



International Oil Pollution  
Compensation Funds

<b>Agenda Item 11</b>	IOPC/NOV20/11/2	
<b>Date</b>	17 December 2020	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A25	●
<b>1992 Fund Executive Committee</b>	92EC74	●
<b>Supplementary Fund Assembly</b>	SA17	●

## RECORD OF DECISIONS OF THE DECEMBER 2020 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 2 to 17 December 2020<sup><1></sup>)

Governing body (session)		Chair	Vice-Chairs
1992 Fund	Assembly (92A25)	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan)  Mrs Aureny Aguirre O. Sunza (Mexico)
	Executive Committee (92EC74)	Ms Gillian Grant (Canada)	Mr Sipho Mbatha (South Africa)
Supplementary Fund	Assembly (SA17)	Mr Sungbum Kim (Republic of Korea)	Mr Andrew Angel (United Kingdom)  Mr Emre Dinçer (Turkey)

<sup><1></sup> Following the virtual meeting of the governing bodies which took place from 2–4 December 2020, the sessions remained open for an additional five working day period from the publication of the draft Record of Decisions (IOPC/NOV20/11/WP.2), for delegations to comment on that document by correspondence. The correspondence period concluded on 17 December 2020.

## CONTENTS

	<b>Page</b>
<b>Opening of the sessions</b>	<b>4</b>
<b>1 Procedural matters</b>	<b>5</b>
1.1 Adoption of the Agenda	5
1.2 Election of the Chairs	5
1.3 Examination of credentials	6
1.4 Temporary suspension of Rules of Procedure	8
<b>2 Overview</b>	<b>10</b>
2.1 Report of the Director	10
<b>3 Incidents involving the IOPC Funds</b>	<b>15</b>
3.1 Incidents involving the IOPC Funds	15
3.2 Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i>	15
3.3 Incidents involving the IOPC Funds – 1992 Fund: <i>Solar 1</i>	17
3.4 Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i>	19
3.5 Incidents involving the IOPC Funds – 1992 Fund: <i>Redferm</i>	21
3.6 Incidents involving the IOPC Funds – 1992 Fund: <i>Haekup Pacific</i>	22
3.7 Incidents involving the IOPC Funds – 1992 Fund: <i>Alfa I</i>	24
3.8 Incidents involving the IOPC Funds – 1992 Fund: <i>Nesa R3</i>	26
3.9 Incidents involving the IOPC Funds – 1992 Fund: <i>Trident Star</i>	27
3.10 Incidents involving the IOPC Funds – 1992 Fund: <i>Nathan E. Stewart</i>	28
3.11 Incidents involving the IOPC Funds – 1992 Fund: <i>Agia Zoni II</i>	29
3.12 Incidents involving the IOPC Funds – 1992 Fund: <i>Bow Jubail</i>	32
<b>4 Compensation matters</b>	<b>35</b>
4.1 Election of members of the 1992 Fund Executive Committee	35
4.2 STOPIA and TOPIA	36
<b>5 Financial reporting</b>	<b>38</b>
5.1 Submission of oil reports	38
5.2 Report on contributions	39
5.3 Report on investments	40
5.4 Report of the Investment Advisory Body	40
5.5 Report of the joint Audit Body	42
5.6 2019 Financial Statements and Auditor’s Report and Opinions	44
<b>6 Financial policies and procedures</b>	<b>45</b>
6.1 Election of members of the joint Audit Body	45
6.2 Appointment of the joint Investment Advisory Body	50
<b>7 Secretariat and administrative matters</b>	<b>50</b>
7.1 Secretariat matters	50
7.2 Information services	52
7.3 Appointment of the Director	54
7.4 European Union General Data Protection Regulation	55
7.5 Headquarters Agreement – Draft Headquarters Agreements	56
<b>8 Treaty matters</b>	<b>57</b>
8.1 Status of the 1992 Fund Convention and the Supplementary Fund Protocol	57
8.2 2010 HNS Convention	58
8.3 Review of Civil Liability and Fund Conventions	60

<b>9</b>	<b>Budgetary matters</b>	<b>64</b>
9.1	Budgets for 2021 and assessment of contributions to the General Funds (1992 Fund and Supplementary Fund)	64
9.2	Assessment of contributions to Major Claims Funds (1992 Fund) and Claims Funds (Supplementary Fund)	65
<b>10</b>	<b>Other matters</b>	<b>66</b>
10.1	Future sessions	66
10.2	Any other business	67
<b>11</b>	<b>Adoption of the Record of Decisions</b>	<b>67</b>

**ANNEXES**

<b>Annex I</b>	List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
<b>Annex II</b>	2021 administrative budget tables for the 1992 Fund and the Supplementary Fund

*Opening of the sessions*

- 0.1 Prior to the opening of the sessions, the Director welcomed participants to the first remote meeting of the IOPC Funds' governing bodies and referred to document IOPC/NOV20/1/4 which provided information and guidance on the conduct of business for the virtual meeting held via the e-conferencing platform KUDO.
- 0.2 The Chair of the 1992 Fund Assembly recalled that sessions ordinarily took place in the International Maritime Organization (IMO) building in London. However, due to the COVID-19 pandemic and the consequent travel restrictions and conditions which had limited movement and travel to London, the sessions were being held remotely. The Chair explained that the priority for these sessions was to successfully fulfil the functions of the governing bodies in order for the IOPC Funds to continue to operate in 2021.
- 0.3 The Chair of the 1992 Fund Assembly further recalled Article 19.1 of the 1992 Fund Convention which provided that regular sessions of the Assembly shall take place once every calendar year and thus, a meeting had to take place in 2020. The Chair sought agreement from the Member States present to suspend Rule 3 of the Rules of Procedure to allow for the 25th session of the 1992 Fund Assembly to be held remotely, as proposed in document IOPC/NOV20/1/3/1. The Chair also sought agreement on the proposal to interpret Rule 33(a) on the definition of 'Members present', as Member States being registered for the sessions using the online registration system, and listed as participants in the remote sessions, using the virtual meeting platform, as proposed in document IOPC/NOV20/1/3/1.

***1992 Fund Assembly***

- 0.4 The Chair of the 1992 Fund Assembly opened the 25th session of the Assembly with 61 Member States present at that time.
- 0.5 He noted the importance of Member States being present during the opening of the 1992 Fund Assembly session in order to achieve quorum.

***Supplementary Fund Assembly***

- 0.6 The Chair of the Supplementary Fund Assembly recalled Article 16.2 of the Supplementary Fund Protocol which provided that regular sessions of the Assembly shall take place once every calendar year and thus, a meeting had to take place in 2020. The Chair sought agreement from the Member States present to suspend Rule 3 of the Rules of Procedure to allow for the 17th session of the Supplementary Fund Assembly to be held remotely, as proposed in document IOPC/NOV20/1/3/1. The Chair also sought agreement on the proposal to interpret Rule 33(a) on the definition of 'Members present', as Member States being registered for the sessions using the online registration system, and listed as participants in the remote sessions using the virtual meeting platform, as proposed in document IOPC/NOV20/1/3/1.
- 0.7 The Supplementary Fund Assembly Chair opened the 17th session of the Assembly.

***1992 Fund Executive Committee***

- 0.8 The 1992 Fund Executive Committee noted that no objections were raised by the 1992 Fund Assembly in respect of the temporary suspension of Rule 3 to allow for the sessions to open remotely. It was also noted that it was agreed by the Assembly to interpret Rule 33(a) on the definition of 'Members present', as Member States being registered for the sessions using the online registration system, and listed as participants in the remote sessions, using the virtual meeting platform.

- 0.9 The Chair of the 1992 Fund Executive Committee opened the 74th session of the Executive Committee.
- 0.10 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	<b>Adoption of the Agenda Documents IOPC/NOV20/1/1 and IOPC/NOV20/1/5</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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1.1.1 The governing bodies noted that, due to the limited duration of the remote meeting, documents containing decisions would be prioritised. It was also noted that a list of decisions in connection to the meeting was contained in document IOPC/NOV20/1/5, to facilitate the discussions during the remote sessions.

1.1.2 The 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/NOV20/1/1.

1.2	<b>Election of the Chairs</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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1.2.1 The Director reminded the governing bodies of the procedure adopted in April 2015, whereby the Director would preside over this agenda item for the governing bodies (document IOPC/APR15/9/1).

1.2.2 The Director recalled with deep regret that the Second Vice-Chair of the 1992 Fund Assembly, Mr Samuel Roger Minkeng of Cameroon, had passed away earlier in the year after a short illness. The post of Second Vice-Chair of the 1992 Fund Assembly was, therefore, vacant and the Assembly would be invited to elect a new Second Vice-Chair.

1.2.3 The Director announced that Ms Azara Prempeh of Ghana had resigned from her post as Vice-Chair of the 1992 Fund Executive Committee, following her appointment as Chief of Staff to the Secretary-General of IMO in October 2020. The Director wished Ms Prempeh all the best in her new post. It was noted that the post of Vice-Chair of the Committee was, therefore, vacant and that the Executive Committee would be invited to elect a new Vice-Chair for this 74th session.

### ***1992 Fund Assembly Decision***

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

Chair: Mr Gaute Sivertsen (Norway)

First Vice-Chair: Professor Tomotaka Fujita (Japan)

Second Vice-Chair: Mrs Aureny Aguirre O. Sunza (Mexico)

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

### ***Supplementary Fund Assembly Decision***

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

Chair: Mr Sungbum Kim (Republic of Korea)

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

Second Vice-Chair: Mr Emre Dinçer (Turkey)

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

***1992 Fund Assembly Decision***

- 1.2.8 The 1992 Fund Assembly elected, by acclamation, Mr Siphon Mbatha (South Africa) as Vice-Chair, to hold office until the end of the 74th session of the Executive Committee.
- 1.2.9 The Chair of the 1992 Fund Executive Committee thanked Mr Mbatha for accepting to step in as Vice-Chair for this session.

1.3	<b>Examination of credentials Documents IOPC/NOV20/1/2, IOPC/NOV20/1/2/1 and IOPC/NOV20/1/2/2</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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- 1.3.1 The governing bodies took note of the information contained in document IOPC/NOV20/1/2.
- 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 and SUPPFUND/A.4/21).

***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 Germany, Japan, Malaysia, Mexico and the Russian Federation 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 confirm the list of delegations authorised to vote for the election of the joint Audit Body, as well as to facilitate the resolution of an issue regarding the credentials of one particular delegation, the Chair of the Credentials Committee, Mr Kanagalingam Selvarasah (Malaysia), presented an interim report of the Credentials Committee on Thursday, 3 December (document IOPC/NOV20/1/2/1). The Chair of the Credentials Committee reported that credentials had been reviewed from 69 Member States, which were all in order.
- 1.3.7 The Chair of the Credentials Committee recalled that during the meeting of the governing bodies in October 2019, the Director had received two letters of credentials for two separate delegations claiming to represent the Bolivarian Republic of Venezuela (Venezuela). The Chair also recalled that on that occasion the Director had invited Dr Rosalie Balkin AO to provide assistance to the

Credentials Committee and had requested the advice of Professor Dan Sarooshi Q.C. The Chair further recalled that the Credentials Committee had recommended that the letter of credentials issued by Ambassador Maneiro should be accepted as the official representatives for the October 2019 sessions of the governing bodies. He added that the recommendation of the Credentials Committee had been accepted by the 1992 Fund Assembly, which had been noted by the 1992 Fund Executive Committee and the Supplementary Fund Assembly.

- 1.3.8 The Chair of the Credentials Committee reported that, prior to the December 2020 sessions of the governing bodies, the Director had again received two letters of credentials for Venezuela. The Director had invited Dr Rosalie Balkin AO to provide her assistance to the Credentials Committee and requested the advice of Professor Antonios Tzanakopoulos, Associate Professor of Public International Law of the Faculty of Law in the University of Oxford, who provided a legal opinion on this matter.
- 1.3.9 The Credentials Committee was unanimous in its view that it was not the function of the IOPC Funds to decide which was the legitimate government of Venezuela since it considered that this question was of a political nature, and was to be decided in the United Nations (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 IOPC Funds' governing bodies.
- 1.3.10 In considering this matter and the legal advice received, the Credentials Committee noted that the decisions of the UN General Assembly on credentials are considered by the UN Office of Legal Affairs (OLA) as providing 'authoritative guidance' to other UN organs, even though they are not binding. It further noted that, at the sessions of the UN General Assembly in 2018, 2019 and 2020, the Credentials Committee had accepted the credentials submitted by the Maduro Government.
- 1.3.11 The Credentials Committee also inferred that the Maduro Government continued to represent Venezuela in the UN, its specialized agencies and conferences and was likely to continue to do so considering the 'authoritative guidance' already given by the UN General Assembly in 2018, 2019 and 2020. It also inferred that it appeared that the Guaidó authority had not sought to challenge this position by submitting credentials; and that it was extremely unlikely that the General Assembly would *proprio motu* refuse to accept the credentials issued by the Maduro Government.
- 1.3.12 The Chair of the Credentials Committee reported that there were two regional organisations, the Inter-American Development Bank (IDB) and the Organisation of American States (OAS) that had accepted the appointment of representatives put forward by the Guaidó authority in 2019; but that neither of these two organisations had set up a Credentials Committee and had only taken note of the Guaidó authority and the revocation of any previous designations by the Maduro Government.
- 1.3.13 When considering the position of these two regional organisations, the Credentials Committee noted that the IOPC Funds had a clear—if not direct—relationship with the UN system which would favour following the practice of the UN, its specialized agencies and its conferences, rather than those of regional organisations with reference to the Americas.
- 1.3.14 The Credentials Committee noted that Ambassador Maneiro had been regularly attending sessions of the IOPC Funds' governing bodies. The Committee also noted that UN and other international organisations allowed the authority that had previously been accepted as representing the State to continue to represent the State pending future developments. In addition, the Credentials Committee noted that Ambassador Maneiro continued to be the Ambassador accredited to the United Kingdom, where the headquarters of the IOPC Funds are located.
- 1.3.15 Therefore, in light of these considerations, the Credentials Committee recommended that the status quo should continue and that the letter of credentials of the current delegation of Venezuela issued by Ambassador Maneiro should be accepted and that the named individuals therein be

deemed the official representatives for the December 2020 sessions of the governing bodies. The Committee noted, however, that this position was applicable to the December 2020 meeting only and it could be susceptible to change depending on future developments.

***1992 Fund Assembly Decision***

- 1.3.16 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 official representative of Venezuela at the December 2020 sessions of the governing bodies.

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

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

***Final Report of the Credentials Committee***

- 1.3.18 The Credentials Committee reported in its final report (document IOPC/NOV20/1/2/2) that the credentials submitted by 69 Member States were found to be in order. It was noted that Côte d'Ivoire submitted credentials after the opening day of the December 2020 sessions, which could not be examined by the Credentials Committee at that time.
- 1.3.19 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the December 2020 meeting.

1.4	<b>Temporary suspension of Rules of Procedure Documents IOPC/NOV20/1/3, IOPC/NOV20/1/3/1, IOPC/NOV20/1/3/2, IOPC/NOV20/1/3/3</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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- 1.4.1 The governing bodies took note of the information contained in document IOPC/NOV20/1/3.
- 1.4.2 The governing bodies noted that, since certain Rules of Procedure of the governing bodies presuppose in-person meetings, such rules would need to be suspended temporarily or amended on an exceptional basis to allow for the regular sessions of the governing bodies to be conducted remotely in 2020.
- 1.4.3 It was also noted that the Secretariat had developed proposals for amendments to IOPC Funds procedures that would facilitate remote sessions, which were closely aligned to those of IMO and set out in detail in documents IOPC/NOV20/1/3/1 and IOPC/NOV20/1/3/2.
- 1.4.4 It was noted that in the interest of expediting the discussions on procedural matters at the opening of the sessions, the Director had invited Member States to consider those documents in advance and to provide their feedback by Friday, 23 October 2020. The feedback received by the Secretariat had been included in document IOPC/NOV20/1/3/3.

**DOCUMENT IOPC/NOV20/1/3/1 – TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS – FACILITATING REMOTE SESSIONS**

- 1.4.5 The governing bodies noted that the Director had made every effort to retain established practices of in-person meetings as was reasonably possible. It was also noted that the Director's priority was for the governing bodies to be able to take the decisions required to ensure the organisations could continue to function properly in 2021.



- 1.4.6 The governing bodies considered the proposals to amend or temporarily suspend Rules of Procedure as contained in document IOPC/NOV20/1/3/1.

DOCUMENT IOPC/NOV20/1/3/3 – TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS – FEEDBACK FROM MEMBER STATES ON DOCUMENT IOPC/NOV20/1/3/1

- 1.4.7 The governing bodies noted that document IOPC/NOV20/1/3/3 contained the feedback provided by Australia, Canada, Cyprus, Denmark, France, Greece, Italy, Japan, Latvia, New Zealand, Portugal, Republic of Korea, Singapore, Turkey and the United Kingdom on the proposals contained in document IOPC/NOV20/1/3/1. It was noted that all States had expressed their support for each proposal, explanation or interpretation of the specific Rules, including the proposal to temporarily suspend Rule 3.

*Debate*

- 1.4.8 All delegations that spoke confirmed their support for the proposals by the Director. One delegation noted with satisfaction that the temporary suspension of the Rules would be in line with the decisions taken within IMO. Another delegation expressed its particular appreciation for the solutions proposed since they would enable the IOPC Funds to continue its important work despite the unusual circumstances.

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

- 1.4.9 The governing bodies decided to:
- (i) Temporarily suspend Rule 3 of the Rules of Procedure in relation to the location to the meeting to allow for remote sessions to be held; and
  - (ii) Endorse the Director's proposal that, in accordance with Rule 27/23<sup><2></sup> and in line with established practice, the Secretariat should prepare a draft Record of Decisions which will be presented for adoption by the governing bodies on the last day of the virtual meeting; and agreed that the sessions should then remain open for an additional five working day period from the publication of the consolidated draft Record of Decisions, for delegations to comment on that document by correspondence.
  - (iii) Continue to adopt decisions by consensus during the remote sessions and that if the need for a vote should arise, an alternative voting procedure would need to be adopted.
- 1.4.10 The governing bodies also noted that:
- (i) While Rule 9/8<sup><3></sup> provides that delegations can register and submit credentials up to the opening day of the sessions, for practical reasons, on this exceptional occasion, the Director had invited Member States to submit credentials no later than Friday, 20 November 2020.
  - (ii) For the purposes of the December 2020 meeting, 'present' as defined in Rule 33(a) shall be interpreted as being registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform.

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<2> The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

<3> The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.

**1992 Fund Executive Committee**

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

DOCUMENT IOPC/NOV20/1/3/2 – TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS – VOTING (READ IN CONJUNCTION WITH DOCUMENT IOPC/NOV20/6/1/1)

- 1.4.12 This document was dealt with in conjunction with document IOPC/NOV20/6/1/1, and as such, the discussion and decisions taken in respect of that document are set out in section 6 below.

## **2 Overview**

2.1 <b>Report of the Director Document IOPC/NOV20/2/1</b>	<b>92A</b>		<b>SA</b>
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- 2.1.1 The Director presented his report contained in IOPC/NOV20/2/1. Before starting to report on the activities of the Secretariat, the Director referred to the sad passing of Mr William O’Neil, former Secretary-General of IMO.

- 2.1.2 The Director explained that following the decision of IMO’s Secretary-General to postpone certain meetings in March due to the outbreak of the COVID-19 pandemic and the subsequent restructuring of IMO’s 2020 calendar of meetings, the meeting of the IOPC Funds’ governing bodies had been rescheduled to 2 to 4 December 2020. The Director extended his sympathy to all those who had been affected by the pandemic.

- 2.1.3 The Director described the substantial adjustments made in the way the IOPC Funds’ Secretariat had worked since March 2020. It was noted that the IOPC Funds, together with IMO, followed the guidelines given by the World Health Organization and the United Kingdom (UK) Government closely at all times during the crisis, and most staff members had worked from home throughout the crisis. The well-being of the staff had been ensured at all times, and the equipment and training necessary to access the IOPC Funds’ systems remotely in a secure manner had been provided to them. Throughout the pandemic, the Secretariat had continued to assess and pay claims as normal, to monitor the global financial markets closely and to review the security of the Funds’ assets.

