



International Oil Pollution
Compensation Funds

Agenda Item 2	IOPC/NOV20/2/1	
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1992 Fund Assembly	92A25	●
1992 Fund Executive Committee	92EC74	
Supplementary Fund Assembly	SA17	●

REPORT OF THE DIRECTOR

Note by the Director

Summary:

This is the first time that the sessions of the IOPC Funds' governing bodies will be held remotely and we will have to adapt to a very different way of holding our discussions in these exceptional circumstances. Member States will have to consider and decide whether to temporarily suspend or modify some rules of procedure to enable the meetings to take place.

This document presents a summary of the key items on the agenda for the December 2020 sessions of the IOPC Funds' governing bodies. It contains an update on the incidents in which the 1992 Fund is involved. It also refers to the main financial matters, including the 2019 Financial Statements for the 1992 Fund and the Supplementary Fund, the oil reports and contributions, and the 2021 budget and assessment of contributions for both Funds. This document also provides information on the election of the members of the seventh joint Audit Body and the appointment of the members of the Investment Advisory Body.

Action to be taken: 1992 Fund Assembly and Supplementary Fund Assembly

Information to be noted.

1 Introduction

- 1.1 Before I start my report on the activities of the Secretariat since October 2019, it is with great sadness that I have to inform you of the passing of Mr William O'Neil, who was Secretary-General of the International Maritime Organization (IMO) from 1990–2003. Mr O'Neil was a good friend of the IOPC Funds. He worked in close cooperation with the Funds during his time at IMO, particularly in respect of the entry into force of the 1992 Civil Liability and Fund Conventions and the establishment of the 1992 Fund in 1996. He was a great supporter of the work of the Funds and joined the organisation's 40th-anniversary celebrations in October 2018, where he commented that the IOPC Funds was one of IMO's success stories. Together with my colleagues at the Secretariat, I have extended my heartfelt condolences to his family.
- 1.2 It is also with deep regret that I have to inform you that the second Vice-Chair of the 1992 Fund Assembly, Mr Samuel Roger Minkeng of Cameroon, passed away earlier this year. Mr Minkeng represented Cameroon at IOPC Funds' meetings for over 10 years and had been serving as second Vice-Chair of the 1992 Fund Assembly since October 2014. His support to his fellow Chairs and Vice-Chairs, and for the work of the organisations was always greatly appreciated. On behalf of the IOPC Funds, I conveyed our deepest sympathies to Mr Minkeng's family and his friends and colleagues at the Société Nationale des Hydrocarbures (SNH).

- 1.3 I would also like to inform you that Mrs Azara Prempeh (Ghana), Vice-Chair of the 1992 Fund Executive Committee, has informed me that she has joined the Executive Office of the Secretary-General of IMO as Chief of Staff and will no longer be able to serve the IOPC Funds. While I regret that she will not be able to join our meeting, I am very pleased that we will be able to continue working with her in her new role. I would personally like to extend my warmest congratulations to Mrs Prempeh and wish her all the best in this next stage of her professional career.
- 1.4 At the beginning of March this year, the Secretary-General of the IMO postponed certain meetings that were to be held in March due to the global COVID-19 outbreak. Following the Secretary-General's decision, the meeting of the IOPC Funds' governing bodies, which was due to be held from 11 to 13 March 2020, was also postponed and later cancelled.
- 1.5 In August this year, the IMO reconstructed its 2020 calendar of meetings as a result of the ongoing COVID-19 pandemic and the regular sessions of the IOPC Funds' governing bodies were therefore rescheduled to 2 to 4 December 2020.
- 1.6 These are unprecedented times; our everyday lives at home and at work have changed drastically, and millions have been affected in Member States by the pandemic throughout these months. My thoughts are with all those who have been affected.

