



International Oil Pollution
Compensation Funds

Agenda Item 11	IOPC/OCT22/11/1	
Date	28 October 2022	
Original	English	
1992 Fund Administrative Council	92AC22/92A27	●
1992 Fund Executive Committee	92EC79	●
Supplementary Fund Assembly	SA19	●

RECORD OF DECISIONS OF THE OCTOBER 2022 SESSIONS OF THE IOPC FUNDS GOVERNING BODIES

(held from 25 to 28 October 2022)

Governing Body (session)		Chair	Vice-Chairs
1992 Fund	Administrative Council (92AC22/92A27)	Ambassador Antonio Bandini (Italy)	Professor Tomotaka Fujita (Japan) Mr Siphon Mbatha (South Africa)
	Executive Committee (92EC79)	Mr Samuel Soo (Singapore)	Ms Luisa Burgess (Ecuador)
Supplementary Fund	Assembly (SA19)	Mr Sungbum Kim (Republic of Korea)	Mr Andrew Angel (United Kingdom) Mr Emre Dinçer (Türkiye)

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*Opening of the sessions***1992 Fund Administrative Council**

- 0.1 The Chair of the 1992 Fund Assembly could not open the 27th session of the Assembly at 9.30 am since the required quorum of 61 Member States was not achieved.
- 0.2 The Chair therefore concluded that, in accordance with Resolution N^o7, the items of the Assembly's agenda would be dealt with by the 22nd session of the 1992 Fund Administrative Council, acting on behalf of the 27th session of the 1992 Fund Assembly^{<1>}.
- 0.3 The Chair reiterated that Member States that have registered for a meeting should ensure that they are present at the opening of the 1992 Fund Assembly session in order to achieve quorum.

Supplementary Fund Assembly

- 0.4 The Supplementary Fund Assembly Chair opened the 19th session of the Assembly with 22 Member States present.

1992 Fund Executive Committee

- 0.5 The 1992 Fund Executive Committee Chair opened the 79th session of the Executive Committee with 12 Member States present.
- 0.6 The Member States present at the sessions are listed in Annex I, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

1 Procedural matters

1.1	Adoption of the Agenda Documents IOPC/OCT22/1/1	92AC	92EC	SA
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The 1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly adopted the agenda as contained in document IOPC/OCT22/1/1.

1.2	Election of the Chairs	92AC	92EC	SA
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- 1.2.1 The Director reminded the governing bodies of the procedure adopted in April 2015, whereby the Director would preside over this agenda item for the governing bodies (document IOPC/APR15/9/1, paragraph 6.1.3 (i)).

1992 Fund Administrative Council decision

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

Chair: Ambassador Antonio Bandini (Italy)

<1> From this point forward, references to the '22nd session of the 1992 Fund Administrative Council' should be taken to read '22nd session of the 1992 Fund Administrative Council, acting on behalf of the 27th session of the 1992 Fund Assembly'.

First Vice-Chair: Professor Tomotaka Fujita (Japan)

Second Vice-Chair: Mr Siphon Mbatha (South Africa)

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

Supplementary Fund Assembly decision

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

Chair: Mr Sungbum Kim (Republic of Korea)

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

Second Vice-Chair: Mr Emre Dinçer (Türkiye)

- 1.2.5 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. He then informed the governing bodies that he would be stepping down as Chair at the end of the current session.
- 1.2.6 The Director noted that the post of the Chair of the Supplementary Fund Assembly would become vacant at the end of this session and the Supplementary Fund Assembly would be invited to elect a new Chair to hold office until the next regular session of the Assembly later during the week.
- 1.2.7 Prior to the closing of the session, the Director reverted to this item and invited nominations for the position of Chair of the Supplementary Fund Assembly.
- 1.2.8 The Supplementary Fund Assembly elected, by acclamation, Mr François Marier (Canada), to take up office from the end of the current session and to hold office until the next regular session of the Supplementary Fund Assembly.
- 1.2.9 The new Chair of the Supplementary Fund Assembly thanked the Supplementary Fund Assembly for the confidence shown in him.

1.3	Examination of credentials Documents IOPC/OCT22/1/2, IOPC/OCT22/1/2/1 and IOPC/OCT22/1/2/2	92AC	92EC	SA
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Establishment of the Credentials Committee

- 1.3.1 The governing bodies took note of the information contained in document IOPC/OCT22/1/2.
- 1.3.2 The governing bodies recalled that at its March 2005 session, the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chair, to examine the credentials of delegations of Member States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.
- 1.3.3 The governing bodies further recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (documents 92FUND/A.13/25 and SUPPFUND/A.4/21).

1992 Fund Administrative Council decision

- 1.3.4 In accordance with Rule 10 of the Rules of Procedure of the 1992 Fund Assembly and the Supplementary Fund Assembly and Rule 9 of the Rules of Procedure of the 1992 Fund Executive Committee, 1992 Fund Administrative Council appointed the delegations of Algeria, Nigeria, Panama, Poland, and Thailand 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 Administrative Council.

Interim report of the Credentials Committee

- 1.3.6 In order to facilitate the resolution of an issue regarding the credentials of one particular delegation, the Chair of the Credentials Committee, Mr Watchara Chiemanukulkit (Thailand), presented an interim report of the Credentials Committee on Wednesday 26 October.

Bolivarian Republic of Venezuela (Venezuela)

- 1.3.7 The Chair of the Credentials Committee recalled that during the meetings of the governing bodies held in October 2019, December 2020, March 2021, November 2021 and March 2022, the Credentials Committee had examined two letters of credentials for two separate delegations claiming to represent Venezuela: one signed by H.E. Mrs Rocío Maneiro and the other signed by President Juan Guaidó.
- 1.3.8 The Chair further recalled that in all five meetings, the Credentials Committee had recommended to the 1992 Fund Assembly that the individuals listed in the credentials letters issued by Ambassador Maneiro should be accepted as the official representatives of Venezuela. The Chair noted that the 1992 Fund Assembly had accepted these recommendations, and the Assembly's decisions had been noted by the 1992 Fund Executive Committee and Supplementary Fund Assembly.
- 1.3.9 The Chair of the Credentials Committee reported that, the same situation occurred at the October 2022 sessions of the governing bodies, in that the Director had again received two letters of credentials for Venezuela. The Director had then requested the advice of Professor Antonios Tzanakopoulos, who had provided a legal opinion on this matter.
- 1.3.10 The Chair reported that as in the previous meetings, the Credentials Committee had been unanimous in its view that it was not the function of the IOPC Funds to decide which was the legitimate Government of Venezuela, since this was considered to be a political question to be decided in another forum, namely the political organs of the United Nations (UN) (i.e. the UN General Assembly and the UN Security Council). The Credentials Committee had concluded that the role of the Credentials Committee and the 1992 Fund Assembly was simply to decide which of the two delegations should be accredited as the official representative of Venezuela at each meeting of the Funds' governing bodies.
- 1.3.11 In considering this matter and the legal advice provided by Professor Tzanakopoulos on 24 October 2022, the Credentials Committee recommended once again that the *status quo* should continue. The Credentials Committee thus recommended that the letter of credentials of the delegation of Venezuela issued by Ambassador Maneiro, appointed by President Maduro, should be accepted and that the named individuals therein be deemed the official representatives for the October 2022 meeting of the governing bodies. However, the Credentials Committee also noted that this position applied to this meeting only and could be susceptible to change in the coming months depending on future developments.

1992 Fund Administrative Council decision

- 1.3.12 The 1992 Fund Administrative Council 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 October 2022 sessions of the governing bodies.

1992 Fund Executive Committee and Supplementary Fund Assembly

- 1.3.13 The 1992 Fund Executive Committee and the Supplementary Fund Assembly noted the decision of the 1992 Fund Administrative Council.

Final Report of the Credentials Committee

- 1.3.14 After having examined the credentials of the delegations of the 1992 Fund Member States, including States members of the 1992 Fund Executive Committee and Member States of the Supplementary Fund, the Credentials Committee confirmed in its report (document IOPC/OCT22/1/2/2) that it had examined 65 letters of credentials and that all were in order. It was noted that the Republic of the Congo, Montenegro, Qatar^{<2>} and Switzerland had presented credentials but had not participated in the sessions. It was also noted that the delegation of Oman had attended the meeting but that credentials had not yet been submitted.
- 1.3.15 It was further noted that the Credentials Committee encouraged Member States to follow the guidelines provided in IOPC/2015/Circ.4 as closely as possible to avoid irregularities in the credentials submitted at the meetings.

Debate

- 1.3.16 One delegation reported that it had submitted credentials to the Secretariat on the evening of Tuesday 25 October 2022.
- 1.3.17 Another delegation recommended that in terms of the interim report, the Credentials Committee or the Secretariat contact those Member States who had submitted credentials that were found not to be in order, as opposed to naming them on the floor as this would be more diplomatic.
- 1.3.18 The Secretariat explained that a lot of work was put into assisting Member States ahead of the meetings to try to correct any inconsistencies.
- 1.3.19 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2022 meeting.

1.4	Amendments to the Rules of Procedure – 1992 Fund Executive Committee Document IOPC/OCT22/1/3	92AC		
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- 1.4.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/OCT22/1/3 and considered the Director's proposal to amend Rule 18 of the Rules of Procedure of the 1992 Fund Executive Committee in order to clarify the process for the election of the Chair and Vice-Chair of the Committee under the following scenarios:

<2> Upon verification, the Secretariat reports that Qatar was in attendance at the October 2022 sessions of the IOPC Funds' governing bodies.

- both the Chair and Vice-Chair resign before the end of the term;
- the Chair resigns before the end of the term; or
- the Vice-Chair resigns before the end of the term.

1992 Fund Administrative Council decision

1.4.2 The 1992 Fund Administrative Council decided to amend Rule 18 of the Rules of Procedure of the 1992 Fund Executive Committee, as set out in paragraph 3.3 of document IOPC/OCT22/1/3. The revised text of Rule 18 is contained in Annex II of the present document.

1.5	Information on the format of meetings Document IOPC/OCT22/1/4	92AC		SA
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1.5.1 The governing bodies noted the information contained in document IOPC/OCT22/1/4 on the format of meetings.

1.5.2 It was recalled that, due to the COVID-19 pandemic and the refurbishment of the International Maritime Organization (IMO) meeting facilities, the IOPC Funds' governing bodies had held five remote meetings via the e-conferencing platform KUDO during the period December 2020 to March 2022.

1.5.3 It was noted that, since the IMO conference facilities were back in full use and the IMO building was now fully open to visitors, it had been possible for the IOPC Funds to return to its established practice of holding in-person meetings, with the October 2022 meeting being the first fully in-person event to be held by the organisation in three years.

1.5.4 It was noted that the October 2022 meeting did not provide a hybrid element for remote attendance, but that since the IOPC Funds use IMO meeting facilities, the Secretariat had been monitoring developments with regards to the practice followed by IMO and the format of its meetings following the pandemic. It was noted in particular that the refurbishment of the audio-visual facilities at IMO in early 2022 had included the installation of a 'hybrid infrastructure' in the Main Hall.

1.5.5 It was further noted that the trial period for hybrid meetings held by IMO was set to continue until September 2023, and that since any change in format of IOPC Funds meetings would require the governing bodies to amend a number of Rules of Procedure, in the Director's view, it would be prudent to first monitor the developments within IMO before taking any decisions in this regard. The Secretariat informed the governing bodies that it would, however, be in a position to offer a passive streaming service for the May 2023 sessions in order to facilitate the wider participation of Member State representatives.

Debate

1.5.6 One delegation invited the Director to consider introducing hybrid meetings at the May 2023 sessions rather than awaiting the final outcome of the IMO trial in the latter part of 2023. That delegation stated that the option to join meetings remotely is of particular benefit to those States who are required to travel significant distances to attend in person in London. That delegation also suggested that a trial of the hybrid system by the IOPC Funds could help to support the trial being carried out by IMO as it would provide a wider range of experiences.

1.5.7 Another delegation agreed that a trial could be carried out at the May 2023 meeting with the temporary suspension of the necessary Rules of Procedure as required. That delegation suggested that a number of hybrid meetings had already been held successfully, that there was general satisfaction with the experience gained so far, which was already well-documented. With that in

mind, that delegation did not see any need to delay the introduction of hybrid meetings for the IOPC Funds.

- 1.5.8 One delegation expressed some concerns with the idea of introducing hybrid meetings before the completion of the IMO trial period. It was pointed that the hybrid facilities were currently only available in the Main Hall at the IMO, that the system applied provided limited access to additional representatives and did not allow States to vote remotely. Others shared these concerns and considered that the Director was right to be prudent and await the outcome of the IMO trial.
- 1.5.9 One delegation agreed that the introduction of hybrid meetings at the next meeting would be beneficial but recognised that it would require the Secretariat to have the necessary training and resources in place and noted that the relevant Rules of Procedure would need to be amended. In any case, that delegation emphasised that the addition of any remote access to the meetings would be complementary to the default format of in-person meetings. That point was supported by several delegations.
- 1.5.10 The Director pointed out that whilst IMO held many meetings, the IOPC Funds held only two each year and the nature of the sessions were quite different, in that the Executive Committee in particular, was required to take decisions and could potentially be required to vote. With this in mind, the Director noted that particular consideration should be given as to how that could take place if the meetings were held in a hybrid format. He also pointed out that there were quite significant cost implications to running hybrid meetings, which needed to be taken into account. He confirmed that there was currently no budget allocated to cover such costs. For these reasons, he reaffirmed that he would be in a better position to prepare draft Rules of Procedure and advise on potential costs at the May 2023 sessions before any firm decisions are taken.
- 1.5.11 The Director further highlighted, however, that the introduction of a passive streaming service at those sessions will enable additional members of delegations to follow the sessions remotely, whilst the meeting can be conducted in its usual format without the need to amend any Rules of Procedure.
- 1.5.12 The Head of Administration further clarified that, following recent consultations with IMO, it was understood that at present IMO were required to engage external expertise to deliver and support hybrid meetings but that in the long-term they would likely look to train staff and provide that skillset internally. He commented that, in any event, this would inevitably incur an additional cost to delivering the meetings which would likely be passed on to the IOPC Funds at some point, should the organisation decide to deliver hybrid meetings.
- 1.5.13 A number of delegations thanked the Secretariat for the clarifications and commented that whilst they supported the early introduction of hybrid meetings for the IOPC Funds, they appreciated that the cost implications and Rules of Procedure must be given careful consideration before any decisions are made.
- 1.5.14 One delegation in favour of introducing hybrid meetings in May 2023, noted the reasons given during the discussion for waiting, but emphasised again that the organisation had a responsibility to be inclusive and recalled that during the COVID-19 pandemic the organisation had already found pragmatic solutions to various challenges of online meetings, including voting. That delegation encouraged the governing bodies to put into practice its experience, facilitate equal participations among Member States and move forward by adopting a new meeting format. One delegation reminded the governing bodies that the online voting practice adopted during the pandemic had been implemented for those specific circumstances at the time and was not to be used as a precedent.
- 1.5.15 The Director thanked the governing bodies for the interesting and very useful debate. He confirmed that he would take into account both the concerns expressed with regards to some of the

experiences of hybrid meetings so far as well as the views of those who were in favour of providing remote capabilities at the earliest opportunity.

- 1.5.16 In concluding the debate, the Chair of the 1992 Fund Administrative Council noted that there was a strong interest to adapt the current format of meetings to enable remote participation, but any such addition would be subsidiary to the main practice of in-person meetings. In addition, he noted that in the case of remote meetings, a suitable system should be identified to allow for conducting a voting procedure.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 1.5.17 The governing bodies noted that the Director would explore the possible options, taking into account the specific activities and requirements of the governing bodies. It was also noted that he would continue to liaise with the IMO Secretariat on a regular basis; take note of the outcome of the interim review of IMO's experience which is expected to be reported to the IMO Council in November 2022; and report developments to the governing bodies at their May 2023 sessions.

2 Overview

2.1	Report of the Director Document IOPC/OCT22/2/1	92AC	SA
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- 2.1.1 The Director presented his report contained in document IOPC/OCT22/2/1. He welcomed everybody to the meeting and said he was very pleased that the meeting could be held in person. He added that this face-to-face meeting would facilitate the interaction and dialogue among the representatives of Member States, which was vital when considering substantive issues which required decisions.
- 2.1.2 He announced that there would be a farewell gathering to thank the former Director, Mr José Maura, for his years of service to the IOPC Funds and also to thank and bid farewell to the former Deputy Director/Head of Finance and Administration Department, Mr Ranjit Pillai, who had retired in June 2022.
- 2.1.3 In terms of membership, the Director noted that the 1992 Fund Convention had entered into force for the Republic of San Marino and the Republic of Costa Rica on 19 April 2022 and 19 May 2022, respectively. He reported that Republic of Guinea-Bissau had acceded to the 1992 Fund Convention on 12 May 2022 and that the Convention would enter into force for that State on 12 May 2023, bringing the number of 1992 Fund Member States to 121 at that time. The Director further noted that 32 States were Members of the Supplementary Fund.
- 2.1.4 With respect to compensation matters, the Director reported that the 1992 Fund was dealing with 12 incidents. With respect to the *Hebei Spirit* incident, the Director reported that a very positive and constructive meeting had been held by the 1992 Fund in June 2022, in Seoul, Republic of Korea, with all the parties involved in the handling of the claims. He also reported that a document would be presented at the sessions on the matters discussed during that meeting, which included a report by the former Director of the IOPC Funds. The Director thanked the Government of the Republic of Korea, the Skuld Club, the *Hebei Spirit* Centre staff, the experts, and the Secretariat for their assistance and cooperation, which had been paramount in resolving the *Hebei Spirit* incident. He added that the incident could be considered closed.
- 2.1.5 With respect to the *Agia Zoni II* incident, the Director reported that the assessment of 423 claims continued, of which 415 had been approved and 189 had been paid. He also reported that the results of the investigations into the cause of the incident by the Public Prosecutor remained pending.

- 2.1.6 With respect to the *Bow Jubail* incident, the Director recalled that it was still to be decided whether the incident was covered under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) or if the 1992 Civil Liability and Fund Conventions applied. He noted that the 1992 Fund had a financial interest in this case since, if a final judgment were to decide that the 1992 Civil Liability and Fund Conventions applied, the 1992 Fund would pay compensation, as the losses were expected to exceed the shipowner's limit under the 1992 Civil Liability Convention (CLC) and the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) (STOPIA 2006) limit. He added that a document with more detailed information on this incident would be presented during the meeting.
- 2.1.7 With respect to the incident in Israel, the Director reported that the assessment of claims filed against the 1992 Fund had continued, with a total of 33 claims having been submitted for clean-up operations, property damage and economic losses, totalling ILS 13.8 million (£3.3 million).
- 2.1.8 The Director reported that all the outstanding claims relating to the *Trident Star* incident had been settled and all corresponding legal actions had been withdrawn, and that the incident was now considered closed. He announced that the 1992 Fund was organising a wash-up meeting with the Shipowners' Club to appraise the handling of the incident and draw lessons learned, which would be useful especially for futures cases in which STOPIA 2006 applied.
- 2.1.9 The Director reported that the Secretariat had been notified of a new incident in Réunion Island (France), which would probably not involve the IOPC Funds.
- 2.1.10 When reporting on financial matters, the Director stated that the 1992 Fund Administrative Council and the Supplementary Fund Assembly would be invited to approve the 2021 Financial Statements for both Funds.
- 2.1.11 The Director reported that, as at 20 September 2022, 94 States had submitted reports to the 1992 Fund and that 30 States had submitted reports to the Supplementary Fund for 2021, representing some 88% and some 89% of the expected total contributing oil, respectively. The Director expressed his concern that there were States that had outstanding reports for five or more years and that one State had never submitted reports despite being a member of the 1992 Fund for many years. He was also concerned about the outstanding 2021 oil reports from large contributors in Malaysia and the Netherlands which affected the Secretariat's ability to calculate an accurate levy per tonne for the 2022 levies. The Director stated that he would continue to engage with those States that had outstanding reports and encouraged those Member States that might have trouble compiling information on oil receipts to contact the Secretariat. He also thanked Member States for their cooperation.
- 2.1.12 The Director was also pleased to report that, as at 20 September 2022, the outstanding contributions represented 0.21% of the total contributions levied since the establishment of the 1992 Fund. He said that he would continue to engage with the authorities in Ghana, Venezuela, Islamic Republic of Iran, Curaçao, Argentina and the Russian Federation with respect to outstanding contributions to correct this situation soon. He also reported that, as at 20 September 2022, outstanding contributions to the Supplementary Fund related to the Republic of the Congo and represented 0.05% of contributions levied to date.

- 2.1.13 The Director added that throughout 2021 and 2022, the Secretariat and the Audit Body had examined the possibility of invoicing contributors based on estimates if no reports were submitted and had discussed this matter extensively on the basis of two legal opinions issued by Professor Dan Sarooshi K.C., the 1992 Fund's legal counsel in public international law. He proposed drafting a resolution enabling him to issue invoices to contributors based on estimates if no oil reports were submitted. The Director added that if the governing bodies agreed, he would prepare, in consultation with the Audit Body, the draft resolution and the relevant draft amendments to the Internal Regulations, which he would then present at a future meeting of the governing bodies in 2023.
- 2.1.14 Regarding the budget, the Director said that the 1992 Fund Administrative Council would be asked to approve the joint Secretariat budget for 2023 of £5 093 705 and the expenditure on the external audit fee, relating only to the 1992 Fund, which was £54 940. He added that the Supplementary Fund Assembly would be asked to approve the budget of £54 510 for 2023. He further proposed that the 1992 Fund and the Supplementary Fund maintained their working capitals at £15 million and £1 million, respectively, in the budget year 2023.
- 2.1.15 The Director noted that he had worked hard with the Secretariat to limit the increase to the budget in 2023, which was a particular challenge given the current inflationary environment. He explained that the year on year increase of 4.9% was approximately half the prevailing rate of inflation and noted that nearly 70% of the 2023 budget related to staff costs and that increases to salary scales were outside the control of the Secretariat. He also noted that inflation had affected all chapters of the Secretariat's budget, in particular travel costs, resulting in the need to make a transfer within the budget for 2022.
- 2.1.16 The Director invited the 1992 Fund Administrative Council to levy 2022 contributions to the General Fund of £5.5 million for payment by 1 March 2023. The Director said he would also be inviting the 1992 Fund Administrative Council to levy 2022 contributions of £3 million to the Incident in Israel Major Claims Fund, payable by 1 March 2023. He also invited the 1992 Fund Administrative Council not to levy 2022 contributions to the Major Claims Funds established for the *Prestige*, *Alfa I*, *Agia Zoni II* and *Nesa R3* incidents. The Director also said that he would be inviting the 1992 Fund Administrative Council to reimburse £7.3 million to contributors to the *Hebei Spirit* Major Claims Fund by 1 March 2023. The Director invited the Supplementary Fund Assembly to decide not to levy contributions to the General Fund. The governing bodies noted that there was no need to levy contributions to any Claims Fund as there had been no incidents involving the Supplementary Fund.
- 2.1.17 The Director noted that the period of office for the External Auditor BDO International LLP (BDO) would end following their report on the 2023 Financial Statements at the 2024 regular sessions of the governing bodies. He also noted that the management of the selection process of the External Auditor fell within the mandate of the Audit Body. He said that the options and related issues regarding the appointment of the External Auditor would be presented by the Audit Body later in the week.
- 2.1.18 The Director noted that at its December 2020 session, the 1992 Fund Assembly had reappointed Mr Alan Moore and Ms Beate Grosskurth to the Investment Advisory Body (IAB) for a term of three years until the regular sessions of the IOPC Funds' governing bodies in 2023. He also noted that Mr Brian Turner had been reappointed for a further two years, until the regular sessions of the IOPC Funds governing bodies in 2022, while a suitable replacement was being sought following his decision to step down from the IAB. The Director said he would be inviting the governing bodies to appoint Mr Marcel Zimmermann as a member of the IAB from 1 November 2022 up to the next regular sessions of the IOPC Funds' governing bodies in 2023. He thanked Mr Brian Turner, who had worked with the IOPC Funds for the last 20 years.

- 2.1.19 With respect to staff matters, the Director referred to the changes in the structure of the Secretariat. As at June 2022, Mr Robert Owen had become the Head of the Administration Department, Mrs Liliana Monsalve had become Deputy Director/Head of Claims Department, Ms Chiara Della Mea had been promoted to Senior Claims Manager, Ms Claire Montgomery had been promoted to Chief of Finance, Mr Thomas Liebert had continued to work in a reduced capacity due to medical reasons with a focus on HNS matters, and Mrs Victoria Turner had continued to coordinate the activities of the External Relations and Conference Department.
- 2.1.20 The Director reported the departure from the Secretariat of Miss Nadja Popović (External Relations and Conference Assistant) and Ms Julia Sükan del Río (External Relations and Conference Coordinator). He thanked Miss Popović and Ms Sükan del Río for their contribution to the work of the IOPC Funds. He also reported that Ms Thamina Begum had been appointed to the position of Finance Assistant and Mr Asayehegn Woldegebrail to the position of Finance Manager, both in the Administration Department.
- 2.1.21 The Director reported that he had decided to discontinue the Manager's and Director's Awards and had introduced the Service Awards and the Retirement Award with effect 1 January 2022.
- 2.1.22 The Director was pleased to report on the progress with the tasks required for implementing the principles of the General Data Protection Regulation (GDPR).
- 2.1.23 The Director referred to the regular review of and endeavours to improve the general information services provided by the Secretariat and encouraged delegates to follow the IOPC Funds account on Twitter and the IOPC Funds page on LinkedIn.
- 2.1.24 The Director reported that the Secretariat had continued to carry out the tasks necessary to set up the HNS Fund and prepare for the first session of the HNS Assembly. He also reported on the establishment of an internal steering group and a more detailed plan, which included a complete list of items to be discussed and agreed upon before, during and after the period of entry into force of the 2010 HNS Convention.
- 2.1.25 The Director said that ensuring correct HNS reporting was a major issue for existing and future Contracting States. He added that the IOPC Funds, in cooperation with IMO, would continue to engage with Contracting States to develop a set of guidelines and support for HNS reporting and contributions as a priority, since this was vital for the proper functioning of the HNS Fund. The Director explained that an appropriation of £135 000 had been included in the 2023 budget to cover the costs for the preparations and other administrative tasks in respect of the HNS Fund, of which £100 000 had been included to provide assistance to States in relation to the HNS reporting and contribution system.
- 2.1.26 The Director announced that he would propose that the HNS Fund should pay a flat management/development fee to the 1992 Fund, which would be based on the model used to calculate the fee paid by the Supplementary Fund to the 1992 Fund. He added 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.
- 2.1.27 The Director referred to the IOPC Funds' Short Course, the Induction Course for delegates and to the outreach activities carried out by the Secretariat during 2022 and to those planned for the near future. He explained that outreach activities were, whenever possible, combined with meetings with government authorities, contributors and other key stakeholders to enhance cooperation, exchange views and answer questions. He added that the Secretariat had further developed online training courses throughout 2022 which had been opened to a wide audience and would continue to do so in the future.