- 2.1.4 In terms of membership, the Director recalled that the 1992 Fund Convention had entered into force for the Co-operative Republic of Guyana and the Republic of the Gambia in 2020, bringing the number of 1992 Fund Member States to 117. He also said that the 1992 Fund Convention would enter into force in the Republic of Nauru in March 2021 and would bring the number of 1992 Fund Member States to 118 on that date. The Director further recalled that 32 States were Members of the Supplementary Fund.

- 2.1.5 With respect to compensation matters, the Director reported that the 1992 Fund was dealing with 11 incidents. With regard to the *Prestige* incident, the Director reported that the Spanish Court had made payments totalling EUR 51.5 million to claimants in the Spanish legal proceedings. In particular, the Spanish State, who had advanced compensation to victims in Spain, had received EUR 40.7 million from the Court. He also reported that the French State, who had carried out clean-up operations on the French coast after the spill, had received EUR 9.3 million. Regarding the action by the French Government against the American Bureau of Shipping (ABS), he reported that the Court of Cassation in France had decided that ABS could not rely on the defence of sovereign immunity. He also reported that, the action of the 1992 Fund against ABS in France continued, and that the 1992 Fund’s French lawyer was coordinating with the French Government’s lawyers regarding their respective actions against ABS.

- 2.1.6 With respect to the *Hebei Spirit* incident, the Director reported that all legal proceedings had been finalised in November 2019. The 1992 Fund had paid the balance of KRW 3.4 billion to the Skuld

Club, and the reconciliation of joint costs between the Club and the Fund was underway. The Director also reported that the 1992 Fund was working towards recovering the Fund's share from the SHI (Samsung Heavy Industries) limitation fund, which amounted to some KRW 5.6 billion. He noted that the meeting which was to take place in May 2020 to discuss the lessons learned had to be postponed to 2021 due to the pandemic. He thanked the cooperation of the Government of the Republic of Korea in resolving this major incident.

- 2.1.7 The Director reported that some claims arising from the *Trident Star* incident had been settled and that the compensation payments made by the Fund were being reimbursed by the Shipowners' Club under STOPIA 2006.
- 2.1.8 With respect to the *Agia Zoni II* incident, the Director reported that the assessment of the 421 claims totalling EUR 98.58 million filed against the 1992 Fund continued and that compensation payments totalling EUR 14.66 million had been made in respect of 179 claims. Since the third anniversary of the spill had been in September 2020, the 1992 Fund had contacted those claimants that had not settled their claims and recommended them to commence legal actions against the 1992 Fund in order to avoid their claims becoming time-barred. The Director reported that there were 24 legal proceedings against the 1992 Fund. The investigation of the cause of the accident which had been conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had concluded that the accident was attributed to a deliberate and negligent action. It was the Director's view that as the investigations remained pending, it would not be appropriate to make any further advance payments to the representatives of the salvor/one of the clean-up contracting companies, at this time.
- 2.1.9 With respect to the *Bow Jubail* incident, the Director reported that on 27 October 2020 the Court of Appeal in The Hague had rendered a judgment confirming the decision of the Rotterdam District Court that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) did not apply to the *Bow Jubail* incident since the shipowner had not proved that the *Bow Jubail* did not contain residues of persistent oil at the time of the incident and the *Bow Jubail*, therefore, qualified as a ship as defined under the 1992 Civil Liability Convention (CLC).
- 2.1.10 The Director also reported that in its judgment, the Court of Appeal had noted that there was no generally accepted standard procedure to determine when a ship which could serve both as an oil tanker under the 1992 CLC and a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the CLC. In the Court's view, consideration should be given by the Parties to the 1992 Fund Convention to the creation of a standard procedure.
- 2.1.11 The Director said that the shipowner had appealed against the judgment to the Supreme Court and that he considered that the 1992 Fund should apply to join the shipowner in the appeal proceedings to request a clarification from the Supreme Court on how the legal test applies as to whether there were residues or not on board the *Bow Jubail*. The Director explained that if a final judgment were to decide that the 1992 CLC and Fund Convention applied, the 1992 Fund would have to pay compensation as the losses exceeded the shipowner's limit under the CLC and the STOPIA limit.
- 2.1.12 The Director reported that he had been contacted by the Sri Lankan authorities in relation to the *MT New Diamond*, an oil tanker carrying approximately 270 000 metric tons of crude oil that had caught fire and drifted off the eastern coast of Sri Lanka. The Director also referred to the *FSO Safer*, a floating storage and offloading unit located off the coast of the Republic of Yemen. Even though Yemen was not a Member State of the 1992 Fund, the Secretariat was participating in meetings with the IMO Task Force established by the Secretary-General of IMO to provide recommendations to prevent an oil spill.
- 2.1.13 When reporting on financial matters, the Director stated that the 1992 Fund Assembly and the Supplementary Fund Assembly would be invited to approve the 2019 Financial Statements for both Funds.

- 2.1.14 The Director was pleased that 98 States had submitted reports to the 1992 Fund and that 32 States had submitted reports to the Supplementary Fund for 2019, representing 96.55% and 94.82% of the expected total contributing oil, respectively.
- 2.1.15 The Director was also pleased to report that one major contributor in India had settled its outstanding contributions on 1 December 2020. The Director thanked the delegation of India for their assistance with this matter. The total outstanding contributions, following the payment by the contributor in India, represented 0.19% of the total contributions levied since the establishment of the 1992 Fund. The Director said that he would continue to engage with the authorities in Ghana, the Russian Federation and Venezuela with respect to outstanding contributions to correct this situation soon. He thanked the delegations of Ghana, the Russian Federation and Venezuela for their cooperation in resolving the situation relating to outstanding contributions in those States. He also reported that outstanding contributions to the Supplementary Fund related to the Republic of Congo and represented 0.05% of contributions levied to date. He added that he would be examining other ways to incentivise the submission of oil reports with the seventh Audit Body in 2021.
- 2.1.16 Regarding the budget for 2021, the Director said that the 1992 Fund Assembly would be asked to approve the 2021 joint Secretariat budget of £4 708 287 million. He noted that the 2021 budget was 3.4% less than that of 2020. He also said that he would propose that the working capital be maintained at £15 million and that there should be no levy of contributions to the General Fund. He would, instead, propose that the 1992 Fund budget for 2021 in the General Fund be met through a loan taken from the *Hebei Spirit* Major Claims Fund. The Director said that the Supplementary Fund Assembly would be asked to approve the budget of £50 400 for 2021 and that he would propose that the working capital be maintained at £1 million.
- 2.1.17 With respect to the assessment of contributions, the Director invited the 1992 Fund Assembly not to levy 2020 contributions for the General Fund or to the Major Claims Funds established for the *Prestige*, *Hebei Spirit*, *Alfa I*, *Nesa R3* and *Agia Zoni II* incidents. The Director also invited the Supplementary Fund Assembly to decide not to levy contributions to the General Fund.
- 2.1.18 The Director noted that the mandate of the current Investment Advisory Body would expire in December 2020 and proposed that Ms Beate Grosskurth and Mr Alan Moore be reappointed for the following three-year period until the regular sessions of the governing bodies in 2023. He also proposed that Mr Brian Turner be reappointed for the following two years, until the regular sessions of the governing bodies in 2022, while a suitable replacement was being sought.
- 2.1.19 The Director reported that, as the mandate of the sixth Audit Body was expiring in December 2020, a circular had been issued in April 2020 calling for nominations by 1992 Fund Member States of candidates for the new Audit Body and that eight candidates had been nominated. He explained that since on this occasion there were sufficient nominations to fill the vacancies, the candidate nominated for a third term, who had later withdrawn his nomination, would not be put forward for election. The Director said he would invite the 1992 Fund Assembly to elect six out of the seven nominated candidates for the new Audit Body, and that the Chair and Vice-Chair would be appointed by the Assembly from the members elected, on a proposal of the Chair of the 1992 Fund Assembly. The Director also said that the 1992 Fund Assembly would have to decide whether to approve the recommendation of the Chair of the 1992 Fund Assembly that Mr Knight's tenure be extended, exceptionally, beyond his third three-year term until 31 December 2021.
- 2.1.20 With respect to staff matters, the Director referred to the departure from the Secretariat of Mr Kensuke Kobayashi (Legal Counsel) and said that after reviewing the need for this post, he had decided that it would only be filled if it was operationally needed in the future. He also referred to the departure of Mr Modesto Zotti (Office Manager) and said that he had decided to reallocate the Office Manager tasks which were still required to the IT/Office Manager (formerly IT Manager). He added that he had retained the post should there be a requirement of such a post in the future.

The Director announced that he had invited Mr Robert Owen (IT/Office Manager) to join the Management Team to provide key advice on IT-related matters. He also announced that he had created the position of Policy Officer at the P3 level to provide expertise and be a key adviser on policy matters and that Mr Yuji Okugawa (Japan) had been offered the post.

- 2.1.21 The Director recalled that the 1992 Fund Assembly would have to appoint a new Director as his second term would expire on 31 December 2021 and said that a circular inviting 1992 Fund Member States to submit nominations for candidates would be issued in 2021.
- 2.1.22 The Director was pleased to have reached an agreement with the UK Government on the amendments to the Headquarters Agreement of the 1992 Fund and on the new Headquarters Agreement for the Supplementary Fund. He invited the governing bodies to approve the Headquarters Agreements in order for the UK Government to submit the required UK domestic legislation to Parliament. He added that he intended to sign both Headquarters Agreements once the new texts had been approved and after having reviewed the draft Order and confirmed that he was satisfied with it.
- 2.1.23 The Director reported that the Secretariat had engaged an expert in the implementation of the European Union General Data Protection Regulation (GDPR) to assist in developing policies and procedures reflecting the GDPR and a data protection lawyer to review the policies and procedures.
- 2.1.24 The Director reported that India would be presenting the document with proposals for a review of the 1992 Civil Liability and Fund Convention. He added that he expected that only a preliminary consideration would be possible at this session and that further discussions could take place in 2021.
- 2.1.25 The Director said that as of July 2020 there were five Contracting States to the 2010 HNS Protocol, namely, Canada, Denmark, Norway, South Africa and Turkey. He added that during 2020 Belgium, France, Germany, the Netherlands and the Republic of Korea had reported positive progress towards accession or ratification of the Protocol. He also thanked France for having submitted a document on the latest developments in the implementation of the 2010 HNS Convention.
- 2.1.26 The Director said that he looked forward to continuing to work with Member States in the implementation and interpretation of the Conventions and to promote the benefits of the international liability and compensation regime in States which have not yet acceded to the 1992 Fund Convention and the Supplementary Fund Protocol. He welcomed the work of the Audit Body for its report on the risks arising from incidents involving the IOPC Funds and insurers who are not members of the International Group of P&I Associations (International Group). The Director also said that he was more committed than ever to continue to review the Secretariat's working methods to make the best possible use of the resources available. He added that the Secretariat would continue to assist Member States with the implementation of the HNS Convention.
- 2.1.27 In concluding, the Director thanked all members of the sixth Audit Body who had completed their mandate, the Secretary-General of IMO and IMO staff, the Chairs and Vice-Chairs of the governing bodies, Member States, the P&I Clubs and fellow international organisations, 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 also thanked the members of the Investment Advisory Body, the lawyers and experts who had worked for the Funds, the representatives of the External Auditor (BDO) and the staff of the Secretariat for their dedication to the Funds over the past 12 months.

*Intervention by the delegation of Sri Lanka*

- 2.1.28 The delegation of Sri Lanka referred to the *MT New Diamond* incident to inform the governing bodies that oil had actually been spilled from that tanker. That delegation indicated that samples

had been collected and testing had been carried out, which identified that the spill was of bunker oil. That delegation also informed the governing bodies that an environmental impact report had been conducted and was being finalised since the location where the spill occurred was a pristine area rich in marine mammals including dolphins and turtles.

- 2.1.29 The Director thanked the delegation for the information and explained that the incident would unlikely involve the 1992 Fund as the *MT New Diamond* was a very large crude carrier (VLCC) with a high CLC limit. The Director suggested that the delegation contact the West of England Club correspondent based in Sri Lanka to begin a dialogue and offered assistance with this if necessary.

*Intervention by the delegation of Italy*

- 2.1.30 The delegation of Italy referred to the recent incident which had occurred off the coast of Mauritius involving the vessel *MV Wakashio*. That delegation explained that it was widely reported by the press that the incident would fall under the scope of the Bunkers Convention 2001 and requested further clarification from the Director as to whether the incident would involve the IOPC Funds.

- 2.1.31 The Director confirmed that he had been monitoring the case and confirmed that it would not involve the IOPC Funds as it was a bulk carrier and as such, fell under the Bunkers Convention 2001.

*Intervention by the delegation of India*

- 2.1.32 The delegation of India referred to paragraph 8.5 of document IOPC/NOV20/2/1 and Resolution N°12 of the 1992 Fund Assembly. That delegation pointed out the distinction between the obligations of a Contracting State as provided in Article 13.2 of the 1992 Fund Convention and the liability of the contributor as provided in Article 13.3 of the Convention and stated that, in that delegation's view, Resolution N°12 may need to be re-examined as it seemed to be exceeding the provisions of the Convention with regard to restrictions imposed on Member States.

- 2.1.33 In response, the Director noted the matter raised by India and confirmed that it was for the Assembly to decide whether Resolution N°12 would need to be re-examined.

*Intervention by the delegation of the Russian Federation*

- 2.1.34 The delegation of the Russian Federation referred to the contributions due from two contributors in the Russian Federation which were subsequently written off by the 1992 Fund Assembly in 2017 and confirmed the intention of the Government of the Russian Federation to pay voluntary contributions plus interest. That delegation stated that the cooperation with the IOPC Funds on this matter had been fruitful, but there were some administrative delays in settlement of this issue as there had been a change of Government at the start of the year which was then followed by the impacts of the COVID-19 pandemic. That delegation assured that the Minister of Transport was progressing with the matter and that a letter had been sent to the Government requesting to speed up the process in order to settle the matter soon.

- 2.1.35 The Director thanked the Russian Federation for its excellent cooperation and looked forward to progress in the matter.

*Intervention by the delegation of the United Arab Emirates*

- 2.1.36 The delegation of the United Arab Emirates referred to staff matters and the recent changes to the Secretariat and asked the Director how this would affect the progression of work of the organisation and whether there was information available about succession planning in the Secretariat.

- 2.1.37 In response, the Director explained that changes to the Secretariat were an opportunity to reconsider the management of the Secretariat and that such changes had not affected the Secretariat as work had been reallocated effectively. The Director also referred to the new Policy

Officer position to emphasise that point. The Director also confirmed that there was a robust succession plan in place within the Secretariat.

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

- 2.1.38 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information contained in document IOPC/NOV20/2/1.

### **3 Incidents involving the IOPC Funds**

3.1	<b>Incidents involving the IOPC Funds Document IOPC/NOV20/3/1</b>		<b>92EC</b>	<b>SA</b>
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- 3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/NOV20/3/1, which contained information on documents for the December 2020 meeting relating to incidents involving the IOPC Funds.

3.2	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/NOV20/3/2</b>		<b>92EC</b>	
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- 3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV20/3/2 relating to the *Prestige* incident.

#### *Judgment by the Spanish Supreme Court*

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

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

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

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

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

- 3.2.6 The Executive Committee noted that in November 2020, the Spanish Court had made payments totalling EUR 51 537 619 to claimants in the Spanish legal proceedings. It was also noted that the

Spanish State, who had advanced compensation to victims in Spain, had received EUR 40 740 852 from the Court. It was further noted that the French State, who had carried out clean-up operations on the French coast after the spill, had received EUR 9 268 952 and that the local government in Galicia and private claimants in Spain had received EUR 1 527 815.

*Civil proceedings in France*

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

RECOURSE ACTIONS

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

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

*Legal action by France against ABS in France*

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

*Legal action by the 1992 Fund against ABS in France*

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



- the Fund’s action would be time-barred under the Civil Liability and Fund Conventions, according to Article VIII of the 1992 CLC.

3.2.13 It was noted that if the Fund’s action against ABS was considered admissible by the Court, the 1992 Fund would have to prove that ABS was negligent in the way it carried out its work in respect of the classification of the vessel.

3.2.14 It was also noted that the 1992 Fund’s lawyer was working with the lawyers engaged by the French Government in consideration of how to proceed with their respective actions against ABS.

**1992 Fund Executive Committee**

3.2.15 The 1992 Fund Executive Committee noted that the Director would report any further developments at the next session of the Executive Committee.

3.3	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i> Document IOPC/NOV20/3/3</b>		<b>92EC</b>	
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3.3.1 The 1992 Fund Executive Committee took note of document IOPC/NOV20/3/3 which contained information relating to the *Solar 1* incident.

3.3.2 The Executive Committee recalled that some 32 466 claims had been received and payments totalling PHP 987 million had been made in respect of 26 870 claims mainly in the fisheries sector.

3.3.3 The Executive Committee also recalled that three claims remained outstanding, all of which were subject to legal proceedings in the Philippines.

*Legal proceedings by the Philippine Coast Guard (PCG)*

3.3.4 In respect of the claim in the amount of PHP 104.8 million by the Philippine Coast Guard (PCG), the Executive Committee recalled that the Solicitor General and the PCG had agreed to settle the PCG claim in the amount assessed by the 1992 Fund. It was recalled that in February 2016, one of the PCG lawyers and the lawyers representing the 1992 Fund and the Shipowners’ Club, signed the compromise agreement, thereby formally recognising the PCG’s agreement to accept the figure of PHP 104.8 million in full and final settlement of the PCG claim, and their agreement to dismiss the legal proceedings which had been commenced by the PCG. It was also recalled that the parties still awaited the signature of the Solicitor General.

3.3.5 It was further recalled that in February 2017, the claimant and the 1992 Fund’s lawyers appeared at court for a judicial dispute resolution procedure where the Court exercised its power to try to aid the parties to finally arrive at a settlement and that the main issue discussed was whether Congressional approval was required for the compromise agreement. The Executive Committee recalled that the Judge had warned the PCG that continued delay would constrain him to act favourably on a motion to dismiss the case for failure to prosecute.

3.3.6 The Executive Committee also recalled that the PCG had applied for Congressional approval of the compromise agreement and the approval of both the Lower and Upper Houses of Representatives, was currently awaited.

3.3.7 The Executive Committee further recalled that in August 2018, the PCG obtained the endorsement of the Office of the Presidential Spokesperson for immediate approval of the House Resolution granting Congressional approval to the compromise agreement. The PCG indicated that it was also seeking the approval of the Philippine President to the compromise agreement.

- 3.3.8 It was recalled that in May 2019, the PCG had confirmed to the Court that the PCG would seek Congressional approval for a settlement offer of PHP 104.8 million and not for a higher amount and that they would only settle the claims when they had obtained Congressional approval to do so.

*Developments since 2019*

- 3.3.9 It was also recalled that due to the PCG's inability to obtain Congressional approval for the settlement agreement within the timescale permitted by the Court, the presiding Judge terminated the attempt at judicial dispute resolution and ordered the case be reset to a different court for the continuation of pretrial procedures.
- 3.3.10 It was noted that at a hearing in January 2020, the PCG indicated that a new lawyer for the PCG would be dealing with the court case, who informed the 1992 Fund's lawyers that the view of the PCG and the Office of the Solicitor General was that there was now no need to obtain Congressional approval to the settlement agreement.
- 3.3.11 It was also noted that the case was set for a further hearing in June 2020 but was cancelled as several personnel from the Court tested positive for COVID-19, and that the 1992 Fund's lawyers continue to push for completion of the settlement without the need for Congressional approval.

*Legal proceedings by 967 fisherfolk*

- 3.3.12 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.
- 3.3.13 The Executive Committee noted that through 2019, a number of witnesses were presented by the claimants' lawyers but their claims were proved to have no factual or legal basis, and further court hearings were set for July and August of 2019, but these were cancelled and reset for January 2020, at which the claimant's lawyer filed a motion to cancel the hearing due to the impending eruption of the Taal Volcano.
- 3.3.14 The Executive Committee also noted that the hearing was reset to April 2020, at which the 1992 Fund's lawyers filed a motion to hold the hearings twice a month and for a minimum of 15 witnesses to be examined at each hearing, in an attempt to expedite the presentation of the witnesses. A further hearing was set for August 2020 but cancelled due to the COVID-19 pandemic.

*Legal proceedings by a group of municipal employees*

- 3.3.15 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.
- 3.3.16 The Executive Committee further recalled that after a series of hearings to continue the examination of the witnesses submitted by the claimants, which proved inconclusive, in 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.

