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International Oil Pollution Compensation Funds

Agenda Item 3	IOPC/MAY23/**3**/**6**	
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1992 Fund Executive Committee	92EC80	●
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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

BOW JUBAIL

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	On 23 June 2018, the oil and chemical tanker *Bow Jubail* (23 196 GT) collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Kingdom of the Netherlands. As a consequence of the collision, a leak occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour. The ensuing pollution affected vessels in the vicinity, quays and other property, and wildlife. At the time of the incident, the *Bow Jubail* was in ballast. The oil spilled was bunker oil. The shipowner applied before the Rotterdam District Court for leave to limit its liability in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96). The shipowner argued that the incident was covered under Article 1.8 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001). In November 2018, the Rotterdam District Court decided that the shipowner had not proved that the tanker did not contain residues of persistent oil at the time of the incident. The Court assumed that the *Bow Jubail* qualified as a ship as defined under the 1992 Civil Liability Convention (1992 CLC) and decided not to grant the leave to limit its liability under the Bunkers Convention 2001. The shipowner appealed to the Court of Appeal in The Hague. The Court of Appeal in The Hague rendered its judgment on 27 October 2020, confirming the decision of the Rotterdam District Court that the Bunkers Convention did not apply to the *Bow Jubail* incident since the shipowner had not proved that the *Bow Jubail* did not contain residues of persistent oil at the time of the incident and the *Bow Jubail*, therefore, qualified as a ship as defined under the 1992 CLC. The shipowner has appealed against the judgment to the Supreme Court of the Netherlands. The 1992 Fund applied to be allowed to join the appeal proceedings in the Supreme Court and in December 2021, the Supreme Court granted the 1992 Fund's subsidiary application to be admitted as an interested party in the proceedings. If the shipowner is 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 of the LLMC 76/96 would apply. The burden of proof on this point lies with the shipowner. If the shipowner cannot prove that the *Bow Jubail* had no

	residues of oil in bulk on board, the 1992 CLC will apply. The relevant test would be the one applied by local law, in this case, the law of the Netherlands. It is likely that the total pollution damage will exceed the limit that would apply to the ship under the 1992 CLC, and in that case, the 1992 Fund Convention could apply to this incident. However, in this scenario, it is unlikely that the Supplementary Fund Protocol would apply as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention. Legal actions have been brought by several claimants before the Rotterdam District Court against the shipowner, its insurer and other parties. The 1992 Fund has been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident.
Recent developments:	The Advocate General delivered his opinion in December 2022. In his opinion, he advises the dismissal of the 1992 Fund's incidental appeal in cassation and the principal appeal by the shipowner and the 1992 Fund (paragraphs 4.9.10-4.9.11). The 1992 Fund has replied to the advice on the Fund's incidental appeal in cassation (paragraph 4.9.12). The shipowner has submitted a reply to the principal appeal in cassation on the question of whether the Bunkers Convention 2001 or the 1992 CLC apply to the *Bow Jubail* incident (paragraph 4.9.13). The Supreme Court delivered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague.
Relevant documents:	The online *Bow Jubail* incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	1992 Fund Executive Committee Information to be noted.

1 Summary of incident

Ship	*Bow Jubail*
Date of incident	23.06.2018
Place of incident	Rotterdam, the Netherlands
Cause of incident	Collision with a jetty
Quantity of oil spilled	Approximately 217 tonnes of heavy fuel oil
Area affected	Rotterdam Port, the Netherlands
Flag State of ship	Norway
Gross tonnage	23 196 GT
P&I insurer	Gard P&I (Bermuda) Ltd
Bunkers Convention 2001	If the Bunkers Convention 2001 were to apply, the limit would be some SDR 14 million.
1992 CLC limit	If the 1992 CLC were to apply, the limit would be some SDR 16 million.
STOPIA/TOPIA applicable	If the 1992 CLC and Fund Conventions were to apply, STOPIA 2006 (as amended 2017) would also apply, with a limit of SDR 20 million.

1992 CLC + 1992 Fund + Supplementary Fund limit	The limit provided under the three Conventions would be SDR 750 million.
Legal proceedings	The Court of Appeal in The Hague confirmed a decision by the Rotterdam District Court that the *Bow Jubail* could qualify as a ship as defined in the 1992 CLC so that the shipowner could not invoke the Bunkers Convention 2001 for its limitation of liability. The shipowner has appealed to the Supreme Court arguing that the Bunkers Convention 2001 should apply to this case since the *Bow Jubail* was not a ship under the 1992 CLC. The Supreme Court has decided to admit the 1992 Fund as an interested party in the proceedings. Legal actions have been brought by several claimants before the District Court in Rotterdam against the shipowner, its insurer and other parties. The 1992 Fund has been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident.

