



International Oil Pollution  
Compensation Funds

<b>Agenda Item 9</b>	IOPC/MAY23/9/1	
<b>Date</b>	25 May 2023	
<b>Original</b>	English	
<b>1992 Fund Administrative Council</b>	92AC23/92AES27	●
<b>1992 Fund Executive Committee</b>	92EC80	●
<b>Supplementary Fund Assembly</b>	SAES11	●

## RECORD OF DECISIONS OF THE MAY 2023 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(23rd session of the 1992 Fund Administrative Council, acting on behalf of the  
27th extraordinary session of the 1992 Fund Assembly, held from 23 to 25 May 2023)

Governing Body (session)		Chair	Vice-Chairs
<b>1992 Fund</b>	<b>Administrative Council (92AC23/92AES27)</b>	Ambassador Antonio Bandini (Italy)	Professor Tomotaka Fujita (Japan)  Mr Sipho Mbatha (South Africa) (absent)
	<b>Executive Committee (92EC80)</b>	Mr Samuel Soo (Singapore)	Ms Karen Andersen (Denmark)
<b>Supplementary Fund</b>	<b>Assembly (SAES11)</b>	Mr François Marier (Canada)	Mr Andrew Angel (United Kingdom) (absent)  Mr Emre Dinçer (Türkiye) (absent)

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**ANNEXES**

- Annex I** List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
- Annex II** Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and the Supplementary Fund Assembly, and Rule 8 of the Rules of Procedure of 1992 Fund Executive Committee

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

- 0.1 The Chair of the 1992 Fund Assembly could not open the 27th extraordinary session of the Assembly at 9.30 am since the required quorum of 61 Member States was not achieved. Fifty-eight 1992 Fund Member States were present at that time.
- 0.2 The Chair therefore concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would be dealt with by the 23rd session of the 1992 Fund Administrative Council, acting on behalf of the 27th extraordinary session of the 1992 Fund Assembly<sup><1></sup>.
- 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 so that quorum can be achieved.

**Supplementary Fund Assembly**

- 0.4 The Supplementary Fund Assembly Chair opened the 11th extraordinary session of the Assembly with 21 Member States present.

**1992 Fund Executive Committee**

- 0.5 The 1992 Fund Executive Committee Chair opened the 80th session of the Executive Committee.
- 0.6 The Member States present at the sessions are listed at Annex I, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

**1 Procedural matters**

1.1	<b>Adoption of the Agenda</b> Document IOPC/MAY23/1/1	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/MAY23/1/1.

1.2	<b>Examination of credentials</b> Documents IOPC/MAY23/1/2 and IOPC/MAY23/1/2/2	92AC	92EC	SA
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*Establishment of the Credentials Committee*

- 1.2.1 The governing bodies took note of the information contained in document IOPC/MAY23/1/2.
- 1.2.2 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.

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<1> From this point forward, references to the '23rd session of the 1992 Fund Administrative Council' should be taken to read '23rd session of the 1992 Fund Administrative Council, acting on behalf of the 27th extraordinary session of the 1992 Fund Assembly'.

- 1.2.3 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***

- 1.2.4 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, the 1992 Fund Administrative Council appointed the delegations of Algeria, Poland, Thailand, the United Arab Emirates and the United Kingdom as members of the Credentials Committee.

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

- 1.2.5 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.

*Debate*

- 1.2.6 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/MAY23/1/2/2) that it had examined 64 letters of credentials and that all were in order. It was noted that the one Member State had attended the meeting but that credentials had not yet been submitted.

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

- 1.2.7 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the May 2023 meeting.

1.3	<b>Credentials for the meetings of the governing bodies</b> <b>Document IOPC/MAY23/1/2/1</b>	<b>92AC</b>	<b>92EC</b>	<b>SA</b>
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- 1.3.1 The governing bodies took note of the information contained in document IOPC/MAY23/1/2/1 regarding the credentials for the meetings of the governing bodies.

- 1.3.2 The governing bodies noted that in accordance with Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee, each Member State was required to transmit to the Director the credentials of its representative and other members of its delegation in order to participate in meetings of the IOPC Funds. It was also noted that the submission of credentials was a longstanding practice in the IOPC Funds, which was crucial for the proper functioning of the Funds' governing bodies. It was further noted that this became even more vital when a ballot took place, as delegations whose credentials were not in order at the time of the ballot would not be eligible to vote.

- 1.3.3 The governing bodies noted that in accordance with Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee, credentials should be submitted not later than the opening day of the Assembly.

- 1.3.4 The governing bodies also noted, however, that the submission of credentials so close to the meeting made it very difficult for the Secretariat to assist Member States. It increased the risk of mistakes and reduced the time available for States to rectify any identified issues and present their credentials in order. It was also noted that if the governing bodies were to decide to conduct hybrid meetings in the future, the timely submission of credentials in advance would become even more important.
- 1.3.5 The governing bodies considered the solution proposed by the Secretariat that credentials be submitted not later than five working days before the meeting, which would require amendments to Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee, as set out in paragraph 2.4 of document IOPC/MAY23/1/2/1.

#### *Debate*

- 1.3.6 Some delegations, who had been members of the Credentials Committee, recognised the difficulty posed by the submission of credentials so close to the meeting, and expressed their view that bringing the deadline for submission forward would benefit the work of the Secretariat and the Credentials Committee. Those delegations also stressed the importance of the timely presentation of credentials in compliance with the relevant Rules of Procedure.
- 1.3.7 Some delegations, while supporting the proposal of the Secretariat, drew attention to the challenges encountered when trying to abide by the Rules of Procedure governing the issuance of credentials.
- 1.3.8 One of the delegations supported the proposal of the Secretariat that credentials be submitted not later than five working days before the meeting but did not think that would solve the problem. The same delegation proposed that credentials be accepted, even if issued at a lower government level than the one currently required by the IOPC Funds. The same delegation proposed that the IOPC Funds accept credentials previously approved by the IMO.
- 1.3.9 Another delegation, that fully supported the proposal of the Secretariat, drew attention to the flexibility provided by Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly, which allowed credentials to be signed by an appropriate authority as determined by the Government and communicated to the Director. That same delegation referred to the last part of Rule 9 of the Rules of Procedure of the 1992 Fund and the Supplementary Fund, and noted that communications authorising persons who were not government employees to issue credentials should also be communicated to the Director not later than five working days before the meeting. The Director agreed that this consequential amendment should be introduced when amending the relevant Rules of Procedure as proposed in the document.
- 1.3.10 One delegation noted that if the governing bodies were to decide to conduct hybrid meetings in the future, bringing forward the deadline for submission of credentials would also facilitate the provision of an active link to those wishing to participate in the meeting. That delegation was of the view that this proposal would help mitigate the problem but underscored the need for Member States to abide by the Rules of Procedure and that said Rules should be enforced in a consistent manner.
- 1.3.11 Another delegation also drew attention to Rule 9 under which credentials could be signed by an appropriate authority as determined by the government and communicated to the Director, which provided flexibility in relation to the submission of credentials and could solve the problems encountered by some Member States. The delegation also referred to forthcoming meetings during which Member States would be voting and suggested that Member States be reminded of the possibility of availing themselves of Rule 9, which allows another person to be designated to issue

credentials. The delegation also stated that the invitation to the next meeting of the governing bodies should make it clear that those following the meeting remotely would not be part of the quorum and would not be allowed to vote.

- 1.3.12 One delegation recognised the impact that the delayed submission of credentials had on the work of the Secretariat and referred to the difficulty faced by some delegations when requested to submit hard copies of credentials which were not delivered until the representative attended the meeting. That delegation also noted how closely guarded the signature of documents was by certain administrations and governments, and suggested that downgrading the signature of documents could be problematic. The delegation expressed concern about the possibility of ensuring compliance with the five working day deadline proposed by the Secretariat.
- 1.3.13 The Secretariat, however, clarified that the IOPC Funds did not require hardcopies of credentials and explained that several Member States had already availed themselves of the possibility of authorising appropriate authorities and non-government employees to issue credentials and communicating that to the Director.
- 1.3.14 Some delegations suggested that the Secretariat should consult with IMO to follow the same practice that they use regarding registration. In response to a request for clarification from one of the delegations on this issue, the Head of Administration said that there were some issues to consider regarding the request to extend the IOPC Funds operations to include the registration on a platform similar to the one of IMO: firstly, the IOPC Funds only operated two meetings a year; and secondly, maintaining all the accounts in a system that was not used frequently might add significantly to the administrative burden of the Secretariat. The Head of Administration said that the Secretariat would nonetheless examine this request internally and consider the practicalities involved.
- 1.3.15 One of the delegations who had been a member of the Credentials Committee, recalled that the presentation of credentials by two different representatives of the same Member State posed an additional challenge in relation to the examination of credentials.
- 1.3.16 One delegation was of the view that having a complete parallel with IMO's registration system was not appropriate as the IOPC Funds only held two meetings during the year and this would overburden the Secretariat. That delegation suggested that nominating one person for registration purposes might help and stressed the importance of clearly distinguishing online registration from the formal accreditation.
- 1.3.17 Several delegations endorsed the Secretariat's proposal that credentials be submitted not later than five working days before the meeting, which would require amendments to Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.
- 1.3.18 The Director noted the broad support for the proposal of the Secretariat expressed by the Member States and thanked Member States for their support for the proposal.
- 1.3.19 The Chair of the 1992 Fund Administrative Council was pleased with the fruitful discussion on the submission of credentials which had been very useful to clarify this issue. He stressed the importance of drawing attention to the challenges faced by some Member States with smaller administrations, and the difficulties encountered by the Secretariat and the Credentials Committee in relation to the submission of credentials. He also underscored the importance of ensuring that the Rules of Procedure were coordinated with those of IMO, bearing in mind the differences between both organisations. The Chair stated that after having abundantly discussed the difficulties encountered in relation to the submission of credentials, he believed that there was general agreement on bringing forward the deadline for the submission of credentials. The Chair

said that, even though this proposal may not solve all the problems in relation to the issuance of credentials, he saw merit in adopting this modest measure. The Chair concluded that the proposal of the Director had been approved by Member States.

***1992 Fund Administrative Council and Supplementary Fund Assembly decisions***

- 1.3.20 The 1992 Fund Administrative Council and the Supplementary Fund Assembly considered the difficulty encountered in relation to the submission of credentials and decided to bring forward the deadline for submission to not later than five working days prior to the opening of the sessions and to amend the relevant Rules of Procedure of the governing bodies as set out at Annex II.

***1992 Fund Executive Committee***

- 1.3.21 The 1992 Fund Executive Committee took note of the information and the decision of the 1992 Fund Administrative Council.

1.4	<b>Information on the format of meetings</b> <b>Document IOPC/MAY23/1/3</b>	<b>92AC</b>		<b>SA</b>
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- 1.4.1 The governing bodies noted the information contained in document IOPC/MAY23/1/3 on the format of meetings.
- 1.4.2 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.
- 1.4.3 It was noted that, since September 2022, IMO meetings had been held in a hybrid format for a trial period and that the trial was set to continue until September 2023. It was also noted that initial reports had been positive and that the Director had continued to liaise with the IMO Secretariat and had noted the preliminary review of its experience as reported to the November 2022 session of the IMO Council (section 2 of document IOPC/MAY23/1/3). The next report to the IMO Council on that experience will be submitted to its 129th session in July 2023.
- 1.4.4 The Secretariat suggested that, having gained experience of attending meetings of the IOPC Funds' governing bodies remotely since 2020 and, following the successful trial so far of hybrid meetings at IMO, Member States may wish to consider the format of future meetings of the governing bodies.
- 1.4.5 The Secretariat reported that it had explored the possible options for the future format of meetings and had discussed various practicalities with IMO, taking into account the specific activities and requirements of the IOPC Funds' governing bodies (section 3 of document IOPC/MAY23/1/3).
- 1.4.6 Two options were presented, namely meetings held in-person but with a passive streaming service, which was the format of the May 2023 sessions, or held both in-person and remotely, i.e. in hybrid format.
- 1.4.7 It was noted that the passive streaming service provided at the May 2023 sessions allowed additional members of delegations to follow the meeting remotely and had not required any amendments to the Rules of Procedure. It was noted, however, that whilst this service allowed larger delegations to send fewer representatives in-person to London, anyone choosing to use this service was unable to actively participate in the sessions and would not be included in the list of participants to the meeting. Furthermore, only those States represented in person were considered present and attending the meeting for the purpose of the quorum. It was also noted that at present, the French and Spanish streaming service provided an audio feed only. The Secretariat reported



that around 60 participants had opted to follow the meetings via the streaming service on this occasion.

- 1.4.8 With regards to holding meetings in hybrid format, the Secretariat reported that it was confident that, subject to testing, the organisation could be in a position to deliver such meetings using the IMO hybrid meeting infrastructure but continuing to use the IOPC Funds meeting registration system, for the November 2023 sessions of the governing bodies.
- 1.4.9 It was noted that the Secretariat had considered the possible cost implications of such meetings and that, whilst the trial period of hybrid meetings for IMO was ongoing, the running of such meetings continued to be dependent on the use of a number of external experts and technicians. It had not, therefore, been possible for IMO to determine an accurate estimate of costs for the running of hybrid meetings in the future, when such expertise would instead be engaged internally.
- 1.4.10 The Secretariat explained that it had also considered the Rules of Procedure which would require amendments in order to hold hybrid meetings on a long-term basis. However, noting that the trial period for hybrid meetings held by IMO was set to continue until September 2023, and that the IMO Council had not yet formally amended its Rules of Procedure, the Secretariat suggested that it would be prudent to await the latest update from IMO at its next Council session in July 2023.
- 1.4.11 It was noted that, should the governing bodies wish to decide to hold hybrid meetings in November 2023, the governing bodies would be required to temporarily suspend or amend the relevant Rules of Procedure for those sessions, and would be required to take such decisions at the May 2023 sessions. The governing bodies noted the Rules which would require temporary suspension or amendment as set out at the Annex to document IOPC/MAY23/1/3. It was noted that the proposals in the Annex fully took into account the practices adopted by the governing bodies during previous remote sessions.
- 1.4.12 Despite the requirement to amend a number of Rules of Procedure, it was noted that the Director remained of the view that, in order to safeguard full and equal participation of all Member States, and legitimacy of decisions taken, every effort would be made for sessions held in hybrid format in the future to retain established practices of in-person meetings to the extent that is reasonably possible.
- 1.4.13 The governing bodies were invited to decide whether to hold future meetings of the IOPC Funds governing bodies either:
- (i) in-person but with a passive streaming service, requiring no amendments to the Rules of Procedure; or
  - (ii) in hybrid format.

#### *Debate*

- 1.4.14 Several delegations thanked the Secretariat for providing a passive streaming service at the May 2023 meeting and expressed their support, in principle, for fully hybrid meetings in the future. However, concerns were expressed by several delegations about any decision being taken at the current sessions in that regard, given that the trial of hybrid meetings by IMO was not due to be completed until September 2023.
- 1.4.15 One delegation confirmed that it was happy to proceed with hybrid meetings in November 2023 and to temporarily suspend or amend the required Rules of Procedure as proposed in document IOPC/MAY23/1/3.

- 1.4.16 One delegation suggested that the governing bodies should await the outcome of the trial period, and the latest report by the IMO Secretariat, which was due to be presented at IMO Council in July 2023. It also stated that the necessary training of staff and financial implications involved in delivering hybrid meetings should be fully explored prior to any decision being taken. That delegation further stated that, in its view, any remote participation should be complementary to and not a replacement for, in-person meetings. Several delegations supported that statement.
- 1.4.17 One delegation agreed with others that it was too early for the governing bodies to take a decision on hybrid meetings given the ongoing IMO trial and the uncertainty surrounding costs, training and resources. That delegation also suggested that, in addition to the Rules of Procedure identified by the Secretariat, there may be other areas that required amendments, in particular Rules relating to voting and quorum, and the Resolutions relating to the establishment of the 1992 Fund Executive Committee and the Administrative Council. That delegation proposed that further time be taken to explore all the required amendments and to look specifically at the needs of the IOPC Funds before any decisions are taken.
- 1.4.18 One delegation highlighted that hybrid meetings provided more flexibility to delegations and facilitated the participation of more Member States. That delegation acknowledged that, in order to conduct hybrid meetings, a number of the relevant Rules of Procedure would require amendment and expressed its agreement with the Director that he should await the decisions of IMO in respect of its Rules of Procedure before considering which of the IOPC Funds' Rules should be changed.
- 1.4.19 That delegation noted that the suggested amendments required to the Rules of Procedure for the conduct of hybrid meetings included changing the recommended date for submitting credentials to five working days in advance of the meeting. That delegation, commented that, having been appointed as a member of the Credentials Committee on a number of occasions, it understood the practical implications of the late submission of credentials and took the opportunity to urge States to submit credentials in advance, as requested by the Secretariat.
- 1.4.20 One delegation stated that it supported the introduction of hybrid meetings since it would enable wider participation, in particular from developing countries, who find it difficult to travel and attend meetings in person.
- 1.4.21 One delegation noted that, during the pandemic, the governing bodies had shown they were adaptable and could find practical solutions to challenges when required, such as holding remote meetings. However, that delegation highlighted the differences between the requirements for IMO meetings, which were far more frequent and often involved the participation of experts in various fields whose remote participation was required, and for IOPC Funds meetings, where many representatives were based in London and the requirement for the participation of additional experts and, therefore, remote participation, was limited. That delegation expressed the firm view that quorum for meetings should be based on States present in-person, that decisions by the governing bodies should be taken in-person, that the passive streaming service was sufficient for experts to follow the meeting remotely and that a move to holding fully hybrid meetings on a permanent basis was not necessary or suitable for such multilateral meetings.
- 1.4.22 Another delegation agreed that the differences between the requirements of IMO and the IOPC Funds should be taken into account, not only with regards to the frequency of meetings, but also in respect of the general nature of the discussions at meetings of the governing bodies. In particular, that delegation referred to the decisions which are required of the 1992 Fund Executive Committee and the potential need for a vote to take place from time to time.