- 3.3.17 It was noted that a further hearing was set for August 2019 but was cancelled and reset to April 2020, at which the 1992 Fund's lawyers filed a motion to expedite the examination and cross-examination of the witnesses. A further hearing was set for August 2020 but was cancelled due to COVID-19 pandemic, and a new date for the hearing was awaited.

#### ***1992 Fund Executive Committee***

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

3.4	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Hebei Spirit</i> Document IOPC/NOV20/3/4</b>		92EC	
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- 3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV20/3/4 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, Assuranceforeningen Skuld (Gjensidig) (Skuld Club).
- 3.4.4 The Executive Committee recalled that in November 2018, the Limitation Court in Seosan issued the 1992 CLC distribution table for this incident. The Executive Committee also recalled that the amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion, which included KRW 139.4 billion of principal and KRW 91.5 billion of interest.

#### ***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 47.4 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.
- 3.4.6 The Executive Committee noted that in July 2020, after it was confirmed that all legal proceedings related to the *Hebei Spirit* incident had been finalised, the 1992 Fund had made a payment to the Skuld Club for the balance of KRW 3.4 billion. The Committee also noted that, with this payment, the entirety of the overpayment by the Skuld Club had been reimbursed but that a final reconciliation of costs was underway. The Committee further noted that the Director would report on the developments in a future session of the Executive Committee.

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

- 3.4.7 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.

3.4.8 The Executive Committee recalled 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. The Executive Committee further recalled that, following the conclusion of the bilateral 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*

3.4.9 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.

3.4.10 The Committee noted that all lawsuits had been withdrawn or dismissed by the Seosan Court and that therefore, all legal proceedings related to the *Hebei Spirit* limitation proceedings were finalised.

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

3.4.11 The Executive Committee recalled that in March 2009, the Seoul Central District Court (SHI Limitation Court) rendered the order for the commencement of the limitation proceedings of the bareboat charterer of the *Marine Spread* (the crane barge, the two tugs and the anchor boat), SHI, and set the limitation fund at KRW 5.6 billion including legal interest. The Executive Committee further recalled that the SHI Limitation Court decided to wait to distribute the limitation fund until after the assessment decision was issued by the Seosan Court.

3.4.12 The Executive Committee recalled 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.

3.4.13 The Executive Committee noted that in July 2020, the SHI Limitation Court had examined the claims submitted in the proceedings. The Committee also noted that at that hearing, it was found that, in addition to the 1992 Fund and the Government of the Republic of Korea, some 24 000 private claimants had also submitted claims. It also noted that SHI had decided not to pursue their claim for the amount settled with the Skuld Club during the proceedings in China. The Executive Committee further noted that the SHI Limitation Court was expected to issue a decision on the distribution of the SHI limitation fund before the end of 2020.

*Lessons learned from the Hebei Spirit incident*

3.4.14 The Executive Committee recalled that as per the 1992 Fund's practice after all claims arising out of a major incident have been assessed, the Director had intended to hold a meeting with all those involved in the handling of the incident, to discuss what lessons could be learned, so as to enable the 1992 Fund to deal with claims more efficiently in the future.

3.4.15 The Executive Committee noted that the meeting for the *Hebei Spirit* incident had been scheduled to take place in Seoul in May 2020. However, due to the global COVID-19 situation and the restrictions on travel, the meeting has been postponed *sine die*. The Executive Committee also noted that the Director intended to update the Executive Committee as to when it will be possible to reschedule the meeting, at a subsequent session of the governing bodies.

*Intervention by the delegation of the Republic of Korea*

3.4.16 The delegation of the Republic of Korea remarked that, in view of the complexity of the legal proceedings arisen from this incident, the successful outcome of this incident could only have been achieved through the cooperation among the Skuld Club, the 1992 Fund and the Government of

the Republic of Korea. For that reason, the delegation expressed its regret that the situation created by the COVID-19 pandemic had postponed the meeting to discuss the lessons learned from the *Hebei Spirit* incident.

- 3.4.17 The delegation of the Republic of Korea further stated that it considered such a meeting crucial for the parties to share their experiences and the lessons learned from it. That delegation expressed its hopes that such a meeting would be rescheduled as soon as possible when it would be safe to do so and confirmed that the Government of the Republic of Korea would work in cooperation with the Skuld Club and the 1992 Fund in order to ensure that the meeting could be successfully held in the near future.

#### **1992 Fund Executive Committee**

- 3.4.18 The 1992 Fund Executive Committee noted that all the legal actions related to the *Hebei Spirit* limitation fund proceedings had been closed and that the Director would report any further developments on the recourse action at future sessions of the Committee.

3.5	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i> Document IOPC/NOV20/3/5</b>		<b>92EC</b>	
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/NOV20/3/5 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, the Federal Republic of Nigeria, when the barge *Redfferm* sank following a transhipment operation from the tanker *MT Concep*. The barge sank, spilling an unknown quantity (estimated to be approximately 100 tonnes) of cargo/residue of low pour fuel oil (LPFO) into the waters surrounding the site, which then impacted upon the neighbouring Tin Can Island area.

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

#### *Reasons for rejection of claims*

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

#### *Legal proceedings*

- 3.5.5 It was also recalled that in March 2012, a claim for USD 26.25 million was filed by 102 communities against the owner of the *MT Concep*, the owner of the *Redfferm*, the agent of both the *MT Concep* and the *Redfferm*, and the 1992 Fund.
- 3.5.6 It was further recalled that in February 2013, the 1992 Fund had applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the

spill rested with the owner of the *Redfferm*. It was recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.

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

#### **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 at the next session of the Committee.

3.6	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i> Document IOPC/NOV20/3/6</b>		<b>92EC</b>	
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- 3.6.1 The Executive Committee took note of document IOPC/NOV20/3/6, 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 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 City of Yeosu and Marine Police had requested the shipowner to provide a plan for the removal of the wreck and that in April 2014, a further request was made.
- 3.6.5 It was also recalled that a number of further meetings had taken place with the City of Yeosu and Marine Police at which the shipowner had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

*Civil proceedings*

- 3.6.6 It was further recalled that in April 2013, the shipowner/insurer had started legal proceedings against the 1992 Fund in the Seoul Central District Court before the expiry of the three-year anniversary of the date when the damage occurred, in order to protect their rights in respect of any future liability for costs of the removal operation which they might have to pay.
- 3.6.7 The Executive Committee recalled that the UK P&I Club had indicated that, if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had been paid in respect of the potential claim for removal operations), then only the six-year time bar under the 1992 Fund Convention would be applicable.
- 3.6.8 The Executive Committee also recalled that the UK P&I Club and the 1992 Fund had settled the terms of an agreement on facts, stating that since the costs of the potential claim for removal operations had not been incurred, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer had been withdrawn in June 2013.
- 3.6.9 The Executive Committee further recalled that in April 2016, the shipowner and insurer had filed a claim for USD 46.9 million (subsequently amended to USD 25.13 million in accordance with 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 It was also recalled that, in April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the courts of the Republic of Korea had stayed the proceedings. It was further recalled, however, that the courts could, of their own volition, resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wished a further stay of the proceedings.
- 3.6.12 The Executive Committee recalled that in December 2017, the 1992 Fund's lawyers had advised that in the related litigation between the shipowners/insurers of the colliding vessels, the Seoul High Court had ruled that although experts opined that the wreck removal of the *Haekup Pacific* was very difficult since the wreck removal order remained effective (despite repeated requests for its withdrawal), it was difficult to consider the order to be null and void based solely on the experts' opinion/parties' submissions.
- 3.6.13 The Executive Committee also recalled that since the *Haekup Pacific's* shipowner was currently still obliged to remove the vessel, the Seoul High Court had ruled that it was reasonable to deem that the damages of the wreck removal costs had in fact arisen. It was noted that the shipowner/insurer of the *Zheng Hang* had appealed against the Seoul High Court's judgment and the matter was now pending at the Supreme Court of the Republic of Korea.
- 3.6.14 The Executive Committee further recalled 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 It was noted that the 1992 Fund's lawyers had also advised that since the appeal was filed in 2017, they were hopeful that a judgment may be rendered by the end of 2020, although matters had been delayed due to the outbreak of the COVID-19 pandemic.
- 3.6.16 It was also noted that in September 2019, the City of Yeosu had requested the shipowner/insurer of the *Haekup Pacific* to implement the wreck and oil removal orders and to submit a document to the City of Yeosu by 10 February 2020, containing information upon the current situation of the ship and the shipowner/insurer's plans for: (1) the removal of oil residue and the cargo; (2) the wreck removal; and (3) the prevention of oil pollution that might occur during the removal operation.
- 3.6.17 It was further noted that the shipowner hired a salvage company to examine the wreck's condition and that the shipowner also obtained a time extension from the City of Yeosu until July 2020, in order that the salvage company could begin the inspection in March 2020.
- 3.6.18 The Executive Committee noted that due to the COVID-19 pandemic, the salvage company had not been able to commence its work as originally planned but had undertaken a survey in August 2020, and a report was expected to be published in September 2020, following which, the shipowner's lawyers would meet with the City of Yeosu to discuss the possibility of revoking the wreck and oil removal orders.
- 3.6.19 The Executive Committee also noted that in early July 2020, the Supreme Court of the Republic of Korea had rendered its judgment in the lawsuit filed by the owners of the *Haekup Pacific* against the owners of the colliding vessel, the *Zheng Hang*, and had remanded the case to the appellate court so that the appellate court could reconsider the question concerning whether the vessel's salvage and removal would be necessary and whether the administrative orders to salvage and remove the vessel should be revoked.
- 3.6.20 The Executive Committee further noted that the 1992 Fund's lawyers were of the view that the judgment appeared to have opened a way so that the City of Yeosu could revoke the salvage and removal orders if it chose to do so, and if revoked, then there would be no claim from the owners of the *Haekup Pacific* against the 1992 Fund. However, it remained to be seen how the appellate court and/or the City of Yeosu would decide, and the legal proceedings were likely to take at least one to two years before they may be concluded.

#### **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 at the next session of the Committee.

3.7	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i> Document IOPC/NOV20/3/7</b>		<b>92EC</b>	
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- 3.7.1 The 1992 Fund Executive Committee took note of document IOPC/NOV20/3/7 which contained information relating to the *Alfa I* incident.
- 3.7.2 The Executive Committee recalled that since no limitation fund had been established, the insurer was liable for the full amount claimed, i.e. for EUR 15.8 million. It was also recalled that in February 2018, the Bank of Greece had revoked the insurer's license and placed the company into liquidation for failure to maintain the necessary solvency capital requirements under Greek law. It was further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.
- 3.7.3 The Executive Committee also recalled that in June 2019, the insurer had filed an appeal to the Supreme Court against the March 2018 judgment issued by the Piraeus Court of Appeal which had distinguished the case of carriage of more than 2 000 tonnes of oil (in which case the 1992 CLC limit



applied), from the case of carriage of 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 noted that in January 2020, the 1992 Fund's lawyers reported that the liquidator's website indicated that the claim submitted by the 1992 Fund had been dismissed, without giving any reason.
- 3.7.5 It was also noted that the 1992 Fund's lawyers had sent the liquidator a declaration protesting the dismissal of the 1992 Fund's claim and requesting a full list of the admissible claims and the justification for the liquidator's refusal to include the 1992 Fund's claim within the list. However, the liquidator refused to provide the list of other claims, citing confidentiality reasons under the GDPR as a reason not to provide the information.
- 3.7.6 It was further noted that the 1992 Fund's lawyers had filed an appeal before the Uni Membered Court of First Instance of Athens, which was due to be heard in May 2020 but was delayed due to the outbreak of the COVID-19 pandemic. A new date for the court hearing is awaited.
- 3.7.7 It was noted that the main clean up contractor (who is working with the 1992 Fund's lawyers in pursuing the balance of its claim from the insurer), did not appeal, but had submitted before the Piraeus Court of First Instance a writ of action against the liquidator for a declaratory judgment which ruled that the procedure followed by the liquidator was irregular. It was further noted that pleadings for that writ of action were filed in October 2020, and a date of hearing would be set thereafter.
- 3.7.8 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*

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

*Applications for prenotated mortgages — Athens*

- 3.7.11 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.
- 3.7.12 It was noted that the decision on the appeal is important, not only because it concerns several and the most valuable properties of the insurer, but because it will be the first opportunity for the Supreme Court to consider the legal issues arising from the amendment to the law in January 2016, and will likely influence the subsequent appeal filed by the insurer regarding the Piraeus properties.

*Applications for prenotated mortgages — Piraeus*

- 3.7.13 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. The insurer (now in liquidation) appealed the decision of the Piraeus Court of Appeal to the Supreme Court, and a hearing date was set for February 2020.
- 3.7.14 It was noted that at that hearing, the 1992 Fund's lawyers submitted pleadings and a judgment was expected to be issued within the next three to five months, but matters were delayed by the outbreak of the COVID-19 pandemic and the judgment is still awaited.
- 3.7.15 It was 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.
- 3.7.16 It was noted that the insurer had also appealed the decision from the Piraeus Court of Appeal to the Supreme Court and the judgment was awaited.

**1992 Fund Executive Committee**

- 3.7.17 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	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/NOV20/3/8</b>		<b>92EC</b>	
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- 3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV20/3/8 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 recalled 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 recalled that the shipowner had not responded to requests from the Omani Government to pay compensation for the damage caused by the *Nesa R3* incident. The Executive Committee also recalled that the shipowner/insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Executive Committee further recalled that the Omani Government had commenced legal proceedings against the shipowner and its insurer in the Court of Muscat and that in February 2016, the 1992 Fund had joined in the legal proceedings.
- 3.8.5 The Executive Committee recalled that in December 2017, the Court of Muscat rendered a judgment finding that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the 1992 Fund and the Omani Government, totalling respectively, OMR 1 777 113.44 plus BHD 8 419.35, and OMR 4 154 842.80, i.e. the amounts paid by the 1992 Fund at the time of the judgment and the balance of the amount claimed by the Omani Government. The Executive Committee further recalled that this judgment was appealed by both the Omani Government and the 1992 Fund and that the appeal proceedings were still ongoing.

- 3.8.6 The Executive Committee recalled that, following the settlement of the claims, the 1992 Fund had been subrogated to all claims arising out of the incident, and the Omani Government had agreed to withdraw from Court all claims settled with the 1992 Fund.
- 3.8.7 The Executive Committee noted that the 1992 Fund would only be able to bring legal proceedings against the shipowner and insurer in the United Arab Emirates and Sri Lanka, respectively, to recover the amount paid in compensation once the legal proceedings in Oman are finalised. It was further noted that the 1992 Fund was investigating the financial position of the shipowner/insurer to ascertain their solvency.
- 3.8.8 The Executive Committee recalled that the legal proceedings had progressed slowly due to the fact that it had been difficult to contact the insurer, who had from the beginning refused to pay compensation. It was also noted that the Court of Muscat had postponed its hearings several times, to allow time for attempts to contact the insurer.
- 3.8.9 The Committee noted that, while it had been expected that the Court of Muscat would reach a decision on the appeal proceedings in 2020, the proceedings were further slowed by the COVID-19 situation, which caused a suspension of all court activities in Oman. The Executive Committee further noted that court activities were expected to resume later in the year.

#### ***1992 Fund Executive Committee***

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

3.9	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Trident Star</i> Document IOPC/NOV20/3/9</b>		<b>92EC</b>	
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- 3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV20/3/9 relating to the *Trident Star* incident.
- 3.9.2 The Committee recalled that on 24 August 2016, the *Trident Star* had spilled an unconfirmed quantity of marine fuel oil into the water at the ATT Tanjung Bin oil terminal, Port of Tanjung Pelepas (PTP), during loading operations.
- 3.9.3 It was recalled that the PTP was situated on the estuary of the Pulai River in Johor, Malaysia and that the oil spill appeared to have drifted across the mouth of the River to the PTP container terminal. It was also recalled that approximately 3.5 kilometres of the container terminal wharf and several cargo vessels and tugs had been oiled following the incident. It was further recalled that some of the container terminal's berths had been closed or had experienced disruption of their normal activity for about three weeks.

#### ***Claims for compensation***

- 3.9.4 The Committee noted that claims arising from this incident exceeded the 1992 CLC limit applicable to the *Trident Star* of RM 27.1 million and that therefore, the 1992 Fund was liable to pay compensation. It was recalled, however, that all payments were recoverable from the shipowner's insurer under STOPIA 2006.
- 3.9.5 It was noted that claims had been settled at USD 7.5 million of which the Fund had paid USD 561 695. It was also noted that the shipowner's insurer had reimbursed the Fund under STOPIA 2006.
- 3.9.6 The Committee noted that claims by a group of shipping companies, totalling USD 6.6 million, remained outstanding and were being assessed by the Shipowners' Club and the 1992 Fund. It was noted that these claims were related to costs and losses incurred as a result of 22 vessels being

contaminated, as well as costs and losses incurred as a result of the diversion to a Singapore terminal of another 20 vessels in order to avoid the pollution in the PTP container terminal.

*Limitation proceedings*

3.9.7 The Committee recalled that nine actions comprising 19 claimants (the operator of the container terminal affected by the pollution and 18 shipping companies) had been filed in the limitation proceedings. It was noted, however, that following out-of-court settlements reached with claimants, the only remaining actions were those by a group of shipping companies, totalling USD 6.6 million.

3.9.8 It was recalled that since the 1992 Fund was liable to pay compensation, it was intervening in the limitation proceedings in order to protect the Fund's rights.

**1992 Fund Executive Committee**

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

3.10	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Nathan E. Stewart</i></b> <b>Document IOPC/NOV20/3/10</b>		<b>92EC</b>	
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3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/NOV20/3/10 relating to the *Nathan E. Stewart* incident.

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

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

- there is a question over whether the *Nathan E. Stewart/DBL 55* ATB falls within the definition of 'ship' under Article I(1) of the 1992 CLC; and
- at the time of the incident, the barge was empty and therefore, was not carrying oil in bulk as cargo. In addition, it has not been established whether during any previous voyage it had carried any persistent oil in bulk as cargo. Its last known cargo was jet fuel and gasoline, which are non-persistent products.

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

*Civil proceedings*

3.10.5 The Executive Committee recalled that in October 2018, a First Nation community consisting of five tribes had brought a legal action against the owners, operators, the master and an officer of the *Nathan E. Stewart/DBL 55* ATB in the Supreme Court of British Columbia. It was also recalled that the claimants also included as third parties: the Ship-source Oil Pollution Fund (SOPF), the 1992 Fund and the Supplementary Fund.

3.10.6 It was further recalled that the claimants argued that they had aboriginal title and sovereign rights in the affected area.

- 3.10.7 The Executive Committee recalled that the claimants argued for the application of the Bunkers Convention 2001 or, as an alternative, the 1992 CLC and in the latter case, the claimants would seek from the 1992 Fund and the Supplementary Fund compensation for any damage in excess of the 1992 CLC.
- 3.10.8 It was also recalled that the shipowners had filed an application to stay the proceedings at the Supreme Court of British Columbia, maintaining that the Federal Court of Canada was a more suitable forum for those claims to be adjudicated.
- 3.10.9 The Executive Committee noted that the proceedings at the Supreme Court had been stayed pending final determination of the limitation action instituted by the shipowners in the Federal Court.

*Limitation proceedings*

- 3.10.10 The Executive Committee recalled that in May 2019, the shipowners had filed an action before the Federal Court to establish a limitation fund and stay the Supreme Court proceedings.
- 3.10.11 The Executive Committee recalled that the Federal Court had rendered a decision in July 2019, which granted the shipowners' motion and ordered that any claimants were precluded from commencing or continuing proceedings against the shipowners before any court other than the Federal Court, until the limitation action had been determined. It was also recalled that the Federal Court had decided that a limitation fund should be constituted pursuant to the Bunkers Convention 2001 and the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96), on the basis of the combined tonnage of the tug and barge. It was further recalled that the Federal Court had concluded that there was no factual basis upon which a limitation fund under the 1992 CLC could be constituted at that time.
- 3.10.12 It was also recalled that, at a later stage, the Court would have to determine whether or not, for the purpose of limitation, the barge and tug formed one unit.
- 3.10.13 The Executive Committee recalled that, eventually, the shipowners would be subject to discovery and would have to communicate all relevant information/documentation which should include the details about the nature of the substances carried on board the tug and the barge. It was recalled that this should enable the Court to reach a decision on whether or not the incident falls within the scope of the 1992 CLC.
- 3.10.14 It was recalled that, following the Federal Court's decision, the shipowners had filed with the Court a bank guarantee in the amount of CAD 5 568 000 plus interest.
- 3.10.15 The Executive Committee noted that it was very unlikely that the IOPC Funds would remain involved in this case. It was noted that the IOPC Funds had to wait until the shipowners disclose their list of documents to determine whether the IOPC Funds should remain a party to the proceedings.