2 Background information

2.1 On 23 June 2018, the oil and chemical tanker *Bow Jubail* (23 196 GT) collided with a jetty owned by LBC Tank Terminals in Rotterdam, the Kingdom of the Netherlands. As a consequence of the collision, a leak occurred in the area of the starboard bunker tank, resulting in a spill of fuel oil into the harbour. The ensuing pollution affected vessels in the vicinity, quays and other property, and wildlife.

2.2 At the time of the incident, the *Bow Jubail* was in ballast; however, 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.

2.3 The shipowner states that the tanks were clean of oil cargo residues at the time of the incident.

2.4 There is some indication that the claimed amount may be over EUR 80 million.

3 Applicability of the Conventions

3.1 The Netherlands is Party to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol.

3.2 Article I(1) of the 1992 Civil Liability Convention (CLC) defines '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**'.

3.3 At the time of the incident, the *Bow Jubail* was in ballast. The oil spilled was bunker oil. The question is whether there were any residues of previous cargoes on board. The burden of proof that there were no residues on board lies with the shipowner. The relevant test will be the one applied by local law, in this case, the law of the Netherlands.

3.4 If the shipowner cannot prove that the *Bow Jubail* had no residues of oil in bulk on board, the 1992 CLC would apply. 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. However, in this scenario, it is unlikely that the Supplementary Fund Protocol would apply as the losses are unlikely to exceed the limit of liability under the 1992 Fund Convention.

3.5 The ship is insured with Gard P&I (Bermuda) Ltd, which is a member of the International Group of P&I Associations. The limitation amount applicable to the *Bow Jubail* if the 1992 CLC were to apply would be SDR 15 991 676, but the owner of the *Bow Jubail* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017), whereby the shipowner would indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.

3.6 However, if the shipowner is successful in proving that there were no such residues on board, the incident would fall under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001), and therefore, the limitation amount under the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96) would apply. The liability limit applicable to the *Bow Jubail* under the Bunkers Convention 2001 would be SDR 14 312 384.

4 Limitation proceedings

4.1 The shipowner applied before the Rotterdam District Court for leave to limit its liability in accordance with the LLMC 76/96. The shipowner argued that the incident was covered under Article 1.8 of the Bunkers Convention 2001. Accordingly, the shipowner requested to establish a Limitation Fund in the form of a guarantee issued by the shipowner's insurer, Gard P&I (Bermuda) Ltd.

4.2 A hearing took place on 28 September 2018. At the hearing, the shipowner 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.

4.3 The shipowner also 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'.

4.4 The majority of the claimants present at the hearing argued that the evidence that had been presented to the Court did not prove that the vessel was free of oil cargo residues and that, as a result, the 1992 CLC with the additional 1992 Fund Convention and the Supplementary Fund Protocol should be governing the incident and the compensation, not the Bunkers Convention 2001.

4.5 The shipowner argued that the facts of the case should dictate which convention and which limits should apply, not simply the desire of the claimants to apply the convention that is more beneficial to the claimants.

4.6 The Court 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. The Court decided to leave the incompleteness of the documents and the lack of clarity with respect to the presence of residues in the sense of the 1992 CLC and decided not to grant the shipowner an opportunity to complete its standpoint that the tanks were clean of oil cargo residues. The Court assumed that the *Bow Jubail* qualified as a ship as defined in the 1992 CLC and decided not to grant the leave to limit its liability under the Bunkers Convention 2001.

4.7 The shipowner appealed to the Court of Appeal in The Hague.

4.8 Judgment by the Court of Appeal in The Hague

4.8.1 The Court of Appeal in The Hague delivered its judgment on 27 October 2020[<1>], confirming the decision of the Rotterdam District Court that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil carried in bulk at the time of the incident, as provided for in Article I(1) of the 1992 CLC. Accordingly, the Bunkers Convention 2001 did not apply, and the limitation of the shipowner's liability was governed by the 1992 CLC, not the LLMC 76/96.

4.8.2 In its judgment, the Court of Appeal considered that there is 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, ceases to be a ship under the 1992 CLC. 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. The Court further considered that shipowners and their P&I Clubs, as well as the IOPC Funds and those who contribute to them, have an interest in such a procedure.

