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RECORD OF DECISIONS OF THE MARCH 2021 SESSIONS OF THE IOPC FUNDS’ GOVERNING BODIES

INCIDENTS INVOLVING THE IOPC FUNDS

(continued)

3 Incidents involving the IOPC Funds

3.1 Incidents involving the IOPC Funds

Document IOPC/MAR21/3/1

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3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/MAR21/3/1, which contained information on documents for the March 2021 meeting relating to incidents involving the IOPC Funds.

3.1.2 It was noted that, since the December 2020 meeting, the Secretariat had been informed of two new incidents; the MT Harcourt, occurring in November 2020 in Nigeria, and the incident in Israel in February 2021, both of which at this stage may or may not involve the 1992 Fund.

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

3.2 Incidents involving the IOPC Funds — 1992 Fund: Agia Zoni II

Document IOPC/MAR21/3/2

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3.2.1 The 1992 Fund Executive Committee took note of document IOPC/MAR21/3/2 relating to the Agia Zoni II incident.

Closure of Claims Submissions Office

3.2.2 It was noted that on 31 December 2020, the Claims Submissions Office (CSO) in Piraeus, Greece, was closed. All claimants with outstanding claims were notified in advance of the closure.

Limitation fund claims evaluation procedure

3.2.3 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.
3.2.4 It was also recalled 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

3.2.5 It was further 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.

3.2.6 The Executive Committee 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.

3.2.7 The Executive Committee also 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.

3.2.8 The Executive Committee further recalled 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

3.2.9 It was recalled that the 1992 Fund’s Greek lawyers had advised that the last sentence of Article 4.3 of
the 1992 Fund Convention was aimed at protecting the environment and safeguarding that clean-up and
preventive measures would be payable at all times.

3.2.10 It was further recalled that the 1992 Fund’s Greek lawyers had advised that the exercise of the right to
claim clean-up expenses under the 1992 Civil Liability and Fund Conventions, by a party 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.

3.2.11 The Executive Committee recalled, 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. The Executive Committee also recalled, therefore, that the mere suspicion
of such action would not be sufficient to deny payment.

Recourse actions

3.2.12 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.
3.2.13 The Executive Committee also 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 186 claims amounting to EUR 14.87 million in compensation.

Civil proceedings

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

3.2.15 The Executive Committee also recalled that in September 2020, the 1992 Fund had been served with further legal proceedings for EUR 998,870 by one of the clean-up contractors and for EUR 1.42 million by three other companies involved in clean-up operations. The Executive Committee noted that shortly thereafter, the 1992 Fund was served with further legal proceedings by a number of other companies involved in clean-up operations. In total, the clean-up claims filed against the 1992 Fund amount to EUR 73.01 million.

Legal proceedings commenced by fisherfolk

3.2.16 The Executive Committee also noted that the 1992 Fund had been served with legal proceedings amounting to EUR 3.35 million from claimants in the fisheries sectors.

Legal proceedings commenced by claimants in the tourism sector

3.2.17 The Executive Committee further noted that the 1992 Fund had been served with legal proceedings amounting to EUR 4.3 million by claimants in the tourism sector.

Legal proceedings commenced by the Greek State

3.2.18 The Executive Committee recalled that in July 2020, the 1992 Fund had been served with legal proceedings by the Greek State to protect its rights to compensation.

3.2.19 The Executive Committee also 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 further recalled 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

3.2.20 The Executive Committee further recalled that, in the Director’s view, since the investigation 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

3.2.21 The delegation of Greece made the following statement:

‘Claims for compensation

This delegation would like once again to express the high appreciation of the Greek State for all payments made so far by the 1992 Fund to victims of the Agia Zoni II incident, as well as for the ongoing endeavours of the 1992 Fund’s experts to assess the rest of claims submitted.

This delegation is also fully aware of the special conditions the Fund’s experts experience during the claims’ assessment process of each oil pollution incident.