2 Work of the IOPC Funds' Secretariat during the COVID-19 pandemic

- 2.1 The pandemic has required that we make substantial adjustments in the way the IOPC Funds' Secretariat has worked throughout 2020. Since March 2020, when access to IMO's Headquarters was restricted, staff have been working remotely.
- 2.2 The IOPC Funds have monitored the situation with IMO and followed the guidelines given by the World Health Organisation and the United Kingdom (UK) Government closely at all times during the crisis.
- 2.3 The IOPC Funds' Information Technology Disaster Recovery Continuity Planning provided the staff with the equipment and training necessary to access the IOPC Funds' systems in a secure manner and allowed staff members to work from home throughout the COVID-19 pandemic. I am pleased that the previous efforts undertaken by the Secretariat enabled us to effectively respond to the challenges posed by the pandemic.
- 2.4 The IOPC Funds' Working from Home Policy had been introduced in February 2020, before the COVID-19 outbreak. This policy was intended to expand the choice of flexible working arrangements within the Secretariat with the aim of enabling a better work-life balance. I never expected, however, that we would have to start implementing this policy so soon after it had been introduced and for such a long period, but I am pleased that the Secretariat had taken such a timely decision and was able to rise to the challenges posed by the pandemic.
- 2.5 From the beginning of the pandemic, staff members have been kept updated on the situation on a regular basis or at staff meetings. Throughout the crisis, managers have communicated with their staff at all times to ensure staff wellbeing and have provided them with the support required. I communicated personally with each staff member to make sure that they were coping well during these difficult times.
- 2.6 The Secretariat has continued to carry out its tasks at all times throughout the pandemic. The assessment and payment of claims continues as normal. The Secretariat also continues to closely monitor the global financial markets and to oversee and review the security of the Funds' assets with advice from the Investment Advisory Body. In addition, the Secretariat has continued to hold its meetings virtually with the Investment Advisory Body and the Audit Body.
- 2.7 The Secretariat has a system of delegated authority approved by the 1992 Fund and Supplementary Fund Assemblies to ensure continuity in the event the Director becomes unable to perform his/her duties due to sickness. This delegated authority allows the Deputy Director, and other members of the

Management Team, to act on the Director's behalf if he/she were to fall ill or be otherwise unable to perform his/her duties. I am pleased to report that we did not have to use this delegated authority, but it is comforting to note that we have it in place.

3 Preparation and running of the December 2020 meeting of the governing bodies during the COVID-19 pandemic

3.1 We will be holding these sessions from 2 to 4 December for three hours each day, which means that we will be facing major time constraints and will have to adapt to a very different way of holding our discussions in these exceptional circumstances. In the interest of expediting the discussions on procedural matters and focusing on substantial decisions, I invited Member States to consider several documents which were published in advance of the sessions and to provide feedback to the Secretariat by either confirming their support for the proposed temporary suspension or modification of some rules of procedure or to make alternative suggestions by Friday, 23 October 2020 (circular IOPC/NOV20/Circ.13).

3.2 The following documents on procedural matters have been published ahead of the meeting:

- Temporary suspension of rules of procedure in connection with remote sessions (document IOPC/NOV20/1/3);
- Temporary suspension of rules of procedure in connection with remote sessions – Facilitating remote sessions (document IOPC/NOV20/1/3/1); and
- Temporary suspension of rules of procedure in connection with remote sessions – Voting (document IOPC/NOV20/1/3/2), to be read in conjunction with Election of members of the joint Audit Body – Ballot procedure (document IOPC/NOV20/6/1/1).

3.3 I would like to thank the 15 Member States of the 1992 Fund (Australia, Canada, Cyprus, Denmark, France, Greece, Italy, Japan, Latvia, New Zealand, Portugal, Republic of Korea, Singapore, Turkey and the United Kingdom) for the feedback they have provided which has helped greatly in organising the meeting and for delegations to have enough time to cover essential substantive items and make the decisions required.

3.4 The Secretariat has published the feedback received so that Member States are aware of the views expressed by other States and thus ensure complete transparency. Taking the feedback received from Member States into account, the revised proposals relating to the Rules of Procedure have been submitted to the governing bodies, who will be invited to make decisions on these proposals when the sessions open on Wednesday, 2 December 2020 (document IOPC/NOV20/1/3/3).