4.8.3 The shipowner has appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands.

4.9 Proceedings before the Supreme Court

Application by the 1992 Fund to join the proceedings

4.9.1 The 1992 Fund 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.

4.9.2 In its application, the 1992 Fund has argued as follows:

(a) The Court of Appeal has overlooked the fact that a generally accepted standard of cleanliness procedure exists under the International Convention for the Prevention of Pollution from Ships (MARPOL). In the event that a chemical tanker such as the *Bow Jubail* has (i) been cleaned in accordance with the regulations of and pursuant to MARPOL; and (ii) has discharged or dispensed with washing water and (thus) does not carry on board oil (mixtures) within the meaning of MARPOL, it has been proved in principle (subject to proof to the contrary) that the tanker in question did not carry on board residues of persistent oil as referred to in the 1992 CLC and therefore cannot be considered as a 'ship' under the 1992 CLC.

(b) Concerning the meaning of 'residues of such carriage of oil in bulk' within the meaning of Article I(1) of the 1992 CLC, it should be noted that the *Bow Jubail* is a relatively modern type of ship which differs significantly from the combination tankers (oil/bulk/ore tanker) referred to when the definition of 'ship' was agreed at the IMO Conference in 1984, which also differs substantially from dedicated oil tankers of the type referred to in document 92FUND/WGR.2/7, paragraph 4.1 on which the Court based its decision.

(c) Article 7.4 of the 1992 Fund Convention provides that 'the Fund shall have the right to intervene as a party to any legal proceedings'. The fact that the limitation procedure was not instituted

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[<1>] A translation of the judgment was published in the online *Bow Jubail* incident report, which can be found via the Incidents section of the IOPC Funds' website. A detailed report on the judgment can be found in document IOPC/NOV20/3/12/1.

under the 1992 CLC does not detract from this because the concept of 'legal proceedings'—as stated—should be interpreted broadly.

(d) The decision of the Supreme Court as to whether or not the *Bow Jubail* qualifies as a ship within the meaning of the 1992 CLC will not be subject to appeal and will therefore have consequences not only for the interpretation of the 1992 CLC but also for the 1992 Fund and its Member States and contributors.

(e) The Court of Appeal considered that it was important for the IOPC Funds to consider designing a standard procedure for assessing whether a ship qualifies as a ship within the meaning of the 1992 CLC. In the opinion of the 1992 Fund, its interest in being admitted as an interested party to the present proceedings has already been given by this legal consideration (*obiter dictum*).

(f) The 1992 Fund may be required to pay compensation if it is decided that the requested limitation will not be granted, because in that case the 1992 CLC applies. It is then likely that the 1992 Fund will have a greater financial interest in these proceedings than any other party. Moreover, it is the 1992 Fund's task to monitor and promote the uniform interpretation of the 1992 Civil Liability and Fund Conventions.

(g) The importance of the case, the possible consequences for the maritime practice in general and the interpretation of the 1992 CLC and the consequences for the 1992 Fund, its Member States and the contributors in particular call for a further explanation of the position of the 1992 Fund.

4.9.3 The Advocate General rendered an opinion in July 2021. The opinion expressed the view that, on the basis of the Netherlands' national legislation implementing the 1992 Civil Liability and Fund Conventions, the 1992 Fund does not need to have an interest to be allowed to join the Supreme Court proceedings. Furthermore, the 1992 Fund can be regarded as an interested party because through no fault of its own, it has not been summoned to appear in the proceedings as a defendant. Consequently, in cassation, the 1992 Fund must be allowed to submit an independent defence with grounds for cassation.

Decision of the Supreme Court on the 1992 Fund's application

4.9.4 In a ruling on 24 December 2021, the Supreme Court 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. However, the Court considered that the 1992 Fund is an interested party in the proceedings that had not appeared in the previous instances through no fault of its own. The Court therefore 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. The Supreme Court has also accepted the 1992 Fund's request to give the parties an opportunity to present their views in writing in the proceedings.

4.9.5 The 1992 Fund has submitted a reply to the Supreme Court as follows:

(a) 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.

(b) 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.

4.9.6 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.

Principal appeal in cassation

4.9.7 In the principal appeal in cassation, the 1992 Fund has joined the complaints of the shipowner with respect to the decision of the Court of Appeal that it is not the Bunkers Convention 2001 but the 1992 CLC that applies to the *Bow Jubail* incident.

4.9.8 In its cassation pleadings, the shipowner has 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: (i) has been cleaned; and (ii) has 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 Bunkers 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.

4.9.9 Several claimants have submitted a reply in opposition to the appeal submitted by the shipowner and the appeal submitted by the 1992 Fund.

Opinion of the Advocate General

4.9.10 The Advocate General delivered his opinion in December 2022. In his opinion, he advises the dismissal of the 1992 Fund's incidental appeal in cassation and the principal appeal by the shipowner and the 1992 Fund.

4.9.11 On the 1992 Fund's incidental appeal, the Advocate General concludes that whereas the limitation proceedings in the Rotterdam District Court and the Court of Appeal were conducted based on the LLMC and the Bunkers Convention 2001, a right of intervention by the 1992 Fund is based on the 1992 CLC and, therefore, the Court of Appeal does not need not go back on its decision that the incidental application to intervene should be assessed under the common law of civil procedure. The Advocate General also concluded that the 1992 Fund's interests have not been directly harmed, nor has its right to an effective access to justice been infringed.

4.9.12 The 1992 Fund has replied to the Advocate General's opinion as follows:

(a) The District Court and the Court of Appeal have decided that the *Bow Jubail* is a ship within the meaning of the 1992 CLC and that decision applies against all parties, including the 1992 Fund. The 1992 Fund, therefore, believes that if the Advocate General's conclusion were to be followed, the 1992 Fund would be denied effective access to the courts in the Netherlands.

(b) The Fund should be able to intervene under the 1992 Fund Convention and, as the potentially largest debtor in this case as well as the guardian of that Convention, the 1992 Fund should be able to debate the scope of the 1992 CLC in factual instance(s). However, the 1992 Fund has not been able to express itself and, therefore, the Fund's right to effective access to justice has been infringed.

4.9.13 The shipowner has replied to the Advocate General's opinion as follows:

(a) In its interpretation of the proviso, the Netherlands court should give significance to the context and purpose of the 1992 CLC. When the proviso was agreed at the IMO Conference in 1984, the parties assumed that significant quantities of residues would remain on board after a voyage, taking into account the ships used at the time and the manner in which these ships were cleaned. Thus, the term 'residue' was thought to include a significant amount of residue. These practices differ from those commonly followed on modern oil product and chemical tankers, which may carry various types of bulk liquid products and undertake repeat washes to avoid contamination of cargo.

(b) If cargo spaces, pipes and manifolds have been cleaned to the standard required for clean ballast, and no residual amounts of previous persistent oil cargo remain on board for disposal in accordance with MARPOL regulations, then it is unclear what other identifiable standard could apply.

(c) Unlike in the 1980s, on modern day chemical tankers, such as the *Bow Jubail*, the standard MARPOL procedure is followed, consisting of a 'MARPOL wash' and delivery of the 'slops'. Once

this standard procedure has been completed, as a rule, at most only a negligible amount or non-significant amount of residue will remain on board after each voyage.

(d) It is logical to assume that if the MARPOL regulations are complied with, as a result of which environmental pollution from cargo residues will not be an issue, then in principle, pollution damage due to cargo residues cannot be an issue either and, therefore, there is no reason for a ship to still be covered by the 1992 CLC.

(e) Reasoning from the purpose 1992 CLC, if the amount of residue on board during the incident is negligible in the context of preventing pollution damage, there will be a negligible amount of residue, thus complying with the proviso. Therefore, the most obvious way for the shipowner to prove that is to show that MARPOL regulations have been complied with.

4.9.14 The Supreme Court delivered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague.

5 Civil proceedings

5.1 Legal actions have been brought by 25 claimants before the Rotterdam District Court against the shipowner, its insurer and other parties. The 1992 Fund has been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions apply to this incident.

5.2 The 1992 Fund is intervening in these proceedings and, through its Dutch lawyers, has obtained a stay in these proceedings until the Supreme Court delivers its decision on the question of whether the *Bow Jubail* qualifies as a ship under the 1992 CLC or not.

6 Director's considerations

6.1 This case has broad implications for the international compensation regime as it involves a chemical tanker capable of carrying both persistent oil and other chemical substances as cargo, so that at different times it could be considered as a ship under the 1992 CLC or a ship under the Bunkers Convention 2001. The issue in question in this case is whether the *Bow Jubail*, which was in ballast at the time of the incident, had in its tanks any residues of persistent oil cargoes from previous voyages.

6.2 The 1992 Fund has a financial interest in this case. If the 1992 Civil Liability and Fund Conventions apply, the 1992 Fund will pay compensation as required. Although STOPIA 2006 (as amended 2017) applies to this case and, therefore, the 1992 Fund will be indemnified by the shipowner up to a limit of SDR 20 million, it is expected that the claims arising from this incident will exceed the STOPIA 2006 (as amended 2017) limit.

6.3 The Supreme Court delivered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague.

6.4 The Director will provide further details to the Executive Committee in an addendum to this document.

7 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.