However, taking into account that the prompt payment of compensation to victims of all oil pollution incidents constitutes one of the main principles that govern the operation of the IOPC Funds, Greece would highly appreciate an estimate by your side on the time frame that the Agia Zoni II claims’ assessment process is expected to conclude.

Furthermore, this delegation would like to express its concern over the impact the recent closure of the local CSO in Piraeus might have on the progress of the claims’ assessment process.

Investigation into the cause of the incident

With regard to the course of the investigation into the cause of the Agia Zoni II’s sinking, we would like firstly to emphasise that the circumstances and the nature of each case are significant facts that largely affect the whole penal procedural process.

As it has been already stated, the Public Prosecutor has instructed an examining Judge to perform a judicial investigation collecting all the necessary evidence before submitting the file to the Public Prosecutor. The finalisation of this legal procedure is still pending. Once we are informed of the outcome, our Administration will let you know accordingly without delay.

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

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.

Moreover, as it can be deduced from the legal interpretation of the last sentence of Article 4.3 of the 1992 Fund Convention, the 1992 Fund would not be entitled to invoke contributory negligence on the part of a claimant as grounds for exoneration from paying compensation with regard to preventive measures.

Nevertheless, should a party be unappealably condemned to have caused the pollution damage, the legal possibility would still exist for the 1992 Fund to commence a recourse action.’

3.2.22 In response to the questions raised by the delegation of Greece, the Director stated that the claims assessments were well advanced, as evidenced by the figures provided in the document, which also showed that the clean-up claims constituted a large proportion of the total claims submitted and were still being resolved.

3.2.23 The Director also stated that the closure of the CSO had no impact on the speed of assessment of claims which were still ongoing, with good progress continuing to be made. Finally, the Director further stated
that the facts of the incident were unusual, and the results of the Public Prosecutor’s investigations were awaited.

1992 Fund Executive Committee

3.2.24 The 1992 Fund Executive Committee noted the statement made by the Greek delegation and the Director’s comments. It was also 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.

3.3 Incidents involving the IOPC Funds — 1992 Fund: Bow Jubail

Document IOPC/MAR21/3/3

3.3.1 The Executive Committee took note of the information contained in document IOPC/MAR21/3/3 relating to the Bow Jubail incident.

3.3.2 The Committee recalled that on 23 June 2018, the oil and chemical tanker Bow Jubail had collided with a jetty in the Port of Rotterdam, the Kingdom of the Netherlands. It was recalled that, as a consequence of the collision, a leak had occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour, with the ensuing pollution affecting vessels in the vicinity, quays and other property, and wildlife.

Applicability of the Conventions

3.3.3 It was recalled that Article I(1) of the 1992 Civil Liability Convention (CLC) defined ‘ship’ as: ‘any seagoing vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard’.

3.3.4 It was also recalled that although at the time of the incident, the Bow Jubail was in ballast, on the voyage prior to the incident, the Bow Jubail had carried ‘oil’ as referred to in the 1992 CLC. It was recalled, however, that the shipowner had stated that the tanks were clean of oil cargo residues at the time of the incident. It was further recalled that the burden of proof that there were no residues on board lay with the shipowner and that the relevant test would be the one applied by local law, in this case, the law of the Netherlands.

3.3.5 The Committee recalled that if the shipowner could not prove that the Bow Jubail had no residues of oil in bulk on board, the 1992 CLC would apply and that in that case, since the total pollution damage was likely to exceed the limit that would apply to the ship under the 1992 CLC, the 1992 Fund Convention could apply to this incident. It was noted, however, that it was unlikely that the Supplementary Fund Protocol applied as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.

3.3.6 It was recalled that the Bow Jubail was insured with Gard P&I (Bermuda) Ltd, and that the limitation amount applicable to the Bow Jubail if the 1992 CLC were to apply, would be SDR 15 991 676. It was also recalled, however, that the owner of the Bow Jubail was a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.