***1992 Fund Executive Committee***

- 3.10.16 The 1992 Fund Executive Committee noted that the Director would report any further developments at the next session of the Executive Committee.

3.11	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/NOV20/3/11</b>		92EC	
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- 3.11.1 The 1992 Fund Executive Committee took note of document IOPC/NOV20/3/11 relating to the *Agia Zoni II* incident.

*Limitation fund claims evaluation procedure*

3.11.2 It was recalled that the limitation fund administrator had concluded the evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing his provisional assessments totalling EUR 45.45 million based predominantly on a review of the rates charged by claimants.

3.11.3 It was noted that court hearings took place in 2020 to deal with the eight appeals lodged against the limitation fund administrator's assessments and the 1992 Fund had filed a subrogated claim against the limitation fund for all payments made by the 1992 Fund which were not part of the limitation proceedings.

*Investigation into the cause of the incident*

3.11.4 It was recalled that the Technical University of Athens had published its report into the cause of the incident and had concluded that the *Agia Zoni II* had sunk after an explosion.

3.11.5 It was also recalled that another investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had concluded that the *Agia Zoni II* sinking had been caused by the opening of the seawater ballast valves which could only have been done from on board the vessel.

3.11.6 It was further recalled that the ASNA report considered that the accident was attributed to the deliberate and negligent actions of:

- the shipowner;
- the general manager of the owning company;
- the Designated Person Ashore (DPA) of the owning company;
- the two crew members on board at the time of the incident; and
- representatives of the salvor/clean-up contracting company.

3.11.7 It was noted that the ASNA report had concluded that the objective was to allow the ship to sink and that it had been pre-planned.

*Impact of the reports on the 1992 Funds payment of compensation to particular claimants*

3.11.8 It was also noted that the 1992 Fund's Greek lawyers had advised that the last sentence of Article 4(3) of the 1992 Fund Convention was aimed at protecting the environment and safeguarding that clean-up and preventive measures would be payable at all times.

3.11.9 It was further noted that the 1992 Fund's Greek lawyers had advised that the exercise of the right to claim clean-up expenses under the 1992 Civil Liability and Fund Conventions, by a party in the clean-up business that had intentionally caused the pollution in order to benefit from the right to claim compensation for clean-up services, would be considered an abuse by the Greek courts under the provisions of Greek legislation.

3.11.10 The Executive Committee noted, however, that the 1992 Fund's Greek lawyers had also advised that the burden of proof rested upon the 1992 Fund to prove before the courts deciding on the issue of compensation, that the claimant had intentionally caused the pollution aiming at receiving the clean-up compensation, or showed that the claimant had been condemned by a criminal court to that effect by an unappealable judgment. It was, therefore, noted that the mere suspicion of such action would not be sufficient to deny payment.

*Recourse action*

3.11.11 The Executive Committee noted that if the claimant was eventually condemned by a criminal court by an unappealable judgment to have intentionally caused the pollution, the 1992 Fund could commence a recourse action under Article 9(2) of the 1992 Fund Convention.

*Claims for compensation*

3.11.12 The Executive Committee further noted that the 1992 Fund had received 421 claims amounting to EUR 98.58 million and USD 175 000 and that the 1992 Fund had paid 179 claims amounting to EUR 14.66 million in compensation.

*Civil proceedings*

3.11.13 It was recalled that in July 2019, the 1992 Fund had been served with legal proceedings filed at the Piraeus Court of First instance by two of the clean-up contractors for the balance of their unpaid claims amounting to EUR 30.26 million and EUR 24.74 million and that in December 2019, the third clean-up contractor also served the 1992 Fund with legal proceedings for its claim of EUR 8.9 million.

3.11.14 It was noted that in September 2020, the 1992 Fund had been served with further legal proceedings for EUR 998 870 by one of the clean-up contractors and for EUR 1.42 million by three other companies involved in clean-up operations.

*Legal proceedings commenced by fisherfolk*

3.11.15 The Executive Committee recalled that in September 2019, the 1992 Fund had been served with legal proceedings by representatives of 78 fisherfolk with claims totalling EUR 2.18 million. It was noted that in September 2020, the 1992 Fund had been served with legal proceedings together amounting to EUR 293 844 by five fish traders/fisherfolk.

*Legal proceedings commenced by claimants in the tourism sector*

3.11.16 It was also noted that in September 2020, the 1992 Fund had been served with legal proceedings amounting to EUR 3.28 million by eight claimants in the tourism sector.

*Legal proceedings commenced by the Greek State*

3.11.17 It was further noted that in July 2020, the 1992 Fund had been served with legal proceedings by the Greek State to protect its rights to compensation in respect of its claim for EUR 4.85 million.

3.11.18 The Executive Committee recalled that 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 noted that every claimant with a claim against the limitation fund had the right to accept or appeal the provisional assessment by the end of September 2019 and only eight claimants had appealed.

*Director's recommendation*

3.11.19 The Executive Committee noted that, in the Director's view, since the investigations into the cause of the incident by the Public Prosecutor remained pending, it would not be appropriate to make any further advance payments to the representatives of the salvor/one of the clean-up contracting companies at this time.

*Statement by the delegation of Greece*

3.11.20 The delegation of Greece made the following statement:

*'Claims for compensation*

This delegation would like to express the high appreciation of the Greek State for all payments that have been made so far by the 1992 Fund to persons who suffered pollution damage from the *Agia Zoni II* incident, for all the ongoing endeavours being made by the experts to assess the rest of claims submitted, as well as for the 1992 Fund's recommendations to claimants whose claims have not been settled so that they engage in legal proceedings and thus protect their rights to compensation from being extinguished.

*Investigation into the cause of the incident*

With regard to the course of the investigation on the reasons for *Agia Zoni II*'s 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 delay.

Furthermore, the reports of the investigations concluded by the Technical University of Athens and the third Marine Accident Investigation Council (ASNA), constitute part of the legal procedure run by the Public Prosecutor, who has not reached his final conclusion, as he is taking into account all the evidence collected.

In addition, according to applicable national law (law 712/1970), the ASNA Report is not binding upon the Judge who evaluates it together with the other evidence.

In any case, an unappealable judgment would be required, if any persons were to be held to have intentionally or negligently caused the pollution damage.

In this respect, from a legal point of view, the implementation of the last sentence of Article 4.3 of the 1992 Fund Convention does not seem to presuppose an acquittal of such a party. In any case, should a party be unappealably condemned to have caused the pollution damage, the possibility would exist for the 1992 Fund to commence a recourse action under Article 9.2 of the 1992 Fund Convention.'

**1992 Fund Executive Committee**

3.11.21 The 1992 Fund Executive Committee noted the statement made by the Greek delegation and noted that the Director would continue to monitor this matter and would report the latest developments to the 1992 Fund Executive Committee at its next session.

3.12	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Documents IOPC/NOV20/3/12 and IOPC/NOV20/3/12/1</b>		<b>92EC</b>	
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3.12.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/NOV20/3/12 and IOPC/NOV20/3/12/1.

3.12.2 The Executive Committee recalled that on 23 June 2018, the oil and chemical tanker *Bow Jubail* (23 196 GT) had collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Kingdom of the Netherlands, resulting in a spill of fuel oil into the harbour. It was recalled that the ensuing pollution had affected vessels in the vicinity, quays and other property, and wildlife.

3.12.3 It was recalled that at the time of the incident, the *Bow Jubail* was unladen and that the oil spilled was bunker oil. It was also recalled that the shipowner had applied before the Rotterdam District



Court for leave to limit its liability in accordance with the LLMC 76/96, arguing that the incident was covered under Article 1.8 of the Bunkers Convention 2001.

- 3.12.4 The Executive Committee recalled that, in November 2018, the Rotterdam District Court had decided that the shipowner had not proved that the tanker did not contain residues of persistent oil at the time of the incident. It was recalled that the Court had assumed that the *Bow Jubail* qualified as a ship as defined under the 1992 CLC and had decided not to grant the leave to limit its liability under the Bunkers Convention 2001. It was also recalled that the shipowner had appealed to the Court of Appeal in The Hague.

#### JUDGMENT BY THE COURT OF APPEAL IN THE HAGUE

- 3.12.5 The Executive Committee noted that the Court of Appeal in The Hague had delivered its judgment on 27 October 2020, confirming the decision of the Rotterdam District Court holding that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident, as provided for in Article I(1) of the 1992 CLC. It was noted that accordingly, in the Court of Appeal's view, the Bunkers Convention 2001 did not apply and the limitation of the shipowner's liability was governed by 1992 CLC, not the LLMC 76/96.
- 3.12.6 It was noted that the Court of Appeal had concluded that what had been put forward by the shipowner in the context of its reliance on the proviso to Article I(1) of the 1992 CLC was no more than the shipowner's, at times inconsistent, statements and its expert's reports, which were based on the information provided to the expert by the shipowner. It was also noted that the Court had concluded that the certificates submitted by the shipowner did not sufficiently demonstrate the alleged 'clean condition' of the ship at the time of and shortly after the incident since there was no confirmation of that 'clean condition' from an independent and expert source. It was further noted that in the Court's view, the shipowner was responsible for the absence of such confirmation because they had blocked or at least had not organised, an independent or joint survey of the tanks, while there was every reason and opportunity to do so immediately after the incident.
- 3.12.7 The Executive Committee noted that in its judgment, the Court of Appeal had considered that there was no generally accepted standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the 1992 CLC. It was noted that in the Court's view, consideration should be given by the Parties to the 1992 Fund Convention to the creation of such a standard procedure which could then be followed, with a view to invoke the exception provided for in Article I(1) of the 1992 CLC and that shipowners and their P&I Clubs as well as the IOPC Funds and those who contribute to them, had an interest in such a procedure.

#### *Appeal to the Supreme Court*

- 3.12.8 The Executive Committee noted that the shipowner had appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands on the following grounds:
1. The Court of Appeal had assumed an undue burden of proof.
  2. The Court had disregarded that the proof may be furnished by all means.
  3. The decisions of the Court on the assessment of the evidence could not remain in place.
  4. The Court had wrongly ignored the shipowner's offer to furnish proof.

#### *Application by the 1992 Fund to join the proceedings*

- 3.12.9 It was noted that the 1992 Fund could apply to join the shipowner in the proceedings before the Supreme Court in order to request clarification from the Supreme Court on the question of the legal test that will be applied in order to decide whether there were residues on board the *Bow Jubail*.

3.12.10 The Executive Committee noted, however, that it would be for the Supreme Court to decide whether to allow the 1992 Fund to join the proceedings. It was also noted that if the Fund is allowed to join as an interested party, the Fund's interventions would be limited in scope to the complaints raised by the shipowner, as no new complaints may be raised. It was noted, however, that the 1992 Fund has the opportunity to play a more neutral role than (only) supporting the shipowner.

#### DIRECTOR'S CONSIDERATIONS

3.12.11 It was noted that the case was based on the issue of the standard of proof of whether there were residues of previous cargoes of persistent oil in an unladen tanker, and on the interpretation of the word 'residues'.

3.12.12 It was noted that according to the information provided by the shipowner, the cargo tanks had been washed and the resulting slops (tank washings mixed with cargo residues) had been discharged into reception facilities in accordance with the International Convention for the Prevention of Pollution from Ships (MARPOL). It was also noted that the tanks had been given a second wash (a so-called 'commercial wash') as required by contractual specifications to avoid contamination of products to be carried on the next voyage and that the washings from the second wash had been discharged at sea. It was further noted that a third wash had then been carried out as some white spots had been found on heating coils in two of the tanks and that the washings from this third wash were still on board at the time of the incident. The Executive Committee noted that in these circumstances, the shipowner maintained that no oil cargoes and/or residues, persistent or non-persistent, remained on board the vessel at the time of the incident.

3.12.13 The Executive Committee noted that the 1992 Fund had a financial interest in this case, as, if a final judgment decided that the 1992 Civil Liability and Fund Conventions should apply, the 1992 Fund would pay compensation as required and would be indemnified by the shipowner in accordance with STOPIA 2006 (as amended 2017), up to a limit of SDR 20 million. It was noted, however, that if the shipowner was successful in their appeal to the Supreme Court, the Bunkers Convention 2001 would apply, and the 1992 Fund would not be involved in this case.

3.12.14 The Executive Committee noted that the Director considered that the 1992 Fund should apply to join the shipowner in the appeal proceedings in the Supreme Court, in order to request a clarification from the Supreme Court on how the legal test would apply as to whether there were residues or not on board the *Bow Jubail*.

3.12.15 The Director thanked the shipowner and the Gard Club for their collaboration in this case since even if there were no financial interests on their part, the shipowner had decided to appeal to the Supreme Court in the interest of the international compensation regime.

#### *Intervention by the delegation of the Netherlands*

3.12.16 The delegation of the Netherlands confirmed that the Court of Appeal had ruled that the shipowner had not been successful in proving that there were no residues of previous cargoes of persistent oil in the *Bow Jubail* at the time of the incident and that, therefore, the 1992 CLC could apply to this case. That delegation also confirmed that the shipowner had filed for cassation and that therefore, the case was now pending a final ruling by the Supreme Court. The delegation also drew attention to the Court of Appeal's statement that there was no standard procedure to establish when a ship, that could at different times be a ship under the 1992 CLC, as well as a non-1992 CLC vessel, would cease to be a ship under the 1992 CLC. Attention was also drawn to the Court's suggestion that the IOPC Funds could establish such a procedure. The delegation indicated that the Court of Appeal seemed to suggest that the IOPC Funds should provide some clarity and for that purpose, the delegation considered that the IOPC Funds could in the future, together with the shipowners and insurers, develop a procedure to determine at what stage a vessel that can carry persistent oil and other cargoes would cease to be a ship under the 1992 CLC.

*Debate*

3.12.17 Some delegations also considered that a standard procedure should be developed, ideally involving IMO. One delegation also suggested that consideration should also be given to including the HNS Convention in the discussions since the issue involves vessels that can serve both as oil tankers and chemical tankers. One delegation, however, expressed the view that it would be best to wait for a final judgment by the Supreme Court before deciding what decisions and steps the 1992 Fund could take.

3.12.18 Several delegations considered that, given the implications of this case for the international compensation regime, the 1992 Fund should apply to join the shipowner in its appeal to the Supreme Court.

*Intervention by the observer delegation of the International Group*

3.12.19 The observer delegation of the International Group stated that this case could have consequences for the international regime and that, since the shipowner had appealed to the Supreme Court, it may be a number of years until those consequences are known. On the other hand, the shipowner and its insurer, supported by the International Group, will continue to defend that the Bunkers Convention 2001 and not the 1992 CLC, applies to this case. The *Bow Jubail* was entered into STOPIA 2006 (as amended 2017) at the time of the incident since that year the vessel was expected to carry both persistent oil and other cargoes in different voyages. Therefore, if there is a final ruling deciding that the 1992 CLC applies to this case, this case could have consequences on the STOPIA/TOPIA regime and the number of vessels entered into those agreements. Concerning the proposal for the possible development of a standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceases to be a ship under the 1992 CLC, the delegation would like to be involved in the development of any guidelines and expressed the opinion that IMO should also be involved, given the crossover questions with the Bunkers Convention 2001.

*Intervention by the observer delegation of IMO*

3.12.20 The observer delegation of IMO stated that, while the case was pending independent judgment, it was not for IMO to comment on the case. However, the issues raised by the case could be considered under the agenda item Advice and Guidance in connection with the implementation of IMO instruments, which is on the agenda of future sessions of the Legal Committee.

**1992 Fund Executive Committee**

3.12.21 The 1992 Fund Executive Committee agreed with the Director that the 1992 Fund should apply to join the shipowner in the appeal proceedings in the Supreme Court, in order to request a clarification from the Supreme Court on how the legal test would apply as to whether there were residues or not on board the *Bow Jubail* and noted that the Director would report on further developments in this case to future sessions of the Executive Committee.

**4 Compensation matters**

4.1	<b>Election of the members of the 1992 Fund Executive Committee</b> <b>Document IOPC/NOV20/4/1</b>	<b>92A</b>		
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4.1.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV20/4/1.

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

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada India Italy Netherlands Republic of Korea Spain Thailand	Ecuador Germany Ghana Liberia Malaysia Marshall Islands Morocco Philippines

4.1.3 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).

4.1.4 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.

4.1.5 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: Mr Kanagalingam Selvarasah (Malaysia)

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

4.2	<b>STOPIA and TOPIA</b> <b>Document IOPC/NOV20/4/2</b>	<b>92A</b>		<b>SA</b>
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4.2.1 The governing bodies took note of the information contained in document IOPC/NOV20/4/2 regarding the recent information on the Small Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) (hereinafter 'STOPIA 2006') and Tanker Oil Pollution Indemnification Agreement 2006 (as amended 2017) (hereinafter 'TOPIA 2006').

*Number of ships entered and not entered in STOPIA 2006*

4.2.2 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 2020 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 2019	6 578	108	6 686	98.4
20 August 2020	7 739	104	7 843	98.67

4.2.3 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*

- 4.2.4 The Supplementary Fund Assembly noted that the International Group had reported that as at 20 August 2020 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.
- 4.2.5 The Supplementary Fund Assembly also noted that the International Group is not required to provide the list of ships entered in TOPIA 2006 under the Memorandum of Understanding (MoU) between the International Group and the IOPC Funds.

*Situation in respect of coastal ships*

- 4.2.6 The governing bodies noted that, as at 20 August 2020, 340 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, 236 ships in this category had been entered in STOPIA 2006 by independent written agreements. These 236 ships were not entered in TOPIA 2006 because the size of these coastal ships 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*

- 4.2.7 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 with the International Group the difference between the STOPIA 2006 and TOPIA 2006 data reporting requirements in the MoU and that the Director will report the developments at future sessions of the governing bodies.

*Intervention by the observer delegation of the International Group*

- 4.2.8 The observer delegation of the International Group explained the reason for the substantial increase in the number of ships entered into STOPIA 2006 in 2020 to 2019. The delegation stated that the International Group had checked with the P&I Clubs and had found that one Club, in particular, had reported an additional 800 tank barges having been entered into STOPIA 2006 this year. The observer delegation noted that this increase was good news for the international regime.

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

- 4.2.9 The 1992 Fund Assembly and Supplementary Fund Assembly noted the information contained in document IOPC/NOV20/4/2. 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	<b>Submission of oil reports</b> <b>Document IOPC/NOV20/5/1</b>	<b>92A</b>	<b>SA</b>
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- 5.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/NOV20/5/1 in respect of the submission of oil reports.
- 5.1.2 The 1992 Fund Assembly noted with satisfaction that since its October 2019 session, Morocco had submitted its outstanding reports, covering a period of four years. It also noted that Sint Maarten (Kingdom of the Netherlands) had submitted its outstanding reports, all nil declarations, covering a period of 15 years.
- 5.1.3 The 1992 Fund Assembly noted that out of 21 States with outstanding reports for the 1992 Fund, nine States recorded outstanding reports for one year only and three Member States had made partial submissions in respect of 2019. It was also noted that there had been a reduction in oil reports received due to difficulties caused by measures taken in response to the COVID-19 pandemic and that it was expected that the non-submission of reports would be rectified by these States once COVID-19 restrictions had been eased.
- 5.1.4 The 1992 Fund Assembly further noted that five States had not submitted reports for four years or more and in particular, it was noted that two of those States had never submitted any reports: the Dominican Republic (21 years) and the Syrian Arab Republic (11 years).
- 5.1.5 With regard to the Supplementary Fund, it was noted that one Member State, the Netherlands, had made a partial submission.
- 5.1.6 It was also noted that the financial consequences of the missing 2019 reports could not be determined, however, the Member States that had submitted their reports for 2019 represented approximately 97% of the total contributing oil expected to be reported to the 1992 Fund and approximately 95% of the total contributing oil expected to be reported to the Supplementary Fund.