- 2.1.28 The Director reported that the Secretariat was exploring the possibility of offering a streaming service or holding hybrid meetings in the future. He added that Member States might wish to consider the format of future meetings of the governing bodies but recommended taking a prudent approach and monitoring the developments within IMO before taking any decisions in this regard.
- 2.1.29 The Director referred to the impact of sanctions on the international liability and compensation regime. He noted that the attempt by many vessels to circumvent sanctions by various methods negated many of the IMO safety measures, put the crews involved at risk and put coastlines at an increased risk of oil pollution. He also noted that as a result of the restriction on insurance of vessels carrying Russian crude oil and products, more shipowners would need to insure with non-International Group of P&I Associations (International Group) insurers, which involved the risk that some of these insurers might not be so willing to comply with their obligations under the 1992 CLC, which could result in the 1992 Fund having to pay additional compensation if a shipowner or its insurer failed to establish a limitation fund. He also noted that many banks might refuse to have any dealings with money destined for or originating from the Russian Federation and that the 1992 Fund might face difficulties in establishing bank accounts from which to pay compensation. He thanked the delegations of Canada, Japan and the United Kingdom, and the International Group for the documents submitted on this matter.
- 2.1.30 The Director said that he would work towards promoting the international liability and compensation regime in States that had not yet ratified the 1992 Fund Convention and the Supplementary Fund Protocol, and that were therefore unprotected or not sufficiently protected from the impact of a potential oil spill. He added that he would also work towards ensuring that the Conventions were uniformly and effectively implemented and interpreted in Member States. He also said that the Secretariat would continue to work actively, in cooperation with IMO, towards the ratification of the 2010 HNS Convention and the setting up of the HNS Fund. He added that he would continue to work with his colleagues at the Secretariat to continue to serve the Member States and the victims of oil pollution, protect the interests of the IOPC Funds and adapt to the changing needs.
- 2.1.31 The Director said that his first year at the Funds had been both exciting and challenging. He added that he had focused on strengthening the structure of the Secretariat and on engaging with the Member States, the Secretariat, the industry and other stakeholders.
- 2.1.32 In concluding, the Director expressed his gratitude to all Member States, P&I Clubs and fellow international organisations with whom the IOPC Funds had worked closely, the oil industry in Member States, and the international shipping community. He thanked all members of the Audit Body, members of the Investment Advisory Body, representatives of the External Auditor BDO and the lawyers and experts who worked for the Funds. He thanked the Secretary-General of IMO and the IMO staff for their support and cooperation. He also expressed his gratitude to the Chairs and Vice-Chairs of the governing bodies who provided their assistance and views on key issues affecting the IOPC Funds. And finally, he thanked the Secretariat who had worked with him throughout his first year at the IOPC Funds to help him keep his promise to serve, protect and adapt.

Debate

- 2.1.33 The Chair of the 1992 Fund Administrative Council thanked the Director for his comprehensive report and welcomed the delegations of the Republic of San Marino and Guinea-Bissau.
- 2.1.34 The delegation of the Republic of San Marino congratulated the Director and the Chair of the 1992 Fund Administrative Council for their well-deserved appointments. The delegation of the Republic of San Marino explained that, even though it was a landlocked State, the interest in maritime issues had grown considerably and several maritime conventions had been ratified. That delegation stressed the commitment of the Republic of San Marino to maritime issues and its desire to collaborate proactively with the IOPC Funds for the benefit of the maritime sector.

2.1.35 Another delegation thanked the Director for his extensive and comprehensive report and welcomed him to the first in-person meeting. That delegation stressed the importance of being able to interact in person again and drew the attention to the potential impact of sanctions on the international liability and compensation regime, an issue that would be debated during the week of the meeting.

1992 Fund Administrative Council and Supplementary Fund Assembly

2.1.36 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted the information contained in document IOPC/OCT22/2/1.

3 Incidents involving the IOPC Funds

3.1	Incidents involving the IOPC Funds Document IOPC/OCT22/3/1		92EC	SA
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3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/OCT22/3/1, which contained information on documents for the October 2022 meeting relating to incidents involving the IOPC Funds.

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

3.2	Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/OCT22/3/2		92EC	
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3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT22/3/2 regarding the *Prestige* incident.

Criminal proceedings in Spain

3.2.2 The 1992 Fund Executive Committee recalled that the Spanish Supreme Court had awarded claimants in the criminal proceedings in Spain EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million), plus interest.

3.2.3 It was also recalled that the judgment had clarified that pure environmental and moral damages were not recoverable from the 1992 Fund. It was recalled, however, that the judgment had confirmed its previous decision that the London P&I Club was liable for all the damages caused by the incident, including pure environmental and moral damages, up to the limit of its policy of USD 1 000 million.

3.2.4 It was recalled that the Court in La Coruña 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, as authorised by the 1992 Fund Executive Committee at its April 2019 session, the 1992 Fund had paid to the Spanish Court EUR 28 million less:

- EUR 800 000 which should be kept available to pay any judgments by French courts; and
- 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.

3.2.5 The Executive Committee also 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).

- 3.2.6 The Executive Committee noted that the Court in La Coruña had made payments totalling EUR 51.7 million to claimants in the Spanish legal proceedings, including the Spanish and French States but that the Court was having problems distributing a minor part of available funds (EUR 39 000) which will be declared abandoned if not claimed by relevant claimants by 2042.

RECOURSE ACTIONS

Legal action by France against ABS in France

- 3.2.7 It was recalled that in April 2010, the French Government had brought a legal action in the Court of First Instance in Bordeaux against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS). It was also recalled that the defendants had opposed this action relying on the defence of sovereign immunity, but that the Court of Cassation in France had decided that ABS could not avail itself of the defence of sovereign immunity in this case.

- 3.2.8 The Executive Committee 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

- 3.2.9 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. It was also recalled that ABS had submitted points of defence alleging that it was entitled to sovereign immunity on the same basis as the flag State of the *Prestige*.

- 3.2.10 It was recalled 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 other admissibility arguments raised by ABS.

- 3.2.11 The Executive Committee recalled that if the 1992 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.

1992 Fund Executive Committee

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

3.3	Incidents involving the IOPC Funds — 1992 Fund: <i>Solar 1</i> Document IOPC/OCT22/3/3		92EC	
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- 3.3.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/3, which contained information relating to the *Solar 1* incident.

- 3.3.2 The Executive Committee noted that some 32 466 claims had been received and payments totalling PHP 1 091 million (£12.3 million) had been made in respect of 26 872 claims, mainly in the fisheries sector, and also recently for the main clean-up claim presented by the Philippine Coast Guard (PCG).

- 3.3.3 The Executive Committee also noted that two sets of claims remained outstanding, both of which were subject to legal proceedings in the Philippines.

Legal proceedings by the PCG

- 3.3.4 In respect of the claim for PHP 104.8 million by the PCG, the Executive Committee noted that the 1992 Fund had paid the full settlement of PHP 104.8 million to the PCG in August 2022, and that the legal proceedings by the PCG were due to be dismissed. It was noted that the 1992 Fund had invoiced the P&I Club for repayment pursuant to the terms of STOPIA 2006.

Legal proceedings by 967 fisherfolk

- 3.3.5 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.
- 3.3.6 The Executive Committee recalled that during 2019, a number of witnesses were presented by the claimants' lawyer, but their claims were proved to have no factual or legal basis. Further court hearings were set for July and August 2019, but these were cancelled and reset for January 2020, at which the claimants' lawyer filed a motion to cancel the hearing due to the impending eruption of the Taal Volcano.
- 3.3.7 The Executive Committee also recalled that the hearing was reset to April 2020, at which the 1992 Fund's lawyers filed a motion to hold the hearings twice a month, and for a minimum of 15 witnesses to be examined at each hearing, in an attempt to expedite the presentation of the witnesses. A further hearing was set for August 2020 but cancelled due to the COVID-19 pandemic. At a hearing in July 2021, upon cross-examination by the 1992 Fund's lawyers, the two witnesses produced by the claimants' lawyer confirmed that their claim amounts had been dictated to them by their lawyer and had no basis in fact.
- 3.3.8 The Executive Committee noted that at a hearing in February 2022, under cross-examination the witness presented by the claimants' lawyer admitted that the amount detailed in the claim was merely supplied by the claimants' lawyer and the witness had not filed a claim against the 1992 Fund, contrary to the assertion in her Judicial Affidavit that the 1992 Fund had wrongly denied her claim.
- 3.3.9 The Executive Committee also noted that at a number of further hearings in April 2022, similar testimonies were heard from other witnesses presented by the claimants' lawyer. Consequentially, the 1992 Fund had requested that its lawyers file an application at court to dismiss such fraudulent claims as it was apparent that: none of the witnesses presented to date by the claimants' lawyer had filed any documents proving their monthly income upon which their claim had been based; the claimed amounts submitted for the witnesses presented had simply been supplied by the claimants' lawyer with no basis for their calculations; and the claimants had not filed claims against the 1992 Fund, nor had they subsequently received denials of such alleged claims.
- 3.3.10 The Executive Committee further noted that the 1992 Fund had instructed its lawyers to file a 'cease and desist' application against the claimants' lawyer in order to force him to refrain from wasting costs and further court time.

Legal proceedings by a group of municipal employees

- 3.3.11 It was recalled that 97 individuals, employed by a municipality on Guimaras Island 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. It was also recalled that, after a thorough review of the legal documents received, the 1992 Fund had filed pleadings of defence in court, noting in particular that the majority of claimants were engaged in activities in principle not admissible for compensation.
- 3.3.12 It was also recalled that after a series of hearings to continue the examination of the witnesses submitted by the claimants which proved inconclusive, in every case, the 1992 Fund's lawyers showed the court that their claims for compensation had no basis. A further hearing was set for August 2020 but was cancelled due to the COVID-19 pandemic. The hearing took place in July 2021, at which, upon cross-examination, the witnesses confirmed that: they had not paid court fees; their activity reports were not signed and validated by the Mayor; and that they were volunteers or had been paid their normal salaries on the days they performed relief work.
- 3.3.13 The Executive Committee noted that at a series of hearings throughout 2022, the witnesses presented by the claimants' lawyer all testified under cross-examination that:
- (a) they had not filed any claim against the 1992 Fund;
 - (b) the services they had rendered were voluntary and not motivated by money and the documents which had been submitted on their behalf did not bear the signature of the Mayor or any other official of the accounting office;
 - (c) that the amounts claimed were merely supplied by the claimants' lawyer;
 - (d) that the amounts claimed as compensation were for alleged transportation expenses even though the vehicles that were used to deliver and distribute goods were provided by the Mayor's Office; and
 - (e) that they had not filed any claim against the 1992 Fund contrary to the assertions in the Judicial Affidavit filed by the claimants' lawyer and that as a consequence, the 1992 Fund had instructed its lawyers to file a 'cease and desist' application against the claimants' lawyer.
- 3.3.14 The Executive Committee also noted that contrary to expectations, the Judge had denied the 1992 Fund's application, that the 1992 Fund's lawyers had filed an application for re-consideration and that a court date was awaited to hear the application.

Intervention by the delegation of the Philippines

- 3.3.15 The delegation of the Philippines thanked all those involved in the payment of the claim made by the PCG, noting that only two other categories of claims remained to be paid. They also reaffirmed their commitment to the resolution of the incident.

1992 Fund Executive Committee

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

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| 3.4 | Incidents involving the IOPC Funds — 1992 Fund: <i>Hebei Spirit</i>
Document IOPC/OCT22/3/4 | | 92EC | |
|-----|--|--|-------------|--|
- 3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT22/3/4 relating to the *Hebei Spirit* incident.
- 3.4.2 The Executive Committee 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 Assuranceföreningen Skuld (Gjensidig) (Skuld Club). The Executive Committee further recalled that all claims arising out of this incident had been finalised by either mediation or judgment and that a total of KRW 432.9 billion had been awarded, and that all legal proceedings had been finalised.
- 3.4.3 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 based on a 60% level of payment.
- 3.4.4 The Executive Committee also recalled that 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, as a consequence, the 1992 Fund had paid the balance of compensation, totalling KRW 27 486 198 196 to the Government of the Republic of Korea.
- 3.4.5 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.
- 3.4.6 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, by 2020, the 1992 Fund had reimbursed the entirety of the overpayment by the Skuld Club.
- 3.4.7 The Executive Committee noted that a reconciliation of costs had been completed by September 2021. It was further noted that the joint costs, which were still being incurred after the end of 2020, which were mainly related to the storage of incident documents for the period of time required under Korean law, were being shared between the Skuld Club and the 1992 Fund.
- 3.4.8 The Executive Committee recalled that in March 2009, the Seoul Central District Court (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), Samsung Heavy Industries Co. Ltd (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.
- 3.4.9 The Executive Committee recalled that proceedings recommenced in July 2019 and that, at the time, 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 statutory interest accrued as per Korean law.
- 3.4.10 The Executive Committee recalled that the SHI Limitation Court, in its assessment decision in February 2021, recognised the Fund's claim as totalling KRW 155 785 519 163, i.e. the principal amount of KRW 134 787 509 429 plus KRW 20 998 009 734 in interest. The Executive Committee

also recalled that the Court determined the 1992 Fund's share of the SHI limitation fund to be KRW 3 271 486 069 and that the amount was paid to the 1992 Fund in June 2021.

- 3.4.11 The Executive Committee recalled that, as per the 1992 Fund's practice, after the assessment of claims arising out of a major incident, 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.
- 3.4.12 The Executive Committee recalled that the meeting for the *Hebei Spirit* incident had been scheduled to take place in Seoul in May 2020. However, due to the COVID-19 pandemic, the meeting had been postponed until the restrictions on travel were lifted.
- 3.4.13 The Executive Committee noted that the meeting was finally held in Seoul, the Republic of Korea, in June 2022. The outcome of the discussions during the meeting, as well as a summary of the lessons learned from the incident, are contained in document IOPC/OCT22/4/3.

Debate

- 3.4.14 One delegation took the floor to express its satisfaction that all the legal proceedings arising out of the *Hebei Spirit* incident have been closed. It further expressed its appreciation for the enormous efforts by the Secretariat, the Government of the Republic of Korea, the Skuld Club and all other parties involved in the incident in bringing it to its conclusion.
- 3.4.15 The observer delegation of the International Group thanked, also on behalf of the Skuld Club, the Secretariat for their cooperation in the handling of this incident. That delegation echoed the words of the Director, expressing its appreciation to the staff of the *Hebei Spirit* Centre, the experts and the Korean authorities, as well as the 1992 Fund, for their monumental efforts in bringing the *Hebei Spirit* incident to a close.

1992 Fund Executive Committee

- 3.4.16 The 1992 Fund Executive Committee noted with satisfaction that, since all the outstanding claims arising from this incident had now been settled and corresponding legal actions had been withdrawn, this incident would now be considered closed and thanked all parties involved for their cooperation.

3.5	Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i> Document IOPC/OCT22/3/5		92EC	
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/5, 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 that occurred in March 2009 at Tin Can Island, Lagos, Nigeria, when the inland-certified barge *Redfferm* sank following a transshipment 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 recalled that at the time of the incident, the barge *Redfferm* was used to tranship LPFO from a sea-going tanker, the *MT Concep*, to a shore-based power plant because of its reduced draft and size compared to the *MT Concep*. The Executive Committee also recalled that no evidence had been submitted of any sea-going voyages undertaken by the barge *Redfferm*.

Reasons for rejection of claims

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

Legal proceedings

- 3.5.5 The Executive Committee 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 further recalled that in May 2018, the claimants had filed an amended statement of claim, increasing the claim from the previously filed total of USD 26.25 million, to USD 92.26 million. It was also recalled that as a result of the transfer to the Federal High Court, and in view of the amended statement of claim filed by the claimants, the 1992 Fund was obliged to file a defence. It was further recalled that during 2019, no further substantive developments took place in the legal proceedings.
- 3.5.10 The Executive Committee recalled that in February 2020, the matter was listed for trial but was adjourned until March 2020 when the claimants made an application for a default judgment against the owner/charterer of the *Redfferm*. The case was adjourned but the court hearing did not take place due to the impact of the COVID-19 pandemic.
- 3.5.11 The Executive Committee further recalled that there were no substantive developments in 2020 or 2021 but noted that in February 2022, a First Instance Judge delivered a summary judgment against the owner/charterer of the *MT Concep* (the first defendant) and the owner/charterer of the barge *Redfferm* (the second defendant) and awarded the claimants their claim in the sum of USD 92.26 million and USD 5 million as 'general damages'.

- 3.5.12 The Executive Committee also noted that the Judge had not referred to the Memorandum of Appearance and Statement of Defence filed by the first defendant, or to the counter-affidavit filed by the 1992 Fund in opposition to the claimants' application for final judgment against the first and second defendants.
- 3.5.13 The Executive Committee further noted that the first and second defendants had filed appeals to set aside the summary judgment on the grounds of fraud, on the basis that the Court had been misled into believing that the first defendant had failed to enter appearance or file a defence, when they had in fact done both.
- 3.5.14 It was noted that in early June 2022, the claimants' lawyer filed garnishee proceedings against all the defendants including the 1992 Fund. The 1992 Fund's lawyers had filed pleadings seeking to remove the 1992 Fund from the list of defendants. The Executive Committee noted that a decision was awaited.
- 3.5.15 The Executive Committee also noted that the 1992 Fund's lawyers had advised that there were a range of scenarios which might occur, and that it was too early to say with any degree of certainty which scenario would occur and what steps would be taken to oppose the claim further.
- 3.5.16 The Executive Committee further noted that the 1992 Fund's lawyers had confirmed that the 1992 Fund still retained its arguments regarding the applicability of Article I(1) of the 1992 CLC, and had already filed a defence rejecting the claims on the grounds that the barge *Redfferm* was not a ship within Article I(1) of the 1992 CLC.

Intervention by the delegation of Nigeria

- 3.5.17 The delegation of Nigeria noted the developments detailed in the document. The delegation also stated that it had taken measures to facilitate the payment of claims and had developed a Price Index to complement its Standard Operating Procedures for the implementation of the 1992 Fund Convention in Nigeria in order to better assess and collaborate with the IOPC Funds in any future incidents.

1992 Fund Executive Committee

- 3.5.18 The 1992 Fund Executive Committee noted the range of scenarios that currently existed and further noted that the Director would continue to monitor the incident and report any developments at the next session of the Executive Committee.

3.6	Incidents involving the IOPC Funds — 1992 Fund: <i>Haekup Pacific</i> Document IOPC/OCT22/3/6		92EC	
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- 3.6.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/6, which contained information relating to the *Haekup Pacific* incident.
- 3.6.2 The Executive Committee recalled that in April 2013, the 1992 Fund was informed of an incident which had taken place in April 2010 in the Republic of Korea when the *Haekup Pacific*, an asphalt carrier of 1 087 GT, was involved in a collision with the *Zheng Hang*, as a result of which the *Haekup Pacific* sank in waters approximately 90 metres deep off Yeosu, Republic of Korea.
- 3.6.3 The Executive Committee also recalled that the *Haekup Pacific* was entered with the UK P&I Club and that it was a 'relevant ship' within the definition of the STOPIA 2006 and that, therefore, STOPIA 2006 would apply. The Executive Committee further recalled that a small spill of some 200 litres of oil had occurred shortly after sinking, resulting in some minor pollution.

- 3.6.4 It was recalled that in September 2013, the City of Yeosu and the Marine Police had requested the shipowner to provide a plan for the removal of the wreck, and that in April 2014 a further request was made.
- 3.6.5 It was also recalled that a number of meetings had taken place with the City of Yeosu and the Marine Police at which the shipowner had reiterated that the wreck removal was not necessary because the marine environment was not endangered, nor was there any impediment to sea traffic.

Civil proceedings

- 3.6.6 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 yet been incurred, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer were withdrawn in June 2013.
- 3.6.9 The 1992 Fund Executive Committee further recalled that in April 2016, the shipowner and insurer had filed a claim for USD 46.9 million (subsequently amended to USD 25.13 million in accordance with STOPIA 2006) against the 1992 Fund before the expiry of the six-year time bar, in order to preserve the shipowner and insurer's rights against the 1992 Fund, in the event that they be instructed to comply with the wreck and oil removal orders.
- 3.6.10 It was 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 also recalled that the courts could, of their own volition, resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wished a further stay of the proceedings.
- 3.6.11 It was further recalled that in December 2017, the 1992 Fund's lawyers had advised that in the related litigation between the shipowners/insurers of the colliding vessels, the Seoul High Court had ruled that although experts opined that the wreck removal of the *Haekup Pacific* was very difficult, since the wreck removal order remained effective (despite repeated requests for its withdrawal), it was difficult to consider the order to be null and void based solely on the experts' opinion/parties' submissions.
- 3.6.12 The Executive Committee recalled that since the shipowner of the *Haekup Pacific* was 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. The Executive Committee also recalled that the shipowner/insurer of the *Zheng Hang* had appealed against the Seoul High Court's judgment to the Supreme Court, and in early July 2020, the Supreme Court of the Republic of Korea had rendered its judgment.

3.6.13 The Executive Committee further recalled that the Supreme Court had recognised, *inter alia*, that:

- (a) the *Haekup Pacific* sank in waters 90 metres deep and was buried in the seabed;
- (b) there had been no trace of oil or the asphalt cargo from the *Haekup Pacific* since it sank and considering the temperature of the seabed, any oil or asphalt remaining in the vessel should have been stabilised through solidification. Furthermore, no diesel oil appeared to have remained in the vessel as it would have been diffused with seawater or evaporated following the sinking, so the risk of environmental pollution appeared to be minimal;
- (c) if the *Haekup Pacific*, which had remained in the seabed for a prolonged period of time, was to be salvaged or removed, there was a high risk of destroying the hull leading to the exposure of the remaining oil or asphalt, which posed further pollution concerns; and
- (d) the operation of salvaging or removing the vessel would be a technically difficult task requiring advanced diving technology in the environment involving strong currents, limited visibility and the risk of the destruction of the ship's hull. It would be difficult to assess the costs for salvaging/removing the vessel and the overall risk level, as there had been no prior cases where a wreck was salvaged/removed from a similar depth as the *Haekup Pacific*.

3.6.14 It was recalled that the Supreme Court referred the case to the appellate court so that the appellate court could reconsider the question concerning whether the vessel's removal would be necessary and whether the administrative orders to salvage and remove the vessel should be revoked.

Possible recourse action against the owner of the Zheng Hang

3.6.15 It was also recalled that the 1992 Fund's lawyers had advised that, given the financial status of the *Zheng Hang*, it might not be financially worthwhile for the 1992 Fund to pursue a recourse action against the *Zheng Hang's* interests.

The status of the wreck and risk of pollution

3.6.16 It was further recalled that in September 2019, the City of Yeosu had requested the shipowner/insurer of the *Haekup Pacific* to implement the wreck and oil removal orders and to submit a document to the City of Yeosu by 10 February 2020, containing information regarding the current situation of the ship and the shipowner/insurer's plans for the removal of oil residue and the cargo, the wreck removal, and the prevention of oil pollution that might occur during the removal operation.

3.6.17 The Executive Committee recalled that the shipowner had hired a salvage company to examine the wreck's condition and that the shipowner had also obtained a time extension from the City of Yeosu until July 2020, in order that the salvage company could begin the inspection. Following the survey, the salvage company had provided its results to a firm of naval architects and marine engineers, retained by the *Haekup Pacific's* P&I Club, to prepare a report.

3.6.18 The Executive Committee also recalled that the report recommended that the *Haekup Pacific* be left undisturbed, but the City of Yeosu and Marine Police had instructed the shipowner to remove the bunker fuels from the wreck since, in their view, the possibility that there were bunker fuels remaining in the wreck could not be ruled out.

3.6.19 The Executive Committee noted that the bunker fuel oil removal operation took place in December 2021 and that in total, some 29.5 tonnes of oil were removed from the fuel tanks in an operation which lasted until 28 December 2021, during which no oil leaked from the wreck location.

3.6.20 The Executive Committee also noted that the bunker fuel removal report stated that the asphalt cargo had solidified and was considered irrecoverable from the wreck by conventional means, and

that the wreck continued to settle and would likely disappear into the seabed and posed no threat to safe navigation or to the marine environment.

- 3.6.21 The Executive Committee further noted that the total costs of the bunker fuel removal operation were reported as being approximately USD 10 million which was less than the amount available from the insurer pursuant to STOPIA 2006 and that, to date, no claim had been submitted to the 1992 Fund for the costs incurred.
- 3.6.22 It was noted that the shipowner/insurer's lawyers intended to meet with the new Head of the City of Yeosu to discuss the possible revocation of the wreck removal order which still remained in place, at the first available opportunity.
- 3.6.23 It was also noted that the 1992 Fund's lawyers were of the view that 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 might be concluded.

Intervention by the delegation of the Republic of Korea

- 3.6.24 The delegation of the Republic of Korea stated that a new Mayor of the City of Yeosu had been elected in July 2022, and subsequently there were discussions between the shipowner's representative and the Mayor of the City of Yeosu. The Ministry of Oceans and Fisheries had provided the City of Yeosu with the result of its risk assessment after the bunker fuel removal operation. That delegation also stated that the City of Yeosu would hold a meeting with experts to take a decision in the near future regarding the lifting of the wreck removal order.

Debate

- 3.6.25 One delegation stated that if the wreck was to be lifted, all parties should be obligated to take any reasonable steps to reduce the risk of pollution during the operation and that the payment of compensation should only be considered if the measures to mitigate the risk fail, and a cargo spill occurs.

1992 Fund Executive Committee

- 3.6.26 The 1992 Fund Executive Committee noted the interventions made and that the bunker fuel removal operation had been successful, and that more clarity was being sought regarding the wreck removal order. The 1992 Fund Executive Committee also noted that the Director would continue to monitor the incident and report any developments at the next session of the Executive Committee.

3.7	Incidents involving the IOPC Funds — 1992 Fund: <i>Alfa I</i> Document IOPC/OCT22/3/7		92EC	
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- 3.7.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/7, 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 by the main clean-up contractor, i.e. for EUR 15.8 million. The Executive Committee also recalled that in February 2018, the Bank of Greece had revoked the insurer's license and placed the company into liquidation for failure to maintain the necessary solvency capital requirements under Greek law. The Executive Committee further recalled that in early July 2018, the 1992 Fund had registered its claim with the liquidator.
- 3.7.3 It was recalled that in June 2019, the insurer had filed an appeal to the Supreme Court against the March 2018 judgment issued by the Piraeus Court of Appeal, 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 fewer 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. It was also recalled that the 1992 Fund had also filed an appeal to the Supreme Court supporting the obligatory insurance provisions under Article VII of the 1992 CLC and that the appeal was heard in February 2021.

- 3.7.4 It was further recalled that in July 2021, the Supreme Court issued its judgment, dismissing all of the insurer's grounds of appeal and held that:
- (i) The issuance by the State authorities of a certificate (based on the Blue Card of insurance issued by the insurer) signified that there existed in place an insurance cover, entered into in accordance with the 1992 CLC provisions regarding **obligatory** insurance; and
 - (ii) The wording of Article VII(1) of the 1992 CLC '...carrying more than 2000 tons of oil in bulk as cargo' should be interpreted to mean **capable of carrying more than 2000 tons**. The Supreme Court linked the obligation of insurance (or other financial security) to the carrying capacity of a vessel, irrespective of the actual quantity carried on board.
- 3.7.5 The Executive Committee recalled that the 1992 Fund's lawyers had advised that the obligation of the insurer to pay was therefore undisputable.

Claims submitted against the insurance liquidator following the insurer's liquidation

- 3.7.6 The Executive Committee also recalled that the insurer had been placed into liquidation and that, in January 2020, the 1992 Fund's lawyers reported that the claim submitted by the 1992 Fund against the insurance liquidator had been dismissed without any reason given.
- 3.7.7 The Executive Committee further recalled that the 1992 Fund's lawyers had sent the insurance liquidator a declaration protesting the dismissal of the 1992 Fund's claim and requesting a full list of the admissible claims and the justification for the liquidator's refusal to include the 1992 Fund's claim within the list. However, the insurance liquidator refused to provide the list of other claims, citing confidentiality reasons under the General Data Protection Regulation (GDPR) as a reason not to provide the information.
- 3.7.8 It was recalled that the 1992 Fund's lawyers had filed an appeal before the Uni Membered Court of First Instance of Athens, which was due to be heard in May 2020 but was delayed due to the outbreak of the COVID-19 pandemic.
- 3.7.9 It was also recalled that the 1992 Fund had succeeded with its appeal but that the insurance liquidator appealed before the Athens Court of Appeal and a hearing has been set for 20 October 2022, however, it was noted that it had been adjourned and a date in October 2023 had been set. It was further recalled that the 1992 Fund's lawyers had served the insurance liquidator with an extrajudicial declaration putting the liquidator on notice not to transfer any of the insurer's property or make any distributions until a judgment is reached by the Athens Court of Appeal.
- 3.7.10 The Executive Committee recalled 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. Pleadings were filed in October 2020 and a court hearing took place in July 2021. The Executive Committee also recalled that the main clean-up contractor's application was successful, however, an appeal is expected by the liquidator.

- 3.7.11 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 initially, only the land registry in Thessaloniki had accepted the 1992 Fund's application and granted the registration on two properties owned by the insurer as security for EUR 851 000.
- 3.7.12 It was recalled that after the lengthy legal proceedings relating to the 1992 Fund's application for prenotated mortgages, the Greek courts held that the 1992 Fund was entitled to the prenotated mortgages in respect of all of the liquidated insurer's properties in Thessaloniki, Athens and Piraeus.

Legal proceedings against the insurer for potentially defrauding creditors

- 3.7.13 It was also recalled that, during the litigation regarding the assets of the insurer and the 1992 Fund's attempts to obtain prenotated mortgages over the insurer's properties, it had been discovered that the insurer had sold to third parties a property in Athens for a price of EUR 370 000, when the property had an imputed tax value of EUR 1.03 million and a commercial value of EUR 1.5 million. It was further recalled that the 1992 Fund's lawyers had advised that there were reasonable grounds to have the property transferred on the grounds of defrauding a creditor, which, if successful, could result in a recovery for the 1992 Fund.
- 3.7.14 It was further recalled that the 1992 Fund had been successful in recording prenotated mortgages against the insurer's assets, and if it could also succeed in reinserting the 1992 Fund's claims back into the liquidator's list of admissible claims, the 1992 Fund's lawyers had advised that they were confident that the 1992 Fund's claim would have a reasonable chance to be given priority over other creditors of the insurance company.

Legal proceedings by second clean-up contractor

- 3.7.15 The Executive Committee recalled that in September 2019, the 1992 Fund was served with legal proceedings by the second clean-up contractor for some EUR 349 000 plus interest and that, in September 2020, the Piraeus Court of First Instance agreed with the 1992 Fund's defence which it had filed and declared the claim time-barred. The Executive Committee also recalled that the second clean-up contractor appealed the judgment and a hearing date was set for the appeal in September 2021, at which the second clean-up contractor claimed that it was sufficient that it had commenced legal proceedings against the 1992 Fund. The Executive Committee further recalled that the 1992 Fund had filed a defence and a hearing date was awaited.

1992 Fund Executive Committee

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

3.8	Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/OCT22/3/8		92EC	
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- 3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT22/3/8 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 claim reimbursement from the shipowner/insurer.
- 3.8.3 The Executive Committee 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 also recalled that the shipowner had not responded to the requests from the Omani Government to pay compensation for the damage caused by the *Nesa R3* incident. The Executive Committee further recalled that the shipowner/insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Executive Committee also recalled that the Omani Government (Ministry of Environment and Climate Affairs (MECA)), had commenced legal proceedings against the shipowner and its insurer in the Court of Muscat and that in February 2016, the 1992 Fund had joined in the legal proceedings.
- 3.8.5 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.
- 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. The Executive Committee noted that as at October 2022, the claims had not been withdrawn.
- 3.8.7 The Executive Committee noted that in March 2022, the Court of Appeal in Muscat decided to appoint an expert to review the settlement agreement concluded between 1992 Fund and MECA, in order to determine the amounts owed to MECA, if any, and the amounts owed to the 1992 Fund. The Executive Committee further noted that in June 2022, the court-appointed expert issued his report, confirming the total amount settled by the 1992 Fund and also noting that MECA had agreed to withdraw its claims from court.
- 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 also recalled that the Court of Appeal in Muscat had postponed its hearings several times to allow time for attempts to contact the insurer. The Executive Committee noted that the Court of Appeal was expected to issue its judgment in October 2022 but that this had been postponed until November 2022.
- 3.8.9 The Executive Committee recalled that, once the proceedings in Oman were finalised, the 1992 Fund would have to consider whether to pursue recovery of the compensation paid from the shipowner and insurer of the *Nesa R3*. The Executive Committee noted that, in preparation for that, the Secretariat had investigated the financial position of the shipowner and insurer to ascertain their solvency. It was noted that the insurer had been dissolved around 2015, and that the original owner of the *Nesa R3* had, since the time of the incident, greatly reduced its activities; while they still retained some assets, it was unclear whether they would be sufficient to cover the claims arising from this incident.

1992 Fund Executive Committee

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

3.9	Incidents involving the IOPC Funds — 1992 Fund: <i>Nathan E. Stewart</i> Document IOPC/OCT22/3/9		92EC	
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- 3.9.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/9, which contained information relating to the *Nathan E. Stewart* incident.

3.9.2 The Executive Committee recalled that in October 2018, the Director had been informed 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 on Edge Reef near Athlone Island, at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia, Canada. It was recalled that the tug's hull had been breached and that some 107 552 litres of diesel bunker oil and 2 240 litres of lubricants had been released into the environment. It was also recalled that the tug had subsequently sunk and separated from the barge.

3.9.3 It was recalled that the ATB was insured by Starr Indemnity & Liability Company (a fixed premium insurer).

Applicability of the Conventions

3.9.4 It was noted that Canada is a Party to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol. It was recalled, however, that the application of the Conventions was not clear in this case, for the following reasons:

- (i) 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
- (ii) 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.

3.9.5 The Executive Committee noted that if the ATB carried non-persistent oil on previous voyages, it would appear that the 1992 CLC and 1992 Fund Convention would not be applicable and that, in that case, since the spilled oil was bunkers, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) should apply instead.

Civil proceedings

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

3.9.7 It was recalled that the claimants had stated that they had aboriginal title and sovereign rights in the area affected by the spill, which was a traditional harvesting site for seafood, and that the spill had caused immediate and long-term impacts or risks of impacts on populations of marine resources, with loss of harvesting opportunities. It was also recalled that the claim included losses relating to past and future interference with the claimants' use and enjoyment of the area and expenses in connection with response efforts, including impact assessment.

3.9.8 The Executive Committee recalled that the claimants had argued for the application of the Bunkers Convention 2001 or, as an alternative, the 1992 CLC. In the latter case, they sought compensation for any damage in excess of the 1992 CLC from the 1992 Fund and the Supplementary Fund.

3.9.9 It was recalled that, following an order from the Federal Court of Canada in July 2019, the proceedings at the Supreme Court of British Columbia had been stayed pending final determination of the limitation action instituted by the shipowners in the Federal Court of Canada.

Limitation proceedings

- 3.9.10 The Executive Committee recalled that in May 2019, the shipowners had filed an action before the Federal Court of Canada to establish a limitation fund and stay the Supreme Court of British Columbia proceedings. It was also recalled that the First Nation community had filed a notice of motion objecting to the jurisdiction of the Federal Court over the limitation action.
- 3.9.11 It was recalled that the shipowners had argued that the 1992 CLC was not applicable in this case, as neither the tug nor the barge fell within the definition of 'ship' in the 1992 CLC, and in particular:
- (i) the barge is not a 'ship' because at no time did it carry any type of persistent oil as cargo; and
 - (ii) the tug and the barge are to be considered as two separate ships for the purposes of a limitation of liability analysis. The tug is not a 'ship' because it was not capable of carrying oil as cargo. The diesel fuel and lubricants that were released during the incident were bunkers, used solely for the operation or propulsion of the tug.
- 3.9.12 The Executive Committee recalled that the Federal Court of Canada had rendered a decision in July 2019, granting the shipowners' motion and ordering that any claimants are precluded from commencing or continuing proceedings against the shipowners before any court other than the Federal Court, until the limitation action has been determined. It was recalled that, therefore, the First Nation community could not continue its action in the Supreme Court of British Columbia against the shipowners. It was also recalled that the Federal Court had also decided that a limitation fund should be constituted pursuant to the Bunkers Convention 2001 and the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96), on the basis of the combined tonnage of the tug and barge. The Executive Committee also 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.
- 3.9.13 It was recalled that, as a result of the Court's decision, claims would be processed in the Federal Court as part of the limitation action.
- 3.9.14 The Executive Committee further 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 (£3.6 million), plus interest.
- 3.9.15 It was noted that, at a later stage, the Court will also have to determine whether or not, for the purpose of limitation, the barge and tug formed one unit.
- 3.9.16 It was also noted 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. This should enable the Court to reach a decision on whether or not the incident falls within the scope of the 1992 CLC.
- 3.9.17 The Executive Committee noted that the 1992 Fund had to wait until the shipowners disclosed their list of documents, and then consider presenting a motion to determine whether the 1992 Fund should remain a party to these proceedings.

1992 Fund Executive Committee

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

3.10	Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/OCT22/3/10		92EC	
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3.10.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/10 relating to the *Agia Zoni II* incident.

Limitation fund claims evaluation procedure

3.10.2 The Executive Committee recalled that the limitation fund administrator had concluded the evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing their provisional assessments totalling EUR 45.45 million.

3.10.3 The Executive Committee also recalled that the 1992 Fund had filed pleadings against the limitation fund in respect of the claims it had paid but which had not been subrogated, due to the short period (six months) set under Greek law for filing claims against the limitation fund, which had expired in May 2018. 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.

3.10.4 It was further recalled that 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. The Executive Committee recalled that in September 2021, the limitation fund administrator had dismissed the claims due to the time-bar and as a result, the 1992 Fund had filed an appeal for a judgment resolving the apparent contradiction between the time allowed by domestic legislation for submission of claims to the limitation fund administrator and the time-bar provided by the 1992 CLC. The Executive Committee also recalled that in September 2021, a hearing took place of all appeals against the limitation fund administrator's evaluation.

3.10.5 The Executive Committee noted that in June 2022, a judgment was made by the Piraeus Multi-Member Court of First Instance which generally upheld the limitation fund administrator's assessments but denied the 1992 Fund's appeal for all of the 1992 Fund's subrogated payments made to claimants to be included within the limitation fund. The judgment also denied the 1992 Fund's appeals in respect of the limitation fund administrator's assessments of 33 claims. The Executive Committee also noted that a number of parties, including the 1992 Fund, were expected to appeal the judgment.

Investigation into the cause of the incident

3.10.6 The Executive Committee recalled that the National Technical University of Athens had published its report on the cause of the incident and had concluded that the *Agia Zoni II* had sunk after an explosion.

3.10.7 The Executive Committee also recalled that another investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor had concluded that the sinking of the *Agia Zoni II* had been caused by the opening of the seawater ballast valves, which could only have been done from onboard the vessel.

3.10.8 The Executive Committee further recalled that the ASNA report considered that the accident was attributed to the deliberate and negligent actions of:

- (i) the shipowner;
- (ii) the two crew members on board at the time of the incident;
- (iii) the General Manager of the shipowning company;
- (iv) the Designated Person Ashore of the shipowning company; and

(v) representatives of the salvor/clean-up contracting company.

3.10.9 The 1992 Fund Executive Committee recalled that in June 2021, the 1992 Fund's lawyer and a number of other parties were summoned and questioned by the Public Prosecutor investigating the cause of the incident to answer questions dealing with the procedure followed for the payment of claims, with emphasis on the clean-up contractors' claims.

3.10.10 The Executive Committee also recalled that the Greek Mercantile Marine, as the supervisory body overseeing disciplinary matters for seafarers, had initiated a disciplinary tribunal against the crew members mentioned in the ASNA report who were on board the *Agia Zoni II* at the time of the incident, and the senior representative of the salvor mentioned in the ASNA report.

3.10.11 It was further recalled that in June 2021, the disciplinary tribunal published its findings and held that the Master was liable in negligence for the loss of the ship, but the tribunal did not examine the ASNA report's criticism of the salvors for their delayed antipollution response in sealing off and pumping out the wreck.

3.10.12 The Executive Committee noted that the results of the investigations were still awaited and that unconfirmed reports stated that the Public Prosecutor's report was with the District Attorney to decide whether to pursue criminal charges against the shipowner and salvor/clean-up contractor.

Impact of the reports on the 1992 Fund's payment of compensation

3.10.13 The Executive Committee 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.

3.10.14 The Executive Committee 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 involved in clean-up operations that had intentionally caused the pollution, in order to benefit from the right to claim compensation for clean-up services, would be considered an abuse by the Greek courts under the provisions of Greek legislation.

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

Recourse actions

3.10.16 The Executive Committee further recalled that if the claimant was eventually condemned by a criminal court by an unappealable judgment to have intentionally caused the pollution, the 1992 Fund could commence a recourse action under Article 9.2 of the 1992 Fund Convention.

Claims for compensation

3.10.17 The Executive Committee noted that the 1992 Fund had received 423 claims amounting to EUR 99.89 million and one claim for USD 175 000, had approved 415 claims and paid 189 claims amounting to EUR 14.96 million in compensation. Further offers of compensation and advance payments had been made to a number of claimants whose responses were awaited.

Legal proceedings commenced by clean-up contractors

- 3.10.18 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.
- 3.10.19 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. In total, the 33 clean-up claims filed against the 1992 Fund amount to EUR 83.23 million.
- 3.10.20 The Executive Committee further recalled that in September 2021, the 1992 Fund's lawyers had attended court hearings and filed supplementary pleadings relating to the concept of reasonableness as defined under the Conventions in relation to the tariff rates employed by the clean-up contractors, which sought to maximise commercial profit. It was noted that in June 2022, the Court issued judgment 1891/2002, which several parties were expected to appeal.

Legal proceedings commenced by fisherfolk

- 3.10.21 The Executive Committee noted that the 1992 Fund had been served with legal proceedings amounting to EUR 3.35 million from claimants in the fisheries sectors. It was noted that court hearings had taken place in 2022 and judgments were awaited.

Legal proceedings commenced by claimants in the tourism sector

- 3.10.22 The Executive Committee recalled that the 1992 Fund had been served with legal proceedings amounting to EUR 4.3 million by claimants in the tourism sector. It was noted that the hearings of all writs of action against the 1992 Fund were adjourned until February and March 2022, and that judgments were awaited.

Legal proceedings commenced by the Greek State

- 3.10.23 The Executive Committee recalled that in July 2020, the 1992 Fund had been served with legal proceedings by the Greek State to protect its right to compensation. In July 2021, an advance payment was offered to the Greek State in respect of its claim, and their decision of whether or not to accept the offer was still awaited.
- 3.10.24 The Executive Committee noted that the Director and the Claims Manager responsible for dealing with the incident had visited Greece in May 2022. They met the Minister of Shipping and Insular Policy; members of the Hellenic Coast Guard; and ministries dealing with the incident, to discuss the Greek State claim and issues arising from the incident, including the lack of conclusion to the investigation into the cause of the incident.
- 3.10.25 The Executive Committee also recalled that there was a close correlation between the limitation fund administrator's assessments which were published in September 2019, and those of the 1992 Fund. It was noted that every claimant with a claim against the limitation fund had the right to accept or appeal within 30 days of the provisional assessment, and only eight claimants had appealed.

Statement by the delegation of Greece

3.10.26 The delegation of Greece made the following statement:

Claims for compensation

'Allow us once again to express the high appreciation of the Greek State for all payments made so far by the 1992 Fund to the people who suffered pollution damage from the *Agia Zoni II* incident, as well as for the on-going endeavours of the 1992 Fund's experts to assess the rest of the submitted claims so that these people are compensated as soon as possible.

Investigation into the cause of the incident

With regard to the course of the investigation into the cause of the *Agia Zoni II*'s sinking, we would like to state that, to the best of our knowledge, there has been progress in the conduct of the legal procedure run by the Public Prosecutor.

It is now expected that, by the end of this October 2022, the District Attorney, after taking into account all the evidence collected, will submit his proposal before the competent Council of Judges who will decide whether the criminal prosecution should be ceased or whether any particular parties should be brought before Court or not.

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

In any case, as it has been expressed during previous sessions of the 1992 Fund Executive Committee, an unappealable penal judgment would be required if any persons were to be held to have intentionally or negligently caused the pollution damage.

Furthermore, to our understanding, the legal interpretation of Article 4, paragraph 3 of the 1992 Fund Convention leads to the conclusion that, with respect to preventive measures, the 1992 Fund would not be entitled to invoke contributory deliberate act or negligence on the part of the claimant as grounds for the 1992 Fund's exoneration from paying compensation.

As regards the references made to our national legislation in paragraphs 6.7 and 6.8 of document IOPC/OCT22/3/10, it should be taken into account that international Conventions prevail over domestic law, as supported by Article 28 of the Greek Constitution.'

Debate

3.10.27 One delegation stated that it appreciated the update on progress provided by the Greek delegation regarding the investigation by the Public Prosecutor, but it was still concerned since nearly five years had passed since the wreck had been lifted. That delegation emphasised the importance of prompt investigation of an incident as it could affect the speed at which compensation was paid to claimants and may also affect the 1992 Fund's right of recourse against a shipowner.

3.10.28 That delegation, supported by others, also expressed concern over the insufficient insurance in place at the time of the incident, noting that the insurance policy had covered not only oil pollution expenses but wreck removal costs too, and stated it was essential that vessels had the correct insurance in place to ensure adequate compensation for victims was available.

3.10.29 Another delegation stated that the time taken to investigate the cause of the incident also limited the time available for the 1992 Fund to commence a recourse action if this was required. Noting that the Greek authorities may not have known the terms of the insurance policy, it still noted that this was the second incident occurring in Greece whereby there had been issues with insufficient insurance. That delegation asked what steps had been taken to stop this happening again, as there

was a need to continue to maintain the balance between compensation paid by insurers and contributors. Two other delegations supported these views and stated that a long investigation also threatened the 1992 Fund's principle of paying compensation promptly.

- 3.10.30 In response to the interventions, the delegation of Greece stated that, regarding the delay of the conclusion of the investigation by the Public Prosecutor, an investigation had been commenced to determine whether there existed any liability under the Greek Criminal Code which would trigger the submission of criminal charges against specific parties and whether any parties should be brought before court, and that the scale of the incident had required an Investigating Judge be appointed. That delegation also stated that the Judge had appointed experts and investigators, and had, in February 2022, delivered the file of investigations to the District Attorney who would issue a proposal to the Council of Judges to decide if the criminal prosecution should proceed. That delegation further stated that under Greek Penal Procedural law, the circumstances and nature of each case exerted influence on the whole penal process and that deadlines could be granted depending on the nature and extent of the case; furthermore, given the high-profile nature of the incident, its scale, and the extent of contamination, this had required a thorough examination.
- 3.10.31 That delegation noted that the liability and compensation regime relied on responsible shipowners/insurers, governments and contributors, and that if there was inadequate compensation from the shipowner/insurer under the 1992 CLC, this resulted in an unfair burden on contributors. That delegation stated that ensuring that adequate insurance liability was in place was one of the fundamental principles governing the IMO liability and compensation conventions and that, with reference to the two incidents in Greek waters, there were other incidents involving non-International Group insurers in other countries with similar issues.
- 3.10.32 That delegation also stated that with regards to the wreck removal liability, Greece was not Party to the Nairobi International Convention on the Removal of Wrecks but that, under Greek national law, any ship sailing to or from a Greek port or terminal must be insured for its wreck removal obligations towards the Greek State up to the limits of liability specified within the LLMC 76/96. That delegation further stated that no certificate was required to be issued by an appropriate authority of Greece but that, under this national legislation, this insurance was only required to be certified with a certificate issued by an insurer, which should be carried onboard and shown by the Master of the ship upon request by the Administration.
- 3.10.33 That delegation stated that, with regard to the *Alfa I* incident, the Greek State had been unaware of the contradiction of the terms of the insurance policy with the Blue Card submitted by the shipowner, and upon which a certificate of insurance was issued by the Greek State in the form specified in the Annex of the 1992 CLC, as was the usual practice. Similarly, with respect to the *Agia Zoni II* incident, the 1992 CLC certificate was issued by the appropriate authority in Greece, based on a Blue Card submitted by the shipowner and thus, the Greek State showed responsibility in issuing the CLC certificates in both cases.
- 3.10.34 That delegation noted that the development of further guidance for the proper implementation of IMO liability and compensation conventions would be valuable. That delegation further noted that a new work output had already been included in the agenda of the IMO Legal Committee, which aimed to increase the understanding of roles and obligations of all parties involved in IMO liability and compensation regimes to reduce the risk that polluters and their insurers could not meet their financial obligations.

1992 Fund Executive Committee

- 3.10.35 The 1992 Fund Executive Committee noted the information in the document, the statement by the delegation of Greece and the interventions by the other delegations, and welcomed the news of the progress of the Public Prosecutor's investigation.

3.10.36 The 1992 Fund Executive Committee also noted that several delegations had emphasised the importance of the prompt investigation of an incident, and had stressed the importance of having adequate insurance in place to sustain the international liability and compensation regime, and further noted that the Director would continue to monitor this incident and would report the latest developments to the Executive Committee at its next session.

3.11	Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Document IOPC/OCT22/3/11		92EC	
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3.11.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/11, which contained information relating to the *Bow Jubail* incident.

3.11.2 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 leak in the area of the starboard bunker tank, spilling fuel oil into the harbour.

3.11.3 It was recalled that, at the time of the incident, the *Bow Jubail* was in ballast but that on the voyage prior to the incident, the *Bow Jubail* carried 'oil' as referred to in the 1992 CLC. It was recalled, however, that the shipowner had stated that the tanks were clean of oil cargo residues at the time of the incident.

Applicability of the Conventions

3.11.4 The Executive Committee recalled that Article I(1) of the 1992 CLC defines a 'ship' as:

'any sea-going 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'.

3.11.5 It was also recalled that, at the time of the incident, the *Bow Jubail* was in ballast and that the oil spilled was bunker oil, the question being whether there were any residues of previous cargoes on board. It was also recalled that the burden of proof that there were no residues on board lay with the shipowner.

3.11.6 The Executive Committee further 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 is likely to exceed the limit that would apply to the ship under the 1992 CLC, the 1992 Fund Convention could apply to this incident.

3.11.7 However, it was also recalled that if the shipowner was successful in proving that there were no such residues on board, the incident would fall under the Bunkers Convention 2001 and, therefore, the limitation amount under the LLMC 76/96 would apply.

Limitation proceedings

3.11.8 The Executive Committee 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.

3.11.9 It was recalled that the shipowner had argued that although it may be assumed that on the voyage prior to the incident, from Houston to Rotterdam via Antwerp, the *Bow Jubail* carried 'oil' as referred to in the 1992 CLC, the tanks were clean of oil cargo residues at the time of the incident and, therefore, the Bunkers Convention 2001 applied to the incident. It was also recalled that the

shipowner had argued that all tanks in which oil had been carried had been subject to a MARPOL (International Convention for the Prevention of Pollution from Ships) prewash and an additional 'commercial wash'.

- 3.11.10 It was recalled that the Court had issued its decision in November 2018, 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 recalled that the Court had assumed that the *Bow Jubail* qualified as a ship as defined in the 1992 CLC and had decided not to grant the leave to limit its liability under the Bunkers Convention 2001.
- 3.11.11 The 1992 Fund Executive Committee recalled that the Court of Appeal in The Hague had rendered a judgment on 27 October 2020, confirming the decision of the Rotterdam District Court. It was recalled 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 also recalled 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 that could then be followed, with a view to invoking the exception provided for in Article I(1) of the 1992 CLC. It was further recalled that the Court had considered 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.
- 3.11.12 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

- 3.11.13 The Executive Committee recalled that the 1992 Fund had applied to the Supreme Court requesting the Court to rule, first, that it may intervene as a party, 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.
- 3.11.14 It was recalled that, in a ruling on 24 December 2021, the Supreme Court had decided that the 1992 Fund could not intervene in the limitation proceedings based on Article 7.4 of the 1992 Fund Convention, since in the Court's view limitation proceedings are not legal proceedings instituted in accordance with Article IX of the 1992 CLC against the owner of a ship or his guarantor. It was recalled, however, that considering that the 1992 Fund was an interested party in the proceedings that had not appeared in the previous instances through no fault of its own, the Court had decided to grant the 1992 Fund's subsidiary application to be admitted as an interested party in the proceedings, based on the civil procedural law of the Netherlands.
- 3.11.15 The Executive Committee noted that the 1992 Fund had submitted a reply to the Supreme Court as follows:
- (i) The 1992 Fund requests the Supreme Court to reverse the decision that the right of the 1992 Fund to intervene as a party in any proceedings brought against the owner of a ship, as laid down in Article 7.4 of the 1992 Fund Convention, does not provide a basis for the decision to admit the 1992 Fund as an interested party to the limitation proceedings. This point is important because it would constitute an international precedent if the Supreme Court decides that the 1992 Fund Convention is no basis for intervention in limitation proceedings and the Court decides that it should be based on national law instead. After all, legal proceedings for damage claims against the owner of a ship or his guarantor are often preceded by limitation proceedings. These limitation proceedings will to a large extent determine whether an incident falls within the scope of the Bunkers Convention 2001 or the 1992 CLC, as these Conventions provide for different limits of liability for the owner of a ship. More importantly,

the applicability of the 1992 CLC to an incident also determines the involvement of the 1992 Fund. Therefore, the 1992 Fund has an interest in intervention in limitation proceedings and should not be dependent on national law to do so.

- (ii) The 1992 Fund argues that whereas the Court of Appeal did recognise the 1992 Fund as an interested party, that Court had failed to call the 1992 Fund to the proceedings. As a result, the 1992 Fund, as the ultimate guardian of the 1992 Fund Convention and as potentially the largest debtor, had no opportunity to be heard during the actual hearing of the case. The 1992 Fund is of the opinion that the Court of Appeal was obliged to summon the 1992 Fund as an interested party to the proceedings.

3.11.16 It was noted that if the Supreme Court agrees with the 1992 Fund's second complaint, then the decision of the Court of Appeal will be set aside and the case will have to be reheard by the Court of Appeal, proceedings to which the 1992 Fund will then be a party.

3.11.17 The Executive Committee noted that, in the principal appeal in cassation, the 1992 Fund had joined the complaints of the shipowner with respect to the decision of the Court of Appeal, that it is not the Bunker Convention 2001 but the 1992 CLC that applies to the *Bow Jubail* incident.

3.11.18 It was noted that, in its cassation pleadings, the shipowner argued (amongst other complaints which are based on national law) as follows:

- (a) The relevant question in cassation is when it has been proved that a chemical tanker such as the *Bow Jubail* is so clean that a negligible quantity of oil residues can be said to exist. The shipowner argues that this is the case if it has been demonstrated that the tanker has: (i) been cleaned; and (ii) delivered/discharged the wash water pursuant to MARPOL and thus, has no oil (mixtures) as referred to in MARPOL on board.
- (b) The Court of Appeal failed to recognise that the regulations based on MARPOL can apply as an internationally generally accepted standard procedure. It is obvious to assume that if MARPOL regulations are followed, there will be no (more than a negligible amount of) residues of oil as referred to in the 1992 CLC. After all, MARPOL explicitly aims to prevent damage caused by environmental pollution by setting universal rules. The small amount of wash water remaining in the washed tank after delivery to the reception facilities is not oil, oily mixture or residue within the meaning of MARPOL or the 1992 CLC.
- (c) If the Chief Officer has verified and documented the washing of the cargo tanks and release of the wash water in the Oil Journal and has found and documented that the cargo tanks are 'oil free' (i.e. free from oil or cargo residue), then it may be assumed that the tanker is 'clean' and that at most a negligible amount of oil has remained in the tanker. There is then no reason to apply a Convention (the 1992 CLC) that has, as its underlying principle, the provision of compensation for oil pollution caused by ships carrying oil in bulk as cargo, since the risk of that oil pollution occurring is no longer there. In addition, for those cases where damage arises due to oil pollution as a result of a spill of bunker oil from a tanker which has discharged its cargo, is empty and has subsequently been washed, the Bunker Convention 2001 applies. Therefore, after cleaning the cargo tanks to achieve the 'oil-free' condition, verifying and documenting in the Oil Journal that the cargo tanks are free from oil, and discharging the wash water in accordance with MARPOL, a tanker can no longer be a 'ship' within the meaning of the 1992 CLC.

- (d) If, in addition to the presumption of applicability of the 1992 CLC, too high requirements for proof of the absence of residues were imposed, in practice this would result in the 1992 CLC applying to every ship that has carried oil in bulk, whereas the guarantees given under the 1992 CLC are not intended for ships that have meanwhile become clean to the extent that no damage can occur by the leakage of the oil carried in bulk in a previous cargo and which has since been discharged.

3.11.19 It was noted that several claimants had submitted a reply in opposition to the appeal submitted by the shipowner and that submitted by the 1992 Fund.

3.11.20 The Executive Committee noted that the case had been transferred to the Advocate General for his opinion and that, after the Advocate General delivers his opinion, it will take several months before the Supreme Court gives its decision in the case, making it unlikely that there will be a decision before the end of 2022.

Debate

3.11.21 The delegation of the Netherlands thanked the Secretariat for document IOPC/OCT22/3/11. That delegation noted that in a ruling on 24 December 2021, the Supreme Court had admitted the 1992 Fund as an interested party in the proceedings and had also accepted the 1992 Fund's request to give the parties an opportunity to present their views in writing and that, following that ruling, the 1992 Fund had been able to present its views in writing to the Supreme Court. The delegation also stated that the case was the subject of ongoing proceedings, and that it remained in close contact with the Secretariat.

1992 Fund Executive Committee

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

3.12	Incidents involving the IOPC Funds — 1992 Fund: <i>MT Harcourt</i> Document IOPC/OCT22/3/12		92EC	
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3.12.1 The 1992 Fund Executive Committee took note of document IOPC/OCT22/3/12, which contained information relating to the *MT Harcourt* incident.

3.12.2 The Executive Committee recalled that on 2 November 2020, an explosion occurred within a ballast tank of the oil storage tanker *MT Harcourt* (26 218 GT) moored at the Elcrest Terminal in the Gbetiokun oil field, near Koko, Delta State, Nigeria. It was also 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.

3.12.3 The Executive Committee also recalled that cargo and slops disposal operations were suspended immediately, and all crew were mustered and accounted for. It was further recalled that there were no injuries or other casualties.

3.12.4 The Executive Committee recalled that approximately 31 barrels (approximately 4.2 tonnes) of crude oil was lost from the cargo tank into the water ballast tank, out of which a small quantity spilled overboard. It was also recalled that this oil was immediately contained by the Terminal, booms were placed around the vessel and across the entrance to the small channel where the ship lay, followed by clean-up of all the oil from the water.

3.12.5 It was further recalled 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 had modelled and monitored vessel stability whilst the cargo was

discharged safely in stages to various barges and other vessels in the same management.

- 3.12.6 It was also recalled that the clean-up operation was organised by the Terminal, who had 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

- 3.12.7 It was further recalled that Nigeria is Party to the 1992 CLC and the 1992 Fund Convention and that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was SDR 203 million (USD 269.54 million).
- 3.12.8 The Executive Committee recalled that, since the *MT Harcourt* is 26 218 GT units of tonnage, the limitation fund applicable under the 1992 CLC is SDR 17.9 million (USD 23.77 million).
- 3.12.9 The Executive Committee also recalled that the owner of the *MT Harcourt* was a party to STOPIA 2006 whereby the limitation amount applicable to the tanker is increased, on a voluntary basis, to SDR 20 million (USD 26.56 million).
- 3.12.10 The Executive Committee further recalled that it appeared unlikely that the amount of compensation payable in respect of this incident would exceed the STOPIA 2006 limit of SDR 20 million and as a result, it was very unlikely that the 1992 Fund would be called upon to pay compensation.

Insurance details

- 3.12.11 It was recalled that the *MT Harcourt* was insured with the West of England P&I Club, part of the International Group of P&I Associations.

Claims for compensation

- 3.12.12 It was also recalled that in February 2021, a claimant representing 12 riverine communities in the Benin river, served legal proceedings upon the shipowner and ship's Master, claiming compensation for damage to the creeks, mangroves, fish breeding grounds, drinking water and means of livelihood of the fisherfolk within the communities.
- 3.12.13 It was further recalled that the claim amounted to NGN 11.98 billion (approximately USD 29 million) but little evidence had been provided in support of the claim, and the P&I Club was of the view that the claim was unfounded and opportunistic.
- 3.12.14 It was noted that the P&I Club had filed a defence and were successful in striking out the claim, but that the claimants had appealed the decision. It was also noted that the P&I Club would file a defence to the appeal filed by the claimants and that a decision was awaited from the appeal Judge. It was further noted that it was unlikely that the 1992 Fund would be called upon to pay compensation.

Intervention by the delegation of Nigeria

- 3.12.15 The delegation of Nigeria stated that it shared the views expressed in the document and awaited the decision of the appeal Judge.

1992 Fund Executive Committee

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

3.13	Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel Document IOPC/OCT22/3/13		92EC	
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3.13.1 The 1992 Fund Executive Committee took note of the information regarding the incident in Israel as set out in document IOPC/OCT22/3/13.

3.13.2 The Executive Committee recalled that in February 2021, the Government of Israel had contacted the 1992 Fund requesting assistance with oil found along the Israeli coastline believed to be caused by a mystery spill. The Executive Committee also recalled that the Israeli Government believed a spill had occurred in the waters of the exclusive economic zone (EEZ) of Israel. It further recalled that the source of the spill had not been identified.

3.13.3 The Executive Committee recalled that, although the result of the investigation by the Israeli authorities seemed to indicate that the spill might have originated from the *MT Emerald*, the evidence obtained by the Israeli authorities was only circumstantial and it was not possible to prove with sufficient certainty that the oil originated from this tanker.

3.13.4 The Executive Committee also recalled that, according to the investigations carried out by experts engaged by the 1992 Fund, the pollution was caused by crude oil and it could not have originated from any other source but a passing oil tanker.

3.13.5 The Executive Committee further recalled that, as a consequence, at its July 2021 session, it had decided that the pollution which had affected the coastline of Israel could be considered as a spill from an unknown source (a so-called 'mystery spill') and that the 1992 Civil Liability and Fund Conventions would apply. It also recalled that it had authorised the Director to pay compensation in respect of claims arising out of the incident in Israel.

3.13.6 The Executive Committee noted that 33 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 13.8 million. The Executive Committee noted that of these, one claim for sampling and monitoring activities has been settled for ILS 78 303 and that one claim for economic losses has been settled for ILS 26 720. The Executive Committee further noted that 22 claims for economic losses and property damage had been rejected for lack of supporting information, and that the remaining claims were being assessed.

3.13.7 The Executive Committee noted that further claims, including several claims for spill response and clean-up operations carried out by local authorities along the Israeli coastline, were expected in the near future.

3.13.8 The Executive Committee also noted that, for this reason, the Director had engaged a local firm with a long history of assisting P&I Clubs to act as the focal point for this incident, in order to help potential claimants and to facilitate the submission and processing of claims, as well as a number of experts.

Debate

3.13.9 One delegation asked the Director if there was any update on the investigation into the source of the spill and whether the 1992 Fund had been able to make progress in the identification of the ship involved in the incident.

3.13.10 The Secretariat responded that enquiries had been made in countries where the managing company of the suspected tanker was reported to be based but that these enquiries had not been successful. Also, it had been impossible to obtain samples of the oil carried by that ship and, therefore, it was not possible to compare the oils to confirm that the oil spilled had originated from that ship.

1992 Fund Executive Committee

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

4 Compensation matters

4.1	Report of the 1992 Fund Executive Committee on its 77th and 78th sessions	92AC		
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The 1992 Fund Administrative Council noted the reports of the 77th and 78th sessions of the 1992 Fund Executive Committee (documents IOPC/NOV21/11/2 and IOPC/MAR22/9/2) and expressed its gratitude to the Executive Committee's Chair, its Vice-Chair and its members for their work.

4.2	Election of the members of the 1992 Fund Executive Committee Document IOPC/OCT22/4/1	92AC		
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4.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT22/4/1.

1992 Fund Administrative Council Decision

4.2.2 In accordance with 1992 Fund Resolution N°5, the 1992 Fund Administrative Council 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	Algeria
France	Bahamas
Japan	Colombia
Republic of Korea	Cyprus
Singapore	Denmark
Thailand	Jamaica
United Kingdom	New Zealand
	South Africa

4.2.3 The governing bodies recalled the procedure adopted in April 2015 for the election of the Chair and Vice-Chair of the 1992 Fund Executive Committee, by which the incoming Chair and Vice-Chair of the 1992 Fund Executive Committee would be elected at the same time as the incoming Executive Committee was elected (document IOPC/APR15/9/1, paragraph 6.1.6 (i)).

4.2.4 It was noted that the incoming Chair and Vice-Chair would assume their positions as soon as the sessions had concluded and the Record of Decisions had been adopted, and until the end of the next regular session of the Assembly.

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

Chair: Mr Samuel Soo (Singapore)

Vice-Chair: Ms Karen Andersen (Denmark)

4.2.6 The newly elected Chair and Vice-Chair thanked the 1992 Fund Executive Committee for the confidence shown in them.

4.3	STOPIA 2006 and TOPIA 2006 Document IOPC/OCT22/4/2	92AC		SA
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- 4.3.1 The governing bodies took note of the information contained in document IOPC/OCT22/4/2 regarding the recent status of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) (STOPIA 2006), and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended 2017) (TOPIA 2006)^{<3>}.

Number of ships entered and not entered in STOPIA 2006

- 4.3.2 The 1992 Fund Administrative Council noted that the total number of ships reported by the International Group as entered and not entered in STOPIA 2006 as at 20 August 2022 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 2021	7 599	120	7 719	98.45
20 August 2022	8 132	105	8 237	98.73

- 4.3.3 It was further noted that the International Group had also reported that the number of relevant ships not entered in STOPIA 2006 was nil, and the number of ships entered in STOPIA 2006 (whether as a Relevant Ship or by an independent written agreement between the owner and its Club) and which ceased to be entered in STOPIA 2006 while remaining insured by the Club, was also nil.

Number of relevant ships not entered in TOPIA 2006

- 4.3.4 The Supplementary Fund Assembly noted that the International Group had reported that as at 20 August 2022, the number of relevant ships not entered in TOPIA 2006 was nil, and the number of ships entered in TOPIA 2006 (whether as a Relevant Ship or by an independent written agreement between the owner and its Club) and which ceased to be in TOPIA 2006 while remaining insured by the Club, was also nil.
- 4.3.5 The Supplementary Fund Assembly also noted that the International Group is not required to provide the list of ships entered in TOPIA 2006 under the Memorandum of Understanding (MoU) between the International Group and the IOPC Funds.

Director's considerations

- 4.3.6 The governing bodies noted that the Director was satisfied with the STOPIA 2006 data, which

<3> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)' and references to 'TOPIA 2006' should be taken to read 'TOPIA 2006 (as amended 2017)'.

showed the current situation and that the equitable sharing of the burden of compensation between shipowners and oil receivers was maintained. The governing bodies also noted that the Director was in discussion with the International Group as to the difference between the STOPIA 2006 and TOPIA 2006 data reporting requirements in the MoU and that the Director would report the developments at future sessions of the governing bodies.

- 4.3.7 The Director thanked the International Group for its implementation of STOPIA 2006 and TOPIA 2006 and for sharing the STOPIA 2006 data.

Intervention by the observer delegation of the International Group

- 4.3.8 The observer delegation of the International Group provided further details on paragraph 3.4 of document IOPC/OCT22/4/2 which reported on the six vessels that had been entered in one of the International Group Clubs but were not reinsured through the International Group's pooling arrangements without being or becoming entered in TOPIA 2006. That delegation stated that those vessels were floating production storage and offloading (FPSO) vessels and, therefore, they could be regarded as a 'Ship' in respect of the 1992 CLC only at certain times of their operation. The International Group was in close contact with the Club concerned regarding those vessels and informed the governing bodies of the Club's efforts to encourage their Members to voluntarily enter these vessels in TOPIA 2006, and that such efforts were ongoing. The International Group agreed to keep the IOPC Funds Secretariat informed of the progress and efforts for these six vessels to become TOPIA 2006 members.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 4.3.9 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted with satisfaction the information contained in document IOPC/OCT22/4/2 and the information provided by the observer delegation of the International Group.

4.4	Lessons learned from the <i>Hebei Spirit</i> incident — incident handling, claims assessment and settlement process Document IOPC/OCT22/4/3	92AC		
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- 4.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT22/4/3 regarding the lessons learned from the *Hebei Spirit* incident, with particular emphasis on the incident handling, and claim assessment and settlement process.
- 4.4.2 The 1992 Fund Administrative Council noted that a high number of issues were raised and discussed during the wash-up meeting, including cooperation between P&I Clubs and national governments, claims handling, legal matters and national mechanisms that the Government of the Republic of Korea considered it could put in place to deal with future large oil spills in Korean waters.
- 4.4.3 The 1992 Fund Administrative Council also noted that the document focused on the specific issues faced by the 1992 Fund which arose from the handling of several thousands of claims and the management of the incident, in particular, those issues related to the mechanisms that had to be put in place to avoid double payments of claims and to correctly match the claims submitted to the Skuld Club and the 1992 Fund with the claims submitted in court. It further noted that a detailed report on all the matters discussed during the wash-up meeting, including those not directly related to IOPC Funds' matters, has been prepared by the former Director of the IOPC Funds, Mr José Maura and was attached to document IOPC/OCT22/4/3 at Annex I.
- 4.4.4 The 1992 Fund Administrative Council further noted that general lessons had been drawn regarding the future handling of claims arising from major incidents as well as specific conclusions with respect to the future handling of incidents in the Republic of Korea.
- 4.4.5 It was further noted that in reaching these conclusions, it had been recognised that the claims-

handling procedures adopted by the IOPC Funds in different countries were sometimes determined by factors outside the Funds' control and that some flexibility would, therefore, be necessary in the light of the particular circumstances of each case.

4.4.6 The 1992 Fund Administrative Council noted that, in view of the magnitude of the *Hebei Spirit* incident in terms of both the amounts claimed and the large variety of types of claims submitted, its handling brought to the fore a number of issues that had started to emerge from previous incidents and helped formalise a series of policies that were subsequently implemented by the IOPC Funds.

4.4.7 It was noted that the main conclusions and lessons for improvements were:

- The involvement of governments in the management of an incident is important for its resolution and was crucial in the case of the *Hebei Spirit* incident. For this reason, the IOPC Funds' governing bodies approved a guidance document for Member States which provides a set of measures that governments could undertake to facilitate the handling of claims, as well as to alleviate economic hardship caused to the victims of future spills;
- The handling of large numbers of claims by small scale businesses in both the fisheries and tourism sectors provided a template which allows for more flexibility in the way such claims can be assessed by the Funds' Secretariat in future incidents;
- The 1992 Fund developed a guidance document for Member States on how to impose fisheries restrictions following an oil spill, to help minimise the impact on claimants of these restrictions, while protecting the health and safety of the public;
- Claims forms in the language of the country of the incident, even when that is not a 1992 Fund's official language, help the claimants' understanding of the requirements for submission of claims. This has been applied to the incidents that occurred after the *Hebei Spirit* incident and will continue in the future; and
- Equally, it is very helpful to have the Claims Manual translated into the language of the affected State. The 1992 Fund's supervision of the translation of the manual, rather than leaving it to be carried out by a third party, ensures that the information and guidance provided to the claimants is accurate and correct.

4.4.8 The 1992 Fund Administrative Council further noted that several other considerations were brought to the IOPC Funds' attention following this incident, which could be taken into account for the successful management of future incidents, such as:

- Establishing and maintaining regular channels of communication with the government throughout the incident;
- Engaging with the public and potential claimants both at the beginning of the incident and also for some time afterwards to facilitate the claimants' understanding of the claims handling process and to manage their expectations; and
- Creating a system by which the Club and the 1992 Fund can cooperate with the national courts as soon as possible after limitation proceedings or civil proceedings are commenced, to ensure that the claim-related information is shared from the beginning, and means are established to harmonise the way claims are recorded.

Debate

- 4.4.9 The Chair of the 1992 Fund Administrative Council noted how, despite the fact that the wash-up meeting had to be delayed due to the COVID-19 pandemic, it was needed since the handling of this case was a monumental endeavour. The Chair thanked the Secretariat for the work and in particular, he thanked two individuals whose work he considered to be very important to the success of this incident, the Chair of the Supplementary Fund Assembly, Mr Sungbum Kim, whose work and assistance during the incident was paramount to achieve its conclusion, and the former Director of the IOPC Funds, Mr José Maura.
- 4.4.10 The delegation of the Republic of Korea took the floor to express their satisfaction with the results of the wash-up meeting, which gave rise to very informative discussions and provided lessons which could be helpful in the future. That delegation expressed its gratitude to all participants at the wash-up meeting, in particular the Fund's Director, Mr Gaute Sivertsen, Deputy Director/Head of Claims Department Mrs Liliana Monsalve, the Head of Administration Mr Robert Owen and Senior Claims Manager Ms Chiara Della Mea, as well as the Fund's former Director Mr José Maura, and the Senior Vice President of the Skuld Club, Ms Nicola Mason for their cooperation and assistance in holding the wash-up meeting, and the ITOPF experts and former Head of the *Hebei Spirit* Centre, as well as all other experts and lawyers who attended the meeting.
- 4.4.11 That delegation informed the 1992 Fund Administrative Council that during the wash-up meeting Korean officials had described their difficulties in responding to the incident in the early stages. Equally, the judge presiding over the court proceedings described the difficulties encountered in the later stages of the incident when issuing judgments and mediation. Lawyers and experts also shared their experience in dealing with the incident at various stages.
- 4.4.12 The delegation noted that many meaningful lessons were learned during the meeting, which had been described in detail in document IOPC/OCT22/4/3. The delegation fully agreed with the summary of the meeting and the Director's considerations. In particular it highlighted the importance of two points:
- (i) Managing claimants' expectations. The delegation noted that claimants need to understand the compensation system and what they should be expected to receive when they submit a claim. The P&I Clubs and the IOPC Funds are not there to save money but will compensate claimants fairly, up to their limit, for as long as the claims are well documented. It is therefore important that local, regional and central governments fully understand the claim process and the importance of preserving supporting evidence, so that they can advise claimants accordingly.
 - (ii) That delegation also considered the importance of a clear understanding of the degree of involvement of a government in an incident. In the *Hebei Spirit* incident, the Korean Government was deeply involved in the management of the incident and intervened directly in the payment of the claims with the Special Law for the 'Support of affected inhabitants and the restoration of the marine environment in respect of the *Hebei Spirit* oil pollution incident' and direct payments to the claimants. However, such in-depth involvement by a government may not be appropriate for all incidents and the government involvement might differ depending on the size of the incident and the circumstances of the country involved.
- 4.4.13 One delegation who took the floor expressed its appreciation for the work of the Secretariat, Skuld P&I Club, the delegation of the Republic of Korea and all concerned parties in dealing with the case. It also noted how this incident showed very clearly the importance of ratifying the Supplementary Fund Protocol. That delegation noted that, because the Republic of Korea was not at the time a party to the Supplementary Fund Protocol, the 1992 Fund had to take a cautious approach to the level of payments given that the established losses for the *Hebei Spirit* incident far exceeded the limit of the 1992 Fund. That delegation therefore urged those States yet to do so to consider joining the Supplementary Fund Protocol.

- 4.4.14 That same delegation noted that regarding the assessment of large numbers of small claims, the application of an assessment method based on an estimate of losses calculated from an economic model would need to be carefully considered to see whether the model is justifiable under the circumstances of an incident and the requirement of evidence for establishing damages as this should be upheld as the main principle for assessing claims.
- 4.4.15 One delegation who took the floor also thanked the Secretariat for all the work they carried out on this incident and in particular, the work of Senior Claims Manager Ms Chiara Della Mea, who had followed the incident from the beginning.
- 4.4.16 That delegation remarked how the *Hebei Spirit* incident had been important for the development of the 1992 Fund's policies, which is important not just for the 1992 Fund but for the claimants as well, who will benefit from these developments. The delegation recalled in particular the work of the Working Group on the assessment of large numbers of small claims, the conclusions of which brought changes to the way the 1992 Fund assessed such claims.
- 4.4.17 That delegation also highlighted the importance for States who have not yet done so, to consider ratifying the Supplementary Fund Protocol.
- 4.4.18 The observer delegation of the International Group expressed, also on behalf of the Skuld Club, their satisfaction with the results of the wash-up meeting. The observer delegation noted how the *Hebei Spirit* incident was a very good example of successful cooperation between the 1992 Fund, the P&I Insurer and the Government, the observer delegation also welcomed the fact that the next wash-up meeting would be held for the *Trident Star* incident which, albeit it was not a major incident, was also the first STOPIA 2006 case to be concluded.
- 4.4.19 The observer delegation noted how some of the lessons learned from this incident, such as cooperation with governments could also be, and in some cases already are, applied to 1992 CLC only incidents. The delegation further noted that in this regard the International Group would be happy to work with the Secretariat and any interested government in further developing ways to establish durable communication channels between Fund/Clubs and the national authorities in case of an incident, as indicated in the Director's considerations and summary of the wash-up meeting.
- 4.4.20 The observer delegation concluded its remarks by also highlighting the importance of ratifying the Supplementary Fund Protocol to insure higher coverage in the case of an incident.
- 4.4.21 The Chair of the Supplementary Fund Assembly, Mr Sungbum Kim, took the floor to thank the Chair of the 1992 Fund Administrative Council and the delegations who took the floor for their kind words. He noted that, in view of the staff turnover in the government departments in the Republic of Korea, it was difficult to ensure continuity of effort in the handling of the case. Mr Kim expressed his wish that in his tenure as Chair of the Supplementary Fund Assembly he had been able to provide a constant presence who both the Korean Government and the 1992 Fund could rely on to ensure smooth communication and to help resolving hurdles when they happened.
- 4.4.22 He concluded his remarks by stating that, as Chair of the Supplementary Fund Assembly, he would also strongly recommend States to ratify the Supplementary Fund Protocol, to avoid having to deal with an incident when there is not enough compensation available under the 1992 Fund Convention.

- 4.4.23 The Chair of the 1992 Fund Administrative Council summarised the discussion by noting that the *Hebei Spirit* had been a difficult case and that the fact that it was resolved so successfully was not just because of the professionalism of all those involved in its handling, but also because of the spirit of cooperation demonstrated by the States participating to the sessions of the 1992 Fund governing bodies, who always strove to find solutions by consensus and therefore achieved agreement on difficult issues in a very effective way.

1992 Fund Administrative Council

- 4.4.24 The 1992 Fund Administrative Council noted how the close cooperation with the Skuld Club as well as the cooperation and assistance provided by the Government of the Republic of Korea were paramount in resolving this major incident. It further acknowledged the excellent work of the *Hebei Spirit* Centre staff and all experts engaged by the Skuld Club and the 1992 Fund to deal with the claims arising from the *Hebei Spirit* incident.

4.5	The potential impact of sanctions on the international liability and compensation regime Documents IOPC/OCT22/4/4, IOPC/OCT22/4/4/1 and IOPC/OCT22/4/4/2	92AC		SA
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- 4.5.1 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of document IOPC/OCT22/4/4 submitted by the Secretariat; document IOPC/OCT22/4/4/1 submitted by Canada, Japan and the United Kingdom; and document IOPC/OCT22/4/4/2 submitted by the International Group.

DOCUMENT IOPC/OCT22/4/4 — SUBMITTED BY THE SECRETARIAT

- 4.5.2 The governing bodies took note of document IOPC/OCT22/4/4, submitted by the Secretariat, and recalled that in March 2022 the Director had submitted document IOPC/MAR22/8/1 which contained at its Annex, a draft circular of the IMO Legal Committee (IMO document LEG 109/16/1, paragraphs 5.14 and 5.15) containing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. The LEG circular included information relevant to the IOPC Funds.
- 4.5.3 The governing bodies noted that from 5 December 2022, pursuant to Articles 3n and 5a of European Regulation 833/2014 (the Regulation), further restrictions would come into effect which governed the carriage and insurance of Russian crude oil and products, and prohibited transactions with the entities listed in Annex XIX of the Regulation that were controlled by the Russian Federation, which might include potential shippers and contributors to the IOPC Funds.
- 4.5.4 The governing bodies also noted that, as a result of the restriction on insurance of vessels carrying Russian crude oil and products, many of the International Group P&I Clubs would no longer be able to insure such vessels, meaning that the shipowners might need to seek insurance from other non-International Group P&I Clubs.
- 4.5.5 The governing bodies noted that while the IOPC Funds are intergovernmental organisations and are not subject to domestic or international sanction regulations and legislation, a number of practical difficulties might arise if dealing with an incident involving a vessel laden with Russian oil.

Sanctions-avoiding vessels

- 4.5.6 It was noted that a high number of vessels were reported as attempting to circumvent the sanctions by various methods, including turning off their automatic identification system (AIS) transponders so as to disappear from coverage in order to conduct illegal ship-to-ship (STS) oil transfer operations, often in dangerous waters/the open sea or in areas with little satellite coverage, thereby negating many of the IMO safety measures and putting coastlines at increased risk of oil pollution.

Provision of insurance by non-International Group insurers

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

Banking restrictions

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

Potential mitigating actions

- 4.5.9 It was noted by the governing bodies that in accordance with the recent IMO LEG guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates, Member States should recall their existing obligations pursuant to IMO Circular 3464, which stated that when receiving a Blue Card or similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, the Member State should verify the financial standing and solvency of such company in order to make sure that prompt and adequate compensation for victims was available.
- 4.5.10 The governing bodies further noted that the Secretariat had spoken with representatives of the International Association of Classification Societies (IACS) regarding the provision of classification services to vessels in Russian Federation ownership. It was noted that the Secretariat was planning to speak with the Head of Licensing, Export Control Joint Unit, United Kingdom (UK) Department for International Trade, to discuss any possible exemptions from the sanctions and/or license which might be available, which the IOPC Funds could take advantage of in order to fulfil its remit of paying compensation under difficult sanctions conditions. It was also noted that certain regulations allowed for the possibility of obtaining a special license covering an extraordinary situation, or an act dealing with an emergency, which was defined as an act assisting with the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment.

DOCUMENT IOPC/OCT22/4/4/1— SUBMITTED BY CANADA, JAPAN AND THE UNITED KINGDOM

Activities increasing the risk of oil spills

- 4.5.11 The governing bodies took note of document IOPC/OCT22/4/4/1 submitted by the delegations of Canada, Japan and the UK, and noted that in the past three years there had been an increase in STS transfers of oil in international waters and 'dark operations' to obscure a ship's identification and to circumvent sanctions and high insurance costs. The governing bodies also noted that these actions had the potential to increase the risk of oil spills and the risk of financial exposure for the IOPC Funds, and were of grave concern to Member States.

- 4.5.12 The governing bodies further noted that these actions made it difficult to assign liability when ship-source spills occurred and increased the risk to the IOPC Funds, as the organisation might assume more financial liability in the absence of being able to implement the polluter-pays principle.
- 4.5.13 It was noted that the delegations that had submitted the document were extremely concerned with reports of an increase of STS transfers in international waters, since ordinarily, transfers typically took place in sheltered waters in order to reduce the risk of spills; these oil transfers in international waters were being used to disguise the cargoes' destinations with little regulatory and technical oversight, which also increased the risks to the crews involved in those operations.
- 4.5.14 It was also noted that the transfers had the potential to undermine the spirit of the regulation of STS operations for oil tankers prescribed by the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I, Chapter 8, which provided safety standards developed and adopted by maritime nations and were intended to prevent pollution during the transfer of oil cargo between oil tankers at sea.
- 4.5.15 The governing bodies further noted that there had also been an increase in crude oil tankers that were 'going dark' (i.e. turning off satellite responders), which increased the risk of collisions and oil spills, and that various reports also noted other behaviour such as ID and location tampering, course deviations and drifting close to other ships. It was noted that these methods of obfuscation could result in participating shipowners evading their liability under the 1992 CLC and could further increase the risk of the IOPC Funds paying compensation from the first dollar up for a 'mystery spill'.
- 4.5.16 The governing bodies noted that the combination of crude oil STS transfers in international waters and methods to conceal a ship's identity could be catastrophic, and could significantly increase the risk of an oil spill in nearby Member States as well as the exposure of the IOPC Funds.
- 4.5.17 The governing bodies noted that flag States were called upon to ensure that tankers under their flag adheres to the spirit and requirements of the safety conventions and practiced safe shipping standards that minimised the risk of oil pollution, and should consider requesting that a notification be sent to the flag States when a vessel flying their flag was engaged in a mid-ocean operation by including it in the vessel's STS operations manual. The governing bodies also noted the suggestion that port States should ensure enforcement of the safety and liability conventions on these vessels and ensure that STS transfer operations were conducted in accordance with the applicable safety convention requirements.
- 4.5.18 The governing bodies also noted the submission that it was unacceptable that the premise of sanctions could be used as an excuse not to pay compensation, and that insurers were requested to examine their policies to ascertain whether the open ocean STS operations constituted a breach.

DOCUMENT IOPC/OCT22/4/4/2 — SUBMITTED BY THE INTERNATIONAL GROUP

Consequences of the sanctions regime on Russian origin persistent oil carried by sea

- 4.5.19 The governing bodies took note of document IOPC/OCT22/4/4/2 submitted by the International Group. It was noted that in June 2022, the Council of the European Union (EU) had adopted a sixth package of sanctions that, *inter alia*, prohibit the purchase, import or transfer of crude oil and certain petroleum products from Russia to the EU.
- 4.5.20 The governing bodies noted that since the International Group were subject to regulatory supervision and compliance rules in the jurisdictions of the EU, Japan, the United Kingdom and the United States of America (United States), they would not have discretion to provide cover for voyages that were prohibited by law. It was further noted that the International Group relied on claims sharing arrangements, 'the Pool', for claims in excess of USD 10 million up to USD 100 million and, thereafter, a reinsurance programme that was heavily dependent on the participation of

reinsurers that are domiciled, regulated and incorporated in multiple jurisdictions including the EU, the United States and the United Kingdom. Consequentially, the International Group and most of their reinsurers would be unable to provide insurance and reinsurance services to the extent that

such was prohibited by law, notwithstanding the provisions of the 1992 Civil Liability and Fund Conventions.

- 4.5.21 The governing bodies noted that if the International Group were prohibited from providing cover, they would be unable to respond to a 1969 or 1992 CLC claim arising in one or more CLC jurisdictions, and that these restrictions on the transport of persistent oil of Russian origin clearly impacted on the operation of the 1992 CLC and the provisions in Article VII of the 1992 CLC relating to insurance.

Impact upon shipowners

- 4.5.22 The governing bodies noted that after 5 December 2022, the prohibition on the transport of Russian origin persistent oil would prevent the UK and EU incorporated, domiciled or regulated shipowners from loading and transporting such oil which would be prohibited under the Regulation(s) from any port of departure to any port of discharge whether within or outside the UK/EU. Non-EU or UK incorporated, domiciled or regulated shipowners would be prohibited from transporting such cargoes to UK/EU destinations but would not be prohibited from transporting cargoes to non-EU destinations. It was noted that the great majority of such non-EU shipowners currently obtained their P&I cover from one of the International Group member P&I Clubs.

Impact on insurers

- 4.5.23 The governing bodies noted that the prohibitions relating to insurance would prevent EU incorporated, domiciled or regulated insurers and reinsurers from providing insurance and reinsurance cover from 5 December 2022 to any vessel that carried Russian origin persistent oil, regardless of whether the oil was destined for delivery within or outside the EU. The prohibitions on insurance would not, however, prevent non-EU regulated insurers and reinsurers from providing cover for non-EU incorporated, domiciled or regulated shipowners transporting cargoes to non-EU destinations. Any P&I insurance arrangements which shipowners entered into with non-International Group P&I Clubs would not extend to include the voluntary additional compensation provided by shipowners who are members of the International Group, pursuant to the STOPIA 2006) and TOPIA 2006 arrangements (document 92FUND/A/ES.10/13).

1992 Civil Liability Convention on Blue Cards

- 4.5.24 It was recalled that Article VII of the 1992 CLC made insurance or other financial security compulsory for ships carrying more than 2 000 tonnes of persistent oil in bulk as cargo, and that such ships must carry a certificate issued by a State as proof of compliance with this requirement. It was also recalled that the ship's insurer or provider of financial security would, in the case of an International Group P&I Club, issue a so-called 'Blue Card' which was then used to obtain a certificate from the flag State of the ship or other 1992 CLC State Party, if the ship was not registered in a State Party.
- 4.5.25 The governing bodies noted that the Blue Card also provided that the insurer remained financially responsible for three months after notice of cancellation of cover was provided to the flag State (unless that three-month period was cut short for reasons provided in Article VII). The governing bodies also noted that a consequence of the UK/EU sanctions legislation was that an International Group P&I Club would be prohibited from providing cover or meeting claims for pollution damage that resulted from a voyage deemed to be in breach of the applicable sanctions legislation. The sanctions legislation would therefore have a direct impact on the operation of the Article VII(5) and the direct action provision at Article VII(8) of the 1992 CLC.

4.5.26 The governing bodies further noted that potentially there could be a significant financial impact on the 1992 Fund and the Supplementary Fund Member States as a result of the latest UK/EU sanctions on the purchase and transport of Russian persistent oil.

4.5.27 It was noted that, at present, it was too early to determine the effect of the G7 price cap on Russian oil.

Statement by the delegation of the Russian Federation

4.5.28 The delegation of the Russian Federation made the following statement:

‘First of all, let me thank the Director and the Secretariat for looking ahead for the challenges that this organisation may face and presenting this insightful document (document IOPC/OCT22/4/4) on sanctions and their consequences.

As the LEG Circular had been mentioned and the issue of insurance, we would like to reiterate what had been stressed in the IMO Circular Letter No. 4548 from April 2022 where the Russian Federation confirmed full validity of certificates of insurance or other financial securities in respect of liability, including Blue Cards issued by Russian insurance companies in compliance with the requirements of international conventions.

In general, it should be noted that sanctions introduced in respect of oil producing countries lead to the risks mentioned in the document by the Director. The countries producing these sanctions are very well aware of such risks as well as their detrimental effect to the regime of environmental protection in general. But they persist.

If we look at the document submitted by Canada, Japan and the UK (document IOPC/OCT22/4/4/1) we see yet another example of putting the situation upside down and shifting the blame by suggesting to cure the signs, symptoms of the disease, but not the disease itself (pay attention to the consequences, but not to the core reason). Thus, taking also into account what is stated in paragraph 2.3.2 of document IOPC/OCT22/4/4/2, submitted by the International Group of P&I Clubs, that ‘potentially there may be a significant financial impact on the 1992 Fund and the Supplementary Fund Member States as a result of the latest UK/EU sanctions’ we therefore would like to invite the 1992 Fund Administrative Council to condemn numerous acts of illicit multilateral and unilateral sanctions that in particular lead to significant financial impact and create risks for the IOPC Funds.’

4.5.29 The Chair of the 1992 Fund Administrative Council stated that the 1992 Fund Administrative Council was not the forum to discuss the appropriateness or otherwise of sanctions which had both an economic and political effect on States in differing measures, and asked delegations to limit their interventions to discussing the consequences of the present situation.

Statement by the delegation of the United Kingdom

4.5.30 The delegation of the United Kingdom made the following statement:

‘The UK would like to join others in expressing our appreciation to the Secretariat, Canada, and the International Group of P&I Clubs for introducing their respective documents.

It is unfortunate that there remain a number of international sanctions regimes in place around the world. Indeed, at the March 2022 meeting of the governing bodies, the UK joined others in condemning the unprovoked and premeditated invasion of Ukraine by Russia. Sadly, today, some seven months later, there is still no end in sight to this blatant violation of international law by Russia so we should expect no let-up in the adoption and implementation of international sanctions.

As the Secretariat's earlier document makes clear, a significant development in the area of sanctions, which has scope to evolve further, concerns the transportation of Russian oil by sea which is due to enter into force on 5 December 2022.

Consequently, the Secretariat and the International Group of P&I Clubs are right to raise awareness of the practical difficulties that could arise when dealing with an incident involving a vessel laden with Russian oil which may ultimately lead to some difficult decisions having to be taken by the governing bodies.

Similarly, it is only right that we shine a light on the deceptive practices that are taking place today to circumvent, amongst other things, international sanctions.

Much has been said already on this by Canada in their introductions. But there is no denying that STS transfers of crude oil in international waters that are not conducted in accordance with (and in the spirit of) the applicable safety convention requirements, and 'dark operations' to circumvent sanctions, are a serious threat to the safety and security of international shipping.

Such actions can only lead to an increase in the risk of oil spills, and greater exposure of the 1992 Fund and Supplementary Fund so it is something that we all need to sit up and take notice of.

To this end, the UK is already taking steps to increase the monitoring of STS transfers within the UK's Exclusive Economic Zone (EEZ). This will provide an avenue for better enforcement - particularly if those ships are found operating in breach of international sanctions.

The UK urges all countries to follow suit and increase their monitoring of these practices, as well as taking the steps outlined in paragraph 2.5 of document IOPC/OCT22/4/4/1, to help act as a deterrent.

Finally Chair, in case anyone is in any doubt, the UK's support for Ukraine remains unwavering. Our call on Russia since the start of its illegal invasion has been simple: observe your obligations under international law, end this war and withdraw from Ukraine. We reiterate that call today.'

Statement by the delegation of Ecuador (original in Spanish)

4.5.31 The delegation of Ecuador made the following statement:

'Ecuador appreciates the documents presented and shares the concern expressed, in particular with regard to the statement that the last three years have seen an increase in ship-to-ship fuel transfers in international waters, which, I wish to highlight, have NOT been executed solely within the framework of imposed sanctions.

We will address this issue from another perspective. In this context, it should be mentioned that, while such operations are not expressly prohibited in international waters, it is clear that they present a risk. Specifically, we would like to highlight the situation witnessed by Ecuador in the last five years, with large fishing fleets accompanied by factory ships and tankers, which, according to our monitoring records, form a group of between 300 and 400 vessels, that are involved in fishing operations in international waters, but very close to the EEZ of Ecuador, specifically to the south and southwest of the Galapagos Islands. In this scenario, these tankers deliver fuel, allowing the fleets to operate for longer periods of time, in excess of six months. Additionally, some ships turn off the Automatic Identification Systems (AIS), thus posing a high risk to navigation and undoubtedly a risk of pollution due to spills during their operations or accidents which could occur and could affect a sensitive area, such as the Galapagos maritime area.

This potential risk needs to be considered, not only because of its impact under the 1992 Civil Liability Convention and the 1992 Fund Convention, and the impact on the IOPC Funds, but principally because of the risks to navigation and the risk of pollution of the marine environment.

For this reason, Ecuador also condemns the hazardous practice of ship-to-ship fuel transfers in international waters, and also highlights the request made to the flag States to ensure that their tankers adhere to the spirit of safe navigation and that work is done to minimise the risks from this type of operation since, as has been mentioned, there is a potential risk of pollution which could affect different and extensive maritime areas of coastal States.'

Debate

- 4.5.32 A significant number of other delegations condemned the illegal STS operations being undertaken in open seas, noting that turning off the AIS transponders increased the risk of collisions and heightened the risk of further mystery spills, which also affected the correct allocation of cost between the two tiers of compensation. Those delegations encouraged coastal and flag States to take efforts to prevent such illegal STS operations occurring.
- 4.5.33 Several delegations restated their condemnation of the Russian invasion and war against Ukraine, and noted that the scenarios described in the documents were concerning, as they had an impact on human life at sea and could cause further pollution. Those delegations called upon flag States to ensure that they complied with their obligations as described in paragraph 2.5 of document IOPC/OCT22/4/4/1. One delegation condemned practices which were not within the spirit and requirements of the safety conventions and increased the risk of oil pollution and called for STS operations to be conducted in accordance with the applicable safety regulations and conventions, and to be included within a vessel's STS operations manual. One delegation urged States to act responsibly in their choice of providers of oil and to adhere to all IMO regulations, noting that failure to do so posed environmental risks and dangers to crew members.
- 4.5.34 Another delegation stated that over recent months, it had increased maritime surveillance and had stopped two attempted STS operations in its EEZ, as these were not permitted under international law.
- 4.5.35 After noting that many of the issues discussed during the debate involved safety issues under the auspices of IMO, the Director invited the observer delegation of IMO to explain what work it was conducting to address the issues.
- 4.5.36 The observer delegation of IMO stated that with reference to STS operations taking place on the high seas, the Marine Environment Protection Committee would discuss the issue at its December 2022 session when considering document MEPC 79/12/2, submitted by the delegation of Dominica. The document proposed a new output for the revision of MARPOL, Annex I, Chapter 8, in order to address the increased use of STS oil transfers on the high seas posing a serious threat to the marine environment and also highlighted that this issue raised questions of sovereignty, legal jurisdiction, pollution reporting and identification, and responsibility for clean-up in case of marine environment pollution incidents.
- 4.5.37 With regard to the issue of 'dark ships', that delegation stated that at the 106th Marine Safety Committee, an update would be provided on the Final Report on the UN Panel of experts regarding the Democratic People's Republic of Korea which recommended that:
- (i) IMO should consider the review of hardware and software security standards for preventing the tampering with of AIS transponders; and

- (ii) IMO should urge all flag States to ensure that the requirements for the Continuous Synopsis Record are complied with, including for such information to be updated accordingly on the IMO Global Integrated Shipping Information System website.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 4.5.38 The governing bodies took note of the information submitted in the documents and the interventions of the delegations. The governing bodies noted that the issues discussed were important, and that there was a large consensus of agreement upon the dangerous nature of the practices identified in the documents submitted and the potential impact upon the IOPC Funds.
- 4.5.39 The governing bodies instructed the Director to continue to monitor the situation and to report back to the governing bodies at its next session.

5 Financial reporting

5.1	Submission of oil reports Document IOPC/OCT22/5/1	92AC		SA
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- 5.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT22/5/1 in respect of the submission of oil reports.
- 5.1.2 It was noted that since the publication of document IOPC/OCT22/5/1, reports had been received from China (Hong Kong Special Administrative Region), Luxembourg and Mauritania.
- 5.1.3 The 1992 Fund Administrative Council also noted that 26 Member States of the 1992 Fund are yet to provide oil reports for the calendar year 2021.
- 5.1.4 The 1992 Fund Administrative Council further noted with concern that six States had outstanding reports for five or more years and in particular, it was noted that one of those States had never submitted any reports: Syrian Arab Republic (13 years). It was also noted that one Member State, the Kingdom of the Netherlands, had nine years of outstanding reports from two contributors in overseas territories.
- 5.1.5 It was noted with concern that outstanding 2021 oil reports from large contributors in some Member States had a significant impact on the total amount of reported contributing oil.
- 5.1.6 With regards to the Supplementary Fund, it was noted that one Member State, the Republic of the Congo had not submitted any reports for 2021. One Member State, the Netherlands, had made a partial submission.
- 5.1.7 It was also noted that, while the financial consequences of the missing 2021 reports could not be determined, the Member States that had submitted their reports for 2021 represented approximately 89% of the total contributing oil expected to be reported to the 1992 Fund and 89% of the total contributing oil expected to be reported to the Supplementary Fund.

Online Reporting System

- 5.1.8 The governing bodies recalled that the Secretariat had been developing the Online Reporting System (ORS) to assist Member States with the submission of contributing oil data to the Secretariat.
- 5.1.9 It was also noted that the Secretariat intends to identify opportunities to integrate the ORS with the new Enterprise Resource Planning system, which currently covers contributions management and financial accounting.

Measures encouraging the submission of oil reports

- 5.1.10 It was recalled that, at the October 2019 sessions of the governing bodies, the Director was instructed to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributions based on estimates in the event that no reports were submitted.
- 5.1.11 It was noted that the Director had worked on this issue with the Audit Body and progress had been reported in document IOPC/OCT22/6/1.

Director's considerations

- 5.1.12 The Director expressed his gratitude for the engagement and cooperation of Member States with regard to the submission of reports, highlighting the necessity of continuous work to ensure that all Member States continue to fulfil this important obligation under the 1992 Fund Convention and the Supplementary Fund Protocol.
- 5.1.13 The Director also expressed his concern that six Member States had outstanding reports for five years or more and that one State had never submitted reports, despite being a member of the 1992 Fund for many years.
- 5.1.14 The Director further expressed his concern that outstanding 2021 oil reports from large contributors in some Member States affected the Secretariat's ability to calculate an accurate levy per tonne for the 2022 levies.
- 5.1.15 The Director assured the governing bodies that he would continue his efforts to obtain the outstanding reports and to ensure that Member States continued to fulfil this very important treaty obligation.

Debate

- 5.1.16 The delegation of the Netherlands provided an update on the progress that had been made with regard to their reports. That delegation informed the governing bodies that they were working with the competent authority to complete the submission of oil reports for 2021. The delegation assured the governing bodies that they would continue working to fulfil their reporting obligation.
- 5.1.17 The delegation of Malaysia provided an update on the outstanding oil report from one contributor yet to submit for 2021. The delegation reported that the competent authority in Malaysia was working with the contributor and hoped that the outstanding report would be submitted soon. That delegation also assured the governing bodies that the competent authority would continue to engage on this issue.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 5.1.18 The governing bodies 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 to ensure that States fulfil their obligations in this regard.

5.2	Report on contributions Document IOPC/OCT22/5/2	92AC		SA
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- 5.2.1 The governing bodies took note of the information on contributions contained in document IOPC/OCT22/5/2.
- 5.2.2 The 1992 Fund Administrative Council noted that a government-owned contributor in Ghana had

outstanding contributions amounting to some £108 000 and that the Secretariat had again offered a payment plan by instalments. The governing bodies further noted that the Director would continue the dialogue with the authorities in Ghana about the outstanding contributions due.

- 5.2.3 The 1992 Fund Administrative Council recalled that the 1992 Fund Assembly at its session in October 2017, 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 on several occasions.
- 5.2.4 It was also noted that during 2019, the Director had held meetings with the Russian representatives, and at their request, the Director had written to the Prime Minister of the Russian Federation setting out the IOPC Funds' position. It was further noted that in March 2020, the Director 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 of the 1992 Fund Convention. The 1992 Fund Administrative Council also noted that the Russian delegation had, on 7 April 2022, corresponded via IMO Circular Letter No. 4548 which referred to the Russian Federation's commitment to fulfilling all obligations arising from previously ratified international instruments.
- 5.2.5 The 1992 Fund Administrative Council noted that a contributor in Venezuela had outstanding contributions accumulating since May 2019, which amounted to some £658 000 corresponding to late oil reports received for the years 2006 to 2018. It was noted that the Director will attempt to engage with the Venezuelan Ambassador to resolve this issue.
- 5.2.6 It was also noted that a contributor in the Islamic Republic of Iran had outstanding contributions of some £199 000 and the Director was hopeful that payment would be received in due course.
- 5.2.7 The 1992 Fund Administrative Council further noted that a contributor in Curaçao (Kingdom of the Netherlands) had outstanding contributions of some £102 000 since March 2020. It was noted that the contributor might no longer be operating in Curaçao and the Secretariat was working with the relevant authorities to establish the status of the company and whether liabilities had been transferred to another company. It was also noted that, if it is confirmed by the authority that no company in Curaçao is responsible for the liabilities, the Director may write off the outstanding contributions and interest, and the governing bodies would be advised of this at a future session.
- 5.2.8 The 1992 Fund Administrative Council noted that contributions of some £56 000 were outstanding from two contributors in Argentina and the Director indicated he would liaise with the authorities regarding these outstanding obligations.
- 5.2.9 The 1992 Fund Administrative Council also noted that the Director did not intend to take legal action in respect of outstanding contributions from contributors in Argentina, Curaçao, Ghana, Islamic Republic of Iran, the Russian Federation and Venezuela at the present time.
- 5.2.10 The 1992 Fund Administrative Council recalled that contributions were due from four contributors based in Denmark, Morocco, Switzerland (oil received in France) and the United Kingdom, which had all gone into liquidation. Pursuant to its decision by the 1992 Fund Assembly at its October 2014 session, the 1992 Fund Administrative Council recalled that any balance due would be written off in the Financial Statements on receipt of final settlement.
- 5.2.11 The Supplementary Fund Assembly noted that only one Member State, the Republic of the Congo, had outstanding contributions of £1 489 since 2019.

Debate

- 5.2.12 The delegation of Argentina expressed its appreciation for the Secretariat's willingness to engage with authorities in Member States on the issue of outstanding contributions, as this provided assistance to authorities in their dialogue with contributors.

1992 Fund Administrative Council and Supplementary Fund Assembly

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

5.3	Report on investments Document IOPC/OCT22/5/3	92AC		SA
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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 2021 to 30 June 2022 contained in document IOPC/OCT22/5/3. 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 both the Bank of England and the United States Federal Reserve began increasing base rates in 2022 which had resulted in an increase to yields achieved by the Funds towards the end of the reporting period.

- 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 further noted that during the reporting period, one GBP/EUR dual currency investment (DCI) was entered into, which had matured in December 2021.

- 5.3.5 It was also noted that no investments had exceeded the normal limits during the reporting period.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 5.3.6 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information provided and will continue to follow closely the investments held by the 1992 Fund and the Supplementary Fund.

5.4	Report of the joint Investment Advisory Body Document IOPC/OCT22/5/4	92AC		SA
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- 5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund and the Supplementary Fund for the period October 2021 to September 2022, contained in the Annex to document IOPC/OCT22/5/4.

- 5.4.2 The governing bodies noted the mandate and the composition of the IAB and that as in previous years' reports and in the verbal presentation, the IAB referred to the hedging guidelines which detailed its approach to hedging a currency risk associated with the liability of an incident. The governing bodies noted that Mr Marcel Zimmerman, who would be joining the IAB upon Mr Brian Turner's departure, was present at the meeting of the governing bodies.

- 5.4.3 The governing bodies also noted that the IAB had kept under review the holding of currencies other than pounds sterling for incidents as part of the Funds' normal assets; and that there were two incidents (*Agia Zoni II* and the incident in Israel) for which compensation was payable and required currency management.

- 5.4.4 The governing bodies noted that the compensation payable for the *Agia Zoni II* incident had been estimated to be EUR 54.6 million. It was further noted that approximately EUR 15 million had been paid and that a balance of EUR 22.6 million was being held, which represented 57% of the amount required in respect of that incident. It was further noted that the hedging ratio would not be increased until there was more clarity on the amount of compensation payable.
- 5.4.5 The governing bodies noted that the first levy for the incident in Israel on 1 March 2022 had amounted to £4 million and that an additional levy for £4 million had been approved and deferred but not utilised. It was also noted that £4 million had been converted into Israeli shekels (ILS) on a spot and forward purchase basis, £2 million for the General Fund and £2 million for the Major Claims Fund. It was further noted that the total amount of compensation payable in respect of the incident in Israel was anticipated to be approximately £13 million, of which 30% had been hedged.
- 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. It was also noted that the changes affecting those financial institutions were reflected in the financial institutions master list provided to the Secretariat by the IAB every quarter. The governing bodies further noted that the list of financial institutions with which deposits might be placed stood at 36, and that deposits were divided into two groups with a tenor of twelve months and a tenor of six months.
- 5.4.7 The governing bodies noted that the IAB had continued to review the IOPC Funds' financial risks during 2022. They also noted the ongoing concerns listed by the IAB, namely the ongoing impact of the United Kingdom's withdrawal from the European Union (Brexit), the pandemic, tightening monetary policy, the war in Ukraine, the resultant restricted gas supply and the appointment of a new British Prime Minister. The governing bodies noted that the IAB continued to monitor the impact on the UK economy and pounds sterling and report to the Secretariat accordingly. The governing bodies noted that there had been significant political changes in the United Kingdom and changes to the value of pounds sterling since the report had been prepared on 6 September 2022. The governing bodies also noted that these changes would be recorded in the minutes of the IAB meeting of 6 December 2022.
- 5.4.8 It was also noted that the IAB continued to monitor the valuation of Provident Fund (PF2) on a quarterly basis at its meetings with the Secretariat and provide comments when appropriate.
- 5.4.9 The governing bodies noted that the IAB had met both remotely and in person with the Secretariat on four occasions during 2022, and had also held a meeting in person with the Audit Body and remotely with the External Auditor. It was noted that the IAB members also held regular meetings remotely amongst themselves and maintained frequent contact with the Secretariat to discuss various issues.
- 5.4.10 The governing bodies noted that the IAB would continue to provide support and advice to the Secretariat on a day-to-day basis as necessary, and to assist in providing solutions to help optimise the returns on the Funds' investments. The governing bodies also noted that the IAB would 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 related to the security of the Funds' assets or could have negative implications for the Funds' capital.
- 5.4.11 The governing bodies noted that the IAB would continue to act with diligence, caution and prudence.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 5.4.12 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted the information provided by the IAB in its report and thanked the members of the joint Investment Advisory Body for their hard work during the year.

5.5	Report of the joint Audit Body Document IOPC/OCT22/5/5	92AC		SA
5.5.1	Before presenting the Report of the joint Audit Body, the Chair thanked Mr Brian Turner, a member of the Investment Advisory Body, on behalf of the Audit Body for his sterling work and his excellent cooperation.			
5.5.2	The governing bodies noted the report of the Audit Body contained in document IOPC/OCT22/5/5 presented by the Chair on behalf of all six members of the Audit Body.			
5.5.3	The governing bodies noted that the Audit Body had held three meetings during the reporting year and that the last two meetings had been held in person in London. They also noted that the Audit Body had worked according to the work plan that is annually presented to the 1992 Fund Assembly and the Supplementary Fund Assembly.			
5.5.4	The governing bodies further noted that the Audit Body had focused on six main areas which fell within its mandate:			
	(a) ascertaining the adequacy 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.			
5.5.5	The governing bodies noted that the Audit Body continued to focus on the effectiveness of the IOPC Funds' risk management. It was also noted that IMO was considering the risks associated with insurers who are not members of the International Group (non-International Group insurers) on the basis of document IOPC/NOV20/5/5/1, submitted by the Audit Body to the November 2020 meetings of the IOPC Funds' governing bodies. It was further noted that at its 109th session in March 2022, the IMO Legal Committee had been mindful of the importance of the subject and had decided to include a new output relating to the development of guidance for the proper implementation and application of IMO liability and compensation conventions on the agenda of the Legal Committee with a target completion year of 2024 (IMO document LEG 109/16/1). The governing bodies noted that the Audit Body had decided to continue to follow the developments at IMO on the issue.			
5.5.6	The governing bodies noted that at the Audit Body meeting of July 2022, the Audit Body had been informed of the internal audit on the claims-handling process by Mazars LLP. The governing bodies noted that the audit covered a core function of the IOPC Funds, and that the audit report had confirmed that the claims-handling was reliable and effective. The governing bodies also noted that the Audit Body had welcomed the recommendations on the adjustment of the claims-handling guidelines and the suggestion on identifying conflicts of interest before the appointment of external experts. It was noted that IOPC Funds' management had reacted in a positive way to these recommendations made by Mazars LLP. The governing bodies noted that, given the importance of the claims-handling process, the Secretariat had made a presentation to the Audit Body on this topic and would present it again in more detail at the Audit Body meeting in December 2022. It was also noted that the Audit Body would look further into this process.			
5.5.7	In October 2019, the governing bodies instructed the Director to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates			

if no reports were submitted. The governing bodies recalled that they had been informed that the Director would examine this matter with the Audit Body. The governing bodies noted that the Audit Body had devoted some time to discussing the issue. The Chair of the Audit Body noted that while the Audit Body was mindful that at present the financial consequences for the IOPC Funds were limited, it was important to ensure that all relevant parties fulfilled their obligations under the 1992 Fund Convention and the Supplementary Fund Protocol. The Audit Body was supportive of the diplomatic efforts made by the Secretariat to encourage Member States to implement the Conventions correctly and to comply with the payment of their contributions. However, the Audit Body had also examined the legal possibilities under the Conventions to issue invoices based on estimates where relevant oil reports had not been received. Based on the legal opinions provided by Professor Dan Sarooshi K.C., the Audit Body found that there was a firm legal basis under the Conventions for the Director to be authorised by the 1992 Fund Assembly to issue invoices based on estimated oil receipts and that he had the power to issue them retrospectively. The Audit Body recommended that the issue be brought to the attention of the 1992 Fund and Supplementary Fund Assemblies for a possible policy decision on the issue, and offered its assistance in the deliberations of such a solution, if needed.

- 5.5.8 The governing bodies noted that after reviewing the IOPC Funds' Financial Statements and reports, the Audit Body recommended that they approve the Financial Statements of the 1992 Fund and the Supplementary Fund for the year ending 31 December 2021.
- 5.5.9 The governing bodies noted that the mandate of the External Auditor BDO, would expire in 2023 and that the selection of the External Auditor had been included in the Audit Body's workplan. The governing bodies also noted that this issue had been discussed by the Audit Body and that its conclusions and recommendations had been included in document IOPC/OCT22/6/3.
- 5.5.10 The Chair of the Audit Body thanked her colleagues on the Audit Body for their hard work, the Secretariat for the assistance it had provided the Audit Body in discharging its responsibilities, and the Chairs of the governing bodies who had attended the Audit Body meetings and provided wise counsel to the deliberations.
- 5.5.11 Finally, the Chair invited the 1992 Fund Administrative Council and Supplementary Fund Assembly to take note of the report of the Audit Body and to provide comments and instructions as might be warranted, and to consider the joint Audit Body's recommendation regarding the adoption of the 2021 Financial Statements.

Debate

- 5.5.12 One delegation recalled that document IOPC/NOV20/5/5/1 which contained a number of proposals to address the risks associated with non-International Group insurers, had been presented at the 108th session of the IMO Legal Committee. That delegation asked whether these proposals were still being considered within the Legal Committee and when this issue would be discussed again within the sessions of the IOPC Funds' governing bodies.
- 5.5.13 The Director explained that this issue was being discussed at the IMO Legal Committee and added that an informal Correspondence Group, chaired by Canada, had been created by the Legal Committee to continue the deliberations on this issue. The Director stated that the Secretariat would continue to monitor the developments on this issue and would report back to the governing bodies at a future session.
- 5.5.14 In response, the delegation of Canada recalled that when discussing the Report of the Audit Body on the issue of non-International Group insurers, it had been recognised that this issue was not solely confined to the 1992 CLC but that it affected other liability conventions involving a larger number of non-International Group insurers who issued Blue Cards and certificates of insurance. That delegation recalled that a proposal had been presented to the IMO Legal Committee and that

a new work output had been included in the agenda. The delegation of Canada explained that the informal Correspondence Group was developing a further proposal on the next steps to be taken on that work output. The proposal included looking at the guidance that had been issued by IMO on non-International Group insurers a few years ago. The delegation added that this proposal would be presented at the 110th session of the IMO Legal Committee in March 2023. Canada welcomed delegations interested in joining the Correspondence Group to approach the delegation.

- 5.5.15 The delegation which had initiated the discussions thanked Canada for the additional information and stated that it supported the work of the IMO Legal Committee. That delegation confirmed that it was satisfied with the Director's confirmation that once the issue had been considered within the IMO Legal Committee it would be discussed again within the forum of the IOPC Funds' governing bodies.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 5.5.16 The 1992 Fund Administrative Council 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 throughout 2022. They also thanked them for their report and noted the recommendation of the Audit Body to approve the 2021 Financial Statements and Auditor's Report and Opinions.

5.6	2021 Financial Statements and Auditor's Report and Opinions Documents IOPC/OCT22/5/6, IOPC/OCT22/5/6/1, IOPC/OCT22/5/6/2	92AC		SA
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- 5.6.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT22/5/6. The governing bodies dealt separately with their respective Financial Statements for the financial year 2021, contained in documents IOPC/OCT22/5/6/1 and IOPC/OCT22/5/6/2.
- 5.6.2 A representative of the External Auditor BDO, 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 audit was well supported by the Secretariat and the working papers provided to the auditors were of good quality.
- 5.6.4 The governing bodies noted that the Financial Statements continued to be prepared in accordance with International Public Sector Accounting Standards (IPSAS) and in accordance with the Funds' Financial Regulations in all respects. The governing bodies also noted that, as in previous years, the financial disclosures were comprehensive and contained enough detail to facilitate in-depth analysis of the Funds' positions, performance and future commitments. It was further noted that there had been no new accounting policies or other significant changes compared with previous years.
- 5.6.5 The governing bodies noted with appreciation the Financial Statements of their respective organisations as well as the External Auditor's Report and Opinions. It was also noted that the External Auditor had provided an unmodified audit opinion on the 2021 Financial Statements for each organisation.

- 5.6.6 It was further noted that the audit had involved procedures considered appropriate for the entity according to the Auditor's judgement, risk assessment and testing of the internal controls of the organisations. The External Auditor was satisfied that no weaknesses had been identified in the internal controls. The governing bodies noted that the unmodified audit opinions on the Financial Statements were confirmation that the organisations' internal financial controls had operated effectively.
- 5.6.7 The 1992 Fund Administrative Council noted that there were no new recommendations in the External Auditor's Report on the 2021 Financial Statements and no recommendations had been carried forward from previous years.

Debate

- 5.6.8 The governing bodies were informed that Mr David Eagles, who led the External Auditor team, was due to retire in June 2023 and that, as such, these were the last sessions of the governing bodies where he would present the Auditor's Reports and Opinion for the IOPC Funds.
- 5.6.9 The Director, Chairs of the governing bodies and the Chair of the Audit Body took the opportunity to thank Mr Eagles for his outstanding work and his excellent cooperation since BDO were first appointed as External Auditor for the organisations.

1992 Fund Administrative Council decision

- 5.6.10 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2021.

Supplementary Fund Assembly decision

- 5.6.11 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2021.

6 Financial policies and procedures

6.1	Measures encouraging the submission of oil reports Document IOPC/OCT22/6/1	92AC		SA
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- 6.1.1 The governing bodies took note of the information contained in document IOPC/OCT22/6/1.
- 6.1.2 The governing bodies noted that the 1992 Fund Convention and Supplementary Fund Protocol required that Member States submit annually to the Secretariat reports on oil receipts in respect of individual contributors (oil reports) under Article 15.1 of the 1992 Fund Convention and Article 13.1 of the Supplementary Fund Protocol.
- 6.1.3 It was also noted that the governing bodies had expressed significant concern that the non-submission of oil reports had been a long-standing issue despite the Secretariat's considerable efforts to engage the States concerned.
- 6.1.4 The governing bodies further noted that at their October 2019 sessions, the Director had been instructed to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates if no reports had been submitted (document IOPC/OCT19/11/1, paragraph 5.1.17).
- 6.1.5 The governing bodies noted that at their November 2021 sessions, the Director had reported that he had discussed the matter with the Audit Body at length throughout 2021 and had requested two legal opinions from Professor Dan Sarooshi K.C., the 1992 Fund's legal counsel in public international law (document IOPC/NOV21/2/1, paragraph 5.2.9).

- 6.1.6 The governing bodies also noted that in his legal opinions, Professor Sarooshi had concluded that there was a legal basis under the 1992 Fund Convention for the governing bodies to authorise the Director to issue invoices to contributors on the basis of estimated oil receipts, and to do it retrospectively in relation to past periods (Annex I and II attached to IOPC/OCT22/6/1).
- 6.1.7 The governing bodies noted the Director's comment on the importance of the reporting obligation to the effectiveness of the entire IOPC Funds system. They also noted that in general, Member States complied with their obligations, that the Secretariat made significant efforts to pursue the submission of oil reports and that non-compliance was kept to quite low and manageable levels. The governing bodies also noted that the failure by some Member States, as well as by some contributors, to fulfil their obligations was not fair to those who did fulfil them.
- 6.1.8 The governing bodies also noted the Director's view that issuing a Resolution on this matter would provide a more tangible measure of the cost resulting from the non-submission of oil reports and could contribute to more prompt and correct reporting of contributing oil. The governing bodies further noted that, as stated by Professor Sarooshi in his legal opinion, a Resolution would provide an enhanced degree of protection against possible legal challenges by contributors for any invoices issued on the basis of estimated oil receipts.
- 6.1.9 The governing bodies noted that the Director sought their endorsement to prepare, in consultation with the Audit Body, a draft Resolution to enable him to issue invoices to contributors based on estimates if no oil reports were submitted. It was also noted that, if instructed by the governing bodies, the Director would present a draft Resolution and the relevant draft amendments to the Internal Regulations at a future meeting of the governing bodies in 2023. It was further noted that the Director strongly encouraged all 1992 Fund and Supplementary Fund Member States to support the Secretariat in this matter.

Debate

- 6.1.10 Several delegations stressed the importance of submitting oil reports in a proper and timely manner. They expressed their concern that some Member States were not fulfilling their obligation under the Convention to submit oil reports, as this was vital for the proper functioning of the international liability and compensation regime and the effectiveness and sustainability of the IOPC Funds system. Several delegations noted that this failure to submit reports could have a negative impact on the Secretariat's ability to calculate an accurate levy per tonne.
- 6.1.11 Those delegations expressed their gratitude to the Director, the Secretariat and the Audit Body for their efforts to solve the issue of non-submission of the oil reports which was a long-standing issue. They further noted that there was a legal basis under the 1992 Fund Convention for the governing bodies to authorise the Director to issue invoices to contributors on the basis of estimated oil receipts, and to do it retrospectively in relation to past periods.
- 6.1.12 Several delegations endorsed the Director's proposal to prepare, in consultation with the Audit Body, a draft Resolution to enable him to issue invoices to contributors and the relevant draft amendments to the Internal Regulations at a future meeting of the governing bodies in 2023.
- 6.1.13 One delegation noted that it might be preferable for the governing bodies to have an opportunity to review the invoices prepared on the basis of estimated oil receipts before they were issued as this was a novel approach to this issue.
- 6.1.14 Another delegation, however, urged the Director not to neglect to continue with the diplomatic efforts and assistance given to Member States to comply with their reporting obligation in the first instance.
- 6.1.15 One delegation suggested that further studies on the contributions of the different Member States

could be undertaken as the IOPC Funds could incur losses if the estimated amounts were lower than the contributing oil actually received by the Member State in question.

- 6.1.16 In response to a question by the Chair of the 1992 Fund Administrative Council earlier during the meeting, the delegation of the Netherlands reported on an oil refinery in Curaçao whose licence had ended on 31 December 2019. That delegation reported that since then the refinery had been operated by local authorities for day-to-day management issues only and that oil imports to Curaçao in 2020, 2021 and 2022 had decreased substantially and were possibly below the limit of contributing oil. That delegation reported that it had informed the Secretariat informally on this situation and that the formal reports from Curaçao for 2020 and 2021 were still outstanding. The delegation of the Netherlands was of the view that if the Director would have the authority to issue invoices on the basis of estimated oil reports, this situation and similar ones could be easily resolved.
- 6.1.17 One delegation noted that Professor Sarooshi, in his legal opinion, had indicated that, in the absence of national legislation that provided for the transposition of debts imposed by the Fund into debts under the national law of the Member State concerned, any legal proceedings for recovery against the defaulting contributor could at best be highly problematic. That delegation asked the Director whether, in such circumstances, he would be prepared to seek compensation directly from the Member State, given that Professor Sarooshi had indicated that this would be deemed to be legally permissible.
- 6.1.18 In response, the Director recognised the difficulty to enforce the levy on the contributor in the absence of national legislation which would support this action. He added that to issue invoices on the basis of estimated oil reports would result in an outstanding oil report becoming an outstanding contribution and would provide the governing bodies with a more tangible measure of the cost resulting from the non-submission of oil reports. The Director stated that this solution would constitute an important tool of a more political nature rather than a legal tool enforceable in all Member States. He explained that the exact measures to be taken would have to be considered on a case-by-case basis as they would depend on the national legislation of each Member State.

1992 Administrative Council and Supplementary Fund Assembly decision

- 6.1.19 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted the information contained in document IOPC/OCT22/6/1. They instructed the Director to prepare, in consultation with the Audit Body, a draft Resolution in order to enable him to issue invoices to contributors based on estimates if no oil reports were submitted. They also instructed him to introduce the relevant draft amendments to the Internal Regulations at a future meeting of the governing bodies in 2023.

6.2	Appointment of members of the joint Investment Advisory Body Document IOPC/OCT22/6/2	92AC		SA
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- 6.2.1 The governing bodies noted the information provided in document IOPC/OCT22/6/2.
- 6.2.2 The governing bodies recalled that at the December 2020 session, the 1992 Fund Assembly had reappointed Mr Alan Moore and Ms Beate Grosskurth as members of the joint Investment Advisory Body (IAB) for a term of three years until the regular sessions of the IOPC Funds' governing bodies in 2023. The governing bodies also recalled that at that same session, the 1992 Fund Assembly had also reappointed Mr Brian Turner for the following two years until the regular sessions of the IOPC Funds' governing bodies in 2022, while a suitable replacement was being sought.
- 6.2.3 The governing bodies noted that, following an interview process, the Director proposed that Mr Marcel Zimmermann be appointed as a member of the IAB from 1 November 2022 up to the

following regular sessions of the IOPC Funds' governing bodies in 2023, when the 1992 Fund Assembly would appoint the members of the IAB for the following three years.

Debate

- 6.2.4 Several delegations took the opportunity to thank Mr Brian Turner, who stepped down from his role as a member of the IAB, for his valuable contribution over the years. The governing bodies set

aside time later in the meeting for delegates to express their appreciation to Mr Turner (see paragraph 10.2.5).

1992 Fund Administrative Council decision

- 6.2.5 The 1992 Fund Administrative Council appointed Mr Marcel Zimmermann as a member of the joint IAB for the period of 1 November 2022 to the following regular sessions of the IOPC Funds' governing bodies in 2023.

Supplementary Fund Assembly

- 6.2.6 The Supplementary Fund Assembly took note of the decision of the 1992 Fund Administrative Council.

6.3	Appointment of the External Auditor Document IOPC/OCT22/6/3	92AC		SA
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- 6.3.1 The Chair of the Audit Body informed the governing bodies that she would be presenting document IOPC/OCT22/6/3 on behalf of Mrs Alison Baker, who was not able to attend the meeting.

- 6.3.2 The governing bodies noted that in October 2019, BDO International LLP (BDO) had been re-appointed as the IOPC Funds External Auditor for a second four-year term, covering the financial years 2020–2023 and that their period of office would come to an end following their report on the 2023 Financial Statements to the regular sessions of the governing bodies in 2024.

- 6.3.3 The governing bodies noted that the management of the selection process of the External Auditor fell within the mandate of the Audit Body. It was also noted that the Secretariat were closely involved in the process with a heavy time commitment, and that the Chairs of the 1992 Fund Assembly and Supplementary Fund Assembly were also invited to be involved in the process. It was further noted that the Audit Body would present to the governing bodies the various options and related issues regarding the appointment of the External Auditor.

- 6.3.4 The governing bodies noted that the Audit Body had concluded in its recommendations in 2019 that, given all commercial audit firms had strict rules on partner rotation to minimise the risk of loss of independence, there was a sound case for a change in audit organisation following a full tender after two terms of four years. However, the re-appointment of the incumbent for one further term after having served two four-year terms, had not been ruled out. In such circumstances, it would be for the governing bodies to decide whether such re-appointment should be for four years or a shorter period.

- 6.3.5 The governing bodies noted that the current UK regulations (applicable since June 2016) stipulated the rotation of auditors for public interest entities after 10 years, extendable for a further 10-year term if there was a tender process. They also noted that accordingly, the current Funds' policy was broadly in line with market best practice.

- 6.3.6 The governing bodies also noted the current market conditions, namely: most corporations in the UK tender every 10 years, audit tenders typically run at least a full year ahead of appointment,

many audit firms are declining to tender due to additional regulatory constraints and resource shortages, and the cost base is increasing significantly. The governing bodies noted that the Audit Body's view was that a tender process might not give the governing bodies enough relevant candidates to choose from, taking into account the current market conditions.