3.3.7 It was further recalled, however, that if the shipowner was successful in proving that there were no such residues on board, the incident would fall under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) and, therefore, the limitation amount (SDR 14 312 384) under the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96) would apply.
Limitation proceedings

3.3.8 It was recalled that in its judgment of 27 October 2020, the Court of Appeal in The Hague had confirmed the decision of the Rotterdam District Court 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. It was recalled that, according to that judgment, the Bunkers Convention 2001 did not apply and the limitation of the shipowner’s liability would be governed by the 1992 CLC, not the LLMC 76/96.

3.3.9 It was recalled that the shipowner had appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands.

Proceedings before the Supreme Court

3.3.10 It was noted that the 1992 Fund had applied to the Supreme Court requesting the Court to rule, first, that it may intervene as a party, or alternatively that it may be admitted as an interested party in the proceedings, and in the further alternative, that it may intervene as a party on the shipowner’s behalf (joinder) in the appeal in cassation.

3.3.11 It was also noted that several claimants had submitted allegations to the Fund’s application.

3.3.12 It was recalled that the Fund’s lawyers in the Netherlands had advised that it will be for the Court to decide whether to allow the 1992 Fund to join the proceedings. It was recalled that the Supreme Court would examine whether the outcome of the proceedings might have an impact on the position of the 1992 Fund and whether the 1992 Fund should be allowed to join the proceedings at this stage under the procedural laws of the Netherlands.

Claims for compensation

3.3.13 The Executive Committee noted that there was some indication that the claimed amount might be over EUR 80 million.

3.3.14 It was noted that the Fund had been contacted by a few potential claimants, including a refinery located in the Port of Rotterdam, expressing their intention of submitting claims against the Fund if the 1992 CLC were to apply to this incident.

Time bar

3.3.15 The Executive Committee recalled that under the 1992 CLC, rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). It was also recalled that, in respect of the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or their insurer (Article 6). It was further recalled that both Conventions also provided that in no case shall legal actions be brought after six years from the date of the incident.

3.3.16 It was noted that the decision of the Supreme Court was not expected before late 2021. It was recalled that if the Supreme Court was to uphold the decision of the Court of Appeal and find that the Bow Jubail is a ship as defined under the 1992 CLC, both the 1992 CLC and Fund Convention, together with the Supplementary Fund Protocol, would apply to this incident. The Executive Committee noted that, as the three-year anniversary of the incident was fast approaching, some claimants were beginning to consult the 1992 Fund’s lawyers about how best to protect their compensation rights against the Fund.
Intervention by the delegation of the Netherlands

3.3.17 The delegation of the Netherlands thanked the Secretariat for the information provided in document IOPC/MAR21/3/3. The delegation noted that the 1992 Fund had applied to join the proceedings at the Supreme Court and reminded the Executive Committee that the matter was now before the courts. That delegation also stated that they had been in close contact with the Secretariat on developments in this case and will remain to do so in the future.

1992 Fund Executive Committee

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

3.4 Incidents involving the IOPC Funds — 1992 Fund: MT Harcourt

Document IOPC/MAR21/3/4/Rev.1

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3.4.1 The Executive Committee took note of document IOPC/MAR21/3/4/Rev.1 relating to this new incident.

Background information

3.4.2 The Executive Committee noted that on 2 November 2020, an explosion occurred within a ballast tank of the oil storage tanker MT Harcourt (26 218 GT) moored at the Elcrest Terminal in the Gbetiokun oil field, near Koko, Delta State, Nigeria. It was also noted that the tanker was loading crude oil into cargo tanks, and after discharging free water from the slops tanks to shore, a loud explosion was heard, and smoke was seen emanating from the water ballast tank manhole covers on both the port and starboard sides.

3.4.3 The Executive Committee further noted that cargo and slops disposal operations were suspended immediately, and all crew were mustered and accounted for. There were no injuries or other casualties.

3.4.4 The Executive Committee noted that approximately 31 barrels of crude oil was lost from the cargo tank into the water ballast tank, out of which a small quantity spilled overboard. This oil was immediately contained by the Terminal, placing booms around the vessel and across the entrance to the small channel where the ship lay, followed by clean-up of all the oil from the water.