4 Activities of the IOPC Funds since October 2019

4.1 I will focus on some key items on the agenda for the December 2020 sessions of the governing bodies, which will require the consideration by Member States. I will also invite the governing bodies to make key decisions on several of these issues.

4.2 In terms of membership, at the opening of the 25th session of the 1992 Fund Assembly in December 2020, 117 States will be Parties to the 1992 Fund Convention.

4.3 The 1992 Fund Convention entered into force for the Co-operative Republic of Guyana in February 2020 and for the Republic of the Gambia in October 2020, bringing the number of 1992 Fund Member States to 117 on that date. In addition, the Republic of Nauru acceded to the 1992 Fund Convention on 23 March 2020. The Convention will enter into force for this State on 23 March 2021 and will bring the number of 1992 Fund Member States to 118 on that date.

4.4 At the opening of the 17th session of the Supplementary Fund Assembly in December 2020, 32 States will be Members of the Supplementary Fund (document IOPC/NOV20/8/1).

5 Compensation Matters

5.1 Incidents involving the 1992 Fund

5.1.1 The 1992 Fund is currently dealing with 11 incidents, and the documents relating to these incidents have been submitted to the 1992 Fund Executive Committee. I will be reporting, in particular, with regard to the following:

Prestige — Spain, November 2002

5.1.2 In April 2019, the 1992 Fund paid into the Court in La Coruña some EUR 27.2 million and set aside some EUR 800 000 to cover potential liabilities in France and Portugal.

5.1.3 In November 2019, the Court in La Coruña issued an order on the distribution of the amount deposited in Court by the 1992 Fund and the amount corresponding to the limitation fund. The distribution of the amounts ordered by the Court largely corresponds with the lists provided by the 1992 Fund of how the compensation available under the 1992 Fund Convention and the 1992 Civil Liability Convention (CLC) should be distributed among all the claimants in the legal proceedings. Payments totalling some EUR 700 000 have been made by the Court so far.

5.1.4 In April 2019, in the context of the action by the French Government against the American Bureau of Shipping (ABS), the Court of Cassation in France decided that ABS cannot rely on the defence of sovereign immunity. The proceedings will now continue on the merits of the French Government's claim against ABS.

5.1.5 Following the decision of the 1992 Fund Executive Committee at its October 2012 session, the 1992 Fund brought a recourse action against ABS in the Court of First Instance in Bordeaux. The proceedings were stayed pending the resolution of the legal proceedings in Spain but have been reinstated.

5.1.6 A case management hearing took place in January 2020, at which both ABS and the 1992 Fund argued that the issue of sovereign immunity should be dealt with as a priority by the Judge in charge of the merits, together with the other admissibility arguments raised by ABS.

5.1.7 In the action of the 1992 Fund against ABS in France, ABS intends to raise its arguments again on sovereign immunity up to the level of the Court of Cassation in the hope that it might reverse its judgment of April 2019. This will be a lengthy process in which the Fund may have to present submissions opposing ABS's arguments.

5.1.8 The 1992 Fund's French lawyer is working in cooperation with the French Government's lawyers to coordinate the respective actions against ABS (document IOPC/NOV20/3/2).

Hebei Spirit — Republic of Korea, December 2007

5.1.9 All legal proceedings related to the *Hebei Spirit* incident were finalised in November 2019. In July 2020, the 1992 Fund paid the balance of KRW 3.4 billion (£2.3 million) to the Skuld Club. The overpayment by the Skuld Club has now been reimbursed in full. A reconciliation of joint costs between the Skuld Club and the Fund is underway, and a payment will be made or received by the Fund once it has been completed.

5.1.10 The 1992 Fund is also working to recover the 1992 Fund's share from the SHI Limitation Fund which amounts to KRW 5.6 billion (£3.8 million) and will report on any developments at future sessions of the Executive Committee.

5.1.11 In October 2019, I informed the 1992 Fund Executive Committee that, as per IOPC Funds' practice, it was the Fund's intention to hold a meeting with all those involved in the handling of the claims arising from the *Hebei Spirit* incident to discuss the case and the lessons to be learned and to enable the IOPC Funds to deal with claims more efficiently in the future.

5.1.12 The meeting was scheduled to take place in Seoul in May 2020. However, due to the COVID-19 pandemic and the restrictions on travel, the meeting has been postponed, and we are hoping to hold it in the spring of 2021. It is my intention to submit a document to the governing bodies summarising the lessons learned from this incident.

5.1.13 I am grateful for the close cooperation and assistance provided to the 1992 Fund by the Government of the Republic of Korea in resolving this major incident which is almost closed. The *Hebei Spirit* incident provides a good example of how the cooperation between Government authorities, the P&I Club and the Fund can strengthen the international compensation regime for the benefit of victims of oil spills (document IOPC/NOV20/3/4).

Trident Star – Malaysia, August 2016

5.1.14 The claims arising from this incident exceed the 1992 CLC limit applicable to the *Trident Star* of RM 27.1 million (USD 6.3 million). The 1992 Fund is therefore liable to pay compensation, albeit all payments will be recovered later from the shipowner's insurer under STOPIA 2006. Claims arising from this incident have been settled at USD 7.5 million, and the Fund has paid USD 561 695 in compensation. The Shipowners' Club has promptly reimbursed the 1992 Fund for these payments.

5.1.15 Claims by a group of shipping companies, totalling USD 6.6 million, remain outstanding and are being assessed by the Shipowners' Club and the 1992 Fund.

5.1.16 I would like to thank the Shipowners' Club for their excellent cooperation in this case, in respect of both the handling of claims and the prompt reimbursement of payments under STOPIA (document IOPC/NOV20/3/9).

Agia Zoni II — Greece, September 2017

5.1.17 The assessment of the 421 claims totalling EUR 98.58 million filed against the 1992 Fund continues. Compensation payments totalling EUR 14.66 million in respect of 179 claims have been made.

5.1.18 Since the three-year anniversary of the spill was in September 2020, in June 2020, the 1992 Fund contacted those claimants that had not settled their claims and recommended them to commence legal actions against the 1992 Fund to protect their rights to compensation in order to avoid their claims becoming time-barred. There are 24 legal proceedings against the 1992 Fund. These claims are being examined by the Fund's experts.

5.1.19 An investigation into the cause of the incident carried out by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor has concluded that the accident was attributed to the deliberate and negligent actions of, *inter alia*, the shipowner, the general manager of the owning company, the two crew members on board at the time of the incident, the salvors and one of the clean-up contracting companies.

5.1.20 The 1992 Fund's Greek lawyers have advised that the exercise of the right to claim clean-up expenses under the 1992 Civil Liability and Fund Conventions by a party that has 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.

5.1.21 They have also advised that until such time as a party is held by an unappealable judgment to have intentionally caused the pollution in order to claim clean-up compensation, the Fund is obliged to pay to such a party the cost of preventive measures which includes clean-up expenses under Article 4(3) of the 1992 Fund Convention. Subsequently, if the claimant is eventually condemned by a criminal court by an unappealable judgment to have intentionally caused the pollution, the possibility would exist for the 1992 Fund to commence a recourse action under Article 9(2) of the 1992 Fund Convention.

5.1.22 It is my view that, since the investigations into the cause of the incident by the Public Prosecutor remains pending, it would not be appropriate to make any further advance payments to the representatives of the salvor/one of the clean-up contracting companies, at this time. I will continue to monitor this matter and will report the latest developments to the Executive Committee at its next session (document IOPC/NOV20/3/11).

Bow Jubail — the Netherlands, June 2018

5.1.23 At the time of the incident in June 2018, the *Bow Jubail* was unladen and the oil spilled was bunker oil. The shipowner applied before the Rotterdam District Court for leave to limit its liability and argued that the incident was covered under the Bunkers Convention 2001 since the *Bow Jubail* was not carrying oil as cargo and therefore was not a ship under the 1992 CLC.

5.1.24 The Court decided that the *Bow Jubail* could qualify as a ship as defined in the 1992 CLC and that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) did not apply, and that the limitation of the shipowner's liability was governed by the 1992 CLC, not the Convention on Limitation of Liability for Maritime Claims, 1976, as modified by the 1996 Protocol (LLMC 76/96). The Court also decided that the shipowner had not sufficiently substantiated that the tanks of the *Bow Jubail* did not contain residues of persistent oil at the time of the incident. The shipowner appealed to the Court of Appeal in The Hague.

5.1.25 On 27 October 2020, the Court of Appeal in the Hague delivered its judgment confirming the decision of the Rotterdam District Court. The case is based on the issue of the standard of proof as to whether there were residues of previous cargoes of persistent oil in the unladen ship and on the interpretation of the term 'residues'.

5.1.26 In its judgment, the Court of Appeal noted that there is no generally accepted standard procedure to determine when a ship which can serve both as an oil tanker under the 1992 CLC and a chemical tanker under the Bunkers Convention 2001, ceases to be a ship under the CLC. In the Court's view, consideration should be given by the Parties to the 1992 Fund Convention to the creation of a standard procedure, which could then be followed with a view to invoking the exception provided for in Article I(1) of the 1992 CLC. The Court further considered that shipowners and their P&I Clubs, as well as the IOPC Funds and those who contribute to them, have an interest in such a procedure.

5.1.27 According to the information provided by the shipowner the cargo tanks had been washed, and the resulting slops (tank washings mixed with cargo residues) has been discharged into reception facilities in accordance with MARPOL. The tanks were given a second wash (a so-called 'commercial wash') as required by contractual specifications to avoid contamination of products to be carried on the next voyage. The washings from the second wash were discharged at sea. A third wash was then carried out as some white spots had been found on heating coils in two tanks. The washings from this third wash were still on board at the time of the incident. In these circumstances the shipowner maintained that no residues of persistent oil remained on board the vessel at the time of the incident.

5.1.28 The shipowner has appealed against the judgment to the Supreme Court. I am of the view that the 1992 Fund should apply to join the shipowner in the appeal proceedings in the Supreme Court, in order to request a clarification from the Supreme Court on how the legal test applies as to whether there were residues or not on board the *Bow Jubail*. The Court has the right to accept or refuse the Fund's application at its discretion.

5.1.29 The 1992 Fund has a financial interest in this case as, if a final judgment were to decide that the 1992 Civil Liability and Fund Conventions apply, the 1992 Fund would have pay compensation as the losses exceed the shipowner's limit under the CLC and the STOPIA limit. If, however, the shipowner were to be successful in its appeal to the Supreme Court, the Bunkers Convention 2001 would apply, and the 1992 Fund would not be financially involved in this case (documents IOPC/NOV20/3/12 and IOPC/NOV20/3/12/1).

5.2 Incidents involving the Supplementary Fund

The Supplementary Fund has not been involved in any incidents so far and has therefore paid no compensation.

5.3 Other events followed by the IOPC Funds

MT New Diamond – Sri Lanka, September 2020

- 5.3.1 The *MT New Diamond*, an oil tanker, caught fire after an explosion of a boiler in the main engine room on 3 September 2020. The tanker was carrying approximately 270 000 metric tons of crude oil and was drifting about 22 nautical miles from the east coast of Sri Lanka. The Sri Lanka Navy, Sri Lanka Air Force, Sri Lanka Ports Authority, the Indian Navy, and the Indian Coast Guard worked together to control the fire. All but one of the 23 *MT New Diamond* crew members were rescued. The enormous efforts of disaster management teams prevented the fire reaching the cargo, averting a major maritime disaster. A team of experts has been tasked to assess the environmental damage and a comprehensive assessment is expected. The insurer paid for the pollution response costs, and after negotiations, the Sri Lankan authorities granted permission for the vessel to be released. The *MT New Diamond* was towed to the United Arab Emirates and arrived safