund.

5.5	Report of the joint Audit Body Documents IOPC/OCT19/5/5 and IOPC/OCT19/5/5/1	92A		SA
-----	-----------------------------------------------------------------------------------------	------------	--	-----------

- 5.5.1 The Chair of the Audit Body, Mr Makoto Harunari, presented the second Report of the sixth joint Audit Body to the governing bodies (document IOPC/OCT19/5/5) on behalf of his fellow members of the Audit Body: Mrs Birgit Sjølling Olsen (Denmark), Vice-Chair; Mr José Luis Herrera Vaca (Mexico); Mr Eugène Ngango Ebandjo (Cameroon); Mr Vatsalya Saxena (India); and Mr Michael Knight (United Kingdom), the Audit Body's external expert. Mr Harunari was joined at this session by Mrs Sjølling Olsen and Mr Knight.
- 5.5.2 Mr Harunari noted that, at its inaugural meeting in December 2017, the sixth Audit Body had planned the programme of activities for its three-year tenure and adopted its work programme which was attached at Appendix I to the Report. He added 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.
- 5.5.3 In respect of the first area of the Audit Body's responsibility, ascertaining the adequacy and effectiveness of the IOPC Funds' management and financial systems, Mr Harunari reported that the Audit Body performed this function through its consideration of the work of the External Auditor, supplemented by periodic briefings by the Secretariat.
- 5.5.4 With respect to the Audit Body's oversight of the risk management function, Mr Harunari noted that in carrying out this function, the Audit Body's work plan prescribed a number of activities which had a bearing on the Funds' risk management processes as well as its management and operating systems. He stated that since April 2018, the Audit Body had started to study how to minimise the risks relating to dealing with incidents involving some insurers who are not members of the International Group of P&I Associations (non-IG insurers) and had presented an interim report on this subject at the October 2018 sessions of the governing bodies. He added that the Audit Body would provide an update on the review it had undertaken of the issues arising from incidents involving the IOPC Funds and non-IG insurers when presenting document IOPC/OCT19/5/5/1. Mr Harunari also noted that the Audit Body had also monitored developments regarding the Director's proposal to commission a risk-focused programme of internal audit activity, which the Audit Body considered beneficial to the overall risk management process of the Funds. He reported that external consultants had been appointed, and that the first project concerning IT infrastructure risks and security had been completed and that further projects had been planned.
- 5.5.5 With respect to the third key area of responsibility relating to the review of the organisations' Financial Statements and Reports, Mr Harunari reported that the Audit Body looked to the external audit for reasonable assurance that the Financial Statements were free from material misstatement and had been attentive to their completeness and consistency while also reviewing the Director's

response to the recommendations made by the External Auditor in previous years. He added that following its review, and considering the results of the external audit, the Audit Body recommended the approval of the Financial Statements of the 1992 Fund and the Supplementary Fund for the year ending 31 December 2018. Mr Harunari also reported that the Audit Body noted the recommendations by the External Auditor with respect to the 2018 Financial Statements, together with the Director's responses, and would consider them during its forthcoming meeting.

- 5.5.6 The governing bodies noted that section 3.4 of the Report outlined how the Audit Body addressed its role to promote the understanding and effectiveness of the audit function within the IOPC Funds. Mr Harunari noted that the Audit Body met three times a year and worked to a structured agenda and detailed programme of activities. He stated that these meetings involved the participation of the Director, Deputy Director/Head of Finance and Administration and other members of the Secretariat as required, and representatives of the External Auditor. He further noted that these meetings gave the Director the opportunity to keep the Audit Body fully apprised of the activities of the IOPC Funds while providing a forum to discuss a broad range of matters relevant to its mandate. Mr Harunari stated that the periodic attendance of one or more of the Chairs of the governing bodies at meetings of the Audit Body further promoted good communications. He further stated that the Audit Body had met once with the IAB since the 2018 October sessions, which it had found particularly useful to have a good understanding of the views of the IAB on investment and financial risks.
- 5.5.7 Mr Harunari stated that the Audit Body was of the view that the work of the External Auditor had been effective and was of tangible value to the operations of the IOPC Funds.
- 5.5.8 With respect to the process for the selection of the External Auditor, Mr Harunari recalled that at the April 2019 sessions of the governing bodies, the Audit Body had outlined the possible approaches that could be taken to the process for appointment of the External Auditor. He added that, as requested by the governing bodies in April 2019, the Audit Body had conducted a detailed review of BDO International. Mr Harunari further noted that the review process and recommendation on this matter were contained in document IOPC/OCT19/6/1, which would be presented by Mr Michael Knight.
- 5.5.9 In closing, Mr Harunari thanked his fellow Audit Body members for their hard work. He also thanked, on behalf of the other members, the Director and Secretariat for their considerable assistance in helping them discharge their responsibilities and the Chairs of the governing bodies who attended their meetings or otherwise provided counsel to Audit Body deliberations.

Debate

- 5.5.10 The Chair of the 1992 Fund Assembly thanked the members of the Audit Body for their work. He also thanked the Chair of the Audit Body in particular, for taking over as Chair following the sad passing of Mr Rysanek in January 2019 and Mrs Sjølling Olsen for taking the position of Vice-Chair of the Audit Body, a newly created post. The Chair of the 1992 Fund Assembly also noted that there would be an election of a new Audit Body in October 2020. He also stated that the Director would submit a document to the March 2020 sessions of the governing bodies which would include relevant information on the election process.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.5.11 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their appreciation to the Chair of the Audit Body and the other Audit Body members and thanked them for their work and their report. They also noted the recommendation of the Audit Body to approve the 2018 Financial Statements and Auditor's Report and Opinion.

DOCUMENT IOPC/OCT19/5/5/1, RISK MANAGEMENT — UPDATE ON THE REVIEW OF INSURANCE PROBLEMS

- 5.5.12 The governing bodies took note of the information contained in document IOPC/OCT19/5/5/1 which contained an update on the review by the Audit Body of the issues arising from incidents involving the IOPC Funds and insurers who are not members of the International Group of P&I Associations (non-IG insurers).
- 5.5.13 The governing bodies recalled that at the October 2018 sessions of the governing bodies the Audit Body had presented an interim report on the difficulties the IOPC Funds had faced when dealing with some non-IG insurers. The governing bodies also recalled that the percentage of incidents involving non-IG insurers had increased during the last 40 years and that as a result, the IOPC Funds had suffered financial losses of at least £8.26 million, which is equivalent to 1.2% of the total compensation amount paid by the Funds to date.
- 5.5.14 The governing bodies were reminded by the Chair of the Audit Body that the 1992 CLC and the 1992 Fund Convention are reliant on responsible shipowners, insurers and Member State governments to ensure that appropriate insurance cover under the 1992 CLC is in place. They noted that if the responsibilities are not adequately fulfilled (e.g. 1992 CLC certificates are issued to ships with insufficient insurance cover) and such situation is not rectified by the concerned stakeholders, their credibility could be damaged, and the regime could be seriously jeopardised.
- 5.5.15 The governing bodies noted that given the complexity of the subject, the Audit Body had classified the above-mentioned issues into three categories and considered the potential measures that could be taken to deal with each one of them:
1. Inconsistency between the documents provided by non-IG insurers to certify the evidence of the 1992 CLC insurance and the underlying insurance policies, which results in Member State governments issuing 1992 CLC certificates and in ships operating with insufficient insurance cover:
 - (i) A template could be created to be furnished by non-IG insurers as evidence of insurance pursuant to the 1992 CLC, similar to the blue card issued by Clubs that belong to the International Group of P&I Associations (an insurance card);
 - (ii) non-IG insurers with whom the IOPC Funds have encountered issues in the past could be included in a list to be posted onto the IOPC Funds' website; and
 - (iii) if involved in an incident involving an unreliable non-IG insurer, the IOPC Funds could request the authority of the Member State that has issued the 1992 CLC certificate in question to inform the IOPC Funds' Secretariat of the efforts made to correct the situation and to prevent or minimise the risk of a similar incident in the future.
 2. Insolvency of the non-IG insurer:
 - (i) If involved in an incident with an insolvent non-IG insurer, the IOPC Funds could maximise the cost recovery in the liquidation procedure.
 3. Uncooperative action of the non-IG insurer:
 - (i) The IOPC Funds could develop cooperation arrangements with the non-IG insurers similar to the ones currently in place with the International Group of P&I Associations.
- 5.5.16 The governing bodies further noted that the Audit Body had discussed some of these issues with experts in the insurance market and had shared a draft of the above-mentioned proposed insurance card as well as other potential cooperation arrangements which could be developed between non-IG insurers and the IOPC Funds.