3.4.5 The Executive Committee also noted that the P&I Club’s surveyors had been mobilised and attended on board for the duration of the cargo discharge operations to other vessels, and were assisted by naval architects in London who modelled and monitored vessel stability while the cargo was discharged safely in stages to various barges and other vessels in the same management.

3.4.6 The Executive Committee further noted that the clean-up operation was organised by the Terminal who used their own barges and crew, and that the Club’s surveyors monitored the boom placement and were satisfied that the clean-up operation was ultimately wholly successful.

Applicability of the Conventions

3.4.7 It was further noted that Nigeria is Party to the 1992 CLC and the 1992 Fund Convention and that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was SDR 203 million.

3.4.8 The Executive Committee noted that since the MT Harcourt is 26 218 GT units of tonnage, the limitation amount applicable under the 1992 CLC is SDR 17.9 million.
3.4.9 The Executive Committee also noted that the owner of the MT Harcourt was a party to STOPIA 2006 (as amended 2017), whereby the limitation amount applicable to the tanker is increased, on a voluntary basis to SDR 20 million.

3.4.10 The Executive Committee further noted that it appeared unlikely that the amount of compensation payable in respect of this incident would exceed the STOPIA 2006 limit of SDR 20 million and as a result, it was very unlikely that the 1992 Fund would be called upon to pay compensation.

*Insurance details*

3.4.11 It was noted that the MT Harcourt was insured with the West of England P&I Club, part of the International Group of P&I Associations (International Group).

*Claims for compensation*

3.4.12 It was also noted that in February 2021, a claimant representing 12 riverine communities in the Benin river, served legal proceedings upon the shipowner and ship’s master, claiming compensation for damage to the creeks, mangroves, fish breeding grounds, drinking water and means of livelihood of the fisherfolk within the communities.

3.4.13 The Executive Committee noted that the claim amounted to NGN 11.98 billion (approximately USD 28 million), but to date, little evidence had been provided in support of the claim.

*Intervention by the delegation of Nigeria*

3.4.14 The delegation of Nigeria stated that it appreciated the account of the incident, which was a true reflection of the events but was unable to comment further as the incident was being dealt with by the Nigerian courts.

*1992 Fund Executive Committee*

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

3.5 Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel

| Document IOPC/MAR21/3/5 | 92EC |

3.5.1 The 1992 Fund Executive Committee took note of document IOPC/MAR21/3/5 relating to this incident.

3.5.2 The Executive Committee also noted that on 19 February 2021, the Government of Israel contacted the 1992 Fund requesting assistance with a mystery spill, which resulted in tar balls being washed up along the Israeli coastline. However, the source of the spill was not identified at that time.

3.5.3 The Executive Committee further noted that the Israeli Government believed that sometime between 1 and 2 February 2021, an oil spill incident occurred within the offshore waters of the Israel exclusive economic zone (EEZ), approximately 130 kilometres off the Israeli coastline, to the west-north-west. The Israeli authorities were investigating the cause of the spill, by identifying vessels within the vicinity of the spill location.

3.5.4 It was noted that on 17 February, tar balls of a substance reported to be crude oil began to wash up along the Israeli coastline, ranging in severity from medium-heavy pollution to very light dispersed tar balls. The pollution affected the entire coastline to varying degrees.
3.5.5 It was also noted that the Israeli Marine Environment Protection Division responded under their National Contingency Plan and took control of the overall response to the spill, utilising the local authorities, which were in charge of organising the response on the beaches. A company was tasked to remove the oil waste for disposal.

3.5.6 It was further noted that clean-up operations commenced, and by 16 March, it was estimated that 60% of the affected coastline had been cleaned by first responders, utilising municipal authorities, nature and parks authority and comprising government personnel and volunteers, numbering between 7 000–12 000 per day, organised and monitored by an Israeli non-governmental organisation and the local authorities. A two-week fishing ban was enacted within areas of the affected coastline.