- 6.3.7 The governing bodies further noted that the IOPC Funds Secretariat was undergoing some significant changes for the first time in many years, including changes within the Finance team. It was also noted that it was likely that Mazars LLP, the Funds' incumbent internal auditor, would be interested to tender. However, given the new 12-month cooling-in period, if an audit tender for the financial year 2024 were to be run in June 2023, Mazars LLP would be precluded from tendering or would need to postpone any internal audit work until after the outcome of the tender; if successful, they would not be able to complete any further internal audit work for the remainder of the year.
- 6.3.8 In addition, the governing bodies noted that the Audit Body was very satisfied with the effectiveness and quality of the BDO audit to date.
- 6.3.9 The governing bodies noted the options to be considered, the corresponding evaluations and the recommendation of the Audit Body on the process to be adopted regarding the appointment of the External Auditor:
- (1) a full tender for the 2024 accounting year, inviting national auditors and commercial firms to apply for a four-year term, excluding BDO who would not be invited to tender;
 - (2) a full tender, inviting national auditors and commercial firms to apply for a four-year term, including BDO, with a possible limit to be proposed on the term that BDO would serve if they were elected;
 - (3) an objective assessment by the Audit Body of the qualifications and performance of BDO to date, as a basis for a decision of the governing bodies of whether to re-appoint BDO for a further two-year term or any term that the governing bodies may consider appropriate; and
 - (4) a straightforward re-appointment for a further two-year term, assuming BDO were willing to serve a further term, which they had confirmed. A full tender would then be undertaken in 2024 for the accounting year 2026.
- 6.3.10 The governing bodies noted the corresponding evaluation of the four options and the recommended approach. The governing bodies also noted that, to ensure the best services by the External Auditor, the External Auditor had to be appointed before the end of 2023, which left little time to encourage and find relevant parties for a full tender process. They also noted that the Audit Body, having considered and evaluated all possible options and taken into account, in particular, the exceptional circumstances within the external audit market and the significant changes within the Secretariat, had recommended the straightforward re-appointment of BDO for a two-year term.
- 6.3.11 The governing bodies further noted that the Audit Body had recommended the straightforward re-appointment of BDO taking into account that: they were currently providing a good service; that this option was consistent with best practice and took into account the circumstances prevailing in the Secretariat; and that it delivered value for money, while allowing the maximum options for tendering firms for the 2026 appointment, the process for which would commence in 2024.
- 6.3.12 The governing bodies noted that the above-recommended approach was not intended to act as a template to be followed at the conclusion of the following period of tenure by the External Auditor.
- 6.3.13 The governing bodies noted that, in the event that the governing bodies approved the recommendation of the Audit Body, a small amendment would be required to Regulation 14.1 of

the Financial Regulations of the 1992 Fund and Supplementary Fund, to allow for the extension of the appointment of BDO after two consecutive four-year terms without a full tender process.

- 6.3.14 The governing bodies noted that there would be a change of partner at BDO as a result of the planned retirement of Mr David Eagles in June 2023. They also noted that the Director, the external expert to the Audit Body, the Head of Administration and the Chief of Finance had met with the new partner, Mr Steven Bladen, and were assured that the good cooperation between BDO and the IOPC Funds would continue under the new partner.

Debate

- 6.3.15 Several delegations thanked the Audit Body for presenting the document and supported the proposals to adopt option (4) and amend Financial Regulation 14.1.
- 6.3.16 One delegation cited the time limitation for the completion of the process by the end of 2023 as justification for a straightforward extension but emphasised that it should be treated as an exceptional circumstance only. Another delegation stated that the proposal appeared to be reasonable and provided a practical solution to the situation that had arisen. That delegation added that it would provide the best conditions for the governing bodies to make an informed decision about the next long-term appointment of the External Auditor.
- 6.3.17 One delegation thanked the Audit Body for the additional information on the proposal and the reasons for the preferred option going forward. That delegation noted that, when considering the appointment of the External Auditor in 2019, the Audit Body had stated in document IOPC/OCT19/6/1 that a 'straightforward reappointment' would be inconsistent with best practice. It stated that the Audit Body's proposal to reappoint the current auditor via a straightforward reappointment was contradictory to this previous advice.
- 6.3.18 That delegation had concerns that a straightforward reappointment would inhibit the Audit Body's ability to ensure that external audit services continue to represent value for money and would jeopardise the transparency of the procurement process for external auditors. That delegation considered that it would be best practice to appoint the External Auditor via a tender process, in line with the current Financial Regulation 14.1 and with what was agreed at the October 2019 sessions regarding reappointment of external auditors beyond two terms. It noted that, if this were an exceptional situation, the rules would need to again be changed to reflect the current Regulation 14.1.
- 6.3.19 Therefore, at this stage, that delegation did not support further amendments to Financial Regulation 14.1 to allow for straightforward reappointment of the current External Auditor, but welcomed further advice from the Audit Body with regard to these issues.
- 6.3.20 The Chair of the Audit Body and the Director provided further advice to the governing bodies, reiterating that the proposal was not a template but an allowance for a specific situation of an exceptional nature. They emphasised that to commence a tender process for completion by end of 2023 might not provide the governing bodies with a wide enough choice of relevant candidates. It was noted that the UK audit market had changed in recent years, following the introduction of additional regulatory constraints and resource shortages, and many firms were declining to tender for new business. They also stressed that a 10-year reappointment cycle was in keeping with standard practice in the UK audit market.
- 6.3.21 The delegation who raised the concerns stated that, should the governing bodies agree to the proposal and amendment to Regulation 14.1, it would be necessary to further consider the reinstatement of text requiring a tender process, at a later stage. That delegation requested that this be noted in the Record of Decisions.

6.3.22 The Chair of the 1992 Fund Administrative Council summed up the discussion, saying that there was overwhelming support from the governing bodies for the proposals of the Audit Body and that in depth discussion had facilitated clarification of some key points. He pointed out that a decision to extend for a further two years did not constitute a template, and should not be interpreted as detracting from the importance of a competitive procedure for identifying an external auditor. Taking into consideration the set of exceptional circumstances described by the Audit Body and the Director, he suggested that it would be appropriate to revert to this issue before the end of the extension period. He also suggested that the Audit Body should then bring another proposal concerning the appointment of the next External Auditor so that the governing bodies could at that point reassess the situation.

1992 Fund Administrative Council and Supplementary Fund Assembly decision

6.3.23 The 1992 Fund Administrative Council and the Supplementary Fund Assembly expressed their appreciation to the Audit Body members for their document on the appointment of the External Auditor. The governing bodies approved the re-appointment of BDO for a two-year term as proposed by the Audit Body and approved the amendment to Financial Regulation 14.1 of the 1992 Fund and the Supplementary Fund, as set out in Annex III of this document.

6.4	Amendments to Financial Regulations Document IOPC/OCT22/6/4	92AC		SA
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6.4.1 The governing bodies took note of the information provided in document IOPC/OCT22/6/4, concerning the proposal to amend Annex I of the 1992 Fund and Supplementary Fund Financial Regulations, which contains the mandate of the joint Investment Advisory Body. It was noted that the proposed amendments reflected recent changes to the structure of the Secretariat and corresponding job titles of staff members.

1992 Fund Administrative Council and Supplementary Fund Assembly decision

6.4.2 The 1992 Fund Administrative Council and Supplementary Fund Assembly decided to amend Annex I of the Financial Regulations of the 1992 Fund and the Supplementary Fund, as set out in the Annex to document IOPC/OCT22/6/4. The full text of the revised mandate, incorporating the agreed amendments, is set out in Annex III of this document.

7 Secretariat and administrative matters

7.1	Secretariat matters Documents IOPC/OCT22/7/1 and IOPC/OCT22/7/1/Corr.1	92AC		SA
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7.1.1 The governing bodies took note of the information contained in document IOPC/OCT22/7/1 and IOPC/OCT22/7/1/Corr.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 23 staff members working in the Secretariat as at 1 September 2022. The governing bodies also noted that there were seven vacant posts in the Professional Category and five vacant posts in the General Service category.

New Working from Home Policy

7.1.3 The governing bodies noted that the Organisation's Working from Home Policy required staff members to work at least three days in the office and allowed two days working from home each week.

7.1.4 The governing bodies also noted that to facilitate the new hybrid working arrangements, the Director had convened a new Information Sharing and Coordination Meeting that he chaired every

week and that was attended by up to two staff members from each Department.

Changes to staff members within the Secretariat

- 7.1.5 The governing bodies noted that Mr Ranjit Pillai had retired from his position of Deputy Director /Head of Finance and Administration with effect from 6 June 2022 after working for over 25 years with the IOPC Funds.
- 7.1.6 The governing bodies noted that the following organisational changes had taken effect from 1 June 2022:
- (i) Mrs Liliana Monsalve was appointed as Deputy Director/Head of Claims Department, at the D2 level;
 - (ii) Mr Robert Owen was appointed as Head of Administration at his current D1 level;
 - (iii) Ms Claire Montgomery was appointed as Chief of Finance at the Professional Grade of P5; and
 - (iv) Ms Chiara Della Mea was promoted to Senior Claims Manager at the Professional Grade of P5.
- 7.1.7 The governing bodies noted that following the retirement of Ms Kathleen McBride, Finance Assistant, at the end of September 2021, the Director had promoted Ms Marina Singh as her replacement at the General Service Grade 7 with effect from 1 March 2022. The governing bodies further noted that Ms Singh's post of Finance Assistant at General Service Grade 5/6 had been advertised, and Ms Thamina Begum had been appointed to this position with effect from 6 June 2022.
- 7.1.8 The governing bodies noted that Miss Nadja Popović had resigned from her position of External Relations and Conference Assistant with effect from 31 August 2022.
- 7.1.9 The governing bodies also noted that since the issuing of document IOPC/OCT22/7/1, Mr Asayehegn Woldegebrail had joined the Secretariat as Finance Manager effective 19 September 2022 and Ms Julia Sukan del Río had resigned from her position of External Relations and Conference Coordinator with effect from 20 October 2022.

Cessation of the Conscious Rewarding Scheme and introduction of Service Awards

- 7.1.10 The governing bodies noted that in 2021 no Manager's awards were awarded. The governing bodies recalled that at its November 2021 sessions, the former Director, on an exceptional basis, had awarded one Director's award in 2021 for long service to the IOPC Funds.
- 7.1.11 The governing bodies noted that after a review of the Conscious Rewarding Scheme, the new Director had decided that both the Manager's and Director's Awards under the scheme would be discontinued with effect from 1 January 2022. The governing bodies further noted that in its place, the Director had decided to introduce Service Awards effective from 1 January 2022 in order to recognise an individual's loyalty and commitment to the IOPC Funds.
- 7.1.12 The governing bodies also noted that the Service Awards would be awarded to a staff member on their anniversary date with the IOPC Funds as follows: _
- 10th Anniversary, £250 voucher
 - 15th Anniversary, £300 voucher
 - 20th Anniversary, £350 voucher

- 25th Anniversary, £400 voucher
- 30th Anniversary, £450 voucher
- 35th Anniversary, £500 voucher

Retirement Award

7.1.13 The governing bodies also noted that the Director had decided to introduce a new Retirement Award with effect from 1 January 2022. The governing bodies noted that the Retirement Award was a cash lump sum that will be awarded to individual staff members who reach the IOPC Funds retirement age of 65 years and retire from the Secretariat after completing at least 10 years of service.

7.1.14 The governing bodies noted the lump sum was £1 000 for 10 years of service, plus £100 for each additional year of service and the Director had decided that this award would only be applicable to staff at Professional Grade P5 and below.

Debate

7.1.15 A number of delegations enquired about the vacant post of Legal Counsel. All delegations expressed their support for the Director, his discretion in managing positions within the Secretariat and filling established vacant posts when required. In response, the Director stated that there was no need at present to fill the Legal Counsel post which had been vacant for some time. He gave his assurances that the Secretariat had sufficient legal advice provisions. He mentioned that as well as having internal legal resources within the Claims Department, he seeks specialised legal expertise from outside experts as and when required. He added that he would continue to monitor the situation and noted that the composition of the Secretariat is reviewed with the Assembly on a yearly basis, including considering the cost-benefit implications of using external consultants, in particular when dealing with legal issues.

7.1.16 In response to a question from one delegation relating to the new Retirement Award, the Director explained that the amount of the award would be reviewed in the future, taking into account inflation.

1992 Fund Administrative Council

7.1.17 The 1992 Fund Administrative Council noted the amendments to the 1992 Fund Staff Rules in respect of Annex A, Annex C, Annex E and Annex F of the 1992 Fund Staff Rules.

Supplementary Fund Assembly

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

7.2	Information services Document IOPC/OCT22/7/2	92AC		SA
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7.2.1 The governing bodies noted the information contained in document IOPC/OCT22/7/2 regarding new, ongoing and future projects relating to the website, publications and other general information services provided by the Secretariat.

7.2.2 It was noted that the Secretariat regularly reviews and endeavours to improve the IOPC Funds' website and that it continues to see an increase in the number of visitors it attracts. Delegates were reminded in particular of the useful tools available under the 'Document Services' section of the website and specifically, of the benefits to account holders in terms of meeting document

notifications, registration and the facility to submit credentials online. Delegates were therefore invited to register for an account if they had not already done so. Delegates were also encouraged to follow the @IOPCFunds account on Twitter and the IOPC Funds page on LinkedIn.

- 7.2.3 It was noted that under the 'About Us' section of the website, the Secretariat had published an updated version of the IOPC Funds' introductory video, which features words from the new Director and members of staff, latest figures and a number of other improvements.
- 7.2.4 Member States were reminded that the main website contained a detailed 'Membership' section with individual country profiles, detailing various facts, figures and information that States may wish to review from time to time. They were also reminded that circular IOPC/2016/Circ.2, issued in January 2016, had invited Member States to submit copies of relevant national legislation to the Secretariat for inclusion in those online country profiles. It was reported that, at the time of the sessions, only 19 States had submitted that information. All Member States were again encouraged to submit copies of their relevant national legislation at their earliest convenience, noting that the sharing of such information with the Secretariat could be useful in verifying that the 1992 Conventions have indeed been implemented correctly into national law in advance of any incident impacting the State.
- 7.2.5 It was noted that the online country profiles also included a section indicating whether a State had informed the Director that it had established an exclusive economic zone (EEZ) under the United Nations (UN) Convention on the Law of the Sea or designated an area under Article 3(a)(ii) of the 1992 Fund Convention. The governing bodies recalled that in order to determine the geographical scope of application of the 1992 Fund Convention in respect of a given Member State, it was necessary for the 1992 Fund to know whether that State had established an EEZ or designated an area. It was noted that information on the EEZ or designated areas had so far been submitted by 33 of the current 120 Member States of the 1992 Fund, with Antigua and Barbuda having submitted their national legislation shortly before the meeting. Any State with updated information in that regard was therefore invited, in accordance with 1992 Fund Resolution N°4, to notify the Director at its earliest convenience.
- 7.2.6 It was noted that the 2020 Financial Statements of the 1992 Fund and Supplementary Fund had been published as online publications, and that the Annual Report 2021 was made available in early 2022.
- 7.2.7 It was also noted that the IOPC Funds had collaborated on a project led by OSPRI (Oil Spill Preparedness Regional Initiative in the Caspian Sea, Black Sea and Central Eurasia), through IPIECA (the global oil and gas industry association), in cooperation with the UN Environment Programme (UNEP), to produce the 1992 Fund Claims Manual, Guidelines for presenting claims for clean-up and preventive measures and the Guidelines for presenting claims for environmental damage in Russian. It was noted that the Russian publications were available under the 'Other publications' section of the organisation's website, together with a number of other claims publications in Arabic and Chinese as part of previous projects.
- 7.2.8 It was recalled that, making such publications available in languages other than the three official languages of the organisation could assist the IOPC Funds in its endeavours to engage with more States, particularly in relation to the implementation of the Conventions and also in relation to raising States' and potential claimants' awareness of the liability and compensation regime, and claims processes.
- 7.2.9 The governing bodies noted that the Secretariat had recently implemented a new customer relationship management (CRM) system, which had significantly improved the way in which communications are delivered to Member States and other key stakeholders. Delegations were reminded, however, that the value of the system remained dependent on the contact information

stored within it and were urged to keep the Secretariat informed of any changes in staff, in particular, Heads of delegations by email to externalrelations@iopcfunds.org.

Debate

- 7.2.10 One delegation pointed out that key information relating to States, including those who had established an EEZ under the UN Convention on the Law of the Sea or designated an area under Article 3(a)(ii) of that Convention, was available under the website of the Division for Ocean Affairs and the Law of the Sea of the United Nations. That delegation, whilst not objecting to the request to States to provide the information, suggested that the Secretariat may find that it can obtain the required information directly. On behalf of the Secretariat, the Chair of the 1992 Fund Administrative Council thanked the delegation for the helpful suggestion and at the same time, encouraged States to nevertheless share the information with the Secretariat, in line with 1992 Fund Resolution N^o4.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 7.2.11 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted the information contained in the document.

7.3	Support provided to Member States Document IOPC/OCT22/7/3	92AC		SA
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- 7.3.1 The governing bodies took note of the information contained in document IOPC/OCT22/7/3 with regards to the training, educational and outreach activities delivered by the Secretariat since November 2021, and the activities and support services it planned to offer to Member States in 2023.
- 7.3.2 It was noted that, following the lifting of many travel restrictions previously in place due to the COVID-19 pandemic, the Secretariat had been able to return to delivering or participating in a number of activities in person in 2022. It was noted, however, that it had also continued, where appropriate, the practice of organising or taking part in a large number of online events, as listed in the document.
- 7.3.3 It was noted that, already this year, the Secretariat had participated in a number of activities such as national and regional workshops, and other training events in collaboration with fellow organisations as described in document IOPC/OCT22/7/3. It was noted that further activities were planned before the end of the year.
- 7.3.4 It was also noted that, in June 2022, the IOPC Funds had participated in Interspill, the European oil spill conference and exhibition which took place in Amsterdam, the Netherlands and in August 2022, it had participated in Oil Spill India, an international conference and exhibition focusing on oil spill prevention, preparedness and response in New Delhi, India. It was noted that the Secretariat continues to speak at such conferences as part of its commitment to create awareness and increase knowledge about the role of the organisation.
- 7.3.5 It was noted that the Secretariat had been able to host visits from universities and other educational institutions again in 2022, and had had the opportunity to lecture on the international liability and compensation regime to maritime students and others at the World Maritime University in Sweden and the International Foundation of the Law of the Sea in Germany.
- 7.3.6 It was reported that the IOPC Funds Short Course was held in person during the week of 27 June and attended by participants from 13 Member States of the 1992 Fund, representing maritime administrations, national coast guards and others. It was noted that dates for the 2023 in-person course would be confirmed later in the year. The Secretariat confirmed its intention to give further consideration as to whether this course could be delivered to Member States remotely again, in a

hybrid format or in an alternative location to London.

- 7.3.7 It was noted that, on Monday 24 October, immediately prior to the opening day of the current sessions of the governing bodies, the Induction Course, which is a half-day course designed specifically to prepare new delegates, was held for the first time since 2019. It was recalled that the course aimed to provide meeting delegates with a better understanding of the functioning of the organisation and the interaction between a Member State and the IOPC Funds in the event of an oil spill. It was noted that demand for places on the course had been very high, with all 20 spaces being filled quickly and several applicants having to be rejected on this occasion. With this in mind, the Secretariat indicated that it would look into the possibility of delivering a further course in advance of the May sessions and into developing an online version for a future date.
- 7.3.8 It was noted that, following the experience gained in the previous year and the increased acceptance and demand for remote activities, the Secretariat had been able to develop mini online training workshops focusing on specific subjects, such as Reporting and Contributions. States were encouraged to take advantage of this training.
- 7.3.9 It was reported that the Secretariat was looking to develop a series of short webinars, which would be open to a wide audience, covering the key areas that form the basis of the IOPC Funds, and that it was also looking into options for providing an online self-paced learning tool.
- 7.3.10 The governing bodies noted that, looking ahead to 2023, the Secretariat would continue to work in close cooperation with IMO in particular, as well as the International Group and ITOPF, to coordinate participation in events and share information in respect of activities planned to assist States. Interested States were encouraged to contact the IOPC Funds Secretariat directly or to discuss their training needs with the IMO Technical Cooperation Division.

Debate

- 7.3.11 One delegation expressed its appreciation to the Secretariat for its efforts to improve the online training activities. It emphasised the importance and usefulness of online training, and pointed out that such events gave States the opportunity to gain a better understanding of the organisation, to ask questions to the Secretariat and to interact with one another. With this in mind, that delegation was pleased to hear that further consideration would be given to delivering a further online or hybrid version of the IOPC Funds Short Course.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 7.3.12 The 1992 Fund Administrative Council and Supplementary Fund Assembly noted the information contained in the document.

7.4	European Union General Data Protection Regulation Document IOPC/OCT22/7/4	92AC		SA
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- 7.4.1 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of document IOPC/OCT22/7/4, which contained information on the application of the 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 the Directive.
- 7.4.2 The governing bodies recalled that the Secretariat had sought clarification from the UK Government on the application of the GDPR and the Directive in light of the existing Headquarters Agreement, and that the reply indicated that the GDPR applied to the IOPC Funds and that the IOPC Funds could have its own position as to its application.
- 7.4.3 The governing bodies also recalled that the Secretariat had retained the services of a data protection lawyer to provide advice as to the application of the GDPR and the Directive, and

generally advise on the policies and procedures to be implemented by the IOPC Funds.

- 7.4.4 The governing bodies further recalled that following the departure of the UK from the EU on 31 January 2020, the UK had maintained the data protection standards that existed under the GDPR and the UK's Data Protection Act 2018 by means of legislation. They further recalled that on 28 June 2021, the EU Commission adopted two 'adequacy decisions' for the UK, thereby recognising that UK data protection legislation provide an essentially equivalent level of protection to that guaranteed under EU law, and the decisions permitted the free flow of personal data between the UK and EU and were subject to a review after a period of four years.
- 7.4.5 It was recalled that the Secretariat believed that the GDPR would not apply to the IOPC Funds, based on the inviolability of archives stipulated in Article 6 of the Headquarters Agreement for the 1992 Fund but nevertheless, the Secretariat believed that the same principles as the GDPR should be applied to protect the data held by the IOPC Funds.
- 7.4.6 It was also recalled that the Secretariat had engaged an expert in implementing the GDPR in order to receive assistance with developing policies and procedures reflecting the data protection principles laid out by the GDPR. It was further recalled that the Secretariat had identified personal data held by the IOPC Funds and had also drafted a Data Protection Policy; Data Privacy Notices for claimants; General Data Privacy Notice for all other persons who have had dealings with the Funds; and a Data Classification and Retention Policy. It was noted that the Secretariat had also considered the provisions necessary to be inserted into various types of contracts which the Funds conclude, including the experts' contract which are normally concluded with insurers and experts in the claims-handling process.
- 7.4.7 The governing bodies recalled that the Secretariat had also engaged an IT support team to assist with the implementation of the Microsoft Information Protection (MIP) suite of IT programs, which enabled a phased approach to be adopted and which identified sensitive information and defined the security and controls to be applied to the data.
- 7.4.8 It was noted that with the assistance of the expert engaged to implement the principles of the GDPR, the staff of the IOPC Funds had received preliminary training on the concept of data protection, which would be expanded upon with further department-specific training, using the MIP when fully installed, to ensure each individual was aware of their duties and responsibilities under the IOPC Funds' data protection system.
- 7.4.9 It was also noted that the Secretariat had continued to make substantial progress with the tasks required for implementing the principles of the GDPR, and had recently designed an IT training platform upon which staff would be trained in readiness for the full implementation of the system in 2023.

Intervention by the observer delegation of the International Group

- 7.4.10 The observer delegation of the International Group stated that was pleased to see progress being made with this issue and that the International Group had spent considerable time complying with the requirements of GDPR. That delegation noted the steps being taken to consider the provisions necessary to be inserted into various types of contracts which the Fund concluded, including specifically, the contracts for experts in the claims-handling process, noting that the discussions between the Secretariat and that delegation had been put on hold pending the resolution of how the GDPR related to the data held by the IOPC Funds.
- 7.4.11 In response to a request from that delegation for confirmation that the discussions could now restart, the Secretariat confirmed it intended to review and insert the GDPR provisions into all applicable contracts to ensure it complied with its obligations.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 7.4.12 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information provided on the GDPR. It was noted that the protection of personal information dealt with by the organisation was very important, with IT systems playing a crucial role, and that the Director would report any further developments at future sessions of the governing bodies.

8 Treaty matters

8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/OCT22/8/1	92AC		SA
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- 8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document IOPC/OCT22/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 8.1.2 It was noted that the 1992 Fund Convention had entered into force for San Marino and Costa Rica on 19 April 2022 and 19 May 2022, respectively, and, therefore, at the October 2022 sessions of the governing bodies, there were 120 Member States of the 1992 Fund.
- 8.1.3 It was also noted that the 1992 Fund Convention would enter into force for Guinea-Bissau on 12 May 2023.
- 8.1.4 It was further noted that at the October 2022 sessions of the governing bodies, there were 32 Member States of the Supplementary Fund.

Debate

- 8.1.5 The Chair of the Supplementary Fund Assembly pointed out that when he first took up his position in 2011, there had been 27 States Parties to the Supplementary Fund Protocol at the time and that in the 11 years since, only five further States had joined the Supplementary Fund. He expressed his disappointment with this limited progress and reiterated a message he had given at previous sessions to encourage further States to ratify the Supplementary Fund Protocol.

1992 Fund Administrative Council and Supplementary Fund Assembly

- 8.1.6 The governing bodies noted the information provided.

8.2	2010 HNS Convention Documents IOPC/OCT22/8/2 and IOPC/OCT22/8/2/1	92AC		
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- 8.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT22/8/2 submitted by the Secretariat with regard to the tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund).

Status of the 2010 HNS Protocol

- 8.2.2 It was noted that, since the March 2022 session of the 1992 Fund Administrative Council, 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 six Contracting States to the Protocol, namely, Canada, Denmark, Estonia, Norway, South Africa and Türkiye. However, it was also noted that a number of States had indicated their intention to become members of the 2010 HNS Convention within the next one to two years.
- 8.2.3 It was noted that the 1992 Fund Secretariat had recently made a number of efforts to provide

further support to interested States with regards to the preparation of their HNS contributing cargo reports, which can often be a deterrent to States' ratification.

- 8.2.4 It was reported that the IOPC Funds had continued to take opportunities to promote the Convention, to engage with interested States and other key stakeholders, and to share information with industry representatives through the delivery of various workshops or other training and outreach activities, often in close cooperation with the IMO Secretariat.
- 8.2.5 Interested States were encouraged to request training sessions from the 1992 Fund Secretariat and the 1992 Fund Administrative Council was reminded that activities could be organised via the Integrated Technical Cooperation Programme (ITCP) of IMO, with support from the IOPC Funds when required.
- 8.2.6 It was recalled that an initial draft list or action plan of tasks to be undertaken by the 1992 Fund Secretariat in relation to the preparations for the entry into force of the 2010 HNS Protocol had been presented to the 1992 Fund Assembly in document IOPC/OCT18/8/2. It was noted that that action plan was now established and being worked towards by the relevant members of the Secretariat.
- 8.2.7 Details of the progress made on specific tasks by the Secretariat as well as a number of actions planned for 2023, as set out in document IOPC/OCT22/8/2, were presented to the 1992 Fund Administrative Council.
- 8.2.8 It was noted in particular that:
- (i) the HNS Finder (the online database of substances that fall within the definition of HNS) had been updated with the most recent list of substances (version 12) on 31 May 2022;
 - (ii) the group of organisations established to develop a draft HNS Convention Claims Manual had so far met on five occasions and was in the process of finalising the draft text; and
 - (iii) the 1992 Fund Secretariat continued to update and maintain the website www.hnsconvention.org and was looking to introduce a number of specific new features to correspond to some of the important planned developments.
- 8.2.9 Looking ahead, the Secretariat expressed its intention to engage with current and identified future Contracting States to develop a set of guidelines and support for HNS reporting and contributions as a priority, as well as its intention to explore the possibility of developing an in-house reporting and financial structure, similar to that developed recently for oil reporting for the IOPC Funds.
- 8.2.10 In respect of other administrative tasks required in order to prepare for the entry into force of the 2010 HNS Convention, it was noted that the 1992 Fund Secretariat would prepare draft Rules of Procedure and draft Internal and Financial Regulations for the consideration of the HNS Fund Assembly at its first session.
- 8.2.11 Given the extensive list of activities to be conducted under the Secretariat's action plan, it was noted that costs would be incurred in 2023 relating to the work of the Secretariat. It was noted that an appropriation of £135 000 had therefore been included in the 2023 budget to cover these costs and other administrative tasks in respect of these activities (document IOPC/OCT22/9/1/1, paragraph 8.3.4).
- 8.2.12 It was also noted that at the next session of the 1992 Fund Assembly, the Director expected to submit a document proposing that the HNS Fund should pay a flat management/development fee to the 1992 Fund, to cover the costs in respect of the preparation for the entry into force of the 2010 HNS Convention, which is based on the model used to calculate the fee paid by the Supplementary Fund to the 1992 Fund.

8.2.13 It was recalled that all costs incurred by the 1992 Fund for the setting up of the HNS Fund will be reimbursed by the HNS Fund with interest.

Debate

8.2.14 The delegation of Canada referred to document IOPC/OCT22/8/2/1, and explained that the workshop on the 2010 HNS Convention, which was due to take place on 31 October and 1 November 2022, had been postponed due to practical reasons and will now take place on 3 and 4 April 2023. It was noted that the rescheduled workshop, which is being organised by Canada, in cooperation with the Secretariats of IMO and the IOPC Funds, will be conducted in hybrid format, i.e. with participants attending in person or remotely, and would follow the meeting of the 110th session of the IMO Legal Committee to facilitate wider participation. The draft programme, provisional timetable for the workshop and registration details can be found in IMO Circular Letter No.4620/Rev.1.

8.2.15 The observer delegation of IMO intervened on that matter to explain that the need to delay the workshop was due to the lack of capability to organise the event in a hybrid format during the original planned dates.

8.2.16 Many delegations indicated their intention to take part in the workshop in April 2023.

8.2.17 The delegation of Canada expressed its appreciation to the Secretariat for its continued efforts to prepare for the entry into force of the 2010 HNS Convention and the first session of the HNS Fund Assembly. It commended the Secretariat for its proactive approach in addressing the challenges that States may face when preparing to ratify the Convention and was particularly pleased to note the planned improvements to the HNS reporting guidelines, which that delegation considered key to ensuring the HNS regime can function from the outset. That delegation offered its support to the Secretariat in that regard. It also urged other States to help maintain the momentum towards entry into force of the Convention, which it hoped would be possible within the coming four years. That delegation reiterated its previous offer to provide technical or other support to interested States and to share their experience of developing implementing legislation and reporting practices should that be useful.

8.2.18 The delegation of France confirmed that work towards the entry into force of the 2010 HNS Convention for the State was progressing and that they hoped to be able to ratify the 2010 HNS Protocol in 2023.

8.2.19 The delegation of the Netherlands reported that they were continuing their efforts towards ratification together with Belgium and Germany. That delegation reported that after consultation with industry in early 2022, the relevant legislation had been adopted during the summer of 2022 and that it should be approved by Parliament in the Netherlands in 2023. It was noted that the legislative process was then expected to take a further six months. That delegation indicated that Belgium and Germany were expected to follow a similar timeline.

8.2.20 As States Parties to the 2010 HNS Protocol, Norway and Denmark expressed their pleasure at seeing the positive progress of a number of States and they offered to provide support and to share their experiences.

8.2.21 The delegation of Namibia referred to the fact that certain products defined as HNS were in the process of replacing traditional oil as a source of energy and as a consequence, it was anticipated that those products will be manufactured and transported in larger quantities, creating new risks of pollution damage to the environment and justifying the need for such a Convention to be in place soon, notably to ensure that coastal States are protected against such risks. That delegation also indicated Namibia's intention to ratify both the 2010 HNS Protocol and the Protocol on

Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol) in the next few years.

- 8.2.22 The delegation of Greece expressed its appreciation to the Secretariat and Canada for the assistance they had provided to the State. That delegation reported that the Greek Government was in touch with industry to clarify their needs and obligations and that, as a consequence, they had sent a number of questions to the Secretariat in order to be able to respond effectively.
- 8.2.23 The observer delegation of IMO thanked both the Secretariat for the report on progress provided in the document and the States who had provided updates on their own progress towards the ratification of the Protocol. That delegation referred to the support available from IMO via the ITCP and other related projects, and also reminded the governing bodies that the IMO Secretary-General would be required to convene the first session of the HNS Fund Assembly and, as such, the IMO Secretariat were looking forward to cooperating with the IOPC Funds Secretariat to ensure that all the necessary documentation is in place.
- 8.2.24 The observer delegation of the International Group thanked the Secretariat for its efforts and time spent to prepare for the entry into force of the Convention and pointed out that a draft Memorandum of Understanding (MoU) between the HNS Fund and the International Group would need to be prepared ahead of the first Assembly, as would an agreement on the funding system of interim payments. That delegation requested that such items should be added to the list of tasks to be completed at the entry into force of the Convention.
- 8.2.25 The observer delegation of the World Liquefied Petroleum Gas Association (WLPGA) reminded the governing bodies that it represented the liquefied petroleum gas (LPG) industry and fully supported the entry into force of that Convention. It also offered support to States where LPG was received and welcomed the increase to the 1992 Fund budget to support the efforts of the Secretariat in its important work on HNS matters.

1992 Fund Administrative Council

- 8.2.26 The 1992 Fund Administrative Council noted that the Secretariat would continue to prepare for and undertake the necessary administrative tasks ahead of the entry into force of the 2010 HNS Convention, would remain available to assist Member States in their efforts to accede to, or ratify the Protocol, and will report on developments at the Assembly's next regular session.

9 Budgetary matters

<p>9.1 Budgets for 2023 and assessments of contributions to the General Fund Documents IOPC/OCT22/9/1, IOPC/OCT22/9/1/1 and IOPC/OCT22/9/1/2</p>	92AC		SA
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- 9.1.1 The governing bodies took note of the information contained in documents IOPC/OCT22/9/1, IOPC/OCT22/9/1/1 and IOPC/OCT22/9/1/2.
- 9.1.2 The 1992 Fund Administrative Council considered the draft 2023 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/OCT22/9/1/1.
- 9.1.3 The Supplementary Fund Assembly considered the draft 2023 budget and the assessment of contributions to the General Fund of the Supplementary Fund in document IOPC/OCT22/9/1/2.
- 9.1.4 It was recalled that the Director had been authorised to create positions in the General Service category as required, providing that the resulting cost did not exceed 10% of the figure for salaries

in the budget and noted the request by the Director for this authorisation to be renewed.

- 9.1.5 It was also noted that the Director had requested the governing bodies renew the authorisation given to him to create one position in the Professional category at the P3 level, subject to need and within the budget resources available.
- 9.1.6 It was further noted that there was an overall increase of 4.9% in the draft 2023 joint Secretariat budget compared to the 2022 budget, mainly due to an increase in costs under Chapters for Personnel and Travel.
- 9.1.7 The governing bodies recalled that in March 2005, they had decided that the distribution of the cost of running the joint Secretariat should be made on the basis of the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed in subsequent years.
- 9.1.8 The 1992 Fund Administrative Council 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 Administrative Council noted the Director's proposal to maintain the working capital at £15 million in the budget year 2023.

Debate

- 9.1.10 One delegation expressed appreciation for the work done on the budget, support for the proposals and requested that the Director continue with cost reduction measures.

1992 Fund Administrative Council decisions

- 9.1.11 The 1992 Fund Administrative Council 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 £233 000, based on the 2023 budget).
- 9.1.12 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create a Professional post at P3 level subject to need and budget availability.
- 9.1.13 The 1992 Fund Administrative Council adopted the budget for 2023 for the 1992 Fund joint Secretariat administrative expenses of £5 093 705 and the 1992 Fund's external audit fee of £54 940, as set out at Annex II, page 1.
- 9.1.14 The 1992 Fund Administrative Council approved the management fee payable by the Supplementary Fund to the 1992 Fund of £40 000.
- 9.1.15 The 1992 Fund Administrative Council approved the Director's estimate of the expenses to be incurred in 2023 in respect of the preparation for the entry into force of the HNS Convention, i.e., £135 000.
- 9.1.16 The 1992 Fund Administrative Council decided to maintain the working capital of the 1992 Fund at £15 million in the budget year 2023.
- 9.1.17 The 1992 Fund Administrative Council approved the Director's proposal to levy 2022 contributions of £5.5 million, payable by 1 March 2023.

Supplementary Fund Assembly decisions

- 9.1.18 The Supplementary Fund Assembly adopted the budget for 2023 for the administrative expenses of the Supplementary Fund for a total of £54 510 (including the cost of the external audit), as set out in the Annex to document IOPC/OCT22/9/1/2.
- 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 2022 contributions to the General Fund.

1992 Fund Administrative Council and Supplementary Fund Assembly decision

- 9.1.21 The 1992 Fund Administrative Council and the Supplementary Fund Assembly approved the Director's proposal that the Supplementary Fund should pay a management fee of £40 000 to the 1992 Fund for the financial year 2023.

9.2	Assessment of contributions to Major Claims Funds and Claims Funds Documents IOPC/OCT22/9/2, IOPC/OCT22/9/2/1 and IOPC/OCT22/9/2/2	92AC		SA
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- 9.2.1 The 1992 Fund Administrative Council 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/OCT22/9/2, IOPC/OCT22/9/2/1 and IOPC/OCT22/9/2/2.
- 9.2.2 The 1992 Fund Administrative Council noted that, in the Director's view, it would not be necessary to levy 2022 contributions for the *Prestige* and *Agia Zoni II* Major Claims Funds.
- 9.2.3 The 1992 Fund Administrative Council also noted that in the Director's view it would not be necessary to levy 2022 contributions to the *Alfa I* and *Nesa R3* Major Claims Funds and that any expenditure exceeding the balance available in those Major Claims Funds be met from loans from the General Fund or from another Major Claims Fund in accordance with Financial Regulations 7.1(c)(iv) and 7.2(d) of the 1992 Fund.
- 9.2.4 The 1992 Fund Administrative Council further noted the Director's proposal to levy 2022 contributions of £3 million to the Incident in Israel Major Claims Fund, payable by 1 March 2023. It also noted that any further expenditure could be met from loans from the General Fund or from another Major Claims Fund in accordance with Financial Regulations 7.1(c)(iv) or 7.2(d) of the 1992 Fund.
- 9.2.5 The 1992 Fund Administrative Council noted the Director's proposal to make a reimbursement of £7.3 million to contributors to the *Hebei Spirit* Major Claims Fund, by 1 March 2023.

1992 Fund Administrative Council decisions

- 9.2.6 The 1992 Administrative Council decided not to levy 2022 contributions in respect of the *Prestige*, *Hebei Spirit*, *Alfa I*, *Agia Zoni II* and *Nesa R3* Major Claims Funds.
- 9.2.7 The 1992 Fund Administrative Council decided to levy 2022 contributions of £3 million to the Incident in Israel Major Claims Fund, payable by 1 March 2023. The 1992 Fund Administrative Council also noted the Director's proposal to meet any further expenditure from loans from the General Fund or from another Major Claims Fund in accordance with Financial Regulations 7.1(c)(iv) or 7.2(d) of the 1992 Fund.
- 9.2.8 The 1992 Fund Administrative Council decided to approve the Director's proposal to make a

reimbursement of £7.3 million to contributors to the *Hebei Spirit* Major Claims Fund, by 1 March 2023.

Supplementary Fund Assembly decision

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

9.3	Transfer within the 2022 budget Document IOPC/OCT22/9/3	92AC		
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- 9.3.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT22/9/3.

- 9.3.2 It was noted that the 2022 budget appropriation for ‘Travel’ (Chapter IV) would not cover the costs of Secretariat travel in 2022.

- 9.3.3 The Director proposed that he should be authorised to make the necessary transfer between chapters within the 2022 budget to cover these additional costs.

Debate

- 9.3.4 One delegation expressed support for the proposal.

1992 Fund Administrative Council decision

- 9.3.5 The 1992 Fund Administrative Council decided to authorise the Director to make the necessary transfer from ‘Personnel’ (Chapter I) to ‘Travel’ (Chapter IV) within the 2022 budget.

10 Other matters

10.1	Future sessions	92AC	92EC	SA
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1992 Fund Administrative Council and Supplementary Fund Assembly decisions

- 10.1.1 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 6 November 2023.

- 10.1.2 The governing bodies agreed that their next sessions would take place during the week of 22 May 2023.

1992 Fund Executive Committee decision

- 10.1.3 The 1992 Fund Executive Committee decided to hold its 80th session during the week of 22 May 2023.

10.2	Any other business	92AC	92EC	SA
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Presentation ceremony

- 10.2.1 Since the October 2022 sessions were the first to be held in person since the departure of the previous Director, Mr José Maura, the governing bodies took the opportunity to invite him to join the meeting and the Director presented him with the gift of a painting and an inscribed glass ornament in recognition of his 25 years’ service to the organisation.

- 10.2.2 Mr Maura expressed his appreciation for the gifts and referred to the enjoyment and honour he had felt to have served Member States in his various positions within the Secretariat for so many years. Since farewell speeches had previously been delivered at the November 2021 sessions, delegations were invited to join Mr Maura at the IOPC Funds reception.
- 10.2.3 The former Deputy Director/Head of Finance and Administration, Mr Ranjit Pillai, who had retired from the organisation in June 2022 after 25 years' service, was also invited to join the meeting. The Director presented him with an inscribed glass ornament in recognition of his 25 years' service to the organisation.
- 10.2.4 Mr Pillai expressed his sincere gratitude to the Director and the governing bodies for the presentation of the gift, which he was delighted to receive. He expressed his heartfelt appreciation to Member States and colleagues for their cooperation, support and friendship over the years.
- 10.2.5 The outgoing member of the joint Investment Advisory Body, Mr Brian Turner, was also invited to receive a gift in recognition of his 20 years' service. He thanked the governing bodies and the Secretariat and explained how much he had enjoyed the work he had carried out for the IOPC Funds, referring to the four Directors with whom he had worked and thanking his colleagues on the Investment Advisory Body and the Audit Body and the members of the Secretariat with whom he had worked closely.

Farewell to outgoing Chair of the Supplementary Fund Assembly

- 10.2.6 Since the Chair of the Supplementary Fund Assembly had informed the governing bodies that he would be stepping down from his position at the end of the current session after 11 years in his post, the governing bodies took the opportunity to thank Mr Kim for his excellent leadership.
- 10.2.7 The 1992 Fund Administrative Council Chair thanked Mr Kim for his support and expressed his appreciation for his unwavering professionalism. He commended him for the precious support he had provided to the Secretariat during the handling of the *Hebei Spirit* incident in particular and wished him well in his future endeavours.
- 10.2.8 The First Vice-Chair of the Supplementary Fund Assembly, Mr Andrew Angel, also expressed his appreciation to Mr Kim, referring to him as a consummate professional, whose calm approach had never wavered even during the hybrid meetings when technology occasionally failed. Mr Angel said Mr Kim had been a true asset to the organisation and wished him all the best for the future.
- 10.2.9 The Director referred to his personal experience of working with Mr Kim as a fellow Chair, having both taken up their posts as Chairs of the governing bodies in the same year. He thanked Mr Kim for his excellent cooperation both as a fellow Chair and since he had become Director. He expressed his particular appreciation for Mr Kim's sound advice over the years and thanked him for his contribution to the organisation.
- 10.2.10 The Chair of the Audit body also thanked Mr Kim for his wise words and advice over the years. She described him as a modest, fair and professional person who, despite his expanding career, had shown great dedication to the organisation.
- 10.2.11 The delegation of the Republic of Korea thanked Mr Kim for his service as Chair of the Supplementary Fund Assembly. That delegation explained that Mr Kim had always been a very supportive and leading member of the delegation with excellent communication skills. It noted the effort and detail that Mr Kim went to when preparing for IOPC Funds' meetings and stated how proud the delegation had been to watch him handle difficult discussions and make decisions. That delegation said that it was an honour to work with Mr Kim and wished him blessings and good fortune for the future.

10.2.12 The Director presented Mr Kim with a gift in recognition of his 11 years' service as Chair of the Supplementary Fund Assembly.

10.2.13 Mr Kim thanked the Director and the governing bodies for the gift and expressed his appreciation to delegations for their support and cooperation over the years. He extended his gratitude to the current First and Second Vice-Chairs of the Supplementary Fund Assembly, the Chair of the Audit Body, who was also the former Vice-Chair of the Assembly, and other members of the Audit Body, the Director and the members of the Secretariat, for the invaluable support they had given to him. He also thanked the Government of Republic of Korea for allowing him to continue to attend IOPC Funds meetings in London despite the numerous changes in his positions within the Government. Finally, he thanked the interpreters of the meetings for ensuring his words were clear to the audience. Mr Kim noted that chairing the Assembly had been challenging at times, but very fulfilling and he considered it an honour and a very enjoyable experience to have held the position of Chair for 11 years.

Other matters

10.2.14 No further items were raised under this agenda item.

11 Adoption of the Record of Decisions

1992 Fund Administrative Council, 1992 Fund Executive Committee and Supplementary Fund Assembly decision

The draft Record of Decisions of the October 2022 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT22/11/WP.1 and IOPC/OCT22/11/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
1	Algeria	•		
2	Angola	•		
3	Antigua and Barbuda	•		
4	Argentina	•		
5	Australia	•		•
6	Bahamas	•		
7	Belgium	•		•
8	Brunei Darussalam	•		
9	Bulgaria	•		
10	Cameroon	•		
11	Canada	•		•
12	China ^{<1>}	•		
13	Colombia	•		
14	Croatia	•		•
15	Cyprus	•		
16	Denmark	•		•
17	Ecuador	•	•	
18	Finland	•		•
19	France	•	•	•
20	Georgia	•		
21	Germany	•	•	•
22	Ghana	•		
23	Greece	•		•
24	Ireland	•		•
25	Italy	•	•	•
26	Jamaica	•	•	

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

		1992 Fund Assembly	1992 Fund Executive Committee	Supplementary Fund Assembly
27	Japan	•	•	•
28	Kenya	•		
29	Latvia	•		•
30	Liberia	•	•	
31	Malaysia	•	•	
32	Malta	•		
33	Marshall Islands	•	•	
34	Mexico	•		
35	Morocco	•	•	•
36	Mozambique	•		
37	Namibia	•		
38	Netherlands	•	•	•
39	Nigeria	•		
40	Norway	•		•
41	Oman	•		
42	Panama	•		
43	Philippines	•	•	
44	Poland	•		•
45	Portugal	•		•
46	Qatar ^{<2>}	•		
47	Republic of Korea	•		•
48	Russian Federation	•		
49	Saint Kitts and Nevis	•		
50	San Marino	•		
51	Singapore	•	•	
52	South Africa	•		
53	Spain	•	•	•

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Upon verification, the Secretariat reports that Qatar was in attendance at the October 2022 sessions of the IOPC Funds' governing bodies.

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

1.2 Intergovernmental organisations

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

1.3 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	Cedre	•	•
2	Comité Maritime International (CMI)	•	•
3	Iberoamerican Maritime Law Institute (IIDM)	•	•
4	International Association of Classification Societies Ltd (IACS)	•	•
5	International Chamber of Shipping (ICS)	•	•
6	International Group of P&I Associations	•	•
7	International Salvage Union (ISU)	•	•
8	ITOPF	•	•
9	Oil Companies International Marine Forum (OCIMF)	•	•
10	Sea Alarm Foundation (Sea Alarm)	•	•

11	World Liquefied Petroleum Gas Association (WLPGA)	•	•
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ANNEX II

RULES OF PROCEDURE FOR THE EXECUTIVE COMMITTEE OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as adopted by the 1992 Fund Administrative Council at its 22nd, acting on behalf of the 27th session of the 1992 Fund Assembly, held from 25–28 October 2022)

Rule 18

The Executive Committee shall elect a Chair and a Vice-Chair from among the representatives of the Committee members, at each regular session of the 1992 Fund Assembly. The Chair and Vice-Chair shall hold office at all sessions of the Executive Committee from the conclusion of the regular session until the conclusion of the next regular session of the Assembly.

The 1992 Fund Assembly Chair shall invite nominations for the Chair and Vice-Chair positions once the Assembly has elected members of the incoming Executive Committee. Should the Chair and the Vice-Chair of the Executive Committee resign from their positions before the end of their term, at the opening of the Executive Committee session, the Director shall chair until the Executive Committee has elected a Chair and a Vice-Chair for the session. Should the Chair of the Executive Committee resign before the end of the term, at the opening of the Executive Committee session, the Director shall chair until the Executive Committee has elected a new Chair for the session. Should the Vice-Chair resign before the end of the term, the Chair of the Executive Committee shall preside over the election of a new Vice-Chair.

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ANNEX III

ANNEX I OF THE 1992 FUND AND SUPPLEMENTARY FUND FINANCIAL REGULATIONS

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

(REVISED IN OCTOBER 2022)

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

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ANNEX IV
2023 Administrative Budget for 1992 Fund

STATEMENT OF EXPENDITURE	Actual 2021 expenditure for 1992 Fund	2021 budget appropriations for 1992 Fund	2022 budget appropriations for 1992 Fund	2023 budget appropriations for 1992 Fund
	£	£	£	£
I Personnel				
(a) Salaries	2 060 616	2 198 676	2 241 908	2 333 382
(b) Separation and recruitment	159 412	120 000	120 000	135 000
(c) Staff benefits, allowances and training	806 564	915 102	913 968	1 014 746
(d) Conscious rewarding scheme	2 250	20 000	20 000	400
Sub-total	3 028 842	3 253 778	3 295 876	3 483 528
II General services				
(a) Rent of office accommodation (including service charges and rates)	169 760	188 109	192 902	184 177
(b) IT (hardware, software, maintenance and connectivity)	360 329	378 400	448 000	457 000
(c) Furniture and other office equipment	9 840	17 000	21 000	36 000
(d) Office stationery and supplies	3 457	9 000	9 000	7 000
(e) Communications (courier, telephone, postage)	12 306	26 000	28 000	21 000
(f) Other supplies and services	37 916	22 000	22 000	22 000
(g) Representation (hospitality)	4 176	20 000	20 000	20 000
(h) Public information	38 171	98 000	98 000	96 000
Sub-total	635 955	758 509	838 902	843 177
III Meetings				
Sessions of the 1992 Fund and Supplementary Fund governing bodies and intersessional Working Groups	114 306	110 000	130 000	122 000
IV Travel				
Conferences, seminars and missions	0	100 000	100 000	150 000
V Other expenditure				
(a) Consultants' and other fees	30 223	150 000	150 000	100 000
(b) Audit Body	72 585	196 000	200 000	245 000
(c) Investment Advisory Body	79 372	80 000	81 000	90 000
Sub-total	182 180	426 000	431 000	435 000
VI Unforeseen expenditure (such as consultants and lawyers' fees, cost of extra staff and cost of equipment)	0	60 000	60 000	60 000
Total joint Secretariat expenditure I–VI	3 961 283	4 708 287	4 855 778	5 093 705
VII External audit fee (1992 Fund only)	53 600	53 600	53 600	54 940
Total Expenditure I–VII	4 014 883	4 761 887	4 909 378	5 148 645

ANNEX IV

2023 Administrative Budget for the Supplementary Fund

(Figures in pounds sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2021 EXPENDITURE	2021 BUDGET APPROPRIATIONS	2022 BUDGET APPROPRIATIONS	2023 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	36 000	36 000	36 000	40 000
II	Administrative expenses (including external audit fees)	4 400	14 400	14 400	14 510
Supplementary Fund budget appropriation		40 400	50 400	50 400	54 510