### *Online Reporting System (ORS)*

- 5.1.7 It was recalled that the Secretariat had been developing the Online Reporting System (ORS) to assist Member States to more efficiently submit contributing oil data to the Secretariat. 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 implemented and that it was expected to be operational in late 2020. It was further noted that the Secretariat expected that the work to integrate the ORS and the ERP would be addressed in 2021.
- 5.1.8 The governing bodies also noted that 29 of the 54 Member States that had registered for an account on the ORS had submitted 2019 reports online, which represented some 71% of the total volume of contributing oil reported to the 1992 Fund and 73% reported to the Supplementary Fund.
- 5.1.9 The Director expressed his gratitude for the engagement and cooperation of Member States with regards to the submission of reports and noted that he expected a number of the outstanding reports would be submitted once measures relating to COVID-19 were lifted. He also expressed his concern, however, that five Member States had outstanding reports for four years or more.
- 5.1.10 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.

*Intervention by the delegation of Greece*

- 5.1.11 The delegation of Greece informed the Assembly that Greece had submitted its oil reports in October 2020 and has thus fulfilled its obligation under the 1992 Fund Convention and the 2003 Supplementary Fund Protocol.

**1992 Fund Assembly and Supplementary Fund Assembly**

- 5.1.12 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.

5.2	<b>Report on contributions Document IOPC/NOV20/5/2</b>	<b>92A</b>		<b>SA</b>
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- 5.2.1 The governing bodies took note of the information on contributions contained in document IOPC/NOV20/5/2.
- 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 met with representatives from the Russian Federation in relation to this matter. It was further noted that the Director wrote to the Russian Federation in January 2019 reiterating his view of the Russian Federation's obligation under Article 15.4 of the 1992 Fund Convention.
- 5.2.3 It was also noted that during 2019 and since the last sessions of the governing bodies the Director had held further meetings with the Russian representatives, and at their request, the Director had written to the Prime Minister of the Russian Federation setting out the IOPC Funds' position. In March 2020, the Director received a letter from the Ministry of Transport of the Russian Federation confirming that consideration was being made to meet the Russian Federation's obligation under Article 15.4. The 1992 Fund Assembly also noted that the Russian Government was assisting in resolving the outstanding contributions due from two contributors rather than reverting to legal action.
- 5.2.4 The 1992 Fund Assembly noted that a contributor in Venezuela had outstanding contributions accumulating since May 2019 now amounting to some £658 000 corresponding to late oil reports received for the years 2006 to 2018.
- 5.2.5 The 1992 Fund Assembly also noted that the Director would continue his dialogue with the authorities in Ghana about the outstanding contributions due.
- 5.2.6 The 1992 Fund Assembly recalled that contributions were due from four contributors based in Denmark, Morocco, Switzerland (oil received in France), and the United Kingdom which had gone into liquidation. Pursuant to its decision at the October 2014 session, the 1992 Fund Assembly recalled that any balance due would be written off in the Financial Statements on receipt of final settlement.
- 5.2.7 It was further noted that outstanding contributions of some £1.1 million were received from a contributor in India on 1 December 2020.
- 5.2.8 The Supplementary Fund Assembly noted that only one Member State, the Republic of Congo, had outstanding contributions of £1 489.

*Debate*

- 5.2.9 A delegation expressed its concern that some contributors have not paid their contributions. It added that, in its view, one of the most effective measures to discourage such practice is to disclose the names of the contributors who did not fulfil their obligations, unless there is any reason not to do so.

**1992 Fund Assembly and Supplementary Fund Assembly**

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

5.3	<b>Report on investments Document IOPC/NOV20/5/3</b>	<b>92A</b>		<b>SA</b>
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- 5.3.1 The governing bodies took note of the information on the IOPC Funds' investments for the period 1 July 2019 to 30 June 2020 contained in document IOPC/NOV20/5/3. The governing bodies also noted the number of institutions used by the Funds for investment purposes and the amounts invested by each Fund during that period.

- 5.3.2 The governing bodies further noted that the Bank of England, the United States Federal Reserve and the Bank of Korea had all decreased base rates during the reporting period which had resulted in a marked negative impact on yields achieved by the Funds.

- 5.3.3 It was noted that the joint Investment Advisory Body had made no recommendations to change the lending limits in the Internal Investment Guidelines due to the credit markets remaining stable during the reporting period.

- 5.3.4 It was also noted that Barclays Bank plc, HSBC Bank plc and Lloyds Bank plc had been the Funds' designated house banks during the reporting period and that BNP Paribas and Santander UK Ltd had been designated as temporary house banks to hold euros for the *Agia Zoni II* incident. KEB Hana Bank, HSBC Korea, ING Bank Korea and KDB (Korea Development Bank) had been designated as temporary house banks to hold Korean won for the *Hebei Spirit* incident.

- 5.3.5 It was further noted that during the reporting period one GBP/EUR DCI matured in December 2019 with the principal amount being converted to euros at the expiry date with the euros to be used for the *Agia Zoni II* incident.

- 5.3.6 It was noted that investments with the house bank Lloyds Bank plc had exceeded the normal limit on one occasion for 94 days.

**1992 Fund Assembly and Supplementary Fund Assembly**

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

5.4	<b>Report of the joint Investment Advisory Body Document IOPC/NOV20/5/4</b>	<b>92A</b>		<b>SA</b>
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- 5.4.1 The governing bodies took note of the report and the first three-year self-evaluation of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund, contained at the Annex to document IOPC/NOV20/5/4.

- 5.4.2 The governing bodies noted the mandate and the composition of the IAB and that Brian Turner, Alan Moore and Beate Grosskurth had been appointed to serve until the 2020 regular sessions of the governing bodies.



- 5.4.3 The governing bodies also noted that the report of the IAB was comprehensive and included sections on the economy, credit markets and hedging currency risks. They further noted that as in previous years' reports, the IAB had referred to the Hedging Guidelines, which detail the approach to hedging a currency risk associated with the liability of an incident.
- 5.4.4 The governing bodies noted that the IAB had kept under review the holding of currencies other than pounds sterling for incidents as part of the Funds' normal assets and that the only currency currently held was a balance of approximately EUR 19.6 million against a current estimated liability of EUR 41.3 million in respect of the *Agia Zoni II* incident. The euros held for this 1992 Fund incident represented 47.4% of the estimated outstanding liability and 60% of the amount which had been levied to date for this incident.
- 5.4.5 The governing bodies also noted that only a small amount was left to be paid in respect of the *Prestige* incident and all compensation had been settled in respect to the *Hebei Spirit* incident and were detailed in the report of the IAB. It was further noted that USD 8.4 million was held as part of the working capital of the 1992 Fund and that the dollars had been purchased at an average rate of £1 = USD 1.3373.
- 5.4.6 The governing bodies noted that the IAB continued to monitor the creditworthiness of the Funds' counterparty banks in accordance with the approved investment guidelines and that the changes affecting those financial institutions were reflected in the financial institutions master list provided to the Secretariat by the IAB every quarter. It was further noted that the current list of financial institutions with which deposits might be placed stood at 34 and that they were divided into two groups with a tenor of six months and a tenor of 12 months.
- 5.4.7 The governing bodies also noted that the Barclays Bank plc and HSBC Bank plc continued to be the Funds' operational house banks. It was further noted and that Lloyds Bank plc, BNP Paribas and Santander UK Ltd were designated temporary house banks since they were being used to also hold euros for the *Agia Zoni II* incident, underlying the difficulty in placing deposits in euros in a negative interest rate environment.
- 5.4.8 The governing bodies noted the meetings that the IAB had held with the Secretariat, and with the Audit Body and the External Auditor. The governing bodies also noted the presentations given by the IAB at the September 2020 meeting of the Audit Body on the Funds' hedging process, the IAB's views on the pound sterling as the Funds' base currency and the approach adopted to protecting the Funds' assets. The governing bodies further noted that the IAB believed that holding regular meetings with the Audit Body and the External Auditor had been beneficial to all the parties involved.
- 5.4.9 The governing bodies welcomed the very first self-evaluation report prepared by the IAB regarding its performance over the past three years, which had been attached to the report of the IAB.
- 5.4.10 It was also noted that the IAB had continued to monitor the valuation of the Provident Fund 2 on a quarterly basis and would continue to provide the Secretariat comments when appropriate.
- 5.4.11 The governing bodies further noted that the IAB continued to provide support and advice to the Secretariat on a day-to-day basis as necessary and assisted in providing solutions to help optimise the returns on the Funds' investments. It was further noted that the IAB would also leverage its broad knowledge and experience within the financial markets to advise the Secretariat of future events that were likely to trigger periods of increased volatility, that would relate to the security of the Funds' assets, or have negative implications for the Funds' capital. The governing bodies noted that the members of the IAB would continue to act with diligence, caution and prudence.
- 5.4.12 The IAB drew attention to the fact that both the currency and asset markets could be affected markedly by the ongoing political uncertainty in the USA and the ongoing Brexit negotiations.

**1992 Fund Assembly and Supplementary Fund Assembly**

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

5.5	<b>Report of the joint Audit Body</b> <b>Documents IOPC/NOV20/5/5 and IOPC/NOV20/5/5/1</b>	<b>92A</b>		<b>SA</b>
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5.5.1 The governing bodies noted the report and the triennial review of the functioning of the sixth Audit Body contained in document IOPC/NOV20/5/5.

5.5.2 The governing bodies noted that the Audit Body usually met three times a year and worked to a detailed programme of activities. It was also noted that in 2020 the Audit Body had held an additional meeting and that three of four meetings had been held virtually due to the COVID-19 pandemic.

5.5.3 The governing bodies further noted that 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. The programme of activities of the Audit Body focused on six main areas in order to discharge its responsibilities under the Audit Body mandate, which were: (a) ascertaining the adequacy and effectiveness of the IOPC Funds' management and financial systems; (b) reviewing the effectiveness of the IOPC Funds' risk management; (c) reviewing the IOPC Funds' Financial Statements and reports; (d) promoting the understanding and effectiveness of the audit function within the IOPC Funds; (e) managing the process for the selection of the External Auditor; and (f) undertaking any other tasks or activities as requested by the IOPC Funds' governing bodies.

5.5.4 The governing bodies also noted that, in reviewing the effectiveness of the IOPC Funds' risk management, the Audit Body had presented its report on the work it has undertaken to date on insurers who are not members of the International Group in document IOPC/NOV20/5/5/1.

5.5.5 With respect to the review of the IOPC Funds' Financial Statements and report, the governing bodies noted that due to the implementation of the new ERP system, the Secretariat had reconsidered the audit cycle and the Audit Body had brought the review of the 2019 Financial Statements and its certification forward to the spring (April 2020 meeting) instead of June 2020.

5.5.6 The governing bodies further noted that pursuant to its review of the Financial Statements and consideration of all relevant reports and comments provided by the External Auditor, the Audit Body recommended the approval of the Financial Statements of the 1992 Fund and the Supplementary Fund for the year ending 31 December 2019.

5.5.7 The governing bodies noted that, in accordance with the Composition and Mandate of the Audit Body, the functioning of the Audit Body was to be reviewed by the 1992 Fund Assembly and the Supplementary Fund Assembly every three years on the basis of an evaluation report from the Chair of the Audit Body. The triennial review included a description of the main tasks it had accomplished during the last three years, namely:

- reviewing the organisations' Financial Statements (for financial years 2017, 2018 and 2019) and reporting on them to the governing bodies at each regular session;
- conducting the formal review and interview sessions with the External Auditor, recommending the reappointment of BDO for a second four-year term (2020–2023), proposing the selection process of the External Auditor for future periods, and the relevant amendment to Financial Regulation 14 of the 1992 Fund and Supplementary Fund, at the October 2019 sessions of the governing bodies.

- 5.5.8 The governing bodies noted that in order to conduct a triennial review, the Audit Body had conducted a structured self-assessment of performance with comments provided by each Audit Body member and summarised for evaluation by the Chair of the Audit Body. The Chairs of the 1992 Fund Assembly and the Supplementary Fund Assembly, and the Director on behalf of the Secretariat had also been invited to provide comments. The governing bodies noted that the self-assessment of the sixth Audit Body had been included in section 5 of the review (document IOPC/NOV20/5/5, Annex II).
- 5.5.9 The governing bodies further noted that in addition to the self-assessment, the external expert had conducted a review of the best practice in the sixth Audit Body on the basis of the 'Codes of Corporate Governance'. It was further noted that the conclusions of this review had been included in section 7 of the review (document IOPC/NOV20/5/5, Annex II).
- 5.5.10 The governing bodies noted that based on the self-assessment and review of the best practice, the sixth Audit Body had operated well and had worked diligently.

#### *Debate*

- 5.5.11 The Director thanked the members of the sixth Audit Body for their hard work during these difficult times and their commitment to the good governance of the IOPC Funds. He further thanked the Chair of the Audit Body, Mr Makoto Harunari, in particular, for having taken over the leadership of the Audit Body after the sad passing of Mr Jerry Rysanek in January 2019.

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

- 5.5.12 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their appreciation to the Chair of the Audit Body and the other Audit Body members for the work they had carried out during very difficult times. They also thanked them for their report and noted the recommendation of the Audit Body to approve the 2019 Financial Statements and Auditor's Report and Opinions.

#### DOCUMENT IOPC/NOV20/5/5/1 RISK MANAGEMENT — UPDATE ON THE REVIEW OF INSURANCE PROBLEMS

- 5.5.13 The governing bodies took note of the conclusions, recommended measures and future tasks to be undertaken in respect of the risk relating to insurers who are not members of the International Group (non-IG insurers) contained in document IOPC/NOV20/5/5/1.
- 5.5.14 The governing bodies recalled that the Audit Body had been working on the issues arising from incidents involving non-IG insurers as part of its work on risk management since April 2018. It was also recalled that the Audit Body had reported on this issue at the 2018 and 2019 regular sessions of the governing bodies and had considered the comments received from Member States. The governing bodies noted that the Audit Body had taken those comments into consideration when preparing its final report on non-IG insurers (document IOPC/NOV20/5/5/1).
- 5.5.15 The governing bodies noted the financial burden resulting from incidents involving non-IG insurers and the structure of the compensation regime. It was further noted that if the stakeholders of the international compensation system did not fulfil their responsibilities, this could result in a serious risk of undermining the system.
- 5.5.16 The governing bodies noted that given the complexity of the subject, the Audit Body had classified the issues arising from incidents involving the IOPC Funds and non-IG insurers into five issues as set out in section 3 of the document and considered the measures that could be taken to deal with each one of them.
- 5.5.17 The governing bodies noted the measures recommended by the Audit Body to prevent the occurrence of insurance gaps and the measures to respond to an insurance gap. The governing

bodies also noted the measures to be taken when non-IG insurers refused to pay compensation for invalid reasons, how to facilitate cooperation between non-IG insurers and the IOPC Funds, and how to cope with the insolvency of non-IG insurers. The governing bodies further noted the recommendations of the Audit Body on how to address the suggested measures. The governing bodies noted that both IMO and the IOPC Funds were the main organisations that would need to be involved in the implementation of any of the suggested measures. It was also noted that the Audit body had recommended, subject to the approval of the Assembly, that the Director share the Audit Body's report on the risk relating to non-IG insurers with IMO and to work with IMO to address the various measures.

- 5.5.18 The governing bodies noted the idea of raising the CLC limit in order to achieve equal footing between the IG Clubs and non-IG insurers. The governing bodies also noted that the Audit Body had not made a recommendation on this issue but had suggested that it could be discussed by the seventh Audit Body.

*Debate*

- 5.5.19 The Director also thanked the sixth Audit Body and the Chair, in particular, for their hard work on this important issue.

**1992 Fund Assembly and Supplementary Fund Assembly**

- 5.5.20 The Chair of the 1992 Fund Assembly took note of the report presented by the Chair of the Audit Body and proposed that this important matter be discussed at a future session due to the time constraints under which the remote meeting was being held.
- 5.5.21 The Chair of the 1992 Fund Assembly also noted that the newly elected Audit Body would continue to examine this important matter when reviewing the risk management of the organisation. He added that the Director would present the report to the IMO Secretariat.
- 5.5.22 The 1992 Fund Assembly and the Supplementary Fund Assembly expressed their appreciation to the members of the sixth Audit Body, and in particular to the Chair of the Audit Body, for their outstanding work.

5.6	<b>2019 Financial Statements and Auditor's Report and Opinions Documents IOPC/NOV20/5/6, IOPC/NOV20/5/6/1, IOPC/NOV20/5/6/2</b>	92A		SA
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- 5.6.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of the information contained in document IOPC/NOV20/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2019, contained in documents IOPC/NOV20/5/6/1 and IOPC/NOV20/5/6/2.
- 5.6.2 A representative of the External Auditor, BDO International, Mr David Eagles, introduced the External Auditor's Report and Opinion for the 1992 Fund and the External Auditor's Opinion for the Supplementary Fund.
- 5.6.3 The governing bodies noted that the 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 previous years.
- 5.6.4 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 2019 Financial Statements for each organisation.

- 5.6.5 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.
- 5.6.6 The 1992 Fund Assembly took note that there were no new recommendations in the External Auditor's Report on the 2019 Financial Statements and noted the Director's responses to recommendations made by the External Auditor in previous years. It was further noted that the recommendations had either been fully implemented or appropriate action was being taken.
- 5.6.7 The governing bodies welcomed the fact that the External Auditor was able to undertake the audit earlier, despite the need to work remotely for the final phase of the audit as a consequence of the COVID-19 pandemic, with the External Auditor being able to issue their opinion on 20 April 2020, over two months earlier than in 2019.

#### ***1992 Fund Assembly Decision***

- 5.6.8 The 1992 Fund Assembly approved the Financial Statements of the 1992 Fund for the financial year 2019.

#### ***Supplementary Fund Assembly Decision***

- 5.6.9 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2019.

### **6 Financial policies and procedures**

6.1	<b>Election of members of the joint Audit Body</b> <b>Documents IOPC/NOV20/6/1 and IOPC/NOV20/6/1/1</b>	<b>92A</b>		<b>SA</b>
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- 6.1.1 The governing bodies noted that before the election of the members of the Audit Body could take place, the ballot procedure for the election would need to be approved.

DOCUMENT IOPC/NOV20/1/3/2 – TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS – VOTING (READ IN CONJUNCTION WITH DOCUMENT IOPC/NOV20/6/1/1)

- 6.1.2 The governing bodies noted the information contained in document IOPC/NOV20/1/3/2 on the possible temporary suspension of Rules of Procedure relating to voting and that the document was to be read in conjunction with document IOPC/NOV20/6/1/1 on the ballot procedure for the election of the members of the joint Audit Body.
- 6.1.3 It was noted that in the event that the 1992 Fund Assembly were to decide to carry out the vote by email, Rule 37 of the Rules of Procedure would need to be temporarily suspended as it would not be possible to carry out the vote by secret ballot.
- 6.1.4 It was also noted that, in the event that the Assembly decided to carry out the election by using an online voting system, it would not be possible to appoint two scrutineers from the Members States to be present and therefore, Rule 38 of the Rules of Procedure would have to be suspended to allow votes to be scrutinised by the third party providing the online service.

- 6.1.5 It was noted that, in the Director's view, none of the other Rules relating to voting would require temporary suspension or amendment in the event that the 1992 Fund Assembly were to adopt any of the voting options proposed.

DOCUMENT IOPC/NOV20/1/3/3 – TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS – FEEDBACK FROM MEMBER STATES ON DOCUMENT IOPC/NOV20/1/3/2

- 6.1.6 The governing bodies noted the information contained in document IOPC/NOV20/1/3/3 containing the feedback received from Member States.

- 6.1.7 It was noted that all States who submitted feedback supported the Director's view that Rules 34–36 and 39–40 of the Rules of Procedure would not be affected by an election taking place during a remote session. It was also noted that 14 of the 15 States who submitted feedback supported the proposal that the election of the joint Audit Body should be carried out through an online voting tool and also supported the consequential proposal to temporarily suspend Rule 38 relating to the appointment of scrutineers.

DOCUMENT IOPC/NOV20/6/1/1 – ELECTION OF MEMBERS OF THE JOINT AUDIT BODY – BALLOT PROCEDURE

- 6.1.8 The governing bodies took note of the information contained in document IOPC/NOV20/6/1/1. They noted that the term of office of the present members of the joint Audit Body of the 1992 Fund and the Supplementary Fund would expire at the December 2020 sessions of the governing bodies and that a new joint Audit Body would be elected.

- 6.1.9 It was noted that, since the December 2020 sessions were being held remotely, the established practice of the Assembly for the election of members of the Audit Body, which in part presupposes in-person meetings, would need to be adapted.

- 6.1.10 The governing bodies noted the three possible options explored by the Director for conducting the ballot procedure on this occasion, namely:

- Use of an online voting tool;
- vote by email; or
- vote by correspondence.

- 6.1.11 The governing bodies also noted the information provided for each of the options above in respect of the Rules of Procedure that would require temporary suspension or amendment, any departure from established practice that would result from adopting each of the possible ballot procedures and the additional practical information on how the vote would take place in each case. It was further noted that, having considered the three options, the Director was of the view that the most practical and secure method to carry out the ballot was through the use of an online voting tool.

- 6.1.12 It was noted that, in response to the Director's request in document IOPC/NOV20/1/3/2 on the possible temporary suspension of one of the 1992 Fund Rules of Procedure relating to voting, 14 of the 15 States who had submitted feedback had supported the Director's proposal that the election of the joint Audit Body should be carried out through the use of an online voting tool. It was noted that those States had also supported the consequential proposal to temporarily suspend Rule 38 relating to the appointment of scrutineers (see section 1.4 above).

- 6.1.13 It was further noted that three States had provided additional comments, suggestions or questions and that Singapore had expressed the view that voting by correspondence offered greater secrecy and security for the election process than online voting. The Director pointed out that the

possibility of providing a hybrid solution of both voting online and by correspondence, as suggested by Singapore, had been explored. The Director pointed out that the example of the vote held by the International Hydrographic Organization, referred to by Singapore, had been successful, but that it had taken three months to complete. He explained that this would be a concern in the case of the Audit Body, whose meetings were carefully timed around the processing of the accounts.

- 6.1.14 It was recalled that, further to the suggestion of Canada, in order to provide delegations with a clear picture of the proposed online voting system in advance of the meeting, delegations had been invited to trial the online voting system with a test ballot which was open from 11.00 am (GMT) on Thursday, 26 November to 9.00 am (GMT) Friday, 27 November 2020 (see circular IOPC/2020/Circ.14). It was noted that the trial was successful and that of the 65 States who could participate in the trial, 38 votes were cast, no votes were rejected and no invalid votes were cast.
- 6.1.15 The Assembly was invited to decide whether to proceed with the election and, if so, which ballot procedure to adopt, taking into account the Director's considerations in document IOPC/NOV20/6/1/1, the information provided in document IOPC/NOV20/1/3/2 on the possible temporary suspension of one of the 1992 Fund Assembly Rules of Procedure relating to voting as well as the feedback provided by Member States on the voting options, as set out in document IOPC/NOV20/1/3/3 and the experience of the voting trial.

#### *Debate*

- 6.1.16 Some delegations expressed concern that the use of an online voting system was less secure than a vote by correspondence. One delegation noted in particular that voting by correspondence would enable those Member States with representatives in London to be able to deliver their vote directly to the IOPC Funds' Secretariat. That delegation noted the Director's concerns with regard to the timing that such process would take, but stated that, in its view, it would be possible to expedite that process with the cooperation of all parties. That delegation expressed its preference for a solution that includes the option of voting by correspondence. It emphasised, however, that whichever option was adopted by the 1992 Fund Assembly, it should not set a precedent for future elections either within the forum of the IOPC Funds or other fora, such as IMO.
- 6.1.17 Many delegations supported the view that any decision taken by the 1992 Fund Assembly with regard to the election, was specifically for the purpose of this session and the election of the Audit Body only, in light of the COVID-19 pandemic.
- 6.1.18 Many delegations expressed their support for the use of the online voting system. Several delegations stated that the online voting system was the best solution under the current circumstances. A number of delegations noted that the online voting procedure provided a pragmatic solution which would enable the IOPC Funds and the Audit Body itself to continue its work.
- 6.1.19 Some delegations who had trialled the online voting system confirmed that they had found it a practical, transparent and efficient process. One delegation stated that it did not consider that voting by correspondence would provide further security than that of the online voting system.
- 6.1.20 In light of the substantial support for the online voting system, those delegations who had expressed concerns and a preference for a vote by correspondence, confirmed that they would agree to the use of an online tool, provided it did not in any way set a precedent for future sessions.

**1992 Fund Assembly Decision**

- 6.1.21 The 1992 Fund Assembly decided to proceed with the election of the members of the joint Audit Body and to conduct the ballot procedure through the use of an online voting tool. It was noted that the decision to adopt this procedure applied to this session only and was for the sole purpose of the election of the members of the joint Audit Body in light of the COVID-19 pandemic.
- 6.1.22 The 1992 Fund Assembly also decided to temporarily suspend Rule 38 of the Rules of Procedure.

**Supplementary Fund Assembly**

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

## DOCUMENT IOPC/NOV20/6/1 – ELECTION OF MEMBERS OF THE JOINT AUDIT BODY

- 6.1.24 It was noted that, in accordance with the Composition and Mandate of the joint Audit Body which was adopted in October 2008, the Audit Body would be composed of seven members elected by the 1992 Fund Assembly for three years: six named individuals nominated by 1992 Fund Member States and one named individual not related to the organisations (an ‘external expert’) with expertise and experience in financial and audit matters, nominated by the Chair of the 1992 Fund Assembly.
- 6.1.25 The governing bodies noted that, in response to a circular from the Director calling for nominations (IOPC/2020/Circ.6), eight nominations had been received from 1992 Fund Member States by the deadline of 30 June 2020:
- |                               |  |
|-------------------------------|--|
| Mr Alfred H.E. Popp, CM, Q.C. | Nominated by Canada (for a first term)               |
| Mrs Birgit Sølling Olsen      | Nominated by Denmark (for a second term)             |
| Mr Arnold Rondeau             | Nominated by France (for a first term)               |
| Mr Vatsalya Saxena            | Nominated by India (for a second term)               |
| Dr Hideo Osuga                | Nominated by Japan (for a first term)                |
| Captain Thomas F. Heinan      | Nominated by the Marshall Islands (for a first term) |
| Mr José Luis Herrera Vaca     | Nominated by Mexico (for a third term)               |
| Mr Watchara Chiemanukulkit    | Nominated by Thailand (for a first term)             |

- 6.1.26 The governing bodies also noted that as on this occasion there were sufficient nominations to fill the vacancies, the candidate nominated by Mexico for a third term, Mr José Luis Herrera Vaca had withdrawn his nomination on 13 October 2020 and would not be put forward for election.
- 6.1.27 It was further noted that the Chair of the 1992 Fund Assembly had recommended that the tenure of Mr Michael Knight as external expert be extended, exceptionally, beyond his third three-year term, until 31 December 2021. This extension would ensure the continuity of the work of the Audit Body and would enable Mr Knight to assist the Secretariat with the election of his successor.
- 6.1.28 The governing bodies further noted that the Chair and Vice-Chair of the Audit Body would be appointed on the proposal of the Chair of the 1992 Fund Assembly, in consultation with the Chair of the Supplementary Fund Assembly, from among the six members elected.
- 6.1.29 Further to its decision in paragraph 6.1.21 above, the 1992 Fund Assembly carried out a vote by secret ballot using an online voting system organised by the third-party provider, UK Engage. Since it was not possible to appoint two scrutineers from the Member States present to scrutinise the votes cast, having temporarily suspended Rule 38 of the Rules of Procedure earlier in the session, scrutiny was provided via UK Engage, as an independent party.



6.1.30 Following the closure of the voting period, and after the votes had been scrutinised, the results were announced as follows:

Mr Alfred H.E. Popp, CM, Q.C. (Canada)	55 Votes
Mrs Birgit Sjølling Olsen (Denmark)	57 Votes
Mr Arnold Rondeau (France)	55 Votes
Mr Vatsalya Saxena (India)	44 Votes
Dr Hideo Osuga (Japan)	63 Votes
Captain Thomas F. Heinan (Marshall Islands)	45 Votes
Mr Watchara Chiemanukulkit (Thailand)	39 Votes

A total number of 66 Member States voted to elect the members of the joint Audit Body.

### ***1992 Fund Assembly Decisions***

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

Mr Alfred H.E. Popp, CM, Q.C. (Canada)
Mrs Birgit Sjølling Olsen (Denmark)
Mr Arnold Rondeau (France)
Mr Vatsalya Saxena (India)
Dr Hideo Osuga (Japan)
Captain Thomas F. Heinan (Marshall Islands)

6.1.32 In respect of the external expert, Mr Michael Knight, the Assembly decided to extend the tenure until 31 December 2021.

6.1.33 On the proposal of the Chair of the 1992 Fund Assembly and in consultation with the Chair of the Supplementary Fund Assembly, the governing bodies elected Mrs Birgit Sjølling Olsen as Chair and Mr Vatsalya Saxena as Vice-Chair of the seventh Audit Body for the three-year term.

### ***Supplementary Fund Assembly***

6.1.34 The Supplementary Fund Assembly noted the decisions taken by the 1992 Fund Assembly.

#### *Interventions by the Chair of the 1992 Fund Assembly, Chair of the Supplementary Fund Assembly and the Director*

6.1.35 Speaking on behalf of the 1992 Fund Assembly, the Chair thanked the States who had nominated candidates as well as to the persons nominated for their willingness to serve on the Audit Body. Furthermore, he thanked the outgoing members of the sixth Audit Body for their hard work and dedication.

6.1.36 The Chair of the Supplementary Fund Assembly congratulated the members of the new Audit Body and stated that he looked forward to working with them in the coming year.

6.1.37 On behalf of the Secretariat, the Director welcomed and congratulated the new Audit Body, and expressed that he looked forward to working with them.

#### *Interventions by the newly elected Chair and Vice-Chair of the seventh Audit Body*

6.1.38 Mrs Birgit Sjølling Olsen expressed her gratitude for the trust placed in her as the Chair, the Vice-Chair and the other newly elected members. She expressed that they would do their best to serve

under their mandate and that they looked forward to working on the important tasks under the Audit Body and working together with the Secretariat and the Chairs of the governing bodies.

- 6.1.39 Mr Vatsalya Saxena also thanked the governing bodies and Member States and expressed that he hoped to continue to contribute substantially to the functioning of the Audit Body.

6.2	<b>Appointment of the Investment Advisory Body Document IOPC/NOV20/6/2</b>	92A		SA
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- 6.2.1 The governing bodies noted the information contained in document IOPC/NOV20/6/2 regarding the mandate and the role of the joint Investment Advisory Body (IAB) in advising the Director on the IOPC Funds' investments, and of the valuable contribution made by its members throughout the years.

- 6.2.2 The governing bodies also noted the expiration of the mandate of the current IAB members. The governing bodies further noted the Director's proposal to reappoint Ms Beate Grosskurth and Mr Alan Moore for the next three-year period until 2023, and Mr Brian Turner for a period of two years until 2022, while a suitable replacement was being sought.

- 6.2.3 The Director thanked the members of the IAB for their sound advice in very difficult and uncertain times over the last three years.

#### *Debate*

- 6.2.4 One delegation supported the regular renewal of Member State representation and externally appointed specialists on committees and advisory bodies and suggested that consideration be given to the development by the Secretariat of rotation and succession planning guidelines for consideration by the governing bodies.

- 6.2.5 The Director said that he would be happy to examine this matter with the Audit Body as it was a governance issue and added that he would report back to the Assembly.

#### ***1992 Fund Assembly Decision***

- 6.2.6 The 1992 Fund Assembly decided to reappoint Ms Beate Grosskurth and Mr Alan Moore as members of the joint Investment Advisory Body for a term of three years and reappoint Mr Brian Turner for a period of two years, while a suitable replacement was being sought.

#### ***Supplementary Fund Assembly***

- 6.2.7 The Supplementary Fund Assembly took note of the decision of the 1992 Fund Assembly.

## **7 Secretariat matters**

7.1	<b>Secretariat matters Document IOPC/NOV20/7/1</b>	92A		SA
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- 7.1.1 The governing bodies took note of the information contained in document IOPC/NOV20/7/1 regarding the operation of the Secretariat.

- 7.1.2 The governing bodies noted that there were 35 posts within the structure of the Secretariat, however, there were 25 staff members working in the Secretariat. The governing bodies also noted there were seven vacant posts in the Professional Category: the posts of two in-house Translators (French and Spanish), External Relations Officer, Claims Manager, Office Manager, Legal Counsel and Policy Officer (newly established in 2020), and that it was only the post of Claims Manager and Policy Officer which had been budgeted for in 2021. The governing bodies further noted that there

were three vacant posts in the General Service category: one in the Director's Office, one in the Claims Department and one in the Finance and Administration Department, and that none of these posts had been budgeted for in 2021.

- 7.1.3 The governing bodies noted that Mr Kensuke Kobayashi resigned from his post of Legal Counsel effective 30 June 2020.
- 7.1.4 The governing bodies also noted that Mr Modesto Zotti resigned from his post of Office Manager in 2020 having served the IOPC Funds for over 35 years. The governing bodies also noted that following Mr Zotti's departure, the Director has taken the opportunity to review the staff requirements in the Secretariat and since the role of Office Manager had changed since the Secretariat relocated to IMO building, the Director had decided to reallocate the tasks which were still required to the IT/Office Manager (formerly IT Manager), the IT Officer and the IT/Office Administrator (formerly IT/Administrative Assistant).
- 7.1.5 The governing bodies further noted that following a job classification review of the IT/Office Administrator job description, which was updated to include the additional office management duties/areas of responsibility, the Director promoted the incumbent, Mr Paul Davis to the grade of G7 with effect from 1 March 2020.
- 7.1.6 The governing bodies also noted that following the departure of the Legal Counsel, Mr Kensuke Kobayashi, the Director had decided to create the position of Policy Officer at the P3 level within the Director's Office to provide expertise and be a key adviser on policy matters. The governing bodies further noted that Mr Yuji Okugawa (Japan) had been offered the post and would be joining the Secretariat whenever work was resumed from the office on a more permanent basis.

#### *Management Team*

- 7.1.7 The governing bodies noted that following the departure of the Legal Counsel, and considering the IT expertise required in order to maintain normal business operations whilst working remotely throughout the COVID-19 crisis, the Director had invited Mr Robert Owen, IT/Office Manager to attend Management Team meetings to provide key advice on IT/Office-related matters

#### *Amendments to Staff Regulations and Staff Rules*

- 7.1.8 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 2020; Annex C of the Staff Rules which contain the salary scales for staff members in the General Service category with effect from 1 May 2019; and Annex E of the Staff Rules which contain the pensionable remuneration scale for staff in the Professional and higher categories with effect from 1 February 2020.

#### *COVID-19*

- 7.1.9 The governing bodies noted that the Director had requested that all staff members work remotely from 12 March 2020, following the IMO's decision to restrict access to the IMO building.
- 7.1.10 The governing bodies also noted that the Director had already introduced a Working from Home Policy (HR Policy No. 15) with effect from 1 February 2020 and that prior to the COVID-19 situation unravelling, training had already been provided to all staff members to enable them to work from home. It was also noted that all staff had the necessary training and equipment to access the IOPC Funds' systems remotely in a secure manner which the Director believed enabled a smoother transition to remote working for all staff members.
- 7.1.11 The governing bodies further noted that additional IT equipment had been allocated and purchased, that the Microsoft Teams platform had been used to communicate internally and that

this had been the main vehicle for communication and holding meetings since the Secretariat had been working remotely.

- 7.1.12 The governing bodies also noted that the IOPC Funds had been closely following IMO in respect of the re-opening of the building plan and would be proceeding through the phases of office re-opening in line with the UK Government and United Nations guidelines and gradual lifting of restrictions within the United Kingdom. In this respect, the Director along with members of the Management Team had taken part in the 'test phases' of the IMO office re-opening plan, which IMO was undertaking, and had been going to the IOPC Funds' offices at staggered intervals, several times per week since 15 June 2020. It was further noted that working from home continued to be the primary working modality for all IOPC Funds staff members.

#### *Conscious Rewarding Scheme*

- 7.1.13 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.
- 7.1.14 The governing bodies further noted that during the course of 2019, six individuals received the Manager's award, totalling £1 500. It was also noted that no Director's awards were awarded in 2019.

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

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

7.2	<b>Information services Document IOPC/NOV20/7/2</b>	<b>92A</b>		<b>SA</b>
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- 7.2.1 The governing bodies noted the information contained in document IOPC/NOV20/7/2 in respect of new, ongoing and future projects relating to the development of online training opportunities, the website, publications and other general information services provided by the Secretariat.

#### *Remote training and information services*

- 7.2.2 The governing bodies noted that, since October 2019, the Secretariat had explored ways in which the organisation could widen its audience by creating information and training opportunities which are accessible remotely. It was recognised that demand for such remote services had inevitably increased following the global COVID-19 pandemic and the subsequent restrictions on gatherings and travel.
- 7.2.3 Among the options explored by the Secretariat, was the possibility of organising a series of short webinars covering the key areas which form the bases of the IOPC Funds and the work of the organisations, such as claims handling or oil reporting and contributions. It was also noted that the Secretariat already had the necessary equipment to comfortably run such webinars and had experience presenting as contributors to online events organised by others, such as the GI WACAF webinars on oil spill preparedness and response, which took place in July and September 2020.
- 7.2.4 It was noted that, although there would be some additional technical and equipment requirements, the Secretariat could also provide a streaming service to interested external participants in conjunction with presentations delivered at the IOPC Funds' headquarters to visiting groups, such as university and other student visits.
- 7.2.5 It was further noted that, following requests by a number of Member States, the Secretariat had also explored the possibility of providing remote access to the IOPC Funds' annual Short Course and

the Induction Course. It was also noted that, for reasons set out in the document, in the Secretariat's view, it would not be practical to provide remote access to the Short Course and that it was instead, exploring the possibility of running a second version of the course in an alternative location to facilitate the attendance of other States.

- 7.2.6 With regard to the Induction Course, it was noted that since it is for a much shorter duration than the Short Course, takes place in one location and involves internal speakers only, it could be an option to make the course accessible to remote users and that the Secretariat was considering developing short interactive online exercises that remote users could undertake, allowing them to share the same experience to those on-site. It was noted that the Secretariat planned to look further into the matter and would keep delegations informed of developments.

#### *Website*

- 7.2.7 The governing bodies again noted the benefits of the Document Services section of the IOPC Funds' website, and the value to users of registering for an account. It was recognised that, particularly while the COVID-19 pandemic continues to necessitate remote working and other changes to usual IOPC Funds' key practices, it was important that delegations did not miss key updates which are automatically sent to account holders. The Secretariat, therefore, urged delegates who had not yet done so, to register for an account.
- 7.2.8 The governing bodies noted that the Secretariat continues to actively use Twitter and that it had also begun to engage with followers on LinkedIn. Delegates to the Funds' meetings were therefore encouraged to follow the @IOPCFunds account on Twitter and the IOPC Funds page on LinkedIn.
- 7.2.9 It was also noted that the IOPC Funds introductory video, available under the About Us section of the website, had been updated in July 2020 to include the latest figures.
- 7.2.10 It was recalled that circular IOPC/2016/Circ.2 issued in January 2016 invited Member States to submit copies of relevant national legislation to the Secretariat for inclusion in the online country profiles. It was noted that as at the December 2020 sessions, 18 States had done so. All Member States were again encouraged to submit copies of their relevant national legislation to the Secretariat at their earliest convenience.

#### *Publications*

- 7.2.11 It was noted that the Annual Report 2019 had been published in March 2020 and that, having been produced in a more reader-friendly format in 2019, and for the benefit of Funds' stakeholders with a particular interest in the Funds' audited accounts, the Financial Statements of the 1992 Fund and Supplementary Fund had been published as an online publication for the first time in January 2020. It was also noted that once approved by the governing bodies, the 2019 Financial Statements would be published online as soon as practically possible.

#### *Debate*

- 7.2.12 One delegation pointed out that it was important to continue to offer virtual training opportunities during the pandemic and to resume remote training away from London once travel restrictions ease. That delegation noted that the Secretariat had identified that the Short Course was oversubscribed and that running an online version of the course could be one way of meeting the high demand of Member States. That delegation also noted the risk of technical failure with virtual training, however, pointed out that the risk of technical difficulties existed with any remote meeting. That delegation suggested that running technical exercises with smaller groups could be done online, and while location visits to London were not possible, presentations by external organisations could be given remotely.

- 7.2.13 In response, the Director noted the request to conduct a version of the Short Course online and to provide other remote training and advised that the Secretariat would continue to examine the matter and work towards online training opportunities.