**Discussions between the Israeli authorities and the 1992 Fund**

3.5.7 The Executive Committee also noted that on 19 February 2021, the Israeli authorities had contacted the 1992 Fund to seek assistance and guidance regarding the source of the spill, which was at that time unknown.

3.5.8 The Executive Committee further noted that during the initial discussions, the Director had stated that if it was not possible to identify the source of the pollution, a number of criteria were required before the 1992 Fund could class the incident as a ‘mystery spill’; such criteria included the need for the ‘oil’ as defined within Article I(5) of the 1992 CLC identified as causing the pollution, and for it to be from a ‘ship’, as defined within Article I(I) of the 1992 CLC.

**Investigation into the cause of the incident by the Israeli authorities**

3.5.9 It was noted that the Israeli authorities began their search to identify the source of the oil spill and examined Automatic Identification System (AIS) data and satellite imagery, which indicated that in their opinion, the vessel responsible for the spill was the *MT Emerald* (62 247 GT), a Panamanian-flagged tanker, registered in the Marshall Islands, and which was initially believed to be owned by an Iranian company.

3.5.10 It was further noted that in the belief that the oil spill emanated from the *MT Emerald*, the Israeli authorities examined satellite and historical AIS data for the recent voyages of that vessel which revealed the vessel had loaded crude oil at Kharg island (Iran) on 17 January 2021 and appeared to be fully laden with 112 000 tons of cargo. The vessel’s AIS was turned off as the vessel entered the Egyptian EEZ, which only appeared again after 23 hours and 230 nautical miles to the north, in the vicinity of the Cypriot EEZ and offshore Syria (Latakia).

3.5.11 The Executive Committee noted that on 2 February 2021, the *MT Emerald* was located in the Israeli EEZ around 130 kilometres from the Israeli shoreline and on 5 February 2021, a large oil spill was identified by satellite images provided by European Maritime Safety Agency (EMSA), and the National Oceanic and Atmospheric Administration (NOAA) of the United States of America.

3.5.12 The Executive Committee also noted that in the view of the Israeli authorities, the spill occurred in the EEZ waters of Israel sometime between the 1 and 2 February 2021, and that analysis of AIS data suggested that there were no other tankers within a 50 nautical mile radius from 1 to 5 February other than the *MT Emerald*.

3.5.13 The Executive Committee further noted that after a period of ship-to-ship (STS) operations with another vessel between 3 and 14 of February, the *MT Emerald* returned to Iran.

3.5.14 It was noted that on 17 February 2021, tar balls washed up along all Israeli coastline in a storm of 4-metre wave height and strong winds of up to 35–50 knots; tar balls in different amount and locations, kept being washed ashore until 13 March 2021.
3.5.15 It was also noted that the Israeli authorities stated that there was no other source of crude oil in the Israeli EEZ nor any land pipeline which could be a possible source of crude oil in the location indicated, but that investigations were ongoing into the cause of the incident and had not yet been concluded.

3.5.16 It was further noted that the Israeli authorities had collected samples of the oil spilled, which had been analysed by the Israeli Institute for Energy and Environment and by the University of Jerusalem, and which appeared to indicate that the oil spilled was crude oil.

Claims for compensation

3.5.17 The Executive Committee noted that the Israeli authorities had not yet established their claim for the clean-up operation costs but that initial estimates of the cost of the response to the oil spill were in the region of ILS 9–45 million, including the losses from a two-week fishing ban.

INVESTIGATIONS INTO THE INCIDENT CONDUCTED BY THE 1992 FUND

Analysis of the oil spilled

3.5.18 It was noted that the 1992 Fund had instructed technical experts to travel to Israel to collect samples for analysis. However, due to the COVID-19 pandemic and the difficulty of travelling overseas during this time, travel arrangements and the collection of oil samples were delayed, and the results of the sample testing were not yet ready.

Details of the vessel

3.5.19 It was also noted that the 1992 Fund had been informed that the MT Emerald was, up until 23 December 2020, owned by a Libyan company but was then sold to a company registered in the Marshall Islands, Oryx Shipping Ltd., said to be owned by a Syrian family based in Greece. The 1992 Fund had requested its Greek lawyers to investigate further, and details were awaited.