- 1.4.23 One delegation, in supporting the importance of in-person meetings, reiterated the views expressed by others that any remote participation should be complementary only and that physical presence for each Member State was fundamental for the purpose of the quorum.
- 1.4.24 Many of the delegations that spoke during the debate, confirmed that they supported the eventual introduction of hybrid meetings, but that any decision in that respect should not be taken before the completion of the IMO trial.
- 1.4.25 The Director thanked the governing bodies for the views expressed and clarified that the option to conduct the November 2023 meeting in hybrid format had been presented on this occasion in response to the last discussions on this matter at the October 2022 sessions of the governing bodies. He recalled that during those discussions, several delegations had expressed a preference for an early move to hybrid meetings. He noted, however, that at the current meeting, he had the impression that delegations considered that more caution should be taken and that the option to conduct an in-person meeting, complemented by a passive streaming service, was preferable at this stage.
- 1.4.26 The Chair of the 1992 Fund Administrative Council noted that the introduction of a passive streaming service had been well received and that there had been general agreement that it should continue to be provided at the next sessions of the governing bodies in November 2023. He also noted that the governing bodies considered that any remote participation in the future should be complementary to, and not instead of, in-person participation. Finally, he concluded that a majority of delegations had expressed their support for not proceeding with any decision in respect of hybrid meetings before the outcome of the trial period by IMO. He noted that the issue should then be revisited, taking into account the human and financial resources required to deliver such meetings.

### ***1992 Fund Administrative Council and Supplementary Fund Assembly***

- 1.4.27 The governing bodies noted the Director's intention to continue to liaise with the IMO Secretariat on a regular basis; to take note of the outcome of the next review of IMO's experience which is expected to be reported to the IMO Council in July 2023; and to report developments, in particular with regards to the amendments of Rules of Procedure, to the governing bodies at their November 2023 sessions.

## **2 Overview**

2.1	<b>Report of the Director</b>	<b>92AC</b>		<b>SA</b>
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- 2.1.1 The Director gave an oral report on the activities of the IOPC Funds since the October 2022 sessions of the governing bodies and provided some background to the key items on the agenda. He also reported on some of the issues on which the Secretariat would be working in the coming months.
- 2.1.2 In terms of membership, the Director recalled that the 1992 Fund Convention had entered into force for the Republic of Guinea-Bissau on 12 May 2023, bringing the number of 1992 Fund Member States to 121 on that date. He also reported that the Supplementary Fund had 32 Member States.
- 2.1.3 With respect to compensation matters, the Director referred to the judgement rendered on 31 March 2023 by the Supreme Court of the Netherlands in relation to the *Bow Jubail* incident, in which it was confirmed that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) did not apply to this incident and that the *Bow Jubail* therefore qualified as a ship as defined under the 1992 Civil Liability Convention (1992 CLC). The Director anticipated that the total pollution damage would exceed the limit that would apply to the ship under the 1992 CLC, in which case the 1992 Fund Convention would apply to this incident. He also reported that the Small Tanker Oil Pollution Indemnification Agreement, 2006 (as amended

2017)( STOPIA 2006)<sup><2></sup> would apply to this case and the 1992 Fund would be indemnified by the shipowner up to a limit of SDR 20 million.

- 2.1.4 He noted that this case might have implications for the definition of ship under the 1992 CLC or a ship under the Bunkers Convention 2001. The Director noted that the Executive Committee would have to decide whether to authorise him to make payments in respect of this incident, whether to authorise him to sign an agreement on interim payments with the Club, and if so, whether the agreement would apply retrospectively.
- 2.1.5 He also noted that the 1992 Fund Administrative Council would have to decide whether to levy contributions for the *Bow Jubail* Major Claims Fund, whether to make payments in relation to this incident exceeding the amount payable from the General Fund and payable in advance of 15 September 2023, if required, through a loan from the *Agia Zoni II* Major Claims Fund, and whether, if authorised to make payments, Resolution N°12 would apply to this incident.
- 2.1.6 The Director referred to a new incident involving the 1992 Fund. He reported that the *Princess Empress* had sunk off the coast of the Philippines. He also reported that the 1992 Fund had been working closely with The Shipowners' Mutual Protection & Indemnity Association (Luxembourg) (Shipowners' Club) and the Government of the Philippines and that he had visited the affected area with Claims Manager, Ms Ana Cuesta. He also reported that claims would imminently surpass the 1992 CLC limit and that it was highly likely that claims would reach and exceed the STOPIA 2006 limit. He noted that the 1992 Fund Executive Committee would have to decide whether to authorise him to make payments in respect of losses arising out of this incident and to sign an agreement on interim payments with the Club, and whether the agreement would apply retrospectively. The Director thanked the Philippine Government, and the Philippine Coast Guard in particular, as well as the Shipowners' Club for their assistance and excellent cooperation.
- 2.1.7 The Director reported that the Audit Body and the Secretariat had been working with Dr Rosalie Balkin, former Assistant Secretary-General and Director of Legal Affairs and External Relations Division of IMO, on the preparation of a draft Resolution and the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices based on estimates if no oil reports were submitted. He added that a document on this issue would be presented at the next meeting of the governing bodies.
- 2.1.8 The Director referred to the changes to the structure of the Secretariat and reported that the External Relations and Conference (ERC) Department would become a section under the Administration Department as of 1 June 2023. He explained that Mr Thomas Liebert would continue to focus on HNS-related issues as HNS Project Officer within the Director's Office. He confirmed that Mrs Victoria Turner would continue to manage the ERC section as its Manager. He also reported that vacancy notices for the position of Information Officer in the ERC section and for the position of Oil Reporting Administrator had been advertised on the IOPC Funds' website.
- 2.1.9 The Director noted that since September 2022, IMO meetings had been held in hybrid format for a trial period. He also noted that the governing bodies would be invited to decide whether to hold future meetings of the IOPC Funds' governing bodies in-person but with a passive streaming service, or in hybrid format.
- 2.1.10 The Director reported that the Secretariat was consistently engaged in supporting Member States, and noted in particular, that the IOPC Funds Annual Academy (formerly the short course) would be

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<sup><2></sup> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)'.

held from 12 to 16 June 2023. He also announced that the IOPC Funds' Annual Report for 2022 was available on the IOPC Funds' website and in hard copy outside the meeting room.

- 2.1.11 The Director also reported that a Memorandum of Understanding had been signed between the IOPC Funds and the Canadian Ship Source Oil Pollution Fund (SOPF).
- 2.1.12 The Director further reported that on 31 March, he had participated with other members of the Secretariat in the 110<sup>th</sup> meeting of IMO's Legal Committee. He referred to the presentation given by the Association of Commercial P&I Insurers (ACPII), which had been very well received.
- 2.1.13 The Director also reported on the work undertaken by the Secretariat to promote the entry into force of the 2010 HNS Convention. He referred, in particular, to the workshop organised by Canada in co-operation with IMO and the IOPC Funds and to the two questionnaires distributed by the Secretariat to gather information from contracting States, and those expected to soon ratify, on their domestic legislation and on HNS reporting. He stressed the importance of developing an efficient and jointly approved system for reporting HNS contributing cargo, which he considered essential to facilitating the entry into force of the Convention and the effective functioning of the HNS Fund once established.
- 2.1.14 The Director referred to the potential impact of international sanctions. He expressed concern regarding the large number of tankers conducting unsafe operations with little or no insurance which put the Member States, the contributors and the IOPC Funds at risk, without the Funds having the means to mitigate that risk. He also briefly referred to the *MT Pablo* incident, which occurred off the coast of Malaysia and said it was a stark reminder of this increased risk. He recalled that flag States, in accordance with the 1992 Fund Convention, were obliged to ensure that ships had proper insurance. He also recalled that port States, under the Convention, were obliged to ensure that ships entering the port, wherever they were registered, had been properly insured.
- 2.1.15 The Director recalled that the term of office of the present members of the Audit Body would expire at the November 2023 sessions of the IOPC Funds' governing bodies. He also recalled that four of the current members would be eligible for nomination for a second term. He announced that a circular would be issued shortly after the May 2023 meeting providing information to 1992 Fund Member States on the nomination of candidates and the deadline for election of members to the Audit Body.
- 2.1.16 The Director reported that it would be necessary to make a transfer within the budget to cover the increase in the fees of the External Auditor.
- 2.1.17 Finally, the Director reported that IMO had requested the IOPC Funds to share an increase in the 2023 service charge costs which had not been foreseen in the underlease agreed by the IMO and the IOPC Funds. The Director added that he would be inviting the governing bodies to consider the request by IMO and to decide whether to instruct him to make requested payment.
- 2.1.18 The Chair of the 1992 Fund Administrative Council thanked the Director for his comprehensive report.

#### *Debate*

#### *Statement by the delegation of Malaysia*

- 2.1.19 The delegation of Malaysia made the following statement in respect of the *MT Pablo* incident referred to by the Director in paragraph 2.1.14.

'We wish to inform this meeting that on the 1 May 2023, at approximately 3.11pm, Malaysian Time, *MT Pablo*, a Gabon-registered crude oil tanker owned and managed by Pablo Union

Shipping Inc., exploded and caught fire 37.5 nautical miles north-east of the Johor coastline, Malaysia. *MT Pablo* is a crude oil tanker with gross tonnage of 52 197 and carrying capacity of 96 773 tonnes of deadweight. In total 28 crew members were on board *MT Pablo* when the incident occurred. Twenty-five crew members were rescued by nearby vessels on the scene and enforcement agencies on duty, while three crew members are still missing.

Distinguished delegates, Malaysia, as a coastal State has taken onboard several precautionary measures, respectively by Malaysia authority, including broadcasting NAVTEX to warn ships in the nearby route of the incident, search and rescue activities followed by conducting a safety investigation which includes the verification of the statutory certificates mostly issued by the respective maritime authority of the country, the cause of the incident as well as response for any spillage that might have occurred.

On matters at hand, herewith Malaysia would like to inform the governing bodies that there is no oil spill present from the vessel despite there being a report of a spill by the neighbouring country. This is confirmed by the continuous measures such as patrolling activities by the maritime administration and enforcement agency at the area of the incident, verification through satellite imaging as well as running the oil spill trajectory simulation, for any spill occurrence for a period of seven days. Respectively, the oil slick, if any, will not hit any of the neighbouring countries.'

#### *Intervention by the delegation of Singapore*

- 2.1.20 The delegation of Singapore also provided information relating to the *Pablo* incident. It reported that its Maritime Rescue Coordination Centre (MRCC) Singapore had received information on 1 May 2023 that 18 crew had been rescued from the *MT Pablo* within the Singapore Maritime Search and Rescue Region (MSRR). It reported that seven other crew had been picked up by vessels in the vicinity, and that, as at 22 May 2023, three remained unaccounted for.
- 2.1.21 That delegation reported that, as part of Singapore's obligations under the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR) Convention for the MSRR, the MRCC Singapore had requested assistance from a total of 119 vessels in the vicinity of the *MT Pablo* to keep watch and report any sighting of the three missing crew members.
- 2.1.22 That delegation also reported that there had been no disruption to vessel traffic in the area and that, based on the information available to the Maritime and Port Authority of Singapore (MPA), there was no indication of an oil spill in the vicinity of the vessel. It was noted that the MPA had requested vessels to report any sightings of such oil spills promptly.

#### ***1992 Fund Administrative Council and Supplementary Fund Assembly***

- 2.1.23 The governing bodies noted the information reported by the Director under this item.

### **3 Incident involving the IOPC Funds**

3.1	<b>Incidents involving the IOPC Funds Document IOPC/MAY23/3/1</b>		<b>92EC</b>	<b>SA</b>
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- 3.1.1 The 1992 Fund Executive Committee and Supplementary Fund Assembly took note of document IOPC/MAY23/3/1, which contained information on documents for the May 2023 meeting relating to incidents involving the IOPC Funds.
- 3.1.2 The governing bodies further noted that there were currently no incidents involving the Supplementary Fund.

3.2	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Prestige</i> Document IOPC/MAY23/3/2</b>		<b>92EC</b>	
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*Criminal proceedings in Spain*

- 3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAY23/3/2 pertaining to the *Prestige* incident.
- 3.2.2 It was recalled that in December 2018, the Spanish Supreme Court had delivered its judgment on the quantification of the losses, awarding, after amendments in January and March 2019, EUR 1 439.08 million (pollution damage of EUR 884.98 million + pure environmental and moral damages of EUR 554.10 million) plus interest to be quantified by the Court.
- 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.
- 3.2.4 It was further recalled that the judgment had held the London P&I Club as 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.
- 3.2.5 The Executive Committee 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 1992 Fund, i.e. EUR 28 million. It was recalled that at its April 2019 session, the 1992 Fund Executive Committee had decided to authorise the Director to pay 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.
- 3.2.6 It was further recalled that in April 2019, the 1992 Fund had paid into the Court some EUR 27.2million, also providing the Court with a list of the amounts due to the claimants in the Spanish legal proceedings pro-rated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC).
- 3.2.7 The Executive Committee recalled 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.

*Legal action by France against ABS in France*

- 3.2.8 The Executive Committee recalled that in April 2010, the French Government had brought a legal action against the American Bureau of Shipping (ABS) in the Court of First Instance in Bordeaux.
- 3.2.9 It was also recalled that in April 2019, the Court of Cassation in France had rendered a judgment deciding that ABS could not avail itself of the defence of sovereign immunity in this case. It was recalled that the Court had considered that the certification and classification work came under different legal regimes and were separable and that, in the Court's view, only the certification work authorised a private-law company to avail itself of the sovereign immunity of the flag State, which had especially authorised it to issue the statutory certification, on its behalf, to the shipowner.
- 3.2.10 It was also 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*

- 3.2.11 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*.
- 3.2.12 The Executive Committee recalled that ABS had raised the following arguments against the admissibility of the 1992 Fund's action against ABS:
- (i) Sovereign immunity: ABS intends to challenge the question of sovereign immunity up to the level of the Court of Cassation in the hope that it might reverse its judgment of April 2019 in the case of the French State against ABS.
  - (ii) The doctrine of *res judicata* (a matter already judged): ABS argues that since the United States courts have already discharged them from any liability in the *Prestige* case, the United States court decision rendered in the case of the Spanish State against ABS has *res judicata* authority before any other court. In particular, ABS has argued that, as the 1992 Fund is subrogated into the rights of the Spanish State, which was a party to the United States proceedings, the United States judgment binds the 1992 Fund.
  - (iii) Channelling: In the case of the *Erika* incident, the Court of Cassation expressed the view that the Registro Italiano Navale (RINA), the classification society that certified the *Erika*, was covered under Article III(4) of the 1992 CLC as persons who perform services for the ship (but the protection was denied because the Court decided that the damage had resulted from RINA's recklessness). ABS argues that, on the basis of that decision, ABS would be protected by Article III(4) of the 1992 CLC and therefore the 1992 Fund's action against ABS would not be admissible.
  - (iv) Time bar: The issue of the time bar is linked to the issue of channelling above. ABS argues that the 1992 Fund's action is time-barred under the 1992 Civil Liability and Fund Conventions, according to Article VIII of the 1992 CLC.
- 3.2.13 The Executive Committee recalled that, if the 1992 Fund's action against ABS is considered admissible by the Court, the 1992 Fund would have to prove that ABS was negligent in the way it carried out its work in respect of the classification of the vessel.
- 3.2.14 The Executive Committee noted that the 1992 Fund had submitted pleadings in December 2022, in reply to ABS's arguments, pleading as follows:
- (i) Sovereign immunity: ABS cannot benefit from sovereign immunity because ABS is not an emanation of the State of the Bahamas and does not contribute to exercising the sovereignty of that State. In addition, the 1992 Fund has argued that the solution adopted by the Court of Cassation at its April 2019 judgment in the action of France against ABS should be applied in the 1992 Fund's action. In its judgment, the Court of Cassation stated the principle that even if a classification society conducts activities of certification and classification simultaneously, these activities are severable and the classification society is only entitled to benefit from sovereign immunity in the framework of its activity of statutory certification, but not for its activity of classification. The 1992 Fund's action relates to faults committed by ABS in its classification activity.
  - (ii) Authority of *res judicata* of a foreign decision: On this point, the 1992 Fund has had to accept that it would have to renounce its claim for the amounts paid in compensation in Spain, since the decision by the American Court of Appeal in the action by Spain against ABS, rejecting Spain's claim, had the authority of *res judicata*. The 1992 Fund nevertheless maintains the



claim in subrogation of the rights of the French claimants and the Portuguese State, totalling EUR 14 365 907.98.