**1992 Fund Assembly and Supplementary Fund Assembly**

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

7.3	<b>Appointment of the Director Document IOPC/NOV20/7/3</b>	<b>92A</b>	<b>SA</b>
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- 7.3.1 The governing bodies took note of the information contained in document IOPC/NOV20/7/3 submitted by the Chair of the 1992 Fund Assembly. It was recalled that the second term of the Director of the IOPC Funds would expire on 31 December 2021 and that therefore, the post of Director would become vacant on 1 January 2022.
- 7.3.2 The governing bodies also noted that, at its regular session in 2021, the 1992 Fund Assembly would have to appoint a new Director who would, *ex officio*, also be the Director of the Supplementary Fund.
- 7.3.3 The governing bodies further noted that, in 2021, the Director would issue a circular inviting 1992 Fund Member States to submit nominations for candidates. It was noted that the circular would provide details as to how the nominations should be presented. It was also noted that the details on the responsibilities of the Director as well as desirable experience, skills and competences of candidates were contained in the Annex to document IOPC/NOV20/7/3.
- 7.3.4 The Chair of the 1992 Fund Assembly recalled that he had issued a document on the potential extension of the contract of the incumbent Director that was to be presented during the March 2020 sessions, which in the end had been cancelled. He stated that the document had not been reissued and that he had presented document IOPC/NOV20/7/3 to the Assembly instead.
- 7.3.5 The Director said he was pleased that the Chair of the 1992 Fund Assembly had raised this point. He stressed that he was in no way attempting to ask Member States to re-elect him, but that he was seeking to clarify a situation that could not be discussed in March 2020.
- 7.3.6 He explained that in 2019 a number of delegations had asked him whether he would be willing to stand as Director for a limited period, but not for a full term. On that occasion, the Director had referred to Resolution N°9, which stated that Directors are appointed for five-year terms. He had also referred to paragraph three of the Resolution which stated that the second term of the incumbent Director might be extended for a limited period of time, if the Assembly so decided, in response to exceptional circumstances that would warrant such an extension. The Director noted that an extension was within the rules and at the discretion of the Assembly.
- 7.3.7 The Director noted that the current situation was very different to that of 2019. He indicated that in 2019 the focus had been on succession planning as he would be departing in December 2021 and the Deputy Director/Head of Finance and Administration would also be retiring six months later, in June 2022. He noted that this issue had been discussed by the Audit Body who had expressed its concern about the situation and that he had been encouraged to talk with the Chair of the 1992 Fund Assembly for that proposal to be made. As he had understood that there had been no support for that proposal, he had requested the Chair of the 1992 Fund Assembly not to present the document at the current meeting.
- 7.3.8 The Director said, that unless instructed otherwise, his intention was to issue a circular in May 2021 inviting 1992 Fund Member States to submit nominations for candidates before the end of July and that the 1992 Fund Assembly would have to appoint a new Director at its regular session in 2021.

*Debate*

- 7.3.9 One delegation referred to the current exceptional circumstances and stated that there would be little scope for discussion on whether there would be an extension of the mandate of the current Director. The delegation was concerned that there might not be enough time to revisit this issue during the March 2021 session.
- 7.3.10 Another delegation referred to the discussion regarding the election procedure which had taken place the day before and recalled that several delegations had expressed concern regarding online voting and had mentioned the possibility of having a hybrid solution of both online voting and vote by correspondence. Against this background, that delegation said that it might be appropriate to consider the possibility of conducting an election online or by correspondence at an earlier date for delegations to feel more comfortable.
- 7.3.11 Another delegation suggested that those Member States that were interested in pursuing this matter could submit documents to the March 2021 meeting of the governing bodies for it to be included in the agenda and discussed thoroughly at that stage.
- 7.3.12 The Chair of the 1992 Fund Assembly noted that given the circumstances it would not be possible to entertain a discussion on this matter at the current session, especially as delegates had not prepared to discuss it. He said that the plan was to issue the circular after the March meeting and added that any discussion on this matter could be held at that meeting.
- 7.3.13 The Chair of the 1992 Fund Assembly stressed that the decision to conduct an online election during this meeting had no bearing on this matter; and that his understanding was that the acceptance of online voting only applied to the election of the members of the Audit Body at the current session. The Chair of the 1992 Fund Assembly also stated that it was the prerogative of Member States to submit documents to the March 2021 meeting.

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

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

7.4	<b>European Union General Data Protection Regulation Document IOPC/NOV20/7/4</b>	<b>92A</b>		<b>SA</b>
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- 7.4.1 The 1992 Fund Assembly and Supplementary Fund Assembly took note of document IOPC/NOV20/7/4 which contained information on the application of the General Data Protection Regulation (GDPR) of the European Union (EU) and Directive 2016/680 (Directive) to the IOPC Funds and on the Secretariat's engagement towards the implementation of the GDPR and Directive.
- 7.4.2 The governing bodies noted that the Secretariat had sought a clarification from the UK Government on the application of the GDPR and the Directive in light of the existing Headquarters Agreement, and that the reply indicated that the GDPR applies to the IOPC Funds and that the IOPC Funds can have its own position as to its application.
- 7.4.3 The governing bodies also noted that the Secretariat believes that the GDPR will not apply to the IOPC Funds, based on the inviolability of archives stipulated in Article 6 of the Headquarters Agreement for the 1992 Fund but nevertheless, the Secretariat believed that the same principles as the GDPR should be applied to protect the data held by the IOPC Funds.
- 7.4.4 The governing bodies further noted that the Secretariat had engaged an expert in implementing the GDPR, in order to receive assistance with developing policies and procedures reflecting the data protection principles laid out by the GDPR. It was also noted that the Secretariat had identified personal data which the Funds held and had also drafted: a Data Protection Policy; Data Privacy

Notices for claimants and all other persons who have had dealings with the Funds; a Data Retention Policy; and the provisions necessary to be inserted in various types of contracts which the Funds conclude, including the experts contract which the Funds normally conclude with insurers and experts in the claims-handling process. The Secretariat had also engaged a data protection lawyer to review the various policies and procedures.

- 7.4.5 It was noted that the Secretariat had made substantial progress with the tasks, continued to develop the application of the GDPR and would report developments at future sessions of the governing bodies.

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

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

7.5	<b>Headquarters Agreement – Draft Headquarters Agreements Document IOPC/NOV20/7/5</b>	92A		SA
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- 7.5.1 The governing bodies took note of document IOPC/NOV20/7/5, which contained information on the recent developments on the amendments to the 1992 Fund’s Headquarters Agreement and the Supplementary Fund’s Headquarters Agreement.

- 7.5.2 The governing bodies recalled that since June 2018, the Director and members of the Secretariat had several meetings with the Foreign and Commonwealth Office and Department for Transport of the UK Government, and that at the request of the Director, Professor Dan Sarooshi Q.C., who had extensive knowledge of public international law, also attended the meetings.

- 7.5.3 The governing bodies noted the draft texts proposed by the UK Government and which had been discussed:

- (i) a draft Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Fund 1992 (1992 Fund Headquarters Agreement);
- (ii) a draft Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Supplementary Fund 2003 (Supplementary Fund Headquarters Agreement); and
- (iii) a draft International Oil Pollution Compensation Funds (Immunities and Privileges) Order (UK domestic legislation), which implements both (i) and (ii) above.

- 7.5.4 The governing bodies recalled that in 2014, a freezing order had been granted against the 1971 Fund which prevented the Fund from disposing of its assets, which was in breach of the 1971 Fund Headquarters Agreement. The freezing order was based on the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979 which contained different wording from that of the 1971 Fund Headquarters Agreement. The governing bodies noted that in view of the fact that the same discrepancy of wording is found between the 1992 Fund Headquarters Agreement and the International Oil Pollution Compensation Fund 1992 (Immunities and Privileges) Order 1996, and to avoid the recurrence of a freezing order in the future, the UK Government and the Director had agreed that the immunity provisions of both Headquarters Agreements and the UK domestic legislation should have the same wording which explicitly protects both Funds from a freezing order in the future.

- 7.5.5 The governing bodies also recalled that the Supplementary Fund, which entered into force in 2005, still did not have its Headquarters Agreement and corresponding domestic legislation and that without these, the Supplementary Fund had no legal personality in the United Kingdom which



would result in claimants not being able to take legal action against the Supplementary Fund, and the Supplementary Fund having no protection of its assets which could be risky given the large amounts of contributions that may be held by the Fund.

- 7.5.6 The governing bodies noted that the UK Government undertook to ensure the full implementation of the Headquarters Agreements through the Immunities and Privileges Order, but that the revised draft Order had not yet been received, so the Secretariat had not had the opportunity to review this text.
- 7.5.7 The governing bodies also noted that the draft Headquarters Agreements would protect the 1992 Fund and the Supplementary Fund from a freezing order and in this context, it was imperative that the Headquarters Agreements were implemented, through the Immunities and Privileges Order, into UK national legislation.
- 7.5.8 The governing bodies further noted that once the draft Headquarters Agreements were approved by the governing bodies, the UK Government would submit the required UK domestic legislation to Parliament and that the Agreements would enter into force once all procedures necessary for entry into force had been completed and notification was made by the UK Government to both Funds in accordance with Article 23 of both Agreements.
- 7.5.9 The Director thanked the UK Government for its assistance and cooperation in concluding these two Agreements.

*Intervention by the delegation of the United Kingdom*

- 7.5.10 The delegation of the United Kingdom stated that the draft Headquarters Agreements submitted before the governing bodies constituted important milestones and addressed the previous concerns raised by the 1992 Fund Assembly and Supplementary Fund Assembly.
- 7.5.11 That delegation stated that the next step would be to await the agreement on the text of the draft Statutory Instrument (Immunities and Privileges Order) but that in the meantime, once agreed, the UK Government would arrange for the Headquarters Agreements to be signed, as part of its continued commitment to the 1992 Fund Assembly and Supplementary Fund Assembly.

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

- 7.5.12 The 1992 Fund Assembly and the Supplementary Fund Assembly thanked the delegation of the United Kingdom for its cooperation and information provided.
- 7.5.13 The 1992 Fund Assembly and Supplementary Fund Assembly approved the wording of the revised 1992 Fund's Headquarters Agreement and the new Headquarters Agreement of the Supplementary Fund and authorised the Director to sign both Agreements.

**8 Treaty matters**

8.1	<b>Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/NOV20/8/1</b>	<b>92A</b>		<b>SA</b>
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- 8.1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly took note of document IOPC/NOV20/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.2 It was noted that at the December 2020 sessions of the governing bodies there were 117 Member States of the 1992 Fund.

8.1.3 It was also noted that the 1992 Fund Convention entered into force for the Republic of the Gambia on 30 October 2020. It was further noted that the 1992 Fund Convention would enter into force for the Republic of Nauru on 23 March 2021, which will bring the number of 1992 Fund Member States to 118 on that date.

8.1.4 It was noted that there were 32 Member States of the Supplementary Fund.

8.2	<b>2010 HNS Convention Documents IOPC/NOV20/8/2 and IOPC/NOV20/8/2/1</b>	<b>92A</b>		
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8.2.1 The 1992 Fund Assembly took note of the information contained in document IOPC/NOV20/8/2 submitted by the Secretariat 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) and of document IOPC/NOV20/8/2/1 submitted by France on their progress towards implementation of the HNS Convention in 2020.

8.2.2 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*

8.2.3 It was noted that, since the October 2019 session of the 1992 Fund Assembly, no State had deposited an instrument of ratification or accession to the 2010 HNS Protocol with the Secretary-General of IMO and that therefore, at the time of the session, there were five Contracting States to the Protocol, namely, Canada, Denmark, Norway, South Africa and Turkey.

8.2.4 It was also noted, however, that a number of States had continued their efforts to implement the HNS Convention into their domestic legislation and that the Secretariat had received positive reports from a number of States on their progress towards an accession or ratification of the 2010 HNS Protocol. It was noted that the governments of Belgium, Germany and the Netherlands had exchanged letters in which they jointly commit to move forward with the procedures necessary for the implementation of the 2010 HNS Convention in an effort to ensure a level playing field among potential large contributing States. It was noted that the letter also called for a mutual update on the progress made by neighbouring countries towards implementation. The 1992 Fund Assembly noted the detailed individual progress of each of those three States, as reported in document IOPC/NOV20/8/2.

8.2.5 The Assembly also noted the progress of the Republic of Korea, which had reported to the IMO Legal Committee that it had undertaken work to obtain information on HNS contributing cargo received in ports and terminals, that domestic legislation had been drafted for the implementation of the HNS Protocol and that a review of the draft legislation and the adoption of sub-regulations for the implementation of the 2010 HNS Protocol were expected to be carried out in 2020.

DOCUMENT IOPC/NOV20/8/2 — IMPLEMENTATION OF THE HNS CONVENTION — SUBMISSION BY FRANCE

8.2.6 The delegation of France presented document IOPC/NOV20/8/2/1 setting out the progression of the implementation of the 2010 HNS Convention in France, the benefits and potential lessons learned from the introduction of an online reporting procedure and the benefits derived from coordination between States.

8.2.7 It was noted that France had already published two pieces of legislation in May 2020, setting out the reporting obligations of those entities receiving HNS in France, as well as the methods by which they should submit those reports. It was also noted that sanctions were included in the legislation for any receivers who do not submit such reports within the required timeframe.

- 8.2.8 The delegation of France explained that from the outset, the process of implementation of the Convention in France had given rise to the question of the practicalities of reporting. It informed the Assembly that, in order to limit the administrative burden on companies, the Ministry in charge (Ministère de la Transition écologique et solidaire) had developed an online reporting system, using a well-known national online platform, which was operational and will enable HNS receivers to declare from January 2021, the quantities of HNS contributing cargo they have received during 2020.
- 8.2.9 Looking forward, it was reported that a law on the ratification of the 2010 HNS Protocol by France was at the drafting stage and that it would be submitted to Parliament to enable the subsequent deposit of the instruments of ratification in 2022.
- 8.2.10 That delegation also took the opportunity to highlight the benefits of coordination between States at all levels in order to facilitate the implementation of the HNS Convention. It stated that, in its view, the Convention should be ratified by the greatest possible number of countries so as to contribute to better compensation for incidents at global level.

#### *Other developments*

- 8.2.11 The 1992 Fund Assembly noted that, since its October 2019 session, when it was reported that a full review had been undertaken of the HNS Finder (the online database of substances that fall within the definition of HNS), the Secretariat had undertaken additional essential verification work and that a number of improvements to the HNS Finder interface had been introduced and made available via [hnsconvention.org](http://hnsconvention.org) in early September 2020.
- 8.2.12 It was noted that the Secretariat had approached a number of organisations with the relevant expertise relating to the handling of claims for compensation, namely Cedre, the International Chamber of Shipping (ICS), the International Group, ITOPF and IMO to discuss the handling of claims relating to HNS incidents. It was noted that the first meeting took place remotely in November 2020, after being postponed earlier in the year due to the COVID-19 pandemic. It was also noted that further meetings of the group would be organised during 2021 to work on a draft HNS Claims manual.
- 8.2.13 The 1992 Fund Assembly noted that the Secretariat had continued to use the opportunity of workshops and overseas trips to give presentations on the HNS Convention including at a regional workshop on IMO's liability conventions for the Arab states in Dubai, United Arab Emirates in December 2019, and at an event dedicated to the HNS Convention and organised by the European Community Shipowners' Associations (ECSA) in Brussels, Belgium in February 2020. It was noted that a number of other planned activities had had to be put on hold until further notice as a consequence of the COVID-19 pandemic.

#### *Intervention by the delegation of Germany*

- 8.2.14 The delegation of Germany confirmed the information provided in document IOPC/NOV20/8/2 in respect of its progress towards ratification of the 2010 HNS Protocol. That delegation reported that the Government had agreed the necessary legislation, that the Bundesrat was likely to decide on the legislation in February 2021 and that they would then be sent to Parliament for approval. It stated that Germany, therefore, would likely be in a position to ratify in 2022.

#### *Debate*

- 8.2.15 One delegation suggested that, in cooperation with the IMO Technical Cooperation Programme, a remote workshop could be organised for States on the implementation of the 2010 HNS Convention while the COVID-19 pandemic continues to prevent physical workshops taking place. That delegation noted with satisfaction that a remote workshop was already under consideration for Malaysia.

**1992 Fund Assembly**

8.2.16 The 1992 Fund Assembly noted the information presented and welcomed the developments reported. It also noted that despite the delays caused by the COVID-19 pandemic, work was continuing at State level to bring the Convention into force and that the Secretariat would continue to regularly provide details to the Assembly on the progress towards the entry into force of the 2010 HNS Convention.

8.3	<b>Review of the 1992 Civil Liability and Fund Conventions Document IOPC/NOV20/8/3</b>	<b>92A</b>		
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8.3.1 The 1992 Fund Assembly took note of document IOPC/NOV20/8/3 submitted by the delegation of India.

8.3.2 The Assembly noted that document IOPC/NOV20/8/3 suggested a number of proposed amendments to the 1992 Civil Liability and Fund Conventions and that the document stated that since almost three decades had elapsed since the adoption of earlier amendments to the Conventions, it was essential to deal with any flaws and bring about clarity in both instruments by amending both of the Conventions.

*Availability of coverage to all Member States without the need to pay contributions*

8.3.3 The Assembly noted that the document stated that for any contract to be valid, it was an essential requirement for any contract to pay consideration (i.e. a 'premium' in insurance contracts) and that without such consideration the contract was void. It was noted that, in the delegation's view, the 1992 Fund Convention did not adhere to this basic tenet of contract law, since not every State which became a Party to the Convention needed to pay contributions.

*No requirement for vessels carrying less than 2000 metric tons of persistent oil to maintain mandatory insurance*

8.3.4 It was also noted that although Article VII of the 1992 CLC required ships carrying more than 2000 metric tons of persistent oil in bulk to maintain compulsory insurance, there was no such requirement for vessels carrying less than 2000 metric tons of persistent oil. This had, in some cases, led to the requirement for the 1992 Fund to step in to pay compensation to the affected claimants.

8.3.5 The document submitted that, according to their analysis, the majority of claims dealt with by the 1992 Fund were in response to incidents involving vessels carrying less than 2000 metric tons of oil. The document also submitted that the payment of such claims by the second tier (cargo interests) without the first tier (shipowner) of the liability regime contravened the founding principles of the international liability and compensation regime.

*Requirement to pay contributions only if the quantity of received oil exceeds 150 000 metric tons*

8.3.6 It was further noted that the document submitted that, while Article 10 of the 1992 Fund Convention required a receiver of oil cargo in a Contracting State to pay contributions only if receiving more than 150 000 metric tons of oil cargo by sea in a calendar year, even small quantities of oil pollution could result in substantially large claims, and the provision exempting a class of receivers from contributing could encourage a lack of oversight by receivers of small parcels of oil cargo by sea. According to the document, this imposed an additional burden on persons receiving more than 150 000 metric tons, who have to shoulder the burden of making contributions to the 1992 Fund in incidents which arise during transportation of such parcels by sea.

*Claims record not linked to contributions paid by a Member State*

- 8.3.7 The Assembly noted that the document submitted that, unlike an insurance contract where the insurance premium was linked to the insured entity's claims record, the 1992 Fund Convention did not link the claims record of a State to the contributions made by oil receivers in that State. The document further stated that the principle of *bonus-malus* was not present within the 1992 Civil Liability and Fund Conventions, so there was no incentive for claims to be kept to reasonable levels.

*Contributions paid were not linked to clean-up costs due to difference in temperatures of warm and cold-water regions*

- 8.3.8 The Assembly also noted that in the delegation's view, the compensation regime did not differentiate between the cost of clean-up costs in different areas of the world. In the view of the delegation, to clean an oil spill in colder temperatures was more costly and required more time but the compensation regime did not take into consideration that oil spills in tropical regions could be cleaned at lower costs in comparison to colder regions.

*Contributions paid by a Member State were not linked to the cost of living index of the Member State*

- 8.3.9 The Assembly further noted that the compensation regime did not differentiate between the cost of cleaning an oil spill in different areas of the world. It was noted that the document purported that countries which had a lower cost of living would require lower costs for cleaning an oil spill than countries with a higher cost of living, which resulted in affluent States obtaining more compensation for every claim compared to a claim of a similar nature in a less affluent State.

*Conclusions and way forward*

- 8.3.10 It was noted that in the delegation's view, the 1992 Conventions needed to be amended as a matter of priority and it requested that the 1992 Fund Assembly considered establishing a Working Group with a mandate to examine the matters raised in detail and if established, to report its findings to the 1992 Fund Assembly and any conclusions and proposals should thereafter be brought to the attention of the Legal Committee of IMO to consider whether to adopt amendments to the Conventions.