Details of the insurance

3.5.20 It was further noted that until 23 December 2020, the tanker was insured by the West of England P&I Club, but P&I cover was withdrawn on that date following the vessel’s sale. It was not known with which insurance company the insurance cover had been placed.

Contact with the delegation of the Islamic Republic of Iran by the 1992 Fund

3.5.21 The Executive Committee noted that the Director had informed the Iranian delegation of the new potential incident involving the 1992 Fund, given the allegations that the tanker belonged to an Iranian company and was carrying oil from Iran.

Applicability of the Conventions

3.5.22 The Executive Committee also noted that Israel was a Party to the 1992 CLC and the 1992 Fund Convention, but the question as to whether the 1992 CLC and Fund Convention applied would have to be examined on the basis of the evidence available, in the light of the definition of ‘ship’ and ‘oil’ contained in the 1992 CLC.

3.5.23 The Executive Committee further noted that for the 1992 international Conventions to apply, the authorities would have to establish that the oil spilled was crude oil and not fuel oil. In addition, the authorities would have to establish that the origin of the crude oil found on the coastline could not have originated from any other source such as a pipeline, refinery or oil tank, and that its origin must have been a passing oil tanker.
3.5.24 It was noted that, at present, pending the outcome of the analysis of the samples collected by the 1992 Fund experts, it was not known what substance was spilled or from where the oil originated.

3.5.25 It was also noted that no limitation proceedings had been established, and no legal proceedings had been commenced.

3.5.26 It was further noted that the Director had informed the Israeli authorities that the 1992 Fund was ready to assist them in the difficult situation caused by the oil spill from an unknown source.

3.5.27 It was also noted that the results of the oil sampling undertaken by the 1992 Fund’s technical experts were awaited and it was presently not possible to state with certainty whether the Conventions applied and, if so, which vessel had caused the incident. Consequently, it was not yet clear whether the 1992 Fund would be involved in the incident.

3.5.28 The Director stated that he particularly wished to thank the delegation of Israel whose assistance had been invaluable in gaining access for the 1992 Fund’s technical experts to collect samples, the results of which were awaited, and that it was important that if the samples were found to be crude oil from a tanker, that Israel be afforded the protection being a Member State of the 1992 Fund.

Debate

Intervention by the delegation of Israel

3.5.29 The Israeli delegation stated that it was grateful for the assistance provided by the 1992 Fund and that since the tar balls had hit the entirety of the 170-kilometre-long coastline, it estimated the incident involved a spill of somewhere between ten and hundreds of tons of oil, which had generated approximately 1000 tons of oily waste products.

3.5.30 The delegation also stated that the incident had lasted for 30 days between 17 February and 17 March 2021, but that there were still small amounts of tar balls being washed up along the coastline. That delegation further stated that two laboratories had tested the oil and found it to be crude oil, but that it also had full faith in the findings of the laboratory employed by the 1992 Fund as it was certain that the oil was crude oil.

3.5.31 The delegation stated that there was no other possible source of the oil in the vicinity of 70 kilometres from the Israeli coastline within the Israeli EEZ, and that it was estimated that the oil had travelled for some 17 days before hitting the coastline. The delegation also stated that while the evidence of the source of the spill was circumstantial, it was very strongly circumstantial.

Statement by the delegation of Greece

3.5.32 The Greek delegation made the following statement:

‘The Greek State has been in close cooperation with the Israeli authorities in relation to the incident in Israel.

As far as the MT Emerald is concerned, first and foremost, it needs to be stressed that the said ship was never under the flag of Greece nor managed from Greece.

With regard to the ownership of the MT Emerald our delegation would like to inform that the company ‘Oryx Shipping Ltd.’, based in the Marshall Islands, was initially granted by the Greek State with a license to establish a branch office in Greece in May 2019.'
However, the company did not fulfil its obligations prescribed under national law and thus the said license ceased to be in force, as declared by a relevant Ministerial Decision issued in February 2020.