- 5.5.17 In September 2019, the Director and the Legal Counsel had attended a meeting of the Joint Liability Committee (JLC) of the Lloyd's Market Association, which is one of the member associations of the International Union of Marine Insurance (IUMI). The governing bodies noted that the discussions during that meeting had focused on how IUMI could assist the IOPC Funds in dealing with issues arising from non-IG insurers. It was also noted that the JLC had fully recognised the issues that the IOPC Funds had faced when dealing with non-IG insurers and had agreed to assist the Funds in trying to address them. It was further noted that at the meeting, the Director had presented three main topics: (i) the insurance card; (ii) the possibility of concluding a Memorandum of Understanding with non-IG insurers; and (iii) the application of STOPIA and TOPIA to non-IG insurers. It was also noted that the Director would continue the dialogue with the JLC and would report on developments to the Audit Body at its next meeting in December 2019.
- 5.5.18 The governing bodies took note of the Audit Body's intention to continue exploring possible measures to deal with the issues arising from incidents involving non-IG insurers. It was further noted that the Audit Body would submit its recommendations to the governing bodies for consideration in 2020 and would indicate whether their implementation would necessitate the cooperation of other stakeholders, such as IMO and IUMI.

Debate

- 5.5.19 All delegations that spoke, expressed their gratitude to the Audit Body for providing the update on its review of the issues arising from the incidents involving the IOPC Funds and insurers who are non-IG insurers.
- 5.5.20 Several delegations highlighted that some of the proposals detailed in the document might already be enforced by Member States individually. One such delegation stated that its criteria already went further than the IMO Guidelines for accepting insurance companies (contained within Circular letter 3464 of 2 July 2014^{<2>}) with additional criteria, such as requiring confirmation of the maximum cover offered by the insurer in US dollars per incident, and a specific credit rating of the insurance company concerned. That delegation highlighted, however, that it was not aware which other Member States were also following or going further than the requirements contained within the IMO Guidelines.
- 5.5.21 Another delegation, echoing this point, highlighted the importance of Member States conducting their own due diligence to ensure that certificates were based on sound financial evidence, since it recognised that even with the consistent application of the IMO Guidelines, no Member State was entirely immune to potential issues when dealing with unknown insurers.
- 5.5.22 Noting that the IMO Guidelines covered all liability conventions, and that the problems with non-IG insurers were likely more commonly found in the Bunkers Convention 2001 and the Nairobi International Convention on the Removal of Wrecks, 2007 (WRC 2007) incidents, that delegation stated that, given the lower thresholds for compulsory insurance in the WRC 2007, it had needed to educate the insurers and its own maritime administration of their obligations, especially in relation to the impact of inadequate insurance from sub-standard, abandoned or derelict ships. That delegation stated that the issue appeared to be that the insurers did not fully understand that the Conventions required the evidence of insurance to be a financial guarantee, or that the Conventions ensured a direct right of action by claimants which meant that the insurer could not simply walk away for breach of warranties in an insurance policy. It also noted that the issue involved not only the insurers but also shipowners, as it believed it was the shipowner's responsibility to ensure that the insurance it purchased met the standards required of the Conventions where the vessel traded. That delegation also encouraged other Member States to start discussions with associations of shipowners and underwriters at a national level as it had done,

<2>

Circular Letter No. 3464 is available via the IMODOCS website: <https://docs.imo.org>

and also highlighted that Article VII(7) of the 1992 CLC itself contained a provision enabling States to consult with other States.

- 5.5.23 Another delegation expressed its support for the proposal for the 1992 Fund to maximise the cost recovery from an insolvent insurer and to also develop cooperation arrangements with non-IG insurers similar to those currently in place with the International Group, by identifying the numbers of non-IG insurers in each country and whether they had a willingness to cooperate with the 1992 Fund in the event of an incident.
- 5.5.24 That delegation also stated that there were two large non-IG Clubs within its jurisdiction, which issued blue cards similar to the International Group Clubs, and any decision relating to insurance cards and cooperation arrangements would be disseminated to the relevant stakeholders to ensure the cooperation and smooth operation of the compensation system.
- 5.5.25 Another delegation stated that the proposal to make insurance certificates more explicit to confirm that in the event of a conflict between the insurance policy and the commitments made under the 1992 CLC, the latter must prevail, was to be welcomed. That delegation also noted that the policies of some non-IG insurers may contain provisions that did not comply with the 1992 CLC such as the 'pay to be paid' clause which was contrary to the right of direct action against the insurer, or defences such as the non-payments of premiums, and that the insurance policy, itself a contractual agreement between the insurer and shipowner, was not enforceable against third parties attempting to exercise rights conferred to them under the CLC. Recognising that the elements would be included in the IMO Guidelines on the acceptance of insurance companies (Circular letter 3464 of 2 July 2014), that delegation stated that the IMO Legal Committee should be made aware of the present deliberations of the 1992 Fund Assembly.
- 5.5.26 This view was supported by several delegations which welcomed early consultation with IMO before any review reached a critical stage, since the issues highlighted were not solely related to the CLC and Fund Conventions but applied equally to the Bunkers Convention 2001 and WRC 2007.
- 5.5.27 In relation to the proposal for the IOPC Funds' website to publish a list of 'unaffiliated insurers with whom the IOPC Funds have had problems in the past', several delegations expressed caution, highlighting the legal implications for, and the potential damages that may be due from, the 1992 Fund if an insurer was included on such a list inappropriately. Noting the differences between an insurer which had set a lower limit on its policy than required under the 1992 CLC, and an insurer which had refused to cover a cargo which it alleged was carried in contravention of international sanctions, such that it would be liable to penalties if it compensated the loss, one delegation stated that it appeared more appropriate, rather than publishing a simple list of problem insurers, to present a summary document, updated as necessary, specifying the various difficulties encountered with insurers, including the contextual elements which would allow Member States to exercise their discretion.
- 5.5.28 A number of delegations supported this comment, and also supported the proposal for the 1992 Fund to seek information from States that had issued unreliable certificates and details of the corrective measures taken subsequently, noting that the question of remedies would need to be considered by all States that had accepted the certificates from that insurer. Delegations also supported the proposals to maximise the recovery from insolvent insurers by presenting their claims in liquidation proceedings, and to enter into cooperation agreements with unaffiliated insurers similar to those existing with the International Group.
- 5.5.29 Another delegation highlighted the obligations upon the appropriate authority of a Contracting State which issued certificates under the 1992 CLC, highlighting that it was the State's responsibility to ensure adequate insurance was in place before the certificate was issued. The measure of creating the 'Insurance Card' would be more effective if the Member States established a practice not to issue CLC certificates unless this 'Insurance Card' was provided.

- 5.5.30 One delegation stated that the issues were not always clear as to who was solely to blame, highlighting that not only was the insurer possibly at fault, but possibly the shipowner and the State itself, by allowing an insurer with insufficient capital to trade in the insurance market. That delegation also stated that any list of defaulting insurers needed to be inclusive and not just for non-IG insurers, as identical violations have to be dealt with in the same way.
- 5.5.31 Two delegations stated that while they welcomed the proposals to minimise risks for the IOPC Funds, they also stressed that administrative burdens on States and shipowners should be kept to a minimum.
- 5.5.32 One delegation stated that the issue was complex and that a targeted approach was necessary. That delegation stressed the merits of attempting to bring about necessary changes by engaging with the non-IG insurers themselves to encourage them to put regulations in place in order to keep those insurers which did not wish to comply with their obligations out of the insurance market.
- 5.5.33 The observer delegation of IMO highlighted the existence of the IMO Guidelines, noting that these also made provision for the exchange of information between Member States, and that IMO also had the GISIS system which could facilitate the sharing of information on each of the conventions listed in the IMO Guidelines among Member States. Noting that the issue was already on the work programme of IMO, that delegation stated that the issue could be considered at the next meeting of the IMO Legal Committee and recognised that cooperation between the various parties was the best way forward.

1992 Fund Assembly and Supplementary Fund Assembly

- 5.5.34 The Chair of the 1992 Fund Assembly stated that due to the extent and level of detail of the interventions, the transcript of the discussion would be provided to the Audit Body and would be written up in order to ensure that none of the interventions by delegates were lost, and to allow the Audit Body to consider it in more detail subsequently.
- 5.5.35 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their appreciation to the members of the Audit Body for their work and noted that in view of the clear support for the work conducted, the Audit Body would continue to examine this matter and report to the governing bodies at future sessions.

5.6	2018 Financial Statements and Auditor's Report and Opinions Documents IOPC/OCT19/5/6, IOPC/OCT19/5/6/1 and IOPC/OCT19/5/6/2	92A		SA
-----	------------------------------------------------------------------------------------------------------------------------------------	------------	--	-----------

- 5.6.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT19/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2018, contained in documents IOPC/OCT19/5/6/1 and IOPC/OCT19/5/6/2.
- 5.6.2 After the Secretariat's introduction of each document, a representative of the External Auditor, BDO International, Mr David Eagles, introduced the External Auditor's Report and Opinion for the 1992 Fund and the External Auditor's Opinion for the Supplementary Fund.
- 5.6.3 The governing bodies welcomed the new presentation of the Funds' Financial Statements and associated reports in a more simplified structure. It was noted that the level and ordering of information was comparable with previous years, but the Financial Statements had been combined into a single Annex, split into three sections.
- 5.6.4 The governing bodies noted that the Financial Statements continued to be prepared in accordance with International Public Sector Accounting Standards (IPSAS) and in accordance with the Funds' Financial Regulations in all respects. As in previous years, the financial disclosures were

comprehensive and contained enough detail to facilitate in-depth analysis of the Funds' positions, performance and future commitments. There had been no new accounting policies or other significant changes compared with prior years.

- 5.6.5 The governing bodies noted with appreciation the Financial Statements of their respective organisations as well as the External Auditor's Report and Opinions, and also noted that the External Auditor had provided an unqualified audit opinion on the 2018 Financial Statements for each organisation.
- 5.6.6 It was further noted that the audit had involved procedures considered appropriate for the entity according to the Auditor's judgement, risk assessment and testing of the internal controls of the organisations. The External Auditor was satisfied that no weaknesses had been identified in the internal controls. The governing bodies noted that the unqualified audit opinions on the Financial Statements were confirmation that the organisations' internal financial controls had operated effectively.
- 5.6.7 The 1992 Fund Assembly took note of the recommendations set out in the External Auditor's Report on the 2018 Financial Statements and noted the Director's responses to the recommendations that had been made. It was also noted that recommendations made in previous years had either been fully implemented or appropriate action was being taken.

1992 Fund Assembly Decision

- 5.6.8 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2018.

Supplementary Fund Assembly Decision

- 5.6.9 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2018.

6 Financial policies and procedures

6.1	Appointment of the External Auditor Document IOPC/OCT19/6/1	92A		SA
-----	------------------------------------------------------------------------	------------	--	-----------

- 6.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of document IOPC/OCT19/6/1, presented on behalf of the Audit Body by its external expert, Mr Michael Knight.
- 6.1.2 The governing bodies recalled that at their April 2019 sessions they had instructed the Audit Body to conduct a review of the performance of the External Auditor, BDO International (BDO), and to evaluate its proposal for a further term, including fees. The governing bodies had also instructed the Audit Body to make a recommendation as to whether BDO should be re-appointed for a further term or whether a full tender process should be undertaken. The Audit Body had also been instructed to develop clear rules regarding the appointment of the External Auditor in the future.
- 6.1.3 The governing bodies noted that a formal review of BDO and an assessment of its performance and proposal for a further term had been conducted by the Audit Body. It was also noted that there had been a presentation by BDO at the Audit Body meeting in June, followed by questions from Audit Body members and that the Chair of the 1992 Fund Assembly, the Director and Deputy Director/Head of Finance and Administration had been in attendance.
- 6.1.4 The governing bodies noted the recommendation by the Audit Body that BDO be re-appointed as the External Auditor for a further four-year term, commencing with the 2020 accounting year. The Audit Body had made this recommendation taking into account that BDO had provided a good service and constructive advice, had gained a good understanding of the organisation and the

challenges facing it in the future, had committed to continuity of senior staff and had proposed a realistic fee.

- 6.1.5 With regard to developing clear rules for the appointment of the External Auditor in the future, the governing bodies noted that the Audit Body had given consideration to the options set out in document IOPC/APR19/6/1 and to the manner in which the appointment had been made in the past. Regarding the selection process of the External Auditor in the future, the governing bodies further noted that the Audit Body had recommended that there should be an alternation between a tender and a formal review at the end of each four-year period, subject to certain conditions being met. It was noted that the Audit Body presumed that for a formal review to be conducted there had to be overall satisfaction with the quality of service being provided and the incumbent had to be prepared to serve for a further term.
- 6.1.6 The governing bodies noted that the Audit Body considered that there was a sound case for a change in audit organisation whenever an incumbent had served for two four-year terms. It was also noted that the Audit Body had not ruled out the re-appointment of an incumbent who had served for two four-year terms in order to cater for exceptional circumstances; in which case it would be for the governing bodies to decide on the duration of such re-appointment. The governing bodies noted that the adoption of these rules for selecting the External Auditor in the future would require a change to the Financial Regulations. It was further noted that the proposed wording for Regulation 14 had been set out in paragraph 3.6 of document IOPC/OCT19/6/1.
- 6.1.7 Mr Knight referred to a minor drafting issue in paragraph 3.6 of the document which had raised concern as to a possible ambiguity and suggested an amendment to the proposed revised text of Regulation 14.
- 6.1.8 The governing bodies were invited to consider the above recommendation regarding BDO's re-appointment for the financial years 2020–2023 inclusive. They were also invited to decide whether to approve the selection process of the External Auditor for the future and, if so, to decide whether to amend Financial Regulation 14 of the 1992 Fund and the Supplementary Fund.

Debate

- 6.1.9 A number of delegations thanked the Audit Body and Mr Knight for their work and expressed support for the recommendation made by the Audit Body to re-appoint BDO for the financial years 2020–2023 inclusive. They also approved the selection process of the External Auditor for the future as proposed by the Audit Body under paragraphs 3.3 to 3.5 of the document.
- 6.1.10 One delegation suggested that the text proposed for Financial Regulation 14 be amended to include a reference to the length of the standard term of the External Auditor, which had historically been four years but was not specified in the Financial Regulation. That delegation considered that doing so would allow for clarity as to the appointment of the External Auditor and the length of their term. Mr Knight confirmed that reference was made to the four-year period in the proposed text.
- 6.1.11 Another delegation requested clarification as to whether there would be any explicit requirement for the appointed External Auditor to change their key audit partners after a set period of time in order to ensure that they remain independent. Mr Knight clarified that the number of years that a partner could serve on any engagement in BDO depended on the status of the client (whether it was a listed company, a public sector organisation or another organisation). He added that Mr Eagles could remain on this engagement for 10 years in this firm and therefore he would be able to serve for the second period which was being proposed by the Audit Body. That delegation also stated that it was its understanding that, under the proposed amendment to Financial Regulation 14, the same audit firm may not be appointed as the External Auditor for more than three consecutive periods in total.

- 6.1.12 Two further editorial amendments to Financial Regulation 14 were proposed and agreed in order to make clear that the basis for the extension of the appointment of the External Auditor had to be the Audit Body's assessment of whether the External Auditor's performance had been satisfactory and that a further extension of the term of the External Auditor had to be made by way of a full tender process.

1992 Fund Assembly and Supplementary Fund Assembly Decisions

- 6.1.13 The 1992 Fund Assembly and the Supplementary Fund Assembly decided to re-appoint BDO International as the IOPC Funds' External Auditor to audit the Financial Statements of the 1992 Fund and the Supplementary Fund for a second four-year term, i.e. the financial years 2020–2023 inclusive, subject to continuing satisfactory performance, as recommended by the Audit Body.
- 6.1.14 The 1992 Fund Assembly and the Supplementary Fund Assembly also decided to approve the selection process of the External Auditor for the future as proposed by the Audit Body and detailed under paragraphs 3.3 to 3.5 of document IOPC/OCT19/6/1.
- 6.1.15 Taking into account the revised selection process, the 1992 Fund Assembly and Supplementary Fund Assembly decided to amend Financial Regulation 14 of the 1992 Fund and the Supplementary Fund, as set out in Annex II of this document.

7 Secretariat and administrative matters

7.1	Secretariat Matters Document IOPC/OCT19/7/1	92A		SA
-----	--------------------------------------------------------------	------------	--	-----------

- 7.1.1 The governing bodies took note of the information contained in document IOPC/OCT19/7/1 regarding the operation of the Secretariat.
- 7.1.2 The governing bodies noted that there were 34 established posts in the Secretariat and that there were four vacant posts in the Professional Category: the posts of two in-house Translators (French and Spanish), External Relations Officer, and Claims Manager, and that it was only the vacant post of Claims Manager which had been budgeted for in 2020 as in recent years. The governing bodies also noted that there were three vacant posts in the General Service category: one in the Director's Office, one in the Claims Department and one in the Finance and Administration Department, and that none of these posts were budgeted for in 2020.
- 7.1.3 The governing bodies further noted that following a job classification review of one of the two Claims Administrator posts, this had now been reclassified from General Services to Professional Services and the title had been changed to Claims Manager. It was also noted that the Director promoted the incumbent, Ms Ana Cuesta to the grade of P2 with effect from 1 January 2019.
- 7.1.4 The governing bodies noted that Mr Thomas Moran had resigned from his post of External Relations and Conference Coordinator effective 31 January 2019 and that Ms Julia Sukan del Rio, who has been working in the Secretariat as an External Relations and Conference Assistant for the past four years, had been appointed as the new External Relations and Conference Coordinator with effect from 1 February 2019.
- 7.1.5 It was further noted that Miss Nadja Popović had been appointed to the position of External Relations and Conference Assistant with effect from 12 August 2019.

Amendments to Staff Regulations and Staff Rules

- 7.1.6 The governing bodies noted the Director had issued amendments to the 1992 Fund Staff Rules in respect of Annex A of the Staff Rules which contain the salary scales for staff members in the Professional and higher categories with effect from 1 January 2019; Annex B of the Staff Rules which

contain the staff assessment rates for staff members in the Professional and higher categories for purposes of pensionable remuneration with effect from 1 January 2019; Annex C of the Staff Rules which contain the salary scales for staff members in the General Service category with effect from 1 May 2018; Annex D of the Staff Rules which contain the staff assessment rates for staff members in the General Service category with effect from 1 January 2019; and Annex E of the Staff Rules which contain the two latest pensionable remuneration scales for staff in the Professional and higher categories with effect from 1 January 2019 and 1 February 2019.

Conscious Rewarding Scheme

- 7.1.7 The governing bodies noted that the Director had continued to apply a Conscious Rewarding Scheme, first introduced in 2011, to reward staff members on an annual basis for outstanding performance in their current role.
- 7.1.8 The governing bodies further noted that during the course of 2018, seven individuals received the Manager's award, totalling £1 750. They also noted that no Director's awards were awarded in 2018.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.1.9 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in the document.

7.2	Headquarters Agreement Document IOPC/OCT19/7/2	92A		SA
-----	-----------------------------------------------------------	------------	--	-----------

- 7.2.1 The governing bodies took note of the information contained in document IOPC/OCT19/7/2 regarding the recent developments on the 1992 Fund Headquarters Agreement and the Supplementary Fund Headquarters Agreement.
- 7.2.2 The governing bodies noted that the discussion on the Headquarters Agreements had continued between the UK Government and the Secretariat, and the drafts of the Agreements were at an advanced stage. It was also noted that the texts of the Agreements would be agreed by both parties soon and would be submitted to the governing bodies for approval at their next sessions.
- 7.2.3 The governing bodies also noted that both parties agreed that immunity provisions of both Agreements and their implementing UK domestic legislation should have the same wording and would explicitly protect both Funds from a freezing order, in view of the fact that a freezing order had been granted against the 1971 Fund. It was also noted that the Supplementary Fund had no legal personality and no protection of its assets without a Headquarters Agreement and its implementing UK domestic legislation.

Intervention by the delegation of the United Kingdom

- 7.2.4 The delegation of the United Kingdom explained that although an agreement on the texts could not be reached in time for this meeting of the governing bodies, it remained confident that an agreement would be reached soon, and the draft Headquarters Agreements would be submitted to the governing bodies for their approval at their next meeting.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.2.5 The 1992 Fund Assembly and the Supplementary Fund Assembly thanked the delegation of the United Kingdom and the Secretariat for the information provided and will await developments at their next sessions.

7.3	Appointment of members and substitute members of the Appeals Board Document IOPC/OCT19/7/3	92A		
-----	-------------------------------------------------------------------------------------------------------------	------------	--	--

- 7.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT19/7/3.

Developments since the October 2017 session of the 1992 Fund Assembly

- 7.3.2 The 1992 Fund Assembly noted that since the appointment of the Appeals board in October 2017, two members Mr Jotaro Horiuchi (Japan) and Ms Nicole Taillefer (France), and two substitute members Mr Park Jun-Young (Republic of Korea) and Mr Argyris Madella (Cyprus) had been replaced by their respective successors in their posts in London.

- 7.3.3 It also noted that the respective successors, Mr Iwao Shimizu (Japan), Ms Geneviève Jean-van Rossum (France), Mr Song Sang-Keun (Republic of Korea), and Mr Marios Stephanides (Cyprus) had all kindly accepted to serve on the Appeals Board until the October 2019 session of the 1992 Fund Assembly.

Proposed composition of the new Appeals Board

- 7.3.4 The 1992 Fund Assembly further noted the Director's proposal to revise the practice for replacing Appeals Board members who resign before the end of their term of office. It noted the Director's proposal that when a member of the Appeals Board leaves before the end of their term of office, rather than their successor assuming the role of the member, they instead assume the role of substitute member, and one of the existing substitute members would instead be invited by the Director to assume the member's role. It noted that the Director hoped that this new practice would assist newcomers to the Appeals Board by giving them time to become familiar with the workings of the Fund and would facilitate a degree of rotation in the post holders of the Board.

- 7.3.5 It further noted that with the new proposed practice in mind, Ms Nicole Taillefer's successor, Ms Geneviève Jean-van Rossum (France), has kindly accepted to serve as a substitute member of the Appeals Board, and existing substitute member, Ms Ana Aurenay Aguirre O. Sunza (Mexico), has kindly accepted to now serve as a member of the Appeals Board.

- 7.3.6 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

- 7.3.7 The 1992 Fund Assembly decided to follow the new proposed practice set out in 7.3.4 for filling vacant posts on the Appeals Board when a member resigns before the end of their term of office and to reflect this new practice in the composition of the Appeals Board for the next two years.

- 7.3.8 The 1992 Fund Assembly appointed the following members and substitute members of the Appeals Board to hold office until the October 2021 session of the 1992 Fund Assembly.

Members		Substitute members	
Mr Iwao Shimizu	(Japan)	Mr Marios Stephanides	(Cyprus)
Ms Ana Aurenay Aguirre O. Sunza	(Mexico)	Ms Geneviève Jean-van Rossum	(France)
Sir Michael Wood	(United Kingdom)	Mr Song Sang-Keun	(Republic of Korea)

7.4	Information Services Document IOPC/OCT19/7/4	92A		SA
-----	---------------------------------------------------------------	------------	--	-----------

- 7.4.1 The governing bodies noted the information contained in document IOPC/OCT19/7/4 in respect of new, ongoing and future projects relating to the IOPC Funds' website, publications and other general information services provided by the Secretariat.

Website

- 7.4.2 In particular, the governing bodies noted that the content management system which sits behind the IOPC Funds' website had undergone an essential upgrade and that, in the process, the existing website had been migrated to an alternative, more suitable and widely used platform. Due to the complexity of certain areas of the Funds' site, in particular the Document Services section, and the extensive testing that was required in all three languages, this project had taken longer than initially anticipated. It was noted, however, that the project had been completed in August 2019 and that the website was functioning as intended on the new platform. It was also noted that while the impact of the changes brought about by this migration had been primarily limited to the Secretariat in its management and maintenance of the website, as with any project of this scale, a small number of issues had arisen shortly after the site was made live which may have affected a small number of users. It was further noted that those issues had since been resolved and the Secretariat thanked users of the site for their patience and understanding during that time.
- 7.4.3 It was pointed out that, if they hadn't already done so, all registered users should reset their passwords to access their account within the new platform. Delegates to the IOPC Funds' meetings were reminded of the benefits of opening such an account under the Document Services section of the IOPC Funds' website, including the facility to directly register multiple members of a delegation for the meetings, the option to submit credentials online, and the automated email service notifying account holders of the publication of documents, key news and events and circulation of the invitation and agenda to meetings. Those delegates who had not yet registered for an account with Document Services were strongly encouraged to do so.
- 7.4.4 Delegates were also particularly encouraged to follow the IOPC Funds on Twitter (@IOPCFunds) for useful updates in the months and weeks prior to and during meetings of the governing bodies and regular news from the Secretariat.
- 7.4.5 The governing bodies recalled that circular IOPC/2016/Circ.2 issued in January 2016 invited Member States to submit copies of relevant national legislation to the Secretariat for inclusion in the online country profiles. It was noted that as at the October 2019 sessions, 17 States had done so. All Member States were again encouraged to submit copies of their relevant national legislation to the Secretariat at their earliest convenience.
- 7.4.6 It was noted that the Secretariat was in the process of reviewing the information it provides in respect of the submission of documents by Member States and observer delegations for meetings of the governing bodies, and that it intends to extend its existing guidance to offer more practical information on the submission process.

Publications

- 7.4.7 The governing bodies noted that since the October 2018 sessions, the Secretariat had published the Annual Report 2018 and a shortened version of the Guidelines for presenting claims for environmental damage. The six-page brochure, entitled 'Claims for Environmental Damage: An Overview' summarises the key points of the Funds' policy on claims for environmental damage, and presents them in a more simplified, visual format.
- 7.4.8 It was also noted that a new edition of the 1992 Fund Claims Manual was also published in April 2019, incorporating revised assessment criteria for claims for compensation made by

employees who have suffered a reduction in wages, been placed on part-time work or been made redundant as a consequence of an incident. It was further noted that the Guidelines for presenting claims in the fisheries, mariculture and fish processing sector (Fisheries Guidelines) and the Guidelines for presenting claims in the tourism sector (Tourism Guidelines) had also been amended to reflect the change in the criteria.

- 7.4.9 It was noted that the revised publications were all available to download via the Publications section of the website but were not yet available in hard copy since the Claims Information Pack, which contains the previous versions of those publications among others, was only reissued in March 2018. An explanatory note providing the wording of all the new and amended text is available to download and in hard copy upon request.

Future publications

- 7.4.10 It was noted that, for the benefit of Funds' stakeholders with a particular interest in the Funds' audited accounts, the Director has decided to publish the financial statements, once they have been approved by the governing bodies each year, as an online publication.

Short introductory video

- 7.4.11 The governing bodies noted that in June 2019, the Secretariat had published an updated version of the IOPC Funds' introductory video, which includes the latest figures and a number of minor improvements. It was noted that, in order to assist those viewers whose first language is not English, French or Spanish and to enable the video to be more easily understood and displayed in public areas, the Secretariat had also added subtitles to each version. The video can be found under the About Us section of the website.

Review of language employed in documents in 2019

- 7.4.12 It was noted that the Secretariat had undertaken a review of the language used in the rules and regulations of the Funds to ensure the terms employed remained in common use and to check for gender-neutral language. It was noted that the Secretariat was in the process of revising the relevant documents accordingly. It was also noted that, since the amendments, which do not always affect the three official languages in the same manner, were of a purely linguistic nature and would not affect the substance of any of the texts, the amended rules and regulations would be implemented with immediate effect from the date of publication.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.4.13 The governing bodies welcomed the information provided and thanked the Secretariat for the improvements made to the information services provided to Member States.

7.5	The European Union General Data Protection Regulation Document IOPC/OCT19/7/5	92A		SA
-----	------------------------------------------------------------------------------------------	------------	--	-----------

- 7.5.1 The governing bodies noted that the Secretariat had sought a clarification from the UK Government on the application of the General Data Protection Regulation (GDPR) and the Directive 2016/680 to the IOPC Funds in light of the existing Headquarters Agreement and received the following reply from the UK Government:

Article 3(1) and Article 4(7) of Regulation 2016/679 defines who is subject to GDPR. International organisations, including the IOPC Funds, as a legal person that processes personal data in the performance of its mission, are subject to the Regulation as a 'controller'. The UK applies this Regulation directly under domestic legislation to all diplomatic missions and international organisations. But it is for each organisation to seek its own legal advice on application and obligations.

- 7.5.2 The governing bodies also noted that the Secretariat would study this aspect with the UK Government and in consultation with the Funds' lawyer and would report developments at future sessions of the governing bodies.
- 7.5.3 The governing bodies further noted the Director's view that it would be good for the IOPC Funds to apply the same principles as the GDPR and to ensure that policies and procedures are in place, because the IOPC Funds, by the very nature of its work, hold personal data (e.g. claimants' data) and have always ensured that personal data are managed sensitively and are protected.
- 7.5.4 The governing bodies noted that although the GDPR and the Directive only apply to the personal data of natural persons in the European Union, the IOPC Funds would provide the same data protection universally in view of its global nature.
- 7.5.5 The governing bodies also noted that the Secretariat had engaged with experts in this field and that it would ensure the principles guiding the GDPR are considered when reviewing its data management processes within the Secretariat. It was further noted that the Director would report on developments at future sessions of the governing bodies.

Debate

- 7.5.6 Several delegations raised the question as to whether the Secretariat could indicate what changes to the practice of the Funds would be necessary. The Secretariat replied that it had not been able to identify exactly what changes would be necessary.
- 7.5.7 The observer delegation of the International Group suggested, in response to the question raised by the delegations, that one practice which would need to be looked at is the work on the expert contract which the Secretariat and that delegation had been developing together. In that delegation's view, a GDPR clause would need to be included because experts may hold claimants' personal data.

1992 Fund Assembly and Supplementary Fund Assembly

- 7.5.8 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information provided on the EU GDPR.

8 Treaty matters

8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/OCT19/8/1	92A		SA
-----	-----------------------------------------------------------------------------------------------------------------	------------	--	-----------

- 8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of document IOPC/OCT19/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.2 It was noted that at the October 2019 sessions of the governing bodies there were 115 Member States of the 1992 Fund. It was also noted that the 1992 Fund Convention would enter into force for the Co-operative Republic of Guyana on 20 February 2020, which will bring the number of 1992 Fund Member States to 116 on that date.
- 8.1.3 It was further noted that there were 32 Member States of the Supplementary Fund. New Zealand was the 32nd State to join the Supplementary Fund on 29 September 2018.

Intervention by the delegation of Jamaica

- 8.1.4 The delegation of Jamaica thanked the Secretariat for the information provided and took the opportunity to raise the issue of the effective implementation of the Civil Liability and Fund Conventions. That delegation drew particular focus to the fact that there were 12 States in the Caribbean Community (CARICOM) which were Parties to the Conventions, but only five had implementing legislation in place, representing only 40% of the States Parties to those Conventions in the region. That delegation stated that this could lead to difficulty in States discharging their treaty obligations, in particular, the reporting and contributing requirements of contributors in those States, which Jamaica itself had faced recently.
- 8.1.5 That delegation recognised that the responsibility of developing implementing legislation fell to Member States, however, it was apparent that it was a difficult challenge for a number of States in the Caribbean region. In recalling the national workshop conducted by the Secretariat in Jamaica in November 2018, that delegation suggested that targeted work such as this, or that of a coordinated action with IMO's Regional Activity Centre based in Curaçao (RAC-REMPEITC-Carib), could be a possible solution in providing assistance to CARICOM States so that they may deal with the challenges arising from developing implementing legislation. That delegation concluded in offering its assistance to facilitate communication between the Secretariat and those States in the Caribbean region.

Debate

- 8.1.6 One delegation confirmed that one of the barriers to the Conventions had been implementing legislation and that any support offered by the IOPC Funds would be welcome. Another delegation recalled the workshop on the international liability and compensation regime held in Curaçao in 2013, which was very well-attended and produced a lot of interest.
- 8.1.7 In response to the intervention by Jamaica, the Director confirmed that implementation was a key issue and that the Secretariat was available, in cooperation with IMO and its Integrated Technical Cooperation Programme (ITCP), to assist Member States and that he would be pleased to support the CARICOM States with the issue raised. The observer delegation of IMO confirmed that IMO was working to engage and assist States through the ITCP and that requests for assistance from IMO would need to be sent to the Director of the Technical Cooperation Division for consideration.
- 8.1.8 One delegation referred to the future audit to be conducted in the Caribbean, in application of the IMO Instruments Implementation of Code (III Code), which would require States to show compliance with the IMO Conventions and suggested that this might be an incentive for States to ensure implementing legislation is in place. In response, the Audit Body pointed out that, unfortunately, the liability Conventions were not covered by the IMO Mandatory Audit Scheme.

1992 Fund Assembly and Supplementary Fund Assembly

- 8.1.9 The governing bodies took note of the information provided on the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.10 In addition, the Chair of the 1992 Fund Assembly noted the concern expressed about the lack of implementing legislation in certain regions and noted with satisfaction that the Secretariat was available to assist in this matter wherever possible.

8.2	2010 HNS Convention Document IOPC/OCT19/8/2	92A		
-----	--------------------------------------------------------------	------------	--	--

- 8.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT19/8/2 on the status of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

(2010 HNS Protocol). It also took note of the work carried out by the 1992 Fund Secretariat with regard to the tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund).

Status of the 2010 HNS Protocol

- 8.2.2 It was reported that on 15 July 2019, the Republic of South Africa had deposited with IMO an instrument of accession to the 2010 HNS Protocol and had become the fifth Contracting State to the Protocol, joining Canada, Denmark, Norway and Turkey. It was noted that since four of those States had reported more than 2 million units of gross tonnage, one of the conditions for entry into force of the 2010 HNS Protocol had already been fulfilled. It was also noted that the total contributing cargo reported under the general account for 2018 in the five Contracting States was 9 794 535 tonnes and that IMO, with support from the IOPC Funds Secretariat when possible, had been offering assistance to new Contracting States in verifying contributing cargo data when required.
- 8.2.3 It was reported that a number of other States had indicated on several occasions that they were working towards implementation of the Convention in 2019 with a view to ratifying or acceding to it during the course of 2020 or 2021. Those States were encouraged to provide an update on their progress.

HNS Convention website

- 8.2.4 It was noted that the Secretariat had continued to maintain the HNS Convention website (www.hnsconvention.org) and that on the occasion of its migration to a new management platform during the first quarter of 2019, the look and feel of the site had been modified. It was also noted that a moderated blog section had been added to the main site. This had replaced the previous blog which, although maintained by the IOPC Funds, sat outside of the website and was used for the purpose of encouraging communication among the HNS Correspondence Group established by the Legal Committee of IMO. The Secretariat urged all interested parties to consider using the new blog to share information, ask questions or raise issues so that other interested stakeholders can also benefit and widen their knowledge of the subject. The Secretariat took the opportunity to thank the delegations of Portugal and Republic of Korea, which have both already made use of the blog with Portugal having submitted a question relating to the definition of 'receiver' and the Republic of Korea having requested clarification of Article 5 of the 2010 HNS Convention. It was noted that both those questions and responses from the Secretariat had been posted to the blog and served as good examples of how it could be used. The Secretariat also thanked the observer delegation of the World LPG Association (WLPGA) for its post relating to the evolution of Liquefied Petroleum Gas (LPG) and its increasing usage as fuel. The Secretariat also reported that it was working on a series of questions and answers to be posted on the blog, based on its current experience dealing with enquiries and issues such as contributing cargo reporting and the applicability of the Convention in specific cases.
- 8.2.5 It was noted that the Secretariat, in cooperation with the relevant technical divisions of IMO and external experts, had undertaken a full review of the HNS Finder, an online database of substances that fall within the definition of HNS, including contributing cargo. It was noted that the updated HNS Finder was in the process of being made available on the HNS Convention website and that it included some changes to the Finder's interface and easy access to previous years' versions of the Finder. An internal document describing the process to be followed for further updates had also been prepared.

Administrative tasks necessary for setting up the HNS Fund

- 8.2.6 It was recalled that, in October 2018, the 1992 Fund Administrative Council had endorsed the proposal that the Secretariat should continue its work to prepare for the setting up of the HNS Fund and the first session of the HNS Fund Assembly. In particular, it had considered that it would be

useful for the Secretariat to undertake the tasks originally listed in document IOPC/OCT18/8/2 and to report on its progress to the 1992 Fund Assembly on a regular basis. Those tasks are listed in paragraph 3.3 of document IOPC/OCT19/8/2.

- 8.2.7 It was noted that, given the limited resources available within the Secretariat to work on HNS matters, the priority had been the issue of HNS contributing cargo reporting, in particular the updating of the HNS Finder. It was also noted that the Secretariat was continuing to work on an action plan, setting out the priorities for undertaking the other administrative tasks assigned to the 1992 Fund and that it would discuss it with the Contracting States and other stakeholders as soon as possible.
- 8.2.8 It was further noted that, for the administrative task related to the handling of claims for compensation, the Secretariat had approached a number of organisations with the relevant expertise in that field, namely Cedre, ICS, the International Group, ITOPF and IMO and was planning to organise a meeting of those organisations and other interested parties before the end of the year to discuss the way forward on this important and complex matter.

Assistance provided to States considering the ratification of or accession to the 2010 HNS Protocol

- 8.2.9 It was reported that the Secretariat had continued to use the opportunity of national and regional workshops and other overseas trips to give presentations on the HNS Convention. It was also reported that it had continued to engage with interested States to promote the use of the tools specifically developed to create awareness about the Convention internally and assist them with their implementation efforts. In particular, States were encouraged to use the HNS incidents scenarios presentation available on the HNS Convention website.
- 8.2.10 It was noted that the Secretariat had also used the opportunity of visits from university students to London or lectures delivered to universities abroad, in particular the World Maritime University in Malmö and the International Maritime Law Institute in Malta, to promote the HNS Convention.

Debate

- 8.2.11 The 1992 Fund Assembly congratulated South Africa on its accession to the 2010 HNS Protocol. A number of delegations reported on progress within their States towards ratification of or accession to the Protocol.
- 8.2.12 The delegation of Sweden informed the Assembly that all the necessary regulations had been adopted in Sweden and that the first report of contributing cargo by the chemical industry was expected to be submitted by 1 March 2020.
- 8.2.13 The delegation of the Philippines reported that it was in the final phase of its work towards ratification of the Protocol and thanked the Secretariat for the assistance it had provided at a workshop held in the Philippines focusing on the HNS Convention.
- 8.2.14 The delegation of the Netherlands confirmed that it was in favour of ratification of the Protocol, but explained that, in order to maintain a level playing field between sea ports in the Netherlands and those of its neighbouring States, it was necessary for the ratification process to progress in a coordinated way, alongside Belgium, France and Germany. That delegation informed the Assembly that a coordination meeting of those States was due to be held in December 2019 in the Netherlands, where further progress was expected to be made. It also reported that, in the meantime, it would continue its preparations and during 2019–2020 two studies would be carried out in the Netherlands concerning the reporting requirements of the HNS Convention. It stated that, given the continued progress, it remained optimistic that it would be in a position to ratify the Convention within two to three years.

- 8.2.15 The delegation of France reported that it shared the position expressed by the Netherlands in respect of the need for a coordinated approach to ratification. That delegation stated that the French Government had asked the relevant Ministries to prepare for the implementation of the provisions of the Convention and that considerable work had been undertaken in that respect during the past two years. It had reviewed its internal rules and regulations and had given consideration as to how to appoint the necessary competent services. That delegation reported that the Ministry of Transport had ensured that the annual obligation to report contributing cargo had been included in a bill which was expected to be adopted later this year and that work had been carried out to ensure that submission of the reports could be carried out electronically, with such system expected to be operational during 2020. It was reported that the Ministry of Foreign Affairs had been focusing on the ratification of the 2010 HNS Protocol and would be seeking approval from Parliament at a date to be confirmed. That delegation took the opportunity to thank Belgium, Germany and the Netherlands for their cooperation and emphasised the importance of the coordination and communication in the work towards the entry into force of this Convention. That delegation stated that it would be happy to share its experience in establishing best practice with others, should they wish to do so.
- 8.2.16 The delegation of Finland reported that the law of implementation of the 2010 HNS Convention was currently with Parliament for consideration and that the law relating to reporting was due to enter into force in January 2020. That delegation also indicated that Finland would follow international developments regarding the progress towards entry into force of the Convention, before depositing its instruments of accession with IMO.
- 8.2.17 The delegations of Canada, Denmark, Norway and South Africa, as four of the five Contracting States to the 2010 HNS Convention, expressed their sincere appreciation for the continued work of the Secretariat in promoting the benefits of the entry into force of the Convention and for the tools it had developed and made available to States to assist them in their work towards implementation. They commented that they were encouraged by the progress reported by States at this session and also thanked the Secretariat for the important work carried out so far in preparation for its entry into force.
- 8.2.18 The delegation of Canada reiterated that the entry into force of the 2010 HNS Convention remained a high priority for that delegation and that it was hopeful that this would take place within the next few years. With that in mind, that delegation looked forward to reading the action plan of the Secretariat. Canada referred to the timeframe for ratification of the Convention by European Union Member States as set out by the European Council and encouraged those States to help achieve that goal. That delegation offered its assistance to the IOPC Funds, IMO and to other States, noting that if useful, it could share its experience implementing the Convention as well as in other areas such as electronic reporting. It also referred to Article 5 of the Convention, under which States may make a declaration excluding small-scale ships, carrying packaged goods, trading in coastal waters, from the application of the Convention. That delegation informed the Assembly that it was the only State to have made such declaration so far and pointed out that it was a decision that all States would need to make when ratifying.
- 8.2.19 The observer delegation of IMO thanked the IOPC Funds Secretariat for the document submitted and its ongoing cooperation on HNS matters. That delegation welcomed South Africa as a new Contracting State to the Convention and stated that it was encouraged to hear the progress being made by other States. IMO pointed out that within the framework of its ITCP, great emphasis had been put in recent years on the implementation of the 2010 HNS Convention. In particular, reference was made to successful workshops in Latin America and Indonesia as well as to the upcoming regional workshop in the United Arab Emirates in December 2019. Furthermore, it was reported that the IMO Secretariat, in cooperation with EU Member States and the European Commission, intended to organise a conference within Europe focusing specifically on the entry into force of the HNS Convention. In relation to the HNS Finder, IMO also informed the Assembly that it had begun work on updating the IMO Circular letter No. 3144 relating to those materials

hazardous only in bulk (MHB). Finally, IMO reiterated that the 2010 HNS Convention remained on the agenda of its Legal Committee and that, together with the IOPC Funds, the hard work to support the entry into force of the Convention would continue.

- 8.2.20 The observer delegation of the International Group reminded the Assembly that it had, at the time of the Diplomatic Conference which adopted the 2010 HNS Protocol, provided a set of claims data relating to incidents involving HNS for the period 2002–2010. That data had been collated on the basis of what the claims would have been had the Convention been in force at the time. The International Group informed the Assembly that, following a request for updated data by the Legal Committee of IMO at its 106th session, it was in the process of collating HNS claims-related data for the period 2010–2019 for consideration at the next session of the Legal Committee in March 2020. That delegation offered to also share that data with the 1992 Fund Assembly at a future session.

1992 Fund Assembly

- 8.2.21 The 1992 Fund Assembly expressed its appreciation for the continued efforts of the Secretariat to promote the entry into force of the 2010 HNS Convention and for the tasks undertaken in preparation for the setting up of the HNS Fund. It noted that the Secretariat would provide a progress report and details of the action plan referred to in paragraph 8.2.7 above at the next regular session of the 1992 Fund Assembly.