*Statement by the delegation of India*

- 8.3.11 The delegation of India made the following statement:

'India has proposed a review of the 1992 Civil Liability Convention and Fund Convention to deal with ambiguities in the Conventions and bring about clarity in some of the wordings of the instruments.

While both the Conventions have served the maritime industry so far, the lacunae in the instruments pose serious challenges to the international liability regime. Not only have some of the judicial decisions in some jurisdictions knocked on the very foundations of the current international liability regime, it has also made it necessary for us to critically evaluate the wording used in the Conventions.

The paper submitted by India has only touched on some of the issues and not raised all the possible issues that need to be addressed. Due to paucity of time, we will not elaborate on each aspect specified in the paper but briefly touch on them.

1. The Convention does not require organisations in every Member State to make contributions to obtain the benefit of compensation against oil pollution damage. This

results in the burden to provide compensation being shouldered by only the contributing States. This could become unsustainable, especially if large claims were to arise. Also, as any contract without consideration could be considered void in some jurisdictions, this commercial international instrument could be challenged on this ground in certain jurisdictions when claims arise.

2. The Convention also does not limit the number of incidents that would require to be paid in a year by a contributor. This makes the liability to pay contributions by a contributor unlimited. In the unfortunate instance of multiple incidents taking place, it could become unsustainable for the contributors.
3. Even small incidents of oil pollution lead to large claims these days. The Convention, however, does not require vessels carrying less than 2000 metric tons of persistent oil to have mandatory insurance. This could result in the polluting ship not being able to pay for the pollution damage. Hence, instead of the polluter paying for the pollution damage as per the internationally accepted principle, it would result in contributors of the Fund paying for such pollution damage.
4. The Convention does not require receivers of less than 150 000 metric tons of oil to pay contributions. Since pollution from even small amounts leads to large claims, this aspect would also need to be reconsidered.
5. The other matter stated in the paper is the need to consider linking the contributions paid by a Member State with several aspects, such as the cost of cleaning the oil in the Member State, the cost of living index of the Member State and the claims record of the Member State.
6. The 1971 Convention was amended in 1992 after 21 years. More than 28 years have elapsed since the 1992 Conventions were adopted. To have a sustainable international liability regime, it is essential for us to review the instruments, so that it can continue to be useful to the international community.

The Assembly is requested to consider the matter and suggest the way forward in the matter.'

8.3.12 The Chair of the 1992 Fund Assembly thanked the delegation of India for its presentation of the document and explained that, in view of the importance of the issues raised and the limited time available at the session, it would not be possible to have a full discussion with regard to either the various points raised in the document or the proposal to establish a Working Group. He did, however, invite delegations to share any preliminary comments or observations and proposed that a full discussion of the document be postponed until such time as the Assembly is able to meet in person.

#### *Debate*

8.3.13 All delegations that spoke thanked the delegation of India for its document.

8.3.14 On some of the specific suggestions contained in the document, such as the concept of calculating contributions based on a wider range of factors, i.e. number of incidents and claims per State, national costs involved in response, etc., a number of delegations expressed concern that such proposals went against the fundamental principles of the international liability and compensation regime. Others questioned how such calculations could work practically.

8.3.15 One delegation suggested that if the Assembly were to take the factors referenced in the document into account when calculating contributions, then there would be many other factors that would also need to be considered, creating a very complicated system. That delegation and others reminded the Assembly that the current regime had successfully been in place for over 40 years,

that it was a relatively simple system which was robust and fair for all stakeholders involved, in that it focused on ensuring those who create the risk of pollution, i.e. the importers of oil, shared the cost with those who transported the oil, i.e. the shipowners.

- 8.3.16 One delegation suggested that further details were required on the proposals presented and suggested that the provision of data and statistics in relation to relevant incidents would be useful and help States contextualise the issues.
- 8.3.17 Another delegation commented that it understood the concerns of India and suggested that a joint Working Group should be established with IMO to consider the issues raised in the document and also the issues of insurers who are not members of the International Group, which was the subject of a separate document by the Audit Body (document IOPC/NOV20/5/5/1).
- 8.3.18 Some delegations gave their initial support for the establishment of a Working Group to consider the issues raised in more detail. Several delegations acknowledged that, while they did not necessarily agree with the specific proposals in the document, it could be worthwhile, given the length of time the regime had been in place, to carry out a review and assess whether improvements can be made.
- 8.3.19 One delegation highlighted the relevance of the IOPC Funds and the added value it provided for States with particular interests in the maritime transport, such as flag States or coastal States, and stated that it was important to take time to review the proper functioning of the international compensation regime from time to time. That delegation recognised that there was no time to consider that proposal in detail, instead, it suggested that interested States could engage informally in a dialogue with India, in order to prepare the grounds for a more formal discussion at the next opportunity.
- 8.3.20 However, most delegations considered that the 1992 Fund Assembly should not undertake to review the international liability and compensation regime without considerable analysis and discussion taking place within the Assembly first.
- 8.3.21 One delegation stated that any discussion on the establishment of a Working Group should be reserved for such time when the 1992 Fund Assembly can fully consider and agree clear Terms of Reference and can ensure that the scope of the discussions is well-defined and cannot be unduly expanded to other matters. This view was supported by several other delegations.
- 8.3.22 All delegations agreed that the item should be included in the agenda at a future session.

#### ***1992 Fund Assembly Decisions***

- 8.3.23 The 1992 Fund Assembly thanked the delegation of India for its document and noted that, due to the very limited duration of the remote sessions, only preliminary views on the matter could be provided by delegations at this stage.
- 8.3.24 The 1992 Fund Assembly agreed to postpone the decision on whether to establish a Working Group to the next meeting of the governing bodies that could be held in person so that meaningful discussions between Member States could take place.

## 9 Budgetary matters

9.1 <b>Budgets for 2021 and assessments of contributions to the General Fund</b> <b>Documents IOPC/NOV20/9/1, IOPC/NOV20/9/1/1 and IOPC/NOV20/9/1/2</b>	92A		SA
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9.1.1 The governing bodies took note of the information contained in documents IOPC/NOV20/9/1, IOPC/NOV20/9/1/1 and IOPC/NOV20/9/1/2.

9.1.2 The 1992 Fund Assembly considered the draft 2021 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/NOV20/9/1/1.

9.1.3 The Supplementary Fund Assembly considered the draft 2021 budget and the assessment of contributions to the General Fund of the Supplementary Fund in document IOPC/NOV20/9/1/2.

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 decrease of 3.4% in the draft 2021 joint Secretariat budget compared to the 2020 budget, mainly due to a decrease in costs under Chapters for Personnel, Travel and Meetings.

9.1.7 The governing bodies recalled that in March 2005 they had decided that the distribution of the cost of running the joint Secretariat should be made on the basis of the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.

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

9.1.9 The 1992 Fund Assembly noted the Director's proposal to maintain the working capital at £15 million in the budget year 2021.

### *Intervention by the delegation of Thailand*

9.1.10 The delegation of Thailand commented that the budget for separation and recruitment proposed for 2021 was three times the 2020 budget. The Director explained that this was to cover separation costs for his term ending at the end of 2021.

### *Intervention by the delegation of the Republic of Korea*

9.1.11 The delegation from the Republic of Korea supported the Director's proposal not to levy contributions for payment in 2021 but expressed concern that the level of contributions for approval in 2021 (for payment in 2022) might create an additional burden for contributors and therefore requested the Director to consider measures to mitigate this burden. The Director said that he shall keep this under review.



**1992 Fund Assembly Decisions**

- 9.1.12 The 1992 Fund Assembly renewed the authorisation given to the Director to create additional posts in the General Service category provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (i.e. up to £220 000, based on the 2021 budget).
- 9.1.13 The Assembly renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.
- 9.1.14 The Assembly adopted the budget for 2021 for the 1992 Fund joint Secretariat administrative expenses of £4 708 287, and the 1992 Fund's external audit fee of £53 600, as set out at Annex II, page 1.
- 9.1.15 The Assembly approved the Director's estimate of the expenses to be incurred in 2021 in respect of the preparation for the entry into force of the HNS Convention, i.e. £35 000.
- 9.1.16 The Assembly decided to maintain the working capital of the 1992 Fund at £15 million in the budget year 2021.
- 9.1.17 The Assembly approved the Director's proposal to meet the estimated deficit on the General Fund for 2021 by taking out a loan of £3.9 million from the *Hebei Spirit* Major Claims Fund on 1 March 2021 until 1 March 2022 when 2021 contributions shall be due.

**Supplementary Fund Assembly Decisions**

- 9.1.18 The Supplementary Fund Assembly adopted the budget for 2021 for the administrative expenses of the Supplementary Fund for a total of £50 400 (including the cost of the external audit), as set out at Annex II, page 2.
- 9.1.19 The Assembly decided to maintain the working capital of the General Fund at £1 million.
- 9.1.20 The Assembly approved the Director's proposal that there should be no levy of 2020 contributions to the General Fund.

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

- 9.1.21 The 1992 Fund Assembly and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay a management fee of £36 000 to the 1992 Fund for the financial year 2021.

9.2	<b>Assessment of contributions to Major Claims Funds and Claims Funds Documents IOPC/NOV20/9/2, IOPC/NOV20/9/2/1 and IOPC/NOV20/9/2/2</b>	92A		SA
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- 9.2.1 The 1992 Fund Assembly and the Supplementary Fund Assembly noted the Director's proposal for contributions to Major Claims Funds and Claims Funds, respectively, as outlined in documents IOPC/NOV20/9/2, IOPC/NOV20/9/2/1 and IOPC/NOV20/9/2/2.
- 9.2.2 The 1992 Fund Assembly noted that, in the Director's view, it would not be necessary to levy 2020 contributions for the *Prestige*, *Hebei Spirit*, *Alfa I*, and *Agia Zoni II* Major Claims Funds.
- 9.2.3 The Assembly also noted that in the Director's view that it would not be necessary to levy 2020 contributions to the *Nesa R3* Major Claims Fund and that any expenditure exceeding the balance available in the Major Claims Fund be met from loans from the General Fund or from another Major Claims Fund in accordance with Financial Regulations 7.1(c)(iv) and 7.2(d) of the 1992 Fund.

*Statement by the delegation of Greece*

9.2.4 The delegation of Greece made the following statement:

‘This delegation would like firstly to thank the Secretariat for all the background information provided in this document in respect of the *Alfa I* and *Agia Zoni II* Major Claims Funds.

Greece, as a contracting member to the Civil Liability and Fund Conventions, fully respects the rules and procedures upon which the Fund is functioning.

In this context, with regard to the Director’s proposal for non-levying 2020 contributions to the *Agia Zoni II* Major Claims Fund, taking into account the fact that prompt compensation to the persons who suffer damage from all oil pollution incidents is one of the main principles that governs the operation of the Fund, Greece would appreciate an estimate by your side about the time frame when a more secure assessment on the Fund’s final liability on this incident would be feasible.

Furthermore, this delegation would like to be informed whether there is an alternative source of finding additional funds to make payments from the *Agia Zoni II* Major Claims Fund, should any requirement arise for these remaining £8 million to be paid to claimants, until 1 March 2022.’

9.2.5 In response, the Director confirmed that the amount available in the *Agia Zoni II* Major Claims Fund was adequate for now and that since claims were now in court, it will take time to settle the claims. He added that there was also the flexibility to levy further contributions should the need arise.

***1992 Fund Assembly Decisions***

9.2.6 The 1992 Fund Assembly decided not to levy 2020 contributions in respect of the *Prestige*, *Hebei Spirit*, *Alfa I* and *Agia Zoni II* Major Claims Funds.

9.2.7 It further decided not to levy 2020 contributions to the *Nesa R3* Major Claims Fund and noted the Director’s proposal to meet any expenditure exceeding the balance available in the Major Claims Fund from loans from the General Fund or another Major Claims Fund in accordance with the 1992 Fund’s Financial Regulations.

***Supplementary Fund Assembly Decision***

9.2.8 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.

**10 Other matters**

10.1	<b>Future sessions</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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10.1.1 It was noted that, due to the substantial disruption to the IMO meetings schedule during 2020 caused by the ongoing COVID-19 pandemic, dates for future sessions of the governing bodies were subject to change.

10.1.2 The governing bodies also noted that their next sessions would likely be convened remotely again. In view of this, the Director also proposed that, due to the limited time available for discussions to take place in remote meetings, extraordinary sessions could also be held in June 2021. This could give the governing bodies the necessary time to discuss procedural matters in relation to remote

sessions and in particular, decide on an appropriate ballot procedure for the election of the Director due to be held next year, should the pandemic persist and the need arise for a remote election process to be conducted. It was noted that the Director would inform the governing bodies of any additional extraordinary sessions to be held in 2021 via the usual channels.

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

10.1.3 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 8 November 2021.

10.1.4 The governing bodies agreed that their next sessions would take place during the week of 29 March 2021.

### ***1992 Fund Executive Committee Decision***

10.1.5 The 1992 Fund Executive Committee decided to hold its 75th session during the week of 29 March 2021.

10.2	<b>Any other business</b>	<b>92A</b>	<b>92EC</b>	<b>SA</b>
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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***

11.1.1 It was recalled that the governing bodies had approved the Secretariat's proposal relating to the preparation and consideration of the Record of Decisions during remote sessions (paragraph 1.4.9).

11.1.2 The draft Record of Decisions for the December 2020 sessions of the IOPC Funds' governing bodies as contained in documents IOPC/NOV20/11/WP.1 and IOPC/NOV20/11/WP.1/1, was submitted for consideration by Member States on the last day of the virtual meeting. Due to the limited duration of the virtual meeting, document IOPC/NOV20/11/WP.1 only contained the substantive items which had been discussed up until the second day of the virtual meeting.

11.1.3 Following the approval of the draft Record of Decisions by the governing bodies at the end of their virtual meeting, the Director prepared a revised draft report (document IOPC/NOV20/11/WP.2) which incorporated the remaining items which had been discussed on the last day of the meeting.

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

11.1.5 Following the correspondence period, the Director prepared an additional document containing the comments received with an accompanying explanation on how they had been addressed in the final Record of Decisions (document IOPC/NOV20/11/1). The final Record of Decisions was then circulated in document IOPC/NOV20/11/2.

### *Closing remarks*

11.1.6 Following the adoption of the Record of Decisions, one delegation congratulated the Chairs and Secretariat on the very smooth running of the first remote meeting of the IOPC Funds.

11.1.7 The Chair of the Supplementary Fund Assembly expressed his gratitude to all the participants for their cooperation and patience, and in particular thanked the interpreters for their work under these extraordinary circumstances.

11.1.8 The Chair of the 1992 Fund Assembly thanked all delegations for their cooperation during the session which did not allow for full discussions as core business had to be prioritised to ensure the continued operation of the Funds. The Chair ensured that full discussions would be had once in-person meetings could be convened again. The Chair thanked the Director and the Secretariat for their hard work in organising a remote meeting. He also thanked the interpreters, stating that working under these circumstances was a great achievement. In closing, he thanked his fellow Chairs for their collaborative efforts.

11.1.9 The Director thanked the Chairs for running the meeting so efficiently under difficult circumstances and thanked the Secretariat for rising to the challenge of organising a remote meeting. He also thanked the interpreters for their efforts and providing an excellent service. In closing, the Director thanked delegations for their valuable contribution and reminded Member States that the organisation is theirs.

\* \* \*

## ANNEX I

### 1.1 Member States present at the sessions

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

<sup><1></sup> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.  
IOPC/NOV20/11/2, Annex I, page 1

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
28	India	•		
29	Ireland	•		•
30	Italy	•		•
31	Jamaica	•	•	
32	Japan	•	•	•
33	Kenya	•		
34	Latvia	•		•
35	Liberia	•		
36	Luxembourg	•		
37	Madagascar	•		
38	Malaysia	•		
39	Malta	•		
40	Marshall Islands	•		
41	Mexico	•	•	
42	Montenegro	•		•
43	Morocco	•		•
44	Netherlands	•		•
45	New Zealand	•		•
46	Nicaragua	•		
47	Nigeria	•		
48	Niue	•		
49	Norway	•		•
50	Palau	•		
51	Panama	•		
52	Philippines	•		
53	Poland	•		•
54	Portugal	•		•
55	Qatar	•		
56	Republic of Korea	•	•	•

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
57	Russian Federation	•		
58	Singapore	•	•	
59	South Africa	•	•	
60	Spain	•		•
61	Sri Lanka	•		
62	Sweden	•		•
63	Switzerland	•		
64	Thailand	•	•	
65	Turkey	•	•	•
66	United Arab Emirates	•	•	
67	United Kingdom	•	•	•
68	Uruguay	•		
69	Vanuatu	•		
70	Venezuela (Bolivarian Republic of)	•		

1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Brazil	•	•

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 Salvage Union (ISU)	•	•
9	International Spill Control Organization (ISCO)	•	•
10	INTERTANKO	•	•
11	ITOPF	•	•
12	Oil Companies International Marine Forum (OCIMF)	•	•
13	Sea Alarm Foundation (Sea Alarm)	•	•
14	World LPG Association (WLPGA)	•	•

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**ANNEX II**  
**2021 Administrative Budget for 1992 Fund**

STATEMENT OF EXPENDITURE	Actual 2019 expenditure for 1992 Fund	2019 budget appropriations for 1992 Fund	2020 budget appropriations for 1992 Fund	2021 budget appropriations for 1992 Fund
	£	£	£	£
<b>I Personnel</b>				
(a) Salaries	2 119 808	2 185 699	2 303 563	2 198 676
(b) Separation and recruitment	900	40 000	40 000	120 000
(c) Staff benefits, allowances and training	865 924	932 278	980 968	915 102
(d) Conscious rewarding scheme	1 750	20 000	20 000	20 000
<b>Sub-total</b>	<b>2 988 382</b>	<b>3 177 977</b>	<b>3 344 531</b>	<b>3 253 778</b>
<b>II General services</b>				
(a) Rent of office accommodation (including service charges and rates)	163 670	183 600	186 500	188 109
(b) IT (hardware, software, maintenance and connectivity)	255 605	363 300	378 700	378 400
(c) Furniture and other office equipment	9 944	16 000	15 000	17 000
(d) Office stationery and supplies	9 101	10 000	10 000	9 000
(e) Communications (courier, telephone, postage)	22 531	29 000	30 000	26 000
(f) Other supplies and services	17 344	23 000	23 000	22 000
(g) Representation (hospitality)	14 220	20 000	20 000	20 000
(h) Public information	84 628	110 000	110 000	98 000
<b>Sub-total</b>	<b>577 043</b>	<b>754 900</b>	<b>773 200</b>	<b>758 509</b>
<b>III Meetings</b>				
Sessions of the 1992 Fund and Supplementary Fund governing bodies and intersessional Working Groups	80 906	130 000	130 000	110 000
<b>IV Travel</b>				
Conferences, seminars and missions	140 637	150 000	150 000	100 000
<b>V Other expenditure</b>				
(a) Consultants and other fees	204 392	150 000	150 000	150 000
(b) Audit Body	166 895	192 500	189 000	196 000
(c) Investment Advisory Body	77 062	77 200	79 000	80 000
<b>Sub-total</b>	<b>448 349</b>	<b>419 700</b>	<b>418 000</b>	<b>426 000</b>
<b>VI Unforeseen expenditure (such as consultants and lawyers' fees, cost of extra staff and cost of equipment)</b>	<b>0</b>	<b>60 000</b>	<b>60 000</b>	<b>60 000</b>
<b>Total joint Secretariat expenditure I–VI</b>	<b>4 235 316</b>	<b>4 692 577</b>	<b>4 875 731</b>	<b>4 708 287</b>
<b>VII External audit fee (1992 Fund only)</b>	<b>86 400</b>	<b>43 200</b>	<b>53 600</b>	<b>53 600</b>
<b>Total Expenditure I–VII</b>	<b>4 321 716</b>	<b>4 735 777</b>	<b>4 929 331</b>	<b>4 761 887</b>

**2021 Administrative Budget for the Supplementary Fund**

*(Figures in pounds sterling)*

STATEMENT OF EXPENDITURE		ACTUAL 2019 EXPENDITURE	2019 BUDGET APPROPRIATIONS	2020 BUDGET APPROPRIATIONS	2021 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	36 000	36 000	38 000	36 000
II	Administrative expenses (including external audit fees)	6 400	13 200	14 400	14 400
<b>Supplementary Fund budget appropriation</b>		<b>42 400</b>	<b>49 200</b>	<b>52 400</b>	<b>50 400</b>