In accordance with our national registration, the legal effect of this Decision is that the original license is considered to have never been granted to the said company.’

Statement by the delegation of the Islamic Republic of Iran

3.5.33 The delegation of the Islamic Republic of Iran made the following statement:

‘As a Member State of the 1992 Fund and the International Maritime Organization (IMO), the Government of the Islamic Republic of Iran has always served as a committed and responsible State with regard to the requirements of international maritime treaties, as verified by the Iranian effective presence and participation in the technical committees and meetings of IMO, and efficient activity in the related fields of interest, as well as close and constructive interaction and liaison with IMO and the IOPC Funds’ Secretariat in various aspects.

A crucial marine environment convention addressing ships is the International Convention for the Prevention of Pollution from Ships (MARPOL), and the Islamic Republic of Iran has been among pioneer Parties thereto, meticulously implementing and enforcing its provisions on board vessels, submitting timely reports, similar to other major conventions such as the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), and thus tolerating no violation of the relevant technical requirements and obligations through appropriate sanctions of the violators.

Despite the above-mentioned facts, questionable allegations have been announced regarding an oil spill near Israeli coasts, involving the vessel MT Emerald, registered in the Marshall Islands and operating under the Panamanian Flag. Any connection and association of the so-called vessel to the Islamic Republic of Iran is unfathomable and groundless, and the Government of the Islamic Republic of Iran thus strongly believes that:

1) Under the mechanisms stipulated in the convention on the establishment of the 1992 Fund, as well as its working regulations and relevant guidelines, it is irrelevant, irrational and illegal to raise serious allegations and accusations, such as environmental sabotage through causing intentional oil spills, at such an international forum with an absolutely technical and specialised mission and duty regarding damages and compensation resulting from oil spills and their consequences. Any mention of issues of that sort at such forums is therefore unacceptable and should be avoided;

2) Oil spills are inevitable accidents that may still occur anywhere around the world, due to numerous reasons that are generally accidental and attributed to deficiencies on board ships or resulting from maritime accidents, or else because of violations from international regulations and requirements, such as the MARPOL Convention. The rationale for the establishment of the 1992 Fund actually arises from such inevitability of oil spills; and

3) It must be emphasised that according to the loading documents of MT Emerald, or other available evidence pertaining to this pollution case, the vessel was not loaded at any of the Iranian ports. Moreover, the origin of the oil products loaded on an oil tanker or her port of loading, located whether in Iran or any other State, can bear no relevance to the occurrence of an oil spill whatsoever, due to intentional or accidental causes. There is no doubt that in case of an oil spill, it is the governments of the ship’s Flag State, owner
This delegation would like to conclude by strongly rejecting any involvement in the mentioned oil spill, believing such allegations and accusations to be solely made under certain political intentions, without sufficient evidential and logical grounds.

Any such groundless accusations and abuse of membership at technical international organisations, such as the IOPC Funds, should be avoided and prevented in the future, as empty allegations of this sort have no credibility or value among nations and states of the world, and will serve no purpose. It is the firm belief of this delegation that international forums such as the IOPC Funds or IMO should not be exploited for raising political issues, and the understanding that the oil spill case involving MT Emerald cannot be attributed to the Islamic Republic of Iran. It seems that its linkage to this Member State of the IOPC Funds or any attempt to do so, is political rather than technical, and this delegation is thus of the opinion that political issues shall not be addressed at technical forums such as the IOPC Funds.’

3.5.34 Another delegation expressed its support for the Secretariat and trusted that it would investigate the incident in a careful and neutral manner.

**1992 Fund Executive Committee**

3.5.35 The Executive Committee thanked the States which had taken the floor for: providing information on the status of the owner; as well as on the status of the investigations into the source of the oil spill; underlining the need to investigate the facts of the incident on a technical rather than political basis; and recognising that the investigation was still in its early stages with significant information as yet unknown.

3.5.36 The 1992 Fund Executive Committee also noted that the Director would monitor developments and report the outcome of the analysis of the spilled oil at a future session.