9 Budgetary matters

9.1	Budgets for 2020 and assessments of contributions to the General Fund Documents IOPC/OCT19/9/1, IOPC/OCT19/9/1/1 and IOPC/OCT19/9/1/2	92A		SA
-----	--------------------------------------------------------------------------------------------------------------------------------------------------------	------------	--	-----------

- 9.1.1 The governing bodies took note of the information contained in documents IOPC/OCT19/9/1, IOPC/OCT19/9/1/1 and IOPC/OCT19/9/1/2.
- 9.1.2 The 1992 Fund Assembly considered the draft 2020 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/OCT19/9/1/1.
- 9.1.3 The Supplementary Fund Assembly considered the draft 2020 budget and the assessment of contributions to the General Fund of the Supplementary Fund in document IOPC/OCT19/9/1/2.
- 9.1.4 It was recalled that the Director had been authorised to create positions in the General Service category as required, providing that the resulting cost did not exceed 10% of the figure for salaries in the budget and noted the request by the Director for this authorisation to be renewed.
- 9.1.5 It was also noted that the Director had requested the governing bodies renew the authorisation given to him to create one position in the Professional category at the P3 level, subject to need and within the budget resources available.
- 9.1.6 It was further noted that there was an overall increase of 3.9% in the draft 2020 joint Secretariat budget compared to the 2019 budget, mainly due to an increase in Personnel costs.
- 9.1.7 The governing bodies recalled that in March 2005 they had decided that the distribution of the cost of running the joint Secretariat should be made on the basis of the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.

9.1.8 The 1992 Fund Assembly noted the Director's estimate of the expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention and recalled that all costs incurred by the 1992 Fund for the setting up of the HNS Fund would be reimbursed by the HNS Fund with interest, once the HNS Fund was established.

9.1.9 The 1992 Fund Assembly recalled the decision taken at its April 2017 session to reduce the working capital from £22 million to £15 million over the budget years 2018 to 2020 and noted the Director's proposal to reduce the working capital to £15 million in the budget year 2020.

1992 Fund Assembly Decisions

9.1.10 The 1992 Fund Assembly renewed the authorisation given to the Director to create additional posts in the General Service category provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (i.e. up to £230 000, based on the 2020 budget).

9.1.11 The Assembly renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.

9.1.12 The Assembly adopted the budget for 2020 for the 1992 Fund joint Secretariat administrative expenses of £4 875 731, and the 1992 Fund's external audit fee of £53 600, as set out at Annex III, page 1.

9.1.13 The Assembly approved the Director's estimate of the expenses to be incurred in 2020 in respect of the preparation for the entry into force of the HNS Convention, i.e. £35 000.

9.1.14 The Assembly noted the decision of the 1992 Fund Administrative Council at its April 2017 session to reduce the working capital of the 1992 Fund from £22 million to £15 million over the budget years 2018 to 2020 and decided to reduce the working capital of the 1992 Fund to £15 million in the budget year 2020.

9.1.15 The Assembly decided to levy contributions of £2.3 million to the General Fund payable by 1 March 2020.

9.1.16 It was noted that the levy of 2019 contributions to the General Fund would be calculated as follows:

Fund	Oil Year	Estimated total oil receipts (tonnes)	Payment by 1 March 2020	
			Levy (£)	Estimated levy per tonne (£)
General Fund	2018	1 576 887 054	2 300 000	0.0014586

Supplementary Fund Assembly Decisions

9.1.17 The Supplementary Fund Assembly adopted the budget for 2020 for the administrative expenses of the Supplementary Fund for a total of £52 400 (including the cost of the external audit), as set out at Annex III, page 2.

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

9.1.19 The Assembly approved the Director's proposal that there should be no levy of 2019 contributions to the General Fund.

1992 Fund Assembly and Supplementary Fund Assembly Decision

9.1.20 The 1992 Fund Assembly and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay a management fee of £38 000 to the 1992 Fund for the financial year 2020.

9.2	Assessment of contributions to Major Claims Funds and Claims Funds Documents IOPC/OCT19/9/2, IOPC/OCT19/9/2/1 and IOPC/OCT19/9/2/2	92A		SA
-----	-------------------------------------------------------------------------------------------------------------------------------------------	------------	--	-----------

- 9.2.1 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the Director's proposal for contributions to Major Claims Funds and Claims Funds, respectively, as outlined in documents IOPC/OCT19/9/2, IOPC/OCT19/9/2/1 and IOPC/OCT19/9/2/2.
- 9.2.2 The 1992 Fund Assembly noted that, in the Director's view, it would not be necessary to levy 2019 contributions for the *Prestige*, *Hebei Spirit* and *Alfa I* Major Claims Funds.
- 9.2.3 The Assembly also noted the Director's revised verbal proposal to levy £5 million in respect of the *Agia Zoni II* Major Claims Fund, which would be payable by 1 March 2020, and not to propose the deferred levy of £6.5 million, or part thereof, to be invoiced later in 2020 if it had proven necessary.
- 9.2.4 The Assembly further noted that a Major Claims Fund had been established for the *Nesa R3* incident in 2018. It noted the Director's proposal to levy £3.6 million in respect of the *Nesa R3* Major Claims Fund, which would be payable by 1 March 2020.

Debate

- 9.2.5 Those delegations that spoke supported the Director's revised proposal not to have a deferred levy in respect of the *Agia Zoni II* Major Claims Fund. They expressed concerns about the admissibility of some claims given the current ongoing investigations into the cause of the incident and they looked forward to receiving confirmation of the admissibility of these claims in the future.

Intervention by the delegation of Greece

- 9.2.6 The delegation of Greece, while fully respecting the practices and principles of the 1992 Fund to ensure that the victims of all incidents are compensated properly and promptly, drew attention to the Assembly's previous decisions in respect of levies made to the *Agia Zoni II* Major Claims Fund. That delegation also reaffirmed that the outcome of the investigation conducted by the Public Prosecutor on the reasons for the sinking was still pending. In any case, the possible attribution of deliberate and negligent actions on any person would be upon the courts' irrevocable decision, which might take some time. Taking primarily into account the respect of the rules and procedures of the 1992 Fund, the references to the possible cause of the incident should not be associated with the compensation rights of the victims of this unfortunate incident.
- 9.2.7 The Director reassured the Greek delegation that the prompt payment of compensation was paramount and that, should there be a requirement for additional funds to make payments from the *Agia Zoni II* Major Claims Fund, loans to the Major Claims Fund would be made from the General Fund's working capital. The Director added that he did not want to burden contributors with an additional levy in 2020.

1992 Fund Assembly Decisions

- 9.2.8 The 1992 Fund Assembly decided not to levy 2019 contributions in respect of the *Prestige*, *Hebei Spirit* and *Alfa I* Major Claims Funds.
- 9.2.9 It decided to levy 2019 contributions of £5 million to the *Agia Zoni II* Major Claims Fund, payable by 1 March 2020.
- 9.2.10 It further decided to levy 2019 contributions of £3.6 million to the *Nesa R3* Major Claims Fund, payable by 1 March 2020.

- 9.2.11 It was noted that the decision to levy 2019 contributions to the *Agia Zoni II* and *Nesa R3* Major Claims Funds would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Total levy (£)	Payment (by 1 March 2020)	
				Levy (£)	Estimated levy per tonne (£)
<i>Nesa R3</i> Major Claims Fund	2012	1 577 331 728	3 600 000	3 600 000	0.0022823
<i>Agia Zoni II</i> Major Claims Fund	2016	1 546 400 431	5 000 000	5 000 000	0.0032333

Supplementary Fund Assembly Decision

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

9.3	Transfer within the budget Document IOPC/OCT19/9/3	92A		
-----	---------------------------------------------------------------	------------	--	--

- 9.3.1 The 1992 Fund Assembly took note of the information contained in document IOPC/OCT19/9/3.
- 9.3.2 It was noted that the 2019 budget appropriation for ‘Consultants’ and other fees’ under Chapter V (Other Expenditure) would not cover additional costs incurred for the implementation of an Enterprise Resource Planning (ERP) system for the financial and contributor management of the IOPC Funds.
- 9.3.3 It was further noted that the budget for ‘External audit fees’ under Chapter VII in the 2019 budget had been intended to cover the audit of the 2018 Financial Statements. However, following the audit of the 2018 Financial Statements, it had been agreed with the External Auditor that the fee for the audit of the 2019 Financial Statements should also be charged to the 2019 financial year to be compliant with the accrual basis of accounting.
- 9.3.4 The Director proposed that he should be authorised to make the necessary transfer between Chapters within the 2019 budget to cover these additional costs.

1992 Fund Assembly Decision

- 9.3.5 The 1992 Fund Assembly decided to authorise the Director to make the necessary transfers from:
- (a) ‘Personnel’ (Chapter I) to ‘Consultants’ and other fees’ under Chapter V (Other Expenditure), within the 2019 budget; and
- (b) ‘Unforeseen’ (Chapter VI) to ‘External audit fees’ under Chapter VII, also within the 2019 budget.

10 Other matters

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

1992 Fund Assembly and Supplementary Fund Assembly Decisions

- 10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 2 November 2020.
- 10.1.2 The governing bodies agreed that their next sessions would take place during the week of 9 March 2020.

1992 Fund Executive Committee Decision

- 10.1.3 The 1992 Fund Executive Committee decided to hold its 74th session during the week of 9 March 2020.

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

Visit from former Secretary-General of the United Nations, Mr Ban Ki-moon

- 10.2.1 During the first day of the sessions, Mr Ban Ki-moon, former Secretary-General of the United Nations, visited IMO. As part of his visit, he took the opportunity to address the IOPC Funds' governing bodies, IMO Member States, affiliated organisations, IMO staff and the IOPC Funds' Secretariat. Following a brief welcome on behalf of both IMO and the IOPC Funds by the Secretary-General of IMO, Mr Kitack Lim, Mr Ban shared his experience as head of the United Nations and discussed key issues concerning climate change and sustainability. He spoke on these particular challenges that face the world and the vital role that governments have both locally and internationally, in order to find global solutions to protect the environment for present and future generations. He acknowledged that the shipping industry also had an important responsibility in tackling climate change and for protecting the marine environment and referred to UN Sustainable Development Goal 14, which advocates the conservation and sustainable use of the oceans, seas and marine resources.
- 10.2.2 Mr Ban commended the ongoing efforts of States and the organisations and acknowledged the new urgency that the maritime field had assumed. He also encouraged States to continue working together multilaterally in order to achieve significant and lasting impacts.
- 10.2.3 The session ended with an interactive question and answer session and the IOPC Funds meeting was reconvened soon after the event.

Other matters

- 10.2.4 No other 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 October 2019 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT19/11/WP.1 and IOPC/OCT19/11/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	Argentina	•		
4	Australia	•		•
5	Bahamas	•		
6	Belgium	•		•
7	Bulgaria	•		
8	Cameroon	•		
9	Canada	•		•
10	China ^{<1>}	•	•	
11	Colombia	•		
12	Croatia	•		•
13	Cyprus	•		
14	Denmark	•		•
15	Ecuador	•		
16	Estonia	•		•
17	Finland	•		•
18	France	•	•	•
19	Georgia	•	•	
20	Germany	•		•
21	Ghana	•		
22	Greece	•		•
23	Iran (the Islamic Republic of)	•		
24	Ireland	•		•
25	Italy	•	•	•
26	Jamaica	•	•	

^{<1>} The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.
IOPC/OCT19/11/1, Annex I, page 1

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
27	Japan	•	•	•
28	Kenya	•		
29	Latvia	•		•
30	Liberia	•		
31	Malaysia	•		
32	Malta	•		
33	Marshall Islands	•		
34	Mexico	•	•	
35	Monaco	•		
36	Montenegro	•		•
37	Morocco	•		•
38	Netherlands	•		•
39	New Zealand	•		•
40	Nicaragua	•		
41	Nigeria	•		
42	Norway	•		•
43	Panama	•		
44	Papua New Guinea	•		
45	Philippines	•		
46	Portugal	•		•
47	Qatar	•		
48	Republic of Korea	•		•
49	Russian Federation	•		
50	Saint Kitts and Nevis	•		
51	Singapore	•	•	
52	South Africa	•	•	
53	Spain	•	•	•
54	Sri Lanka	•	•	
55	Sweden	•		•

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
56	Thailand	•		
57	Trinidad and Tobago	•		
58	Tunisia	•		
59	Turkey	•	•	•
60	United Arab Emirates	•	•	
61	United Kingdom	•	•	•
62	Uruguay	•		
63	Venezuela (Bolivarian Republic of)	•		

1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Bolivia (Plurinational State of)	•	•
2	Indonesia	•	•
3	Kuwait	•	•
4	Peru	•	•

1.3 Intergovernmental organisations

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

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	BIMCO	•	•
2	Cedre	•	•
3	Comité Maritime International (CMI)	•	•
4	Iberoamerican Maritime Law Institute (IIDM)	•	•

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

* * *

ANNEX II

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

(as amended by the 1992 Fund Assembly at its 24th session held from 28–31 October 2019)

Regulation 14

External Audit

- 14.1 An External Auditor, who shall be the Auditor-General (or officer holding the equivalent title) of a Member State, or a commercial firm with the requisite capabilities nominated by a Member State or identified by the Audit Body, shall be appointed in the manner and for the period decided by the Assembly. Ordinarily, such appointment will be for four years and be the result of a tender process conducted by the Audit Body and its subsequent recommendation to the Assembly.

If the Audit Body assesses the External Auditor's performance to be satisfactory, the External Auditor's initial appointment may be extended for a further period of up to four years. The External Auditor may serve for this further period if the Audit Body after undertaking an objective assessment of the qualifications and performances of the incumbent External Auditor recommends to the Assembly an extension of the term of appointment. After serving as an External Auditor for two consecutive periods, the appointment of the External Auditor may, in exceptional circumstances, be extended and such an extension must be by way of a full tender process. The Assembly decides on the manner and the period applicable to such an extension based on a recommendation by the Audit Body.

**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 16th session held from 28–31 October 2019)

Regulation 14

External Audit

- 14.1 An External Auditor, who shall be the Auditor-General (or officer holding the equivalent title) of a 1992 Fund Member State, or a commercial firm with the requisite capabilities nominated by a Member State or identified by the Audit Body, shall be appointed in the manner and for the period decided by the Assembly. Ordinarily, such appointment will be for four years and be the result of a tender process conducted by the Audit Body and its subsequent recommendation to the Assembly.

If the Audit Body assesses the External Auditor's performance to be satisfactory, the External Auditor's initial appointment may be extended for a further period of up to four years. The External Auditor may serve for this further period if the Audit Body after undertaking an objective assessment of the qualifications and performances of the incumbent External Auditor recommends to the Assembly an extension of the term of appointment. After serving as an External Auditor for two consecutive periods, the appointment of the External Auditor may, in exceptional circumstances, be extended and such an extension must be by way of a full tender process. The Assembly decides on the manner and the period applicable to such an extension based on a recommendation by the Audit Body.

* * *

ANNEX III
2020 Administrative Budget for 1992 Fund

STATEMENT OF EXPENDITURE	Actual 2018 expenditure for 1992 Fund	2018 budget appropriations for 1992 Fund	2019 budget appropriations for 1992 Fund	2020 budget appropriations for 1992 Fund
	£	£	£	£
I Personnel				
(a) Salaries	2 028 664	2 160 678	2 185 699	2 303 563
(b) Separation and recruitment	3 298	40 000	40 000	40 000
(c) Staff benefits, allowances and training	851 347	931 030	932 278	980 968
(d) Conscious rewarding scheme	9 250	20 000	20 000	20 000
Sub-total	2 892 559	3 151 708	3 177 977	3 344 531
II General services				
(a) Rent of office accommodation (including service charges and rates)	161 511	185 100	183 600	186 500
(b) IT (hardware, software, maintenance and connectivity)	254 005	247 500	363 300	378 700
(c) Furniture and other office equipment	14 715	16 100	16 000	15 000
(d) Office stationery and supplies	6 863	10 000	10 000	10 000
(e) Communications (courier, telephone, postage)	22 182	32 000	29 000	30 000
(f) Other supplies and services	20 700	21 000	23 000	23 000
(g) Representation (hospitality)	24 315	20 000	20 000	20 000
(h) Public information	135 063	118 000	110 000	110 000
Sub-total	639 355	649 700	754 900	773 200
III Meetings				
Sessions of the 1992 Fund and Supplementary Fund governing bodies and intersessional Working Groups	98 569	110 000	130 000	130 000
IV Travel				
Conferences, seminars and missions	100 249	150 000	150 000	150 000
V Other expenditure				
(a) Consultants' and other fees	73 984	150 000	150 000	150 000
(b) Audit Body	184 635	187 800	192 500	189 000
(c) Investment Advisory Body	76 405	77 225	77 200	79 000
Sub-total	335 024	415 025	419 700	418 000
VI Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)	0	60 000	60 000	60 000
Total joint Secretariat expenditure I–VI	4 065 756	4 536 433	4 692 577	4 875 731
VII External audit fee (1992 Fund only)	43 200	43 200	43 200	53 600
Total Expenditure I–VII	4 108 956	4 579 633	4 735 777	4 929 331

2020 Administrative Budget for the Supplementary Fund
(Figures in pounds sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2018 EXPENDITURE	2018 BUDGET APPROPRIATIONS	2019 BUDGET APPROPRIATIONS	2020 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	34 000	34 000	36 000	38 000
II	Administrative expenses (including external audit fees)	3 200	13 200	13 200	14 400
Supplementary Fund budget appropriation		37 200	47 200	49 200	52 400