- (iii) Channelling: Classification societies cannot benefit from channelling of liability, because:
- (a) The classification society is not a ‘servant or agent of the owner’ of the ship, nor a ‘member of the crew’ (Article III(4) paragraph (a) of the 1992 CLC). According to the terms of the agreement of classification of vessels, ABS is an independent contractor and cannot act as a servant or agent of any other party.
  - (b) The classification society is not a ‘pilot or any other person who... performs services for the ship’ (Article III(4) paragraph (b) of the 1992 CLC) since it does not participate in the nautical operation of the ship, and the inspections which it is supposed to carry out on the ship are not services provided to the ship but only to the shipowner, at the latter’s request or that of the ship’s insurers.
- (iv) Time bar: Since the 1992 CLC does not apply to actions in tort brought against third parties such as ABS, these actions are not governed by the 1992 CLC. The 1992 Fund’s action against ABS would therefore be governed by French law, that provides for a 10-year limitation period. This period started to run on 13 November 2002, the date the *Prestige* sank. Since the 1992 Fund brought its action on 30 October 2012, the 1992 Fund’s action is not time-barred.
- (v) On the merits of the action, the 1992 Fund argues that the liability of classification societies follows the rule whereby a party who performs a contract badly shall be liable in tort to those who suffer detriment caused by that bad execution. In the case of the *Prestige*, ABS’s contractual breach is based on their failure to comply with stipulations laid down in their classification regulation. In addition, in the context of the criminal proceedings in Spain, the Spanish Court concluded, on the basis of the testimony of several experts, that ABS had displayed gross negligence and recklessness.

3.2.15 The Executive Committee recalled that the 1992 Fund was working with the French Government to consider how to proceed with their respective actions against ABS.

3.2.16 The Executive Committee noted that ABS had provided its reply to the 1992 Fund’s pleadings and that the Court had given the 1992 Fund until September 2023 to respond.

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

3.2.17 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.

3.3	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Redfferm</i> Document IOPC/MAY23/3/3</b>		<b>92EC</b>	
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3.3.1 The 1992 Fund Executive Committee took note of document IOPC/MAY23/3/3 which contained information relating to the *Redfferm* incident.

3.3.2 The 1992 Fund Executive Committee recalled that in January 2012, the Secretariat had been 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.

3.3.3 The 1992 Fund Executive Committee also recalled that at the time of the incident, the barge

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

*Reasons for rejection of claims*

3.3.4 It was recalled that in February 2014, the 1992 Fund had 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*

3.3.5 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.

3.3.6 The Executive Committee also 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*. The Executive Committee further recalled that at first instance, the Judge had denied the 1992 Fund's application and that the 1992 Fund had appealed the decision.

3.3.7 It was 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 had continued very slowly until October 2017 when the Nigerian Court of Appeal had referred the case back to the Federal High Court.

3.3.8 It was 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. It was further recalled that the Court of Appeal had subsequently adjourned the hearing of the application until January 2019.

3.3.9 The Executive Committee 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 92.26million. 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. The Executive Committee also recalled that during 2019, no further substantive developments had taken place in the legal proceedings.

3.3.10 The Executive Committee further recalled that in February 2020, the matter was listed for trial but was adjourned until March 2020 when the claimants had 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.

3.3.11 It was recalled that there were no substantive developments in 2020 or 2021, but noted that in February 2022, a First Instance Judge had 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 had awarded the claimants their claim in the sum of USD 92.26 million and USD 5 million as 'general damages'.

- 3.3.12 It was also recalled 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.
- 3.3.13 It was further recalled 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 it had in fact done both.
- 3.3.14 The Executive Committee recalled 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 in November 2022, the claimant's lawyer had discontinued the claim against the former third defendant (Thames Shipping). Accordingly, the 1992 Fund then became the third defendant.
- 3.3.15 The Executive Committee also noted that at a further court hearing in November 2022, the Judge had upheld the default judgment and garnishee order against the first defendant, dismissed the default judgment against the second defendant, and struck out the default judgment and garnishee proceedings against the 1992 Fund.
- 3.3.16 The Executive Committee further noted that in response to a request, the claimants' lawyer was instructed by the Judge to bring a formal application to set matters down for trial.
- 3.3.17 It was noted that in view of the developments, the Director, the Head of the Claims Department and the Claims Manager handling the incident met with the 1992 Fund's Nigerian lawyer upon his visit to the United Kingdom in December 2022. It was also noted that the Director had expressed his concern at the recent developments, noting that a number of procedural steps which would ordinarily be expected to have been complied with by the courts, had seemingly been ignored in the Nigerian legal proceedings.
- 3.3.18 It was further noted that the 1992 Fund's Nigerian lawyer had explained that the reason why interim applications were removed from the defence Rules of Court, was that the procedure was being abused, since trials were being stalled by preliminary objections, so the rules were changed so as to hear such applications after close of pleadings at the time of trial. Accordingly, many aspects of the procedural steps which had been missed, would be dealt with at the time of trial.
- 3.3.19 The Executive Committee noted that the 1992 Fund's Nigerian lawyer also advised that he was confident that the default judgment against the first defendant (the owner of the *MT Concep*) would be set aside at trial, but that even if this did not occur and the judgment was subsequently entered against the first defendant, he advised that a separate set of legal proceedings would have to be commenced against the 1992 Fund once it had been shown that the first defendant lacked the resources to pay any judgment, and that these would be time-barred.
- 3.3.20 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.
- 3.3.21 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*

3.3.22 The Nigerian delegation stated that it noted the information contained in the document and that the matter was now before a competent Court of a Member State, and it would continue to monitor events as they developed and await the outcome of the court proceedings.

3.3.23 Another delegation stated that given that there were few developments, there was little choice but to wait for the developments in the legal proceedings and that, in its view, according to the evidence available, the barge *Redfferm* was not a ship within Article I(1) of the 1992 CLC and that no causation had been proved between the oil spill and the losses claimed.

**1992 Fund Executive Committee**

3.3.24 The 1992 Fund Executive Committee noted the range of scenarios that currently existed and that the 1992 Fund had filed a defence. The Executive Committee also noted that the Director would continue to monitor the incident and report any developments at the next session of the Committee.

3.4	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Nesa R3</i> Document IOPC/MAY23/3/4</b>		<b>92EC</b>	
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3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAY23/3/4 relating to the *Nesa R3* incident.

3.4.2 The 1992 Fund 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.

3.4.3 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.

3.4.4 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 (Environmental Authority, formerly the 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.

3.4.5 The Executive Committee recalled that in December 2017, the Court of Muscat had 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.

3.4.6 The Executive Committee recalled that, following the settlement of the claims, the 1992 Fund had been subrogated to all claims arising out of the incident, and the Omani Government had agreed to withdraw from Court all claims settled with the 1992 Fund.

3.4.7 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 the 1992 Fund and the Environmental Authority, in order to determine the amounts owed to the Environmental Authority, if any, and the amounts owed to the 1992 Fund. The Executive Committee further noted that in June 2022, the court-appointed expert had issued his report, confirming the total amount settled by the 1992 Fund and also noting that the Environmental Authority had agreed to withdraw its claims from court.

3.4.8 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 Muscat had postponed its hearings several times to allow time for attempts to contact the insurer.

3.4.9 The Executive Committee noted that, in January 2023, the Court of Appeal in Muscat rendered its judgment, in which the Court, *inter alia*:

- accepted the appeal by the 1992 Fund;
- dismissed the appeal by the Environmental Authority;
- ordered Indian Ocean P&I Club and Welance Marine Inc. to pay the 1992 Fund an amount of OMR 3 521 364.39 and BHD 8 419.350; and
- ordered the Environmental Authority, Indian Ocean P&I Club and Welance Marine Inc. to pay the case expenses.

3.4.10 The Executive Committee noted that in February 2023, the Indian Ocean P&I Club had filed an objection before the Supreme Court. The Executive Committee further noted that the objection was still under the assessment of the Court as to whether it would accept to entertain it. The Executive Committee noted that, once the Court had decided whether to accept the objection in form, the Court would notify the other parties of its decision.

3.4.11 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 Committee noted that, while a previous investigation into the financial situation of the owner and the insurer indicated that they may not have sufficient funds to cover the claims arising out of this incident, since the insurer appears to have become active again, it may be necessary to conduct a new investigation into its current status before further actions are taken.

#### *Debate*

3.4.12 One delegation noted that, while in the past it had appeared that the insurer of the ship had folded, the fact that it had now objected to the Appeal Court judgment seemed to indicate that there may be some solvency. That delegation welcomed the intention of the Director to conduct a new investigation to explore the possibility of recovering the compensation paid.

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

3.4.13 The 1992 Fund Executive Committee noted the intention of the Director to conduct a new investigation into the financial status of the owner and insurer of the *Nesa R3*. It further noted that the Director would continue to monitor the incident and report any further developments at the next session of the Committee.

3.5	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Agia Zoni II</i> Document IOPC/MAY23/3/5</b>		<b>92EC</b>	
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/MAY23/3/5, relating to the *Agia Zoni II* incident.

*Limitation fund claims evaluation procedure*

- 3.5.2 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.
- 3.5.3 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. The Executive Committee further recalled that court hearings had taken place in 2020 to deal with the eight appeals lodged against the limitation fund Administrator's assessments.
- 3.5.4 It was 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. It was further recalled that in September 2021, a hearing had taken place of all appeals against the limitation fund Administrator's evaluation.
- 3.5.5 The Executive Committee recalled 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.
- 3.5.6 The Executive Committee noted that in late 2022, the 1992 Fund had appealed against the judgment on two legal issues, namely: (1) whether the 1992 Fund had the right to appeal against the limitation fund Administrator's list of claims; and (2) what was the significance of the extinction of time provided in Article VIII of the 1992 CLC, when the limitation fund had been established. The Executive Committee also noted that the Court had set a hearing date in February 2024, which was the earliest available date.

*Investigation into the cause of the incident*

- 3.5.7 The Executive Committee recalled that two investigations had been conducted into the cause of the incident and had reached different conclusions: one determining that the *Agia Zoni II* sank after an explosion, and the other that it sank after the seawater ballast valves were opened. It was also 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.

- 3.5.8 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.
- 3.5.9 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.
- 3.5.10 The Executive Committee further recalled that in June 2021, the disciplinary tribunal had 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.
- 3.5.11 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*

- 3.5.12 It was recalled that the 1992 Fund's Greek lawyers had advised that the last sentence of Article 4.3 of the 1992 Fund Convention was aimed at protecting the environment and safeguarding that clean-up and preventive measures would be payable at all times.
- 3.5.13 It was also 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.
- 3.5.14 It was further 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. The Executive Committee also recalled, therefore, that the mere suspicion of such action would not be sufficient to deny payment.

*Recourse actions*

- 3.5.15 The Executive Committee 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*

- 3.5.16 The Executive Committee noted that the 1992 Fund had received 423 claims amounting to EUR 99.9 million and one claim for USD 175 000, had approved 416 claims and paid 191 claims amounting to EUR 16.56 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*

- 3.5.17 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.

3.5.18 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 2.09 million by three other companies involved in clean-up operations. It was recalled that in total, the 33 clean-up claims filed against the 1992 Fund amounted to EUR 83.22 million.

3.5.19 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 recalled that in June 2022, the Court had issued judgment 1891/2022, which several parties had appealed.

*Legal proceedings commenced by fisherfolk*

3.5.20 It was also 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 further noted that court hearings had taken place in 2022 and that judgments were awaited.

*Legal proceedings commenced by claimants in the tourism sector*

3.5.21 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. The Executive Committee also recalled 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*

3.5.22 The Executive Committee further 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. It was noted that the claim had been paid in March 2023 after the Greek State had accepted it.

3.5.23 It was also 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.

3.5.24 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, and that judgments in respect of the writs were awaited.

*Statement by the delegation of Greece*

3.5.25 The delegation of Greece made the following statement:

'First of all, 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 persons 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 claims submitted.



Furthermore, this delegation would like to convey its sincere thanks, first, for the payment of the advance payment in respect of the Greek State's claim and, secondly, for the constructive spirit of cooperation and the fruitful exchange of views between the IOPC Fund and the Hellenic Maritime Authority at the stage of preparing the text of the Partial Payment Agreement. As it is known, the Agreement was signed by the two parties in March this year and the deposit of relevant amount to the Bank of Greece has been concluded.

We are convinced that there will be progress in all aspects of the incident and at the same time we expect this fruitful cooperation to continue until all issues related will have been resolved.

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

In particular, at the October 2022 meeting, we informed you that the District Attorney, after taking into account all the evidence collected, will submit his proposal before the Council of Judges. At present, to the best of our knowledge, there has been a development as the Public Prosecutor has submitted his proposal before the Council of Judges which will decide whether the criminal prosecution will be ceased or whether any particular parties should be brought before Court or not. The content of this proposal has not been communicated to the legal department of our Ministry.

The judicial decision is still pending.

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

### **1992 Fund Executive Committee**

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

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

3.6	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Bow Jubail</i> Documents IOPC/MAY23/3/6, IOPC/MAY23/3/6/1 and IOPC/MAY23/3/6/2</b>		<b>92EC</b>	
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3.6.1 The 1992 Fund Executive Committee took note of documents IOPC/MAY23/3/6, IOPC/MAY23/3/6/1 and IOPC/MAY23/3/6/2 on the *Bow Jubail* incident.

3.6.2 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.

3.6.3 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.

3.6.4 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’.

*Limitation proceedings*

- 3.6.5 The Executive Committee recalled that the shipowner had 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), arguing 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).
- 3.6.6 The Executive Committee 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.
- 3.6.7 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.
- 3.6.8 It was recalled that the shipowner had appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands. The Executive Committee recalled that the 1992 Fund had joined in the proceedings as an interested party, based on the civil procedural law of the Netherlands.
- 3.6.9 The Executive Committee noted that the Supreme Court had rendered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in The Hague, 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 that the *Bow Jubail*, therefore, qualified as a ship as defined under the 1992 CLC.
- 3.6.10 The Executive Committee recalled that a total of 29 legal actions had been brought by 57 claimants before the Rotterdam District Court against the shipowner, its insurer and other parties. It was further recalled that the 1992 Fund had been notified or included as a defendant in the actions. The Executive Committee also recalled that these proceedings had been stayed whilst the national courts determined which liability convention would apply in this case.
- 3.6.11 The Executive Committee recalled that, at the inception of the case, the indication was that the total claim amounted to some EUR 80 million. The Executive Committee noted that, after a preliminary review of the amounts claimed so far, the total provisional amount was closer to EUR 50 million. The Executive Committee further noted that the amount claimed so far was already well in excess of the 1992 CLC limit as well as in excess of the indemnity that the shipowner would provide to the 1992 Fund under STOPIA 2006, which is SDR 20 million.
- 3.6.12 The Executive Committee noted that, not all the claimants had quantified their damages in full, and

some had not quantified them at all and that, therefore, the total amount claimed was expected to increase. It was noted that, as a consequence, the Director had recommended that he be authorised to make payments in respect of losses arising out of the *Bow Jubail* incident.

- 3.6.13 The Executive Committee further noted the Director's proposal that the 1992 Fund should sign an agreement on interim payments in respect of the *Bow Jubail* incident, in line with the Agreement on Standard Terms relating to Interim Payments (2016) between the International Group of P&I Associations (International Group) and the 1992 Fund. The Executive Committee noted that the Director proposed that such an agreement should be applied retrospectively to the amounts approved by the 1992 Fund and paid by the Club prior to the signature of the Agreement.

*Statement by the delegation of the Netherlands*

- 3.6.14 The delegation of the Netherlands made the following statement:

'The delegation of the Netherlands thanks the Secretariat for the documents IOPC/MAY23/3/6, IOPC/MAY23/3/6/1 and IOPC/MAY23/3/6/2 on the *Bow Jubail* incident.

The Supreme Court of the Netherlands delivered its judgment on 31 March 2023, confirming the previous decisions of the Rotterdam District Court and the Court of Appeal in the decision not to grant the leave to limit its liability under the Bunkers Convention 2001. The Director therefore concludes in document IOPC/MAY23/3/6/1, paragraph 3.4 that since the Dutch courts determined that the 1992 Civil Liability and Fund Conventions apply in this case, the 1992 Fund will have to pay compensation as required by the Conventions.

The Netherlands is not member of the 1992 Fund Executive Committee this year. However, we want to give the following advice. On the proposed actions in document IOPC/MAY23/3/6/1, paragraph 4(b) the delegation of the Netherlands advises the Executive Committee to agree with the proposal to authorise the Director to make payments in respect of losses arising out of this incident. On paragraph 4(c) the delegation of the Netherlands advises the Executive Committee to instruct the Director to give a prompt and fair payment to compensate the victims of the incident as soon as possible.

Regarding document IOPC/MAY23/3/6/2 and the request by Gard Club to sign the agreement on Standard Terms relating to Interim Payments (2016) in respect of the *Bow Jubail* incident, the delegation of the Netherlands advises the Executive Committee to authorise the Director to sign the agreement as per the text in the Annex to document IOPC/MAY23/3/6/2.

It is worth mentioning that the Court of Appeal mentions in its earlier judgment that there is no standard procedure for determining when a ship, that at one stage is an oil tanker under the 1992 CLC, and at another stage a chemical tanker under the Bunkers Convention 2001, is no longer a 1992 CLC vessel. It seems desirable to the Dutch Court that the IOPC Funds consider if such a standard procedure can be designed. This would help both the shipowners, the P&I clubs and the IOPC Funds.'

*Debate*

- 3.6.15 The observer delegation of the International Group thanked the Director for the three documents submitted relating to this incident. That delegation noted that it was still considering the legal and practical ramifications of the Supreme Court's judgment. That delegation expressed its surprise at the Court's conclusions, while at the same time acknowledging the Court's ruling and noting the Court of Appeal's comments on what is a 'ship'. That delegation indicated that it would be helpful to know the Member States' views on the Court's decision.

- 3.6.16 Most delegations that took the floor expressed their disappointment about the Dutch courts'

decision and all delegations that intervened in the discussions stated their concerns with regards to the impact of such decision in shaping future incidents. Those delegations indicated that, since the decision was final and there is no further room for legal recourse, they would support the Director's proposal that he be authorised to make payments for compensation for this incident.

- 3.6.17 One delegation suggested that the Executive Committee consider what the IOPC Funds would do to prevent similar decisions with respect to the interpretation of the proviso of Article I(1) of the 1992 CLC in the future, since this case clearly demonstrated the risk that this Article could be interpreted quite differently from the Executive Committee's understanding. That delegation noted that one of the causes for the different interpretation may be, as the Court of Appeal indicated, that there was no established standard procedure that should be followed in this context. That delegation therefore expressed its belief that it was essential to develop a standard procedure which was effective in the context of the proviso of Article I(1) of the 1992 CLC.
- 3.6.18 That delegation further stated that it was also necessary for the Member States to share their common understanding that the text of 'no residues of such carriage of oil' in that Article does not require that physically, no oil should be found on the oil tank, but rather that the tank was sufficiently cleaned so that the risk of pollution was essentially the same as a tanker which was not carrying oil on board as cargo.
- 3.6.19 That same delegation proposed that the Secretariat, in consultation with the Audit Body, consider the possibility of developing a standard procedure for the purpose of the proviso of Article I(1) of the 1992 CLC and make a specific proposal at a future session of the 1992 Fund Assembly. It was suggested that the standard procedure and the underlying common understanding of Article I(1) may possibly be adopted as a guidance document by the 1992 Fund's Assembly.
- 3.6.20 That delegation further remarked that this incident showed the importance of the 1992 Fund intervening in any legal proceedings which related to maritime oil pollution incidents. The delegation noted that shipowners do not always have strong incentives to argue that the ship had no residues of oil on board as cargo because the result does not matter much to them as far as the insurance cover. For this reason, the delegation expressed its hopes that the 1992 Fund would intervene in the proceedings at the earliest possible stage.
- 3.6.21 The majority of the delegations that took the floor agreed with the proposal that the Director should develop a guidance document to prepare a standard procedure to determine when a ship ceased to be a ship under the 1992 CLC. However, a number of delegations requested that, before determining what form the guidance document would take, consideration is given to the possible ramifications of drafting such a document.
- 3.6.22 One delegation suggested that, as part of the enquiries into this incident, the Secretariat could investigate the possible number of dual tankers that may be on various registers, to determine whether this was a narrow pool or if it extended to a point whereby, going forward, a guidance document could meaningfully impact on the industry itself. That delegation suggested that the International Group might be able to assist with that determination. That delegation noted that, if it is a small pool of ships, then it would be possible to proceed with all the recommendations that have been made, and were supported by all the delegations which had taken the floor but if this was just an isolated incident, then perhaps such guidance would not have the impact on the industry that the Executive Committee might seek.
- 3.6.23 On the subject of interim payments, several delegations expressed support for the Director to sign an agreement on interim payments with the Gard Club, and for the agreement to apply retrospectively to the amounts approved by the 1992 Fund and paid by the Club prior to the signature of the agreement.

- 3.6.24 The Director thanked the delegations that took the floor for their support for his proposal that he be authorised to make payments for compensation. However, it was noted that the support was given at the same time as disappointment, and that concern was expressed for the Court of Appeal's decision, as well as its implications for the future.
- 3.6.25 The Director further noted the proposal that he develop a standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the 1992 CLC, and that he considers an interpretation of the meaning of the word 'residues' in Article I(1) of the 1992 CLC.
- 3.6.26 The Director noted that the 1992 Fund's position in this case had been that there was already a standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL). However he acknowledged that, following the Dutch courts' decision, further guidance might need to be developed. He indicated that he would consult with the Audit Body, the industry as well as technical and legal experts, in order to develop a proposal for the way forward. The Director stated that he would present this proposal at the November 2023 meeting of the governing bodies.
- 3.6.27 The Director concluded that one lesson to be learnt from this incident was that the 1992 Fund should endeavour to intervene as soon as possible in legal proceedings, when a case appears to run the risk of being considered a 1992 CLC incident. Whilst the Director acknowledged that the 1992 Fund could not possibly intervene in all bunker spills that occur in Member States, he conceded that the Fund would need to find a way to monitor the situation more closely to avoid similar situations in future. The Director indicated that he intended to consult with the International Group and the shipping industry to find a workable way forward.
- 3.6.28 The Chair summarised the discussion, noting that most delegations that took the floor expressed their disappointment about the Dutch courts' decision and that all delegations that intervened in the discussions, had agreed to authorise the Director to make payments for compensation to claims arising out of this incident.
- 3.6.29 The Chair also noted that all the delegations which took the floor on the matter of interim payments supported the Director's proposal that he be authorised to sign an agreement on interim payments with the Gard Club in respect of this incident, and that the agreement should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Club before the signature of the agreement.
- 3.6.30 Finally, the Chair noted that almost all the delegations that spoke expressed their concerns for the implications of the Court of Appeal's decision, and that they agreed to ask the Director to develop a guidance document detailing a standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the 1992 CLC. He noted that the Director intended to submit a proposal for the way forward in developing a guidance document at the November 2023 meeting of the governing bodies.

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

- 3.6.31 The 1992 Fund Executive Committee decided to authorise the Director to make payments in respect of losses arising out of this incident.
- 3.6.32 The Executive Committee further decided to authorise the Director to sign an agreement on interim payments with the Gard Club in respect of this incident and that the agreement should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Club before the signature of the agreement.

- 3.6.33 The Executive Committee also requested the Director to explore the possibility of developing a guidance document which would provide a standard procedure to determine when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ship under the 1992 CLC.

3.7	<b>Incidents involving the IOPC Funds — 1992 Fund: Incident in Israel</b> <b>Document IOPC/MAY23/3/7</b>		<b>92EC</b>	
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- 3.7.1 The 1992 Fund Executive Committee took note of the information regarding the incident in Israel as set out in document IOPC/MAY23/3/7.
- 3.7.2 The 1992 Fund 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, which they believed to have been caused by a mystery spill. The Executive Committee also recalled that the Israeli Government believed the 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.
- 3.7.3 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 had from this tanker.
- 3.7.4 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.
- 3.7.5 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.
- 3.7.6 The Executive Committee noted that 44 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 24.8 million. The Executive Committee recalled that two claims had been settled at ILS 101 000. The Executive Committee further recalled that 23 claims for economic losses and property damage had been rejected for lack of supporting information.
- 3.7.7 The Executive Committee noted that three claims had been assessed and that two of these claims had received a provisional payment of ILS 3.3 million.
- 3.7.8 The Executive Committee also noted that further claims, including claims for spill response and clean-up operations carried out by local authorities along the Israeli coastline, were expected.

#### *Debate*

- 3.7.9 One delegation recalled that the Secretariat had previously reported 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. That delegation noted that it was unfortunate that there was no mechanism for cooperation with countries where managing companies are located, as such cooperation would aid the 1992 Fund to investigate the source of the spill more effectively.
- 3.7.10 That delegation requested the Director to continue his efforts to identify the source of the spill and to provide any update on the progress of the identification of the ship involved in the incident.

3.7.11 The Director remarked 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, even if samples were to be obtained now, it might be too late to be able to use them in court.

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

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

3.8	<b>Incidents involving the IOPC Funds — 1992 Fund: <i>Princess Empress</i></b> <b>Documents IOPC/MAY23/3/8 and IOPC/MAY23/3/8/1</b>	92EC	
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3.8.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/MAY23/3/8 and IOPC/MAY23/3/8/1 regarding a new incident involving the 1992 Fund, which had occurred off the coast of Oriental Mindoro, the Philippines on 28 February 2023.

3.8.2 It was reported that the Philippine-flagged *Princess Empress* (508 GT) had sank off the coast of Naujan, Oriental Mindoro, whilst carrying 800 000 litres of fuel oil as cargo, spilling oil into the sea.

3.8.3 It was also reported that the pollution damage resulting from the *Princess Empress* incident had affected the coasts of Oriental Mindoro to various degrees and that the oil had also travelled to the Caluya archipelago, which is situated south of Mindoro Island, affecting the islands of Semirara and Liwagao.

3.8.4 The Executive Committee noted that part of the population in the affected area relied on small-scale fisheries-related activities, including subsistence fishing. It also noted that some mangrove areas had been affected by the pollution, particularly on Semirara island and that the tourism sector was also expected to be impacted, since some of the affected areas had a number of tourism-dependent businesses.

#### *Response operations*

3.8.5 The Secretariat reported that clean-up and response operations were continuing and that they were well advanced. It was noted that the clean-up operations on shore had relied on workers from the affected area as part of a 'cash for work' programme.

3.8.6 It was also noted that fishing and swimming bans had been imposed in the areas affected by the pollution but that some of those bans had been lifted.

#### *Status of the wreck*

3.8.7 The Executive Committee noted that the shipowner had engaged a salvor to survey the sunken wreck and that it had been found that the wreck had suffered substantial structural damage and that oil was leaking, leading to oil surfacing and reaching the coasts.

3.8.8 It was also noted that, following an assessment of the pollution risks posed by the wreck, the shipowner had engaged a salvor to remove the oil from the wreck.

#### *Meetings with the Shipowners' Club*

3.8.9 The Executive Committee noted that the Director and members of the IOPC Funds' Claims Department had travelled to Singapore to meet personnel from the Shipowners' Club. It was also noted that the Shipowners' Club and the Secretariat held regular virtual meetings to discuss the

handling of claims and other issues relating to the incident.

*Visit by the Director to the Philippines*

- 3.8.10 The Executive Committee noted that the Director and a member of the IOPC Funds' Claims Department had visited the Philippines in April 2023 where, assisted by the Philippine Coast Guard, they had visited the affected area and met with local authorities and other stakeholders. It was also noted that in Manila, they had attended a case management meeting at the Department of Justice (DOJ), with different government departments. It was noted that at the various meetings, the Director had explained the operation of the international liability and compensation regime.

*Applicability of the Conventions*

- 3.8.11 The Executive Committee noted that the Philippines was a Party to both the 1992 CLC and the 1992 Fund Convention and that, therefore, the 1992 Fund had been working closely with the insurer of the ship, the Shipowners' Club, and the Government of the Philippines.
- 3.8.12 It was noted that, given the latest reported information, claims relating to this incident will exceed the limit of liability of the insurer under the 1992 CLC of SDR 4.51 million and that, therefore, the 1992 Fund will be called upon to pay compensation.
- 3.8.13 It was also noted that STOPIA 2006 applied, whereby the limitation amount applicable to the tanker is increased, on a voluntary basis, to SDR 20 million. It was noted that the 1992 Fund will continue to be liable to compensate claimants when the total number of admissible claims exceeds the limitation amount applicable to the *Princess Empress* under the 1992 CLC, but that it would be reimbursed by the Shipowners' Club up to SDR 20 million. It was noted, however, that claims arising from this incident will soon reach the STOPIA limit.
- 3.8.14 The Executive Committee noted that the shipowner had not yet set up a limitation fund.

*Investigations into the cause of the incident*

- 3.8.15 The Executive Committee noted that, according to preliminary information, the *Princess Empress* had been refurbished in 2022. It was also noted that there were reports of investigations being conducted by several government agencies to determine the cause and extent of the spill, and potential criminal responsibility for the incident.

*Claims for compensation*

- 3.8.16 The IOPC Funds Secretariat reported that the 1992 Fund and the Shipowners' Club had opened a Claims Submission Office (CSO) in Calapan, Oriental Mindoro, to facilitate the submission of claims for compensation resulting from the incident. The Secretariat also informed the Executive Committee that, given the characteristics and extent of the affected area, in order to give an opportunity for claimants to submit claims, it was considered necessary to open temporary CSOs (collection centres) in different areas, some of which were not easily reachable. The Secretariat confirmed that efforts continued to be made in order to reach claimants and that, due to the number of claimants and the geographical constraints, the claims submission process had been proving time and labour intensive.
- 3.8.17 It was noted that claims totalling PHP 115 617 633 had been submitted in relation to the categories of fisheries, property damage and tourism claims as of 12 May 2023, when document IOPC/MAY23/3/8/1 was published. It was also noted that the shipowner had submitted claims totalling USD 17.8 million, EUR 1.9 million and GBP 64 510 in respect of clean-up and preventive measures. The Executive Committee also noted, however, that claims continued to be submitted on a daily basis.



*Director's considerations*

- 3.8.18 The Executive Committee took note of the Director's recommendation that he be authorised to make payments in respect of losses arising out of the *Princess Empress* incident. It also noted his proposal that the 1992 Fund should sign an agreement on interim payments in respect of the *Princess Empress* incident, in line with the Agreement on Standard Terms relating to Interim Payments (2016) between the International Group and the 1992 Fund. It was proposed that such an agreement should be applied retrospectively to the amounts approved by the 1992 Fund and paid by the Club prior to the signature of the Agreement.
- 3.8.19 The Secretariat conveyed the gratitude of the Director for the help provided by the Philippine Government, and in particular his appreciation to the Philippine Coast Guard for their help organising his visit to the Philippines. Appreciation was also expressed to the local authorities in the affected areas for their help, especially in respect of the opening of temporary local CSOs. The Secretariat took the opportunity to also express gratitude to the Shipowners' Club for their excellent cooperation and proactive approach to the incident so far.

*Statement by the delegation of the Philippines*

- 3.8.20 The delegation of the Philippines took the floor to provide an update on the *Princess Empress* incident, as follows:

'The Philippine delegation would like to provide an update on the unfortunate incident involving the Philippine-flagged vessel, Motor Tanker *Princess Empress*, which sank in rough seas off Naujan, Oriental Mindoro, in the Philippines. The vessel was carrying 800,000 litres of fuel oil, resulting in an oil spill that has severely impacted coastal communities and contaminated approximately 79 kilometres of coastline. We want to highlight that the clean-up and containment operations are currently ongoing.

Further, Philippine authorities, in coordination with the P&I Club, have established claim hubs to facilitate processing claims from affected individuals and communities. As of this report, we have received 5 507 claims, with expectations that this number will continue to rise. It is anticipated that the claims arising from this incident may surpass the liability limit under the 1992 Civil Liability Convention. Therefore, we may need to call upon the 1992 Fund to provide the necessary compensation. We are committed to closely coordinating with the relevant authorities, particularly the IOPC Funds Secretariat, to ensure the verification and authentication of these claims.

We would like to extend our sincere gratitude to the Director of the IOPC Funds and the rest of the Secretariat for immediately reaching out to our delegation following the incident. Learning from previous oil spill incidents, their prompt response and technical assistance have been invaluable in ensuring that the compensation claims of the affected communities are adequately documented. Their support in this critical phase is greatly acknowledged and appreciated.

Furthermore, we would like to extend our appreciation for the visit of the Director Gaute Sivertsen and Ana Cuesta to the heavily impacted areas in Oriental Mindoro and Semirara Island in Antique, Philippines on April 21. Likewise, the participation of the Director of the IOPC Funds and his staff in the meeting held at the Department of Justice has been enlightening for all relevant departments and agencies of the Philippine Government, shedding light on the vital role of the IOPC Funds.

Additionally, we express our deepest gratitude to the international community, with special mention to Japan, the United States, Republic of Korea and France, for their unwavering

support during this oil spill incident. The collective efforts and solidarity extended by these nations have made a significant impact on our response and recovery efforts. Your invaluable assistance, expertise, and resources have helped us navigate this challenging situation and will contribute to restoring our coastal ecosystems and affected communities.

As we move forward, we remain committed to addressing the consequences of this incident comprehensively. We will continue to work hand in hand with the IOPC Funds, relevant authorities, and all stakeholders to ensure that the affected communities receive the compensation they rightfully deserve and to prevent similar incidents from occurring in the future.

Once again, we express our most profound appreciation for the support of the Director of the IOPC Funds and his staff, as well as the solidarity and assistance provided by the international community.'

#### *Debate*

- 3.8.21 The observer delegation of the International Group took the floor and expressed satisfaction with the excellent cooperation between the Shipowners' Club, the 1992 Fund and the Philippine Government in this case. The International Group pointed out that the Shipowners' Club was very experienced in dealing with STOPIA 2006 cases, which will facilitate the implementation of the STOPIA 2006 provisions in this case. The delegation also brought to the Executive Committee's attention the dedicated website set up by the Shipowners' Club, which could facilitate the engagement with claimants, and recommended that delegations visit the website for more information and updates on the incident. Regarding the Memorandum of Understanding between the International Group and the IOPC Funds (MoU), that delegation suggested that, as the MoU is only an established set of principles where the IOPC Funds and the shipowner's insurers agreed to collaborate in the handling of an oil pollution incident, there was no need to 'invoke' the MoU.
- 3.8.22 The delegation of the Republic of Korea took the floor and thanked the Secretariat for providing the relevant information in connection with this incident. That delegation stated that the Republic of Korea's Ministry of Foreign Affairs and Coastguard had been making significant efforts to support the Philippines in combating the oil spill in Philippine waters by providing clean-up supplies and dispatching an emergency response team. The delegation also stated that this support activity was the first example of the Government of the Republic of Korea supporting foreign clean-up operations, and added that the Republic of Korea would continue to take an active interest in international oil spill incidents, taking advantage of their experience in overcoming the *Hebei Spirit* incident.
- 3.8.23 One delegation enquired as to the implications of the shipowner not having yet set up a limitation fund in this case, which could subject the compensation process to the high volatility of currency exchange rates. The Director explained that for the 1992 Fund it was clear that the exchange rate applicable to the amount available for compensation under the 1992 Fund Convention would be that of the date of the adoption of the Record of Decisions in which he is authorised to commence payments.
- 3.8.24 A representative of the Shipowners' Club, part of the International Group delegation, took the floor to confirm that, whereas the Shipowners' Club had not yet set up a limitation fund in relation to this case, it intended to do so in the future.
- 3.8.25 All delegations that took the floor were in agreement to authorise the Director to commence payments in relation to the *Princess Empress* incident.

3.8.26 On the question of interim payments, all delegations that took the floor were in favour of authorising the Director to sign an Agreement on Interim Payments applicable to the *Princess Empress* incident, and considered that it should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Shipowners' Club before the signature of the Agreement.

***1992 Fund Executive Committee Decision***

3.8.27 The 1992 Fund Executive Committee noted that the Secretariat would continue to liaise with key stakeholders and to monitor developments closely and that it would respond in accordance with the terms of the 1992 Fund Convention.

3.8.28 The Executive Committee decided:

- (a) to authorise the Director to make payments in respect of losses arising out of this incident;
- (b) to authorise the Director to sign an agreement on interim payments with the Shipowners' Club in respect of this incident; and
- (c) that the agreement should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Club before the signature of the agreement.

**4 Compensation matters**

4.1	Lessons learned from the <i>Trident Star</i> Incident Document IOPC/MAY23/4/1	92AC		
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4.1.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/MAY23/4/1 regarding the lessons learned from the *Trident Star* incident.

4.1.2 The 1992 Fund Administrative Council noted that in November 2022, the 1992 Fund had held a wash-up meeting with the Shipowners' Club, the insurers of the *Trident Star*, to discuss the handling of the incident, in order to identify lessons to be learned and improve the procedures for future spills, especially incidents for which STOPIA 2006 applies.

4.1.3 The 1992 Fund Administrative Council took note of the conclusions of the meeting, as follows:

- (a) The excellent cooperation between the 1992 Fund and the Club under STOPIA 2006 sped up the process of reimbursement of the amounts paid by the Fund in compensation.
- (b) The *Trident Star* incident was the first case in which an agreement on standard terms relating to interim payments between the IOPC Funds and the Shipowners' Club was signed (document IOPC/OCT17/3/13, paragraph 8.2). Although a limitation fund was constituted by the shipowner's insurers, the insurers made interim payments to claimants. Once all the claims had been settled and actions in court had been withdrawn, the Club obtained from the Court the cancellation of the letter of undertaking that had been placed with the Court as guarantee to the setup of the limitation fund.

*2006 Memorandum of Understanding*

- (c) As there was a possibility that the liability limit applicable to the *Trident Star* under the 1992 CLC would be reached and that the 1992 Fund would have to pay compensation, the 2006 Memorandum of Understanding (2006 MoU) between the P&I Clubs and the 1992 Fund applied.

*Assessments/use of experts*

- (d) This case benefited from the knowledge and experience of the Singapore branch of the Shipowners' Club, in particular regarding the use of local experts.
- (e) One difficulty in this case was the novelty of some types of claims the 1992 Fund had not had to deal with before, such as the claims for loss of income by the container terminal affected by the pollution and claims for losses suffered by the shipping companies in relation to disruption to ship schedules due to contamination of the vessels or the berths allocated. It was helpful that the *Double Joy* incident gave rise to similar claims and the same experts could be used. In addition, the location of the Shipowners' Club branch, so close to the area affected by the pollution (Johor, Malaysia) made the sourcing of new experts easier.
- (f) Looking towards future incidents, it was agreed that the technological advances, brought about in particular during the pandemic, like the use of online meeting applications, will be of benefit for future incidents, so that meetings could be held between the Shipowners' Club, the IOPC Funds, the experts and claimants, which would facilitate the Fund's input in the instructions to the experts and discussions with claimants with complex claims.

*Limitation proceedings*

- (g) This is one of the incidents in which there was a difference between the time bar provided under the Conventions and the time limits to enter action in the limitation proceedings. The time limit for filing claims against the limitation fund was six months. That could have caused problems in that some claimants risked being left out of the limitation proceedings. Eventually, however, all the claims were entered in the limitation proceedings before the deadline.

*Contact with claimants*

- (h) In general, the process of dealing with the claims went smoothly. As there was a time limit of six months to enter claims in the limitation proceedings, most claims were entered in the proceedings.
- (i) The assessment of the biggest claim, from a large international shipping company, took longer mainly due to the lack of proper supporting documentation and the complexity of the claim, relating to costs and losses in respect of 42 vessels, due to the pollution of the container terminal. In addition, the movement restrictions during the pandemic extended the length of time that would have otherwise taken to assess the claim. However, this claim was also eventually settled out of court.

*STOPIA 2006*

- (j) STOPIA 2006 applied to this incident. The 1992 Fund commenced making payments to claimants once the 1992 CLC limit applicable to the *Trident Star* incident had been reached, and the Shipowners' Club reimbursed the 1992 Fund promptly after each Fund payment, and, therefore, the real compensation costs for the 1992 Fund were nil.

4.1.4 The 1992 Fund Administrative Council noted that the wash-up meeting had been a success, and that a number of valuable lessons had been identified from the incident which may be taken into consideration when handling future incidents.

*Statement by the delegation of Malaysia*

## 4.1.5 The delegation of Malaysia made the following statement:

‘This delegation wishes to extend our sincere appreciation and thanks to the Director of the IOPC Funds as well as the Secretariat for their tireless efforts, in particular on the wash-up meeting with the Shipowners’ Club, the insurers of the *Trident Star*.

This delegation also took note of the conclusions of the meeting, consisting of cooperation, interim payments agreement between the IOPC Funds and the Shipowners’ Club, assessments and use of experts, limitation proceedings, as well as contact with claimants.

This delegation is fully aware of the oil spill incident, which happened in 2016, and fully aware that there are needs for improvement, in particular on the STOPIA as well as TOPIA regime. This is because people change from time to time, communication interfaces and difficulties may exist between governments and private entities, new resources, as well as vast development of the liability and compensation regime. Perhaps, there is a need for continuous capacity building for such a regime, which takes into consideration the technology advancement and future cooperation and collaboration to be established and secured, such as MoU between the maritime administration and IOPC Funds or entity representing insurance regime to be considered.

Chair, noted on the closing of the incident and our sincere appreciation, this delegation shared a small token which is a small chocolate distributed this morning with the Secretariat as well as all Member States who are present today.’

*Debate*

4.1.6 The observer delegation of the International Group took the floor to thank the Secretariat for the cooperation with the Shipowners’ Club in this case, and for the wash-up meeting. That delegation hoped that more wash-up meetings would be organised for other incidents, since in their view, wash-up meetings were important to improve the general handling of the compensation process.

4.1.7 The Chair concluded the discussion remarking the harmonious cooperation between the 1992 Fund, the P&I Club involved and the Member State. He added that the same pattern had been followed in a number of other recent incidents, facilitating their final settlement, and that the cooperation between the interested parties seemed to have reached a satisfactory cruise speed. He also noted the effective implementation of STOPIA 2006 in this incident.

**1992 Fund Administrative Council**

4.1.8 The 1992 Fund Administrative Council took note of the information submitted in document IOPC/MAY23/4/1.

4.2	<b>The potential impact of sanctions on the international liability and compensation regime</b> <b>Document IOPC/MAY23/4/2</b>	<b>92AC</b>		<b>SA</b>
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4.2.1 The governing bodies took note of document IOPC/MAY23/4/2 which contained information on the potential impact of sanctions on the international liability and compensation regime.

4.2.2 The governing bodies recalled that in March 2022, the Director had submitted document IOPC/MAR22/8/1 containing at its Annex, a draft circular of the IMO Legal Committee (IMO document LEG109/16/1 paragraphs 5.14 and 5.15) providing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates.

- 4.2.3 The governing bodies noted that from 5 December 2022, pursuant to Articles 3m and 5aa of the European Union (EU) Regulation 833/2014 (the Regulation), further restrictions had come into place which governed the carriage and insurance of Russian crude oil and products, and the prohibition of transactions with the entities that are controlled by the Russian Federation, which may include contributors to the IOPC Funds. As a result, many members of the International Group were unable to insure such vessels carrying Russian crude oil and products, meaning that the owners needed to seek insurance from other non-IG P&I Clubs.
- 4.2.4 The governing bodies also noted that a price cap arrangement on Russian seaborne crude oil was imposed by the EU and allies in the Group of Seven (G7), designed to allow European affected operators to insure and transport Russian oil to third countries provided its price remained strictly below the cap (the 'Price Cap Scheme').
- 4.2.5 The governing bodies further noted that, at the IMO Legal Committee which was convened from 27 to 31 March 2023, a number of States had submitted document LEG 110/5 which requested flag States to ensure that tankers under their flag adhere to the measures which lawfully prohibited or regulated ship-to-ship (STS) transfers, and that such vessels adhere to the spirit of the safety requirements in IMO conventions and practice safe shipping standards to minimise the risk of oil pollution.
- 4.2.6 It was noted that whilst the 1992 Fund Convention and 2003 Supplementary Fund Protocol contained no exemptions from liability for sanctionable or sanctioned events, and were not subject to domestic or international sanction regulation and legislation, a number of practical difficulties may arise if dealing with an incident involving a vessel laden with Russian oil, including the possibility that the 1992 Fund may have to pay additional compensation if a shipowner or its insurer fail to establish a limitation fund, or have difficulties establishing bank accounts from which to pay compensation.

#### *Sanctions-avoiding vessels*

- 4.2.7 It was also noted that since the introduction of the international sanctions, several press reports had highlighted the high number of vessels which were attempting to circumvent the sanctions by various methods, including by turning off their Automatic Identification System (AIS) transponders so as to disappear from coverage, in order to conduct illegal 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 an increased risk of pollution.
- 4.2.8 It was further noted that press reports highlighted a dramatic increase in the number of vessels within the so-called 'ghost' or 'dark' fleet, with some estimates as high as 600 vessels now participating in such a fleet, and other press reports listing a record 311 mid-range tankers sailing without cargo or destination. It was also noted that records showed that only 33 empty vessels had signalled the Russian Federation as their destination, the lowest on record and down from 103 at the beginning of 2023.

#### *Provision of insurance by International Group insurers – compliance with Price Cap Scheme*

- 4.2.9 The governing bodies noted that on 5 February 2023, the EU and its G7 allies had expanded the Price Cap Scheme and set two price caps (USD 45 and USD 100) depending on whether the petroleum product traded at a discount or a premium to crude oil.
- 4.2.10 The governing bodies also noted that under the Price Cap Scheme, the International Group are permitted to provide P&I cover for shipments of Russian petroleum products to countries which are not part of the Price Cap Coalition provided that the price of the cargo remains below the

relevant price cap, per barrel, from the time it is loaded until it has cleared customs at the port of destination.

4.2.11 The governing bodies further noted that a shipowner or charterer that intends to transport Russian petroleum product cargoes after 5 February 2023, needs to provide its P&I Club with an attestation that it will not, for the duration of the insurance period, carry Russian petroleum product cargoes which has been sold at a price that, for the period it is on board the vessel, is in excess of the price caps.

4.2.12 It was noted that this enabled shipowners that were able to provide and comply with the attestation provisions, to be insured by an International Group P&I Club, for the limited destinations covered by the Price Cap Scheme, but for voyages outside those permitted under the Regulations, no such insurance was permitted and shipowners would have to seek insurance from insurers not covered by the sanctions.

*Provision of insurance by non-IG insurers*

4.2.13 It was also noted that there was a likelihood that shipowners wanting to transport oil to destinations under the Regulations would still need to insure with non-IG insurers not caught by the sanctions, and there was a risk that some of those insurers may not be so willing to comply with their obligations under the 1992 CLC, meaning that the 1992 Fund may have to pay additional compensation if a shipowner or its insurer failed to establish a limitation fund.

*Provision of services by shipping registries*

4.2.14 It was further noted that a number of press reports had highlighted the increase in the number of ships undertaking flag transfers to those States with less enviable inspection records, and that the Paris Memorandum of Understanding (MoU) database which tracked port State detentions, had listed one specific State for which the detention rate for 2022 worsened, with some 26.6% of inspections of that State's flagged vessels resulting in the ship being held, and more than 90% of inspections finding at least one deficiency in 2022. The governing bodies noted that 'dark activities' by that State's flagged vessels in the South Atlantic increased from seven events in 2021, to 315 in 2022.

*STS operations*

4.2.15 The governing bodies also noted that the number of STS operations being undertaken, especially in the Strait of Gibraltar near Ceuta, had increased dramatically between the end of 2022 and the beginning of 2023 with many more STS operations likely to occur as the purchasers of the oil sought to benefit from better economies of scale by transferring oil to very large crude carriers (VLCCs).

*The use of ageing vessels*

4.2.16 The governing bodies further noted that the result of the growing 'ghost' or 'dark' fleet had been an increase in the age of the tanker fleet calling at Russian ports, and it appeared that a number of shipping companies wished to operate outside the international regulatory order; those operators were being welcomed by some open registries, which, with little regulatory oversight appeared to be willing to accept ships on the fringes of the global safety regime.

*Banking restrictions*

4.2.17 It was noted that the practical issues (such as the ability to establish bank accounts from which to pay compensation for an incident) that may arise if an incident occurs involving a vessel laden with Russian oil or within the Russian Federation itself, had not yet been tested.

*Potential mitigating actions*

- 4.2.18 The governing bodies recalled that at its March 2022 meeting, it had fully endorsed the action points contained in the 2022 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, and had encouraged Member States to adhere to its recommendations, and to recall their existing obligations pursuant to IMO Circular No. 3464.
- 4.2.19 Additionally, flag States were encouraged to comply with the suggestions detailed in IMO document LEG 110/5, by ensuring that tankers under their flag adhere to measures which lawfully prohibited or regulated STS transfers. The governing bodies also noted that port States were encouraged to ensure enforcement of the safety and liability conventions on such vessels, and to ensure that STS transfer operations were conducted in accordance with the applicable safety requirements in IMO conventions, and should those States become aware of vessels 'going dark', they should consider subjecting such vessels to enhanced inspections as authorised and notifying the vessel's flag administration as appropriate.
- 4.2.20 The governing bodies further noted the guidance document issued by the Government of the United Kingdom (UK) for the provision of maritime transportation of, and associated services for, certain oil and oil products. It was noted that the document contained exceptions to the prohibitions otherwise in place, specifically for when dealing with an emergency, stating that the prohibitions will not apply to any person performing an act that assists 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. It was also noted that similar exceptions were permitted for providers of financial/brokering services or funds to anyone who was supplying or delivering by ship, oil and oil products from a place in the Russian Federation to a third country, or between third countries, if it was to deal with an emergency, for example, to clear up an oil spill.
- 4.2.21 It was recalled that within IMO Circular Letter 4548 of 7 April 2022, the Russian Federation stated it guaranteed fulfilment of all assumed obligations in their entirety under the international merchant shipping instruments it had previously ratified, and confirmed full validity 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.

*Debate*

- 4.2.22 One delegation, noting that the G7/EU and their coalition members agreed the Price Cap Scheme, which permitted International Group P&I Clubs to issue insurance documents if the price remained below the price cap level for the duration of the voyage, emphasised the importance of obtaining sufficient P&I insurance. That delegation, noting the increase in numbers of vessels in the 'dark fleet', and the potential increase in mystery spills and increased financial burden upon the IOPC Funds, stated that it was imperative to prevent such increase in burden, and crucial for flag and port States and all parties to closely monitor any suspicious activities and to co-operate in preventing 'dark' operations and to ensure the safety of maritime transport in accordance with the maritime conventions.
- 4.2.23 A number of delegations shared their concerns regarding the increase in sanctions-avoiding actions that could lead to an increased risk of incidents and increased burden upon the IOPC Funds and its contributors. One delegation stated that the dangerous practice of STS oil transfers in the open ocean and the obscuring of the identity of ships posed significant threats to the environment, safe navigation as well as the IOPC Funds and undermined the spirit of the MARPOL and SOLAS Conventions, making it almost inevitable that an incident would occur given the growth of the 'ghost fleet', and the age and quality of the ships within it.



- 4.2.24 That delegation further stated that those 'dark' operations exposed vulnerabilities in the marine industry and threatened the regulatory regime, and that those States that actively imported sanctioned oil on board vessels that are old and substandard, operating without known P&I insurance coverage, while practising dangerous activities, exposed all Member States of the IOPC Funds to an increased risk of oil pollution which may result in the payment of large sums of compensation. That delegation called upon each State to do its part to protect the regime, the industry and the public by enforcing safety requirements and taking other steps to reduce the purchase and transportation of sanctioned oil.
- 4.2.25 Noting that the STS operations undertaken in open waters were not in accordance with the safety measures contained within various maritime conventions, one delegation stated that such operations could only lead to an increase in risk and exposure to the 1992 Fund and Supplementary Fund. That delegation encouraged all States to adhere to the guidance provided at the IMO Legal Committee in March 2023, referring specifically to document LEG 110/5, to act as a deterrent and help to mitigate risk.
- 4.2.26 Another delegation stated that shipowners insuring with non-IG P&I Clubs could lead to an increased burden on the IOPC Funds and stated that the issues of safety posed by the 'dark' or 'ghost' fleet, was being considered by the EU.
- 4.2.27 The Director recalled that he had spoken at the IMO Legal Committee in March 2023, and had taken the opportunity to warn of the increased risks to Member States, the environment and contributors, posed by the 'dark fleet'. The Director emphasised that flag States and port States had an obligation under the Conventions to: ensure that tankers had sufficient insurance; flag States had an obligation to ensure vessels were issued with the correct CLC certificates; and port States to ensure vessels had adequate insurance before allowing vessels into their waters. The Director noted that there was an increased risk profile caused by the 'dark fleet' and the illegal STS operations being undertaken. The Director noted that there was a lack of mitigating actions that the IOPC Funds could take to reduce the risks it faced.
- 4.2.28 The delegation of the Russian Federation stated that the document plainly highlighted the negative impact of sanctions on the whole of the maritime industry, and the potential detrimental effect it could have on the marine environment. Furthermore, it was stressed that these concerns, as well as the other concerns articulated by previous delegations, would easily be addressed by removing the sanctions as their primary cause. In response, another delegation stated that the sanctions were a direct response to the war of aggression by Russia against Ukraine.
- 4.2.29 The observer delegation of the International Group recalled that it had previously submitted a document at the last meeting of the governing bodies, and provided some clarifications regarding the attestation required by shipowners and insurers to be able to transport Russian oil products under the Price Cap Scheme. Noting that the attestation was similar to the last piece in the puzzle of compliance with the body of legislation that sat behind the issuance of the attestation itself, that delegation stated that the attestation did not absolve the shipowner and insurer from the responsibility of conducting due diligence and 'know your client' procedures, and that shipowners and their insurers were Tier 3 parties, which relied on an attestation provided by a Tier 1 party directly involved in the sale or purchase of the oil product.

#### ***1992 Fund Administrative Council and Supplementary Fund Assembly***

- 4.2.30 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of the information submitted in document IOPC/MAY23/4/2, and the statements made by those that took the floor, noting that it was a delicate, complex issue, which relied upon control and co-operation between Member States, to avoid the damage and risks that were involved in the current political/military situation. The Chair of the Administrative Council also noted that there was

already an ongoing initiative regarding non-IG Clubs from the Audit Body. The Chair further stated that there was potentially a serious issue with the banking system, due to the stringent limitations banks are subject to as a result of the sanctions. Those limitations meant that even if effective insurance was in place for an incident, it may be impossible for compensation to be paid.

- 4.2.31 The Supplementary Fund Assembly noted that most delegations that took the floor were party to the Supplementary Fund Protocol and were concerned regarding the increasing risks that were inherent with an uninsured or under-insured vessel, further noting that such an incident involving a non-IG Club may not benefit from the voluntary Tanker Oil Pollution Indemnification Agreement (TOPIA 2006) (as amended 2017) arrangement, leaving contributors to bear the full SDR 547 million (the difference between the 1992 Fund limit of SDR 203 million and the Supplementary Fund limit of SDR 750 million).

## 5 Treaty matters

5.1	<b>2010 HNS Convention Documents IOPC/MAY23/5/1 and IOPC/MAY23/5/1/2</b>	92AC		
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*Document IOPC/MAY23/5/1*

- 5.1.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/MAY23/5/1, relating to the preparations for the entry into force of the 2010 HNS Convention including recent outreach and technical assistance activities undertaken by the IOPC Funds Secretariat.
- 5.1.2 The Administrative Council noted that, since October 2022, there had been no further ratification of or accession to the 2010 HNS Protocol, leaving the number of contracting States at six: Canada, Denmark, Estonia, Norway, South Africa and Türkiye. It was also noted, however, that a number of States had been preparing their legislation, had contacted their relevant industry and, in some cases, had developed tools to facilitate the submission of HNS reporting documentation. It was noted that those States had indicated their intention to become members of the 2010 HNS Convention within the next two years.
- 5.1.3 It was noted that the Secretariat continued to make 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.
- 5.1.4 The Secretariat reported in detail in document IOPC/MAY23/5/1 on various items of work it had undertaken since October 2022, in particular with regard to: the HNS Finder (the online database of substances that fall within the definition of HNS); the issuing to States of a note summarising the main HNS reporting issues to be resolved as well as two questionnaires; the draft 2010 HNS Convention Claims Manual; and improvements to the HNS website ([hnsconvention.org](https://hnsconvention.org)).
- 5.1.5 It was noted that among the tasks that still needed to be undertaken or considered prior to the first HNS Fund Assembly were: a draft Memorandum of Understanding (MoU) between the HNS Fund and the International Group; an agreement on the funding system of interim payments; draft Rules of Procedure for the HNS Fund Assembly; and draft Internal and Financial Regulations for the HNS Fund.
- 5.1.6 It was noted that, given the current progress towards accession/ratification of the Convention, the first meeting of the HNS Fund Assembly was likely to be no earlier than 2027.

*Document IOPC/MAY23/5/1/2*

- 5.1.7 The Secretariat reported that, in January 2023, it had finalised a note summarising the main HNS reporting issues to be resolved before entry into force of the 2010 HNS Convention and proposing a number of possible solutions to those issues. The note also contained two questionnaires to encourage contracting States, and those expected to soon ratify, to provide information on their domestic legislation regarding HNS reporting. They were intended to give States the opportunity to share issues they had faced and to raise any questions they might have regarding some of the more advanced issues related to HNS reporting.
- 5.1.8 The Secretariat reminded the 1992 Fund Administrative Council in document IOPC/MAY23/5/1/2 that prior to the entry into force of the Convention, contracting States needed only to report the total quantities of contributing cargo received in their country, without specific details. However, once the Convention was in force, more detailed HNS reports and a list of companies would be required. The Secretariat highlighted the importance, therefore, of ensuring that the applicable rules relating to reporting are clear for all parties and integrated in their domestic law before the 2010 HNS Convention enters into force.
- 5.1.9 It was noted that in distributing those questionnaires, one of the key goals of the Secretariat was to gather information to help to improve the existing HNS Reporting Guidelines adopted in 2013 and that 12 fully completed questionnaires had been received, with five further States having responded to the request in general terms.
- 5.1.10 The Secretariat reported that the results of the questionnaires had highlighted that not all contracting States were completely ready to meet the requirements for the entry into force of the Convention and that some States required particular assistance from the Secretariat to ensure the full implementation of the Convention in the near future.
- 5.1.11 The 1992 Fund Administrative Council noted the results of the questionnaires, as summarised in document IOPC/MAY23/5/1/2.
- 5.1.12 In particular, it noted the considerations in the document relating to the definition of the receiver of contributing cargo in Article 1.4(a) of the 2010 HNS Convention. The Secretariat suggested that such a definition has the potential to bring about more administration and regulation for not only the Physical Receiver, but the Principal too, and referred to its proposal in the questionnaire that the most practical solution would be for States to use Article 1.4(b).
- 5.1.13 The 1992 Fund Administrative Council noted the proposal that the decision be taken that States must ensure that their national law identifies the Physical Receivers as the 'Receiver' of contributing cargo in their ports and terminals and that Article 1.4(b) under which States can rely on the physical receiver only, should be used, and not use the Agent/Principal option within Article 1.4(a). The Secretariat stated that, for the reasons set out in the document, this would significantly simplify the management of reporting and contributions for States and for the HNS Fund.
- 5.1.14 The Secretariat reported that another challenge for States was to identify their actual receivers and be in a position to provide individual contributing cargo reports when the Convention comes into force. The Secretariat pointed out that, from the comments made in the questionnaires, the relevant industry associations were the most useful resources and should be contacted by the States authorities.

*HNS Workshop in April 2023*

- 5.1.15 It was recalled that an international workshop aimed at assisting States in their work towards ratification of the 2010 HNS Protocol had been organised by Canada on 3 and 4 April 2023 in

cooperation with the Secretariats of IMO and the IOPC Funds. A summary of the discussions at the workshop contained in document IOPC/MAY23/5/1/2 was noted.

- 5.1.16 It was noted that the programme had covered a wide range of issues, including: domestic implementation; risks and claims from HNS incidents; industry views on the importance of the 2010 HNS Convention; HNS reporting requirements (delivered by IMO and the IOPC Funds); and the future implementation of the Convention. The 1992 Fund Administrative Council noted that the event had included expert speakers who shared their experiences from their own specialised areas. It was also noted that a number of States had shared their experiences relating to the implementation of the Convention and several industry representatives had expressed their support for the Convention whilst sharing important insights into their practices.
- 5.1.17 It was noted that the Director had taken the opportunity of the workshop to highlight his concerns that the management of HNS reporting would be significantly more complex than for oil reporting, would require more human and technical resources in States and in the HNS Fund, and would raise costs, which would be borne by the governments and the industry. It was noted that the Director had referred at the workshop to the proposals for a simplified method of HNS reporting, as contained in the questionnaires, and had reiterated the importance of finding pragmatic solutions.
- 5.1.18 Among other discussions, the suggestion to prepare a short one-page document was made, which was identified as high-level and to the point and targeted at Ministerial level, answering the fundamental questions: what are the benefits of the Convention and the solutions now being adopted, to make its management easier.
- 5.1.19 The 1992 Fund Administrative Council noted the summary of the moderator of the workshop, Mr François Marier, Canada, as set out in document IOPC/MAY23/5/1/2, in which he referred to:
- the importance of putting into place a global HNS liability and compensation regime;
  - the interest of States to coordinate their implementation, highlighting the collaboration of European States;
  - the interest for more tools and technical training for States considering becoming a Party to the Convention;
  - the progress on ratification by countries; and
  - the timeframe for entry into force of the Convention once the conditions were met, i.e. 18 months and the need for many decisions to be taken during that time.
- 5.1.20 The IOPC Funds Secretariat confirmed that it would continue to take opportunities to promote the entry into force of the 2010 HNS Convention, to engage with interested States and other key stakeholders, and to share information with industry representatives, through the delivery of workshops and outreach activities. In that respect, the Secretariat announced the intention to organise another workshop immediately prior to the sessions of the IOPC Funds governing bodies in the first half of 2024.
- 5.1.21 The Secretariat also informed the Council that it was available to assist States with questions relating to subjects such as the definition of 'Receiver', the use of the HNS Finder, the identification of receivers or complicated business situations such as some ship-to-ship operations. As well as providing responses to such questions electronically, the Secretariat also confirmed its availability to participate in-person, where useful, in meetings with a State's relevant administration and/or industry representatives.

5.1.22 It was also explained that, as the number of enquiries the Secretariat receives increases, it would make more use of and develop further the Blog section of the HNS website.

*Debate*

5.1.23 The Chair of the 1992 Fund Administrative Council thanked the Secretariat for the two detailed documents and, in particular, for the information on the results of the questionnaire exercise, which had demonstrated the best efforts conducted by all those States who had responded. In reference to some of the issues raised in the questionnaires, he mentioned that industry was often more adaptable to change than government, and that it should be able to respond quickly to any requests from authorities to revise and implement new rules and procedures relating to the carriage of HNS.

5.1.24 Several delegations spoke to express their appreciation to Canada, IMO and the IOPC Funds for organising the HNS workshop in April 2023.

5.1.25 The delegation of Denmark thanked the Secretariat for distributing the questionnaires and for the analysis of the results. That delegation noted that since it had implemented the 1996 version of the 2010 HNS Convention twenty years ago, the workshop had prompted them to reconsider its current implementation and reporting procedures. That delegation commented that it saw some merits to the proposal relating to the definition of 'Receiver' but pointed out that it had already implemented the alternative definition and had established an entire reporting system on that basis. It noted, however, that the legislative process to make a change at this stage would be lengthy but could be done.

5.1.26 The delegation of Denmark also expressed some reservations in respect of the burden on the physical receivers and indicated the need for its Government to engage with the industry on the matter before considering it further. It also expressed its interest in the steps being taken to introduce a new digital system for reporting, noting that such system would help States with the complexities of reporting.

5.1.27 The delegation of France thanked the Secretariat for the work undertaken to facilitate the entry into force of the Convention and indicated that it was in support of the Secretariat's Action Plan. It expressed its hope that France would soon be in a position to ratify the Convention, noting that a vote was currently, on 24 May, taking place in the Senate on the relevant legislation and that it would be sent to its National Assembly shortly afterwards. That delegation also referred to the April 2023 workshop and stated that the clarification provided of the current issues had been very useful and the recognition of the importance of a collaborative approach was important.

5.1.28 The delegation of Canada expressed its appreciation for the work undertaken by the Secretariat and the recent progress made. It offered its support to States to help them with their preparations to join the Convention. It noted that, in its view, the common definition of 'Receiver' still needed to be discussed by States as a group in order to reach an agreement. Canada expressed the concern that, given the proposal by the IOPC Funds on that subject had been made at such a late stage, it may not be possible to implement it.

5.1.29 The delegation of the Netherlands expressed its appreciation for the workshop, its content and the opportunity to engage with fellow policy makers and experts, stating that such events were instrumental to progress being made by States and encouraged such workshops to be held more often. It indicated that, with regard to the progress towards ratification by the Netherlands, the relevant package of legislation was with Parliament and it was on track to ratify the Convention in 2024, together with Belgium and Germany. The delegation reported that, in 2022, an exercise had been undertaken to identify reporting companies and, in 2023, a first test of reporting had taken place. It was reported that during that exercise, many questions were raised by industry, including

in respect of transshipment. That delegation stated that it was grateful to have been able to submit questions to the Secretariat, and that it had done so several times.

- 5.1.30 The delegation of Jamaica explained that it was currently working together with the Secretariat on a specific question related to the status of certain ship-to-ship transfer activities in Jamaican waters and expressed its appreciation for the support provided.
- 5.1.31 The delegation of Norway thanked the co-organisers for the workshop and commented on the usefulness of the hybrid format of the event. Regarding the definition of 'Receiver', that delegation indicated that the current legislative arrangements in Norway limit the definition to the one described in Article 1.4(a) but noted that they were willing to discuss this further.
- 5.1.32 The delegation of Belgium reaffirmed its commitment to joining the HNS Convention and reported that the relevant legislation had been adopted in 2022 and that the ratification process was ongoing. It informed the Administrative Council that a temporary reporting system had been put in place in Belgium and that the system used the lower reporting cargo figures as per the current Guidelines. That delegation referred to the support it has from the chemical and shipping industries and confirmed that Belgium was open to discussion on solutions to the definition of 'Receiver'.
- 5.1.33 The delegation of Colombia indicated that efforts were being made to bring about the approval and ratification of the 2010 HNS Convention in that State.
- 5.1.34 The observer delegation of IMO welcomed the positive comments regarding the workshop as well as the positive progress made by the States who had committed to become parties to the HNS Convention. Nevertheless, that delegation noted that six further ratifications were required. It was pleased to learn that States were working together on the pertinent issues and reassured to hear at the workshop the unanimous support for the Convention expressed by the many industry representatives who had participated. The delegation of IMO reminded States that the deadline for the annual submission of HNS cargo reports was approaching on 31 May 2023, and reported that only two of the six Contracting States had so far submitted reports. It urged the remaining States to submit their reports as soon as possible.
- 5.1.35 The observer delegation of the International Group made reference to document IOPC/MAY23/5/1/2 paragraph 3.9, regarding the positive declaration of France, Belgium and the Netherlands at the workshop that they would issue HNS Convention certificates to ships from non-States Parties. It noted, however, that this was likely to be a sizeable task, particularly in the first few years after entry into force. That delegation suggested that this issue should be taken into account and revisited closer to the entry into force.
- 5.1.36 In conclusion, the Chair of the Supplementary Fund Assembly, who, in his capacity as representative of Canada, had acted as moderator for the workshop, indicated that based on today's shared information, it was possible that six new States would ratify the Convention and more than 40 million tonnes of cargo would be reported to the General HNS Account in 2024, meeting the required conditions for entry into force. He reminded States that the goal was to have a global framework in place to provide compensation. Whilst he recognised that safety had significantly improved since the adoption of the original Convention, he noted that shipping fuels had since changed and that new fuels, expected to be transported in large quantities, are HNS products, increasing the risk of HNS incidents.

#### ***1992 Fund Administrative Council***

- 5.1.37 The 1992 Fund Administrative Council thanked the Secretariat for its continued efforts to prepare and assist States for the entry into force of the 2010 HNS Convention and noted that the Director would report on progress at the next session of the 1992 Fund Assembly.

**6 Financial policies and procedures**

6.1	<b>Election of members of the joint Audit Body — Procedures Document IOPC/MAY23/6/1</b>	92AC		SA
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6.1.1 The governing bodies took note of the information contained in document IOPC/MAY23/6/1 regarding the election of members of the joint Audit Body.

6.1.2 The governing bodies noted that at their October 2001 sessions, the governing bodies had decided to establish a joint Audit Body to provide expert advice and enhance the effectiveness of Member States' oversight in the key areas of internal control, financial reporting and risk management.

6.1.3 The governing bodies also noted that in accordance with the Composition and Mandate of the Audit Body, the joint Audit Body of the 1992 Fund and the Supplementary Fund was composed of seven members elected by the 1992 Fund Assembly: six named individuals nominated by 1992 Fund Member States, and one named individual not related to the organisations, with expertise and experience in financial and audit matters (an 'external expert'), nominated by the Chair of the 1992 Fund Assembly.

6.1.4 The governing bodies further noted that the members of the joint Audit Body would hold office for three years, once renewable, while the external expert should hold office for three years, twice renewable.

6.1.5 It was noted that the term of office of the present members of the Audit Body would expire at the November 2023 sessions of the IOPC Funds' governing bodies and that four of the current members of the Audit Body appointed in December 2020 would be eligible to be nominated for a second term.

6.1.6 The governing bodies noted that the Director would issue a circular shortly after the May 2023 meeting informing 1992 Fund Member States that nominations of candidates for election to the Audit Body, accompanied by their curriculum vitae, should be submitted to him by 15 September 2023 at the latest. It was also noted that in the circular attention would be drawn to the fact that nominations could only be made by 1992 Fund Member States and that present members of the Audit Body who wished to be re-elected for a second term of three years would also need to be nominated by 1992 Fund Member States. It was further noted that Mrs Alison Baker had been appointed as the external expert of the Audit Body for a for a term of three years from 1 January 2022 to 31 December 2024.

***1992 Fund Administrative Council and Supplementary Fund Assembly***

6.1.7 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information provided on the election of members of the joint Audit Body.

**7 Secretariat and administrative matters**

7.1	<b>Underlease of the IOPC Funds offices — Extraordinary increase to the 2023 service charge Document IOPC/MAY23/7/1</b>	92AC		
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7.1.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/MAY23/7/1 on the extraordinary increase to the 2023 service charge.

7.1.2 It was recalled that on 15 February 2016, the Secretary-General of IMO and the Director of the IOPC Funds had signed an agreement whereby IMO had agreed to underlet office accommodation to the IOPC Funds on the first floor, rear wing, in its Headquarters building (the Agreement). It was

also recalled that the terms of the underlease (the superior lease being held between IMO and the UK Government) had entered into effect on 1 March 2016 and would expire on 25 October 2032 (document IOPC/APR16/7/1).

- 7.1.3 It was noted that under the terms of the underlease, in addition to the rent, the IOPC Funds should pay a service charge in proportion to the area it occupied, to cover common services provided by IMO. It was also noted that the service charge was calculated on a calendar-year basis and might be subject to annual increases in line with the UK Consumer Price Index (CPI) but that those increases could not exceed 3% in any year unless the UK CPI remained at or above 3% for two or more consecutive years.
- 7.1.4 The 1992 Fund Administrative Council noted, however, that due to the extraordinary increase in energy costs, IMO had forecast a 38% increase to the 2023 service charge and had asked the IOPC Funds to share this cost. It was also noted that this represented an increase of £44 325, increasing the service charge contribution from the IOPC Funds for 2023 from £116 559 to £160 884.
- 7.1.5 The Secretariat explained that IMO had not advised the IOPC Funds of the extraordinary increase to the 2023 service charge by 1 July 2022 and, noted that the increase requested by IMO exceeds the 3% cap in service charge increase, pursuant to the terms of the underlease. It was noted that, as the IOPC Funds had not been advised of the increase to the 2023 service charge by 1 July 2022, this expense had not been included in the 2023 budget for the 1992 Fund which had been presented at the October 2022 sessions of the governing bodies.
- 7.1.6 The 1992 Fund Administrative Council was invited to decide whether to authorise the Director to make payment of the extraordinary increase to the 2023 service charge from the Chapter 'Unforeseen expenditure' of the 2023 budget of the 1992 Fund.

#### *Debate*

- 7.1.7 Several delegations recognised that the request for payment of the extraordinary increase to the 2023 service charge had been made by IMO in response to an exceptional situation and confirmed that they had no objection to the Director making payment on this occasion.
- 7.1.8 A number of delegations stated, however, that any authorisation to make payment would be applicable to this particular request only and on the understanding that none of the rights of the underlease agreement would be waived. One delegation proposed that the Director should liaise with the IMO Secretariat to avoid a repetition of the situation in the future.
- 7.1.9 In response to a question from one delegation, the Director clarified that he had discussed the 2023 request by IMO with the Audit Body as well as an earlier request that had been received from IMO relating to the service charge for 2022. He explained that he had sought the views of the Audit Body on his intention to request authorisation from the 1992 Fund Assembly to pay the 2023 request, since it had been received after the budget for 2023 had been approved, and also on his decision not to pay the request relating to 2022, which had been received too late and after the closure of the 2022 accounts. He confirmed that the members of the Audit Body had agreed with both his intention to present the 2023 request to the Assembly and his decision not to retrospectively pay the increased costs relating to 2022.
- 7.1.10 One delegation enquired as to what the alternative would be if the Administrative Council decided not to pay the additional costs and expressed concern that, as an IMO Member State, it would be requested to pay such costs both to IMO and to the IOPC Funds. The Director confirmed that under the terms of the underlease, the 1992 Fund was not obliged to pay the additional costs, but clarified



that there would be no duplicate payments by States since any amount paid by the 1992 Fund would be deducted from the amount required from IMO Member States.

- 7.1.11 The Director pointed out that given the high rate of inflation in the UK, the IOPC Funds should expect increased energy bills in the future. He reported, however, that he had established a practice whereby the IOPC Funds Secretariat would meet regularly with the IMO Administrative Division to ensure that the Funds Secretariat is made fully aware of any anticipated increases in costs in sufficient time to prepare the annual budget for the organisation, incorporating such energy bills.

***1992 Fund Administrative Council decision***

- 7.1.12 The 1992 Fund Administrative Council noted the request made by IMO and instructed the Director to make payment of £44 325 from the Chapter 'Unforeseen expenditure' of the 2023 budget of the 1992 Fund.
- 7.1.13 It also instructed the Director to confirm to IMO that this authorisation had been given for this specific occasion only, taking into account the exceptional situation relating to increased energy costs, and that any future anticipated increase to costs should be communicated to the Secretariat in sufficient time to be considered by the 1992 Fund Assembly as part of the draft budget for the 1992 Fund.

7.2	<b>Support provided to Member States Document IOPC/MAY23/7/2</b>	<b>92AC</b>		<b>SA</b>
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- 7.2.1 The governing bodies took note of the information contained in document IOPC/MAY23/7/2 with regards to the training, educational and outreach activities delivered by the Secretariat since October 2022, and the activities and support services it plans to offer to Member States in 2023.
- 7.2.2 It was noted that the IOPC Funds' recent practice of offering training activities and support in a variety of formats had been well received by Member States and the Secretariat had seen a further increase in demand for such events and other services in the first quarter of 2023.

*Annual activities*

- 7.2.3 The Secretariat reminded the governing bodies of the activities that it organises each year, which are aimed at providing support and training to Member State representatives, and encouraged attendance.
- 7.2.4 It was noted that the IOPC Funds Annual Academy (formerly Short Course), which is a week-long training activity supported by the International Maritime Organization (IMO), the International Group, INTERTANKO, ITOPIF and the International Chamber of Shipping (ICS), was set to be held in-person in London between 12 – 16 June 2023.
- 7.2.5 It was also noted that the annual half-day Induction Course, which is designed to particularly benefit meeting delegates who are either new to the IOPC Funds or have little prior knowledge of the organisations, will take place shortly before the November 2023 sessions of the governing bodies. It was confirmed that the exact date and application process for this year's course would be announced in July 2023.
- 7.2.6 The Secretariat referred to the informal lunch meetings hosted by the Director at the IOPC Funds' offices two to three times per year. It was noted that these meetings provided an opportunity for regional groups of London-based representatives from Member and non-Member States to learn more about the organisations and the role of Member States in an informal setting. It was noted that the most recent event was held in February 2023 for representatives of the European region and that the next regional lunch meeting was expected to be organised in July 2023.

- 7.2.7 The Secretariat announced that it had developed a webinar series which was intended to cover all aspects of compensation for oil pollution in 15-minute presentations, followed by 15 minutes of questions. It was noted that the Webinar Series will be open to any interested party and that each of the 11 webinars in the series will be delivered at three different times to facilitate participation from various time zones. It was noted that registration for the first webinar was expected to open in August 2023.
- 7.2.8 Member States were encouraged to keep the Secretariat informed of changes to any relevant post-holders or contact details to ensure that invitations to and notifications of such events are correctly addressed.

*Training and educational activities organised upon request*

- 7.2.9 It was noted that the Secretariat regularly contributes to events organised by fellow organisations and stakeholders to create awareness and promote better understanding of the role of the IOPC Funds and that it works in particularly close collaboration with IMO, the International Group and ITOPF. The Secretariat reminded the governing bodies that it also attends national and regional workshops in person and runs online activities upon request for both Member and non-Member States directly.
- 7.2.10 It was noted that since the October 2022 sessions of the governing bodies, as reported under the news section of the website, the Secretariat had participated in events organised by RAMOGEPol, the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), the IMO-IPIECA Global Initiative for West, Central and Southern Africa (GI WACAF Project), the IMO-IPIECA Global Initiative for South East Asia (GI SEA Project), ITOPF, the International Group, Cedre and the European Maritime Safety Agency (EMSA).
- 7.2.11 It had also organised and delivered events directly with Member States, including short, targeted online training sessions for those State representatives working on specific areas of work relating to the IOPC Funds, such as oil reporting and contributions. It was noted that such online events can usually be organised within a month of the request being received and that for workshops or training events in person, to be held in the State concerned, a minimum of three-months' notice is usually required.
- 7.2.12 Interested Member States were encouraged to contact the Secretariat to discuss any training or support requirements using the email address [externalrelations@iopcfunds.org](mailto:externalrelations@iopcfunds.org) or alternatively, to discuss their training needs with the IMO Technical Cooperation Division.

*Debate*

- 7.2.13 One delegation thanked the Secretariat for the various training, educational and outreach activities that it provided for the assistance of Member States in understanding the general claims process and implementation of the Conventions. That delegation noted that the Annual Academy was a very popular and useful training event, which was self-funded and held in-person, in London, with limited spaces available. That delegation suggested that in order to facilitate wider participation in the Academy, future events should be held in hybrid format. That delegation noted that a virtual course would reduce the cost of participation for States and would make it more accessible to all States Parties to the 1992 Conventions.
- 7.2.14 In response to that suggestion, the Director clarified that the Annual Academy was not suited to being held in a hybrid format due to the nature of the activities delivered within the programme and since part of the event involves visits to different locations across London, including the offices of key stakeholders. He pointed out, however, that the Secretariat did offer a variety of alternative online training options in order to reach a wider audience.

**1992 Fund Administrative Council and Supplementary Fund Assembly**

- 7.2.15 The governing bodies expressed their appreciation for the support services provided to the Member States and encouraged any Member State that may consider it useful to organise in-person or online training activities to contact the Secretariat.

**8 Other matters**

8.1	<b>Any other business — Transfer within the 2022 Budget — 1992 Fund Document IOPC/MAY23/8/1</b>	<b>92AC</b>		
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- 8.1.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/MAY23/8/1.
- 8.1.2 It was noted that the 2022 budget appropriation for 'External Audit Fees' (Chapter VII) would not cover the cost to the Secretariat for the 2022 audit.
- 8.1.3 The Director proposed that he should be authorised to make the necessary transfer to meet any shortfall to the budget appropriation of 'External Audit Fees' (Chapter VII) from Chapter I (Personnel).

*Debate*

- 8.1.4 One delegation enquired whether making a transfer of budget from Chapter I would affect the funds available for Personnel. The Secretariat clarified that actual expenditure against the 2022 budget had been finalised and the underspend for that Chapter was available for transfer to another Chapter, as required.

**1992 Fund Administrative Council decision**

- 8.1.5 The 1992 Fund Administrative Council decided to authorise the Director to make the necessary transfer from Chapter I (Personnel) to 'External Audit Fees' (Chapter VII) within the 2022 budget.

8.2	<b>Any other business — Assessment of contributions to Major Claims Funds — 1992 Fund Document IOPC/MAY23/8/2</b>	<b>92AC</b>		
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- 8.2.1 The 1992 Fund Administrative Council noted that document IOPC/MAY23/8/2 had been published, and also noted that, while introducing the document, the Director had proposed a revision to the actions which had been presented in the document.
- 8.2.2 The Director informed the Administrative Council of his intention, after consultation with several delegations, to postpone his proposal to levy contributions for the *Bow Jubail* Major Claims Fund, withdrawing action 7(b) and adjusting action 7(c). The 1992 Fund Administrative Council was invited to consider the following revised actions:

- (a) to take note of the information contained in the document;
- (b) to decide whether to make payments in relation to the *Bow Jubail* incident exceeding the amount payable from the General Fund and payable in advance of 1 March 2024, if required, through a loan to the *Bow Jubail* Major Claims Fund from the *Agia Zoni II* Major Claims Fund; and

(c) to decide whether to make payments relating to the *Princess Empress* incident exceeding the amount payable from the General Fund, if required, through a loan from the *Agia Zoni II* Major Claims Fund.

8.2.3 The 1992 Fund Administrative Council also noted that, in the Director's view, the 1992 Fund should ensure that sufficient funds were available to allow for prompt payment of compensation for claims arising from the *Bow Jubail* and the *Princess Empress* incidents, and to pay the expenses relating to these incidents.

8.2.4 It was further noted that the Director would seek to ensure that sufficient liquidity was available within the General Fund working capital for the payment of claims covered by STOPIA 2006 in advance of their reimbursement by the relevant Club.

8.2.5 It was noted that, while the Director was mindful of the need to ensure prompt payment of compensation and alert to the heightened risk profile for the Funds, he wished to avoid placing a burden on the contributors by levying for contributions outside of the annual cycle.

8.2.6 The 1992 Fund Administrative Council also noted the Director's proposal that any expenditure exceeding the amount payable from the General Fund in respect of the *Bow Jubail* incident prior to 1 March 2024, should be financed through a loan from the *Agia Zoni II* Major Claims Fund in accordance with Financial Regulation 7.2(d) of the 1992 Fund and to be repaid (with interest) on receipt of contributions.

8.2.7 It was further noted that, in the Director's view, it would not be necessary to levy contributions to a *Princess Empress* Major Claims Fund at this session.

8.2.8 It was noted that, in accordance with Financial Regulation 7.2(d) of the 1992 Fund, any expenditure exceeding the amount payable from the General Fund in respect of the *Princess Empress* incident prior to 1 March 2024 should be financed through a loan from the *Agia Zoni II* Major Claims Fund, to be repaid (with interest) on receipt of contributions.

8.2.9 The Administrative Council also noted that a levy to the *Bow Jubail* Major Claims Fund, payable by 1 March 2024, would need to be considered at the November 2023 sessions of the governing bodies.

*Statement by the delegation of the Netherlands*

8.2.10 The delegation of the Netherlands made the following statement

'The delegation of the Netherlands can accept the compromise just explained by the Director.

The IOPC Funds Secretariat explains in document IOPC/MAY23/8/2 that considerable funds may be required during 2023 and early 2024 for the payment of claims and claims-related expenditure in relation to the *Bow Jubail* and *Princess Empress* incidents. It is important that the 1992 Fund pays compensation to those who have suffered oil pollution damage as soon as possible, as that is the aim of the IOPC Funds. We therefore consider it imperative that payments of claims and claims-related expenditure can be made and claims can be processed as soon as possible and should not be compromised. As we have the guarantee of the Director that this is the case, as we just heard, we can live with the compromise on the understanding that a new levy will be decided in the November 2023 meeting.'

*Statement by the delegation of Greece*

8.2.11 The delegation of Greece made the following statement:

‘With regard to the document under examination and taking into account the provisions of the Financial Regulation 7.2(d), in principle, we have no objection to the decisions proposed and the activation, if required, of the lending procedure described.

However, we would like to stress the need to ensure the seamless continuation of the compensation payments to all those affected by the *Agia Zoni II* incident and who are entitled to compensation in case of the positive assessment of their claims, either as a result of court/judicial proceedings or after the evaluation of the Fund. Therefore, it is considered important to maintain the appropriate liquidity of the *Agia Zoni II* Major Claims Fund in the event that the payment of compensation is required.’

*Debate*

8.2.12 Several delegations expressed support for the Director's revised proposal, on the understanding that a levy for the *Bow Jubail* Major Claims Fund would be proposed at the November 2023 sessions of the governing bodies, for payment by 1 March 2024. Some delegations noted that it was imperative that the 1992 Fund maintained sufficient liquidity to make timely payment of claims and claims-related expenditure in respect of all incidents, including the *Agia Zoni II*.

8.2.13 The Director confirmed that liquidity requirements for all incidents had been taken into consideration in the proposal to delay the levy to the *Bow Jubail* Major Claims Fund. The Director reported that information available at the time indicated that funds available for loan from the *Agia Zoni II* Major Claims Fund would be sufficient to cover payments, if required, from the *Bow Jubail* and *Princess Empress* Major Claims Funds in advance of 1 March 2024. The Director confirmed that a loan from the *Agia Zoni II* Major Claims Fund would have no detrimental effect on the 1992 Fund's ability to make payment of claims in respect of the *Agia Zoni II* incident.

**1992 Fund Administrative Council decisions**

8.2.14 The 1992 Fund Administrative Council approved the Director's proposal that any expenditure exceeding the amount payable from the General Fund in respect of the *Bow Jubail* incident prior to 1 March 2024 should be financed through a loan to the *Bow Jubail* Major Claims Fund from the *Agia Zoni II* Major Claims Fund.

8.2.15 The 1992 Fund Administrative Council approved the Director's proposal that any expenditure exceeding the amount payable from the General Fund in respect of the *Princess Empress* incident prior to 1 March 2024 should be financed through a loan to the *Princess Empress* Major Claims Fund from the *Agia Zoni II* Major Claims Fund.

8.3	<b>Any other business — Application of 1992 Fund Resolution N°12 in respect of the <i>Bow Jubail</i> incident Document IOPC/MAY23/8/3</b>	<b>92AC</b>		
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8.3.1 The 1992 Fund Administrative Council recalled that, at the October 2022 session of the 1992 Fund Assembly, it was reported that the Netherlands had only partially submitted reports for 2021 and had historical gaps in submission from two contributors in Bonaire and Sint Eustatius. The 1992 Fund Administrative Council noted that, as at 22 May 2023, with the exception of one contributor in Bonaire and Sint Eustatius, the Netherlands had completed the submission of oil reports for 2021 and 2022.

8.3.2 The 1992 Fund Administrative Council also noted that reports from Bonaire and Sint Eustatius were outstanding for the years 2004-2009 for two contributors, and for 2019 to 2021 for one contributor.

8.3.3 The 1992 Fund Administrative Council further noted that paragraph 8 of Resolution N°12 'Measures in respect of outstanding oil reports and outstanding contributions' states that the 1992 Fund Assembly:

"DECIDES that it shall make a determination as to those States that are responsible for two or more oil reports in arrears, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the reporting deficiency;"

8.3.4 The 1992 Fund Administrative Council noted that the Government of the Netherlands was expected to submit a claim for compensation to the 1992 Fund in respect of the *Bow Jubail* incident.

*Statement by the delegation of the Marshall Islands*

8.3.5 The delegation of the Marshall Islands made the following statement:

'First, this delegation would like to thank the Secretariat for its work in producing document IOPC/MAY23/8/3 on the applicability of Resolution N°12 to the *Bow Jubail* case.

This delegation opposed the adoption of Resolution N°12 during the April 2016 meetings of the Governing Bodies of the IOPC Funds, as can be seen from our statement in paragraph 6.1.10 of the Record of Decisions of said meetings, contained in document IOPC/APR16/9/1. We opposed the resolution on two grounds: first, that nowhere in its text does the 1992 Fund Convention authorise the deferment of payments of valid claims. Second, that the Assembly was aware of the issue I just mentioned and, in order to go ahead, sought to derive authority from a set of proposed rules called the "Draft principles of State responsibility for internationally wrongful acts", which the Marshall Islands does not agree to be bound by, or to elevate to the category of international law. On this point, this delegation expressed its unwillingness to agree to any practice, or to any subsequent agreement, that would seek to make those draft principles applicable in any way within the context of the 1992 Fund Convention.

Consistent with our position back then, we oppose the application of Resolution N°12 to the *Bow Jubail* case today, and we do it for the same reasons then expressed, which we simply restate at this time.'

*Statement by the delegation of the Netherlands*

8.3.6 The delegation of the Netherlands made the following statement:

'This document was published on Monday, the day before this meeting, when we were travelling to London. So, we did not have time to consult our Legal experts on this matter. And this is highly needed, as we can also conclude by the intervention of the Marshall Islands. That is why the Netherlands cannot give a view on the action items requested in the document.

However, the delegation of the Netherlands does want to give an update on the submission of oil reports.

1. In October 2022, it was reported that some oil reports from the Netherlands were outstanding.

2. We had the aim to correct this before this meeting and to have all missing oil reports submitted. We did send most missing information and we are almost there, as is mentioned in paragraphs 1.4 and 1.5. However, we are not there yet, since there are still a few oil reports outstanding. We did send more missing information on Monday to the IOPC Fund Secretariat and we hope to have completed all outstanding reports soon.
3. Next week a delegation of the Government of the Netherlands will travel to the Caribbean part of the Netherlands. During this visit, we will contact local authorities and enterprises in Bonaire and Sint Eustatius in order to emphasise the importance of collecting all remaining information and signatures.
4. We do make the remark, however, that in some cases we did send information on missing oil reports to the IOPC Fund Secretariat, but the Secretariat still had questions. We have a meeting with the IOPC Fund Secretariat this week, trying to make sure we are on the same page with regards to what is still missing.

We hope this clarifies the situation on the submission of oil reports of the Netherlands.'

#### *Debate*

- 8.3.7 A large majority of delegations expressed support for the application of Resolution N°12 in respect of the payment of compensation to government authorities in the Netherlands, while oil reports from that State remain outstanding for more than two years.
- 8.3.8 Delegations noted that the submission of oil reports is crucial for the integrity the regime and adherence to Member State obligations under the 1992 Fund Convention.
- 8.3.9 Delegations also recognised the efforts of the Government of the Netherlands on this issue, and the progress already made to complete the submission of oil reports. Several delegations expressed their belief that the issue would soon be resolved, resulting only in a delay to payment, if at all.
- 8.3.10 One delegation suggested that the 1992 Fund Assembly seek to find some leeway in the application of Resolution N°12, hoping that application of the Resolution would be used only as a last resort.
- 8.3.11 The Chair summed up discussions noting that he had listened carefully to the remarks made and observed that they were both justified and based on factual grounds. He further noted that the Administrative Council had, by a large majority, agreed with the Director's proposal that Resolution N°12 be applied in respect of the *Bow Jubail* incident.
- 8.3.12 He also noted, however, that the Government of the Netherlands had maintained a constructive attitude, deploying repeated efforts to rectify the present situation of lack of submission of oil reports for a number of years, pertaining to two receivers located in Bonaire and Sint Eustatius.
- 8.3.13 He noted that further efforts were presently ongoing, including by a specific Government mission, and was this expected to reach the abovementioned territories in the next weeks.
- 8.3.14 The Chair also recalled the fact that the delegation of the Netherlands had requested that it be provided time to assess the legal implications of the application of Resolution N°12, since the relevant document had been circulated on the last day before the present IOPC Funds session.

#### **1992 Fund Administrative Council decision**

- 8.3.15 Taking all the aspects into account, including paragraph 8.3.11 above, the 1992 Fund Administrative Council did not oppose the Chair's proposal that the issue be revisited at the next session of the 1992 Fund Assembly in November 2023; to take an updated stock of the reporting situation and

decide whether eventual payment of claims to the Government of the Netherlands be deferred pending rectification of the reporting requirement.

8.4	<b>Any other business — Other matters</b>	<b>92AC</b>	<b>92EC</b>	<b>SA</b>
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8.4.1 Before closing the sessions, the Chair of the 1992 Fund Assembly took the opportunity to express, on behalf of the governing bodies, appreciation and farewell to the representative of the Netherlands, Mr Dick Brus, who was attending the IOPC Funds meetings for the last time. The Director also thanked Mr Brus, who he noted had been an active participant, contributing wise interventions on all varieties of IOPC Funds' discussions for over ten years. He recalled that he had benefited from both his expertise and friendship whilst working alongside him as a fellow delegate for many years and wished him well in his retirement and future endeavours.

8.4.2 No further items were raised under this agenda item.

## **9 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 May 2023 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/MAY23/9/WP.1 and IOPC/MAY23/9/WP.1/1, was adopted, subject to certain amendments.

\* \* \*



## ANNEX I

### 1.1 Member States present at the sessions

		1992 Fund Administrative Council	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	Canada	•	•	•
11	China <sup>&lt;1&gt;</sup>	•		
12	Colombia	•	•	
13	Cook Islands	•		
14	Cyprus	•	•	
15	Denmark	•	•	•
16	Ecuador	•		
17	Finland	•		•
18	France	•	•	•
19	Georgia	•		
20	Germany	•		•
21	Ghana	•		
22	Greece	•		•
23	India	•		
24	Italy	•		•
25	Jamaica	•	•	
26	Japan	•	•	•
27	Kenya	•		

<sup><1></sup> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.  
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		1992 Fund Administrative Council	1992 Fund Executive Committee	Supplementary Fund Assembly
28	Latvia	•		•
29	Liberia	•		
30	Luxembourg	•		
31	Madagascar	•		
32	Malaysia	•		
33	Maldives	•		
34	Marshall Islands	•		
35	Mexico	•		
36	Morocco	•		•
37	Namibia	•		
38	Netherlands	•		•
39	New Zealand	•	•	•
40	Nicaragua	•		
41	Nigeria	•		
42	Norway	•		•
43	Oman	•		
44	Palau	•		
45	Panama	•		
46	Philippines	•		
47	Poland	•		•
48	Portugal	•		•
49	Republic of Korea	•	•	•
50	Russian Federation	•		
51	Saint Kitts and Nevis	•		
52	San Marino	•		
53	Singapore	•	•	
54	South Africa	•		
55	Spain	•		•
56	Sri Lanka	•		

		1992 Fund Administrative Council	1992 Fund Executive Committee	Supplementary Fund Assembly
57	Sweden	•		•
58	Thailand	•	•	
59	Trinidad and Tobago	•		
60	Türkiye	•		•
61	United Arab Emirates	•		
62	United Kingdom	•	•	•
63	Venezuela (Bolivarian Republic of)	•		

1.2 States represented as observers

		1992 Fund	Supplementary Fund
1	Brazil	•	•
2	Indonesia	•	•

1.3 Intergovernmental organisations

		1992 Fund	Supplementary Fund
1	International Maritime Organization (IMO)	•	•

1.4 International non-governmental organisations

		1992 Fund	Supplementary Fund
1	BIMCO	•	•
2	Cedre	•	•
3	Conference of Peripheral Maritime Regions (CPMR)	•	•
4	International Association of Classification Societies Ltd (IACS)	•	•
5	International Chamber of Shipping (ICS)	•	•
6	International Group of P&I Associations	•	•
7	ITOPF	•	•

9	World LPG Association (WLPGA)	•	•
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ANNEX II

**RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION  
COMPENSATION 1992 FUND**

(as amended by the 1992 Fund Administrative Council at its 23rd session, acting on behalf of the  
1992 Fund Assembly at its 27th extraordinary session, held from 23 - 25 May 2023)

*Credentials*

**Rule 9**

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than five working days prior to the opening of the Assembly session. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place or by an appropriate authority as determined by the Government and communicated to the Director. Where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director not later than five working days prior to the opening of the Assembly session.

**RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION  
COMPENSATION SUPPLEMENTARY FUND**

(as amended by the Supplementary Fund Assembly at its 11th extraordinary session held  
from 23 May - 25 May 2023)

*Credentials*

**Rule 9**

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than five working days prior to the opening of the Assembly session. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place or by an appropriate authority as determined by the Government and communicated to the Director. Where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director not later than five working days prior to the opening of the Assembly session.

**RULES OF PROCEDURE FOR THE 1992 FUND EXECUTIVE COMMITTEE**

(as amended by the 1992 Fund Administrative Council at its 23rd session, acting on behalf of the 1992 Fund Assembly at its 27th extraordinary session, held from 23 - 25 May 2023)

*Credentials*

**Rule 8**

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than five working days prior to the opening of the Executive Committee session. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place or by an appropriate authority as determined by the Government and communicated to the Director. Where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director not later than five working days prior to the opening of the Executive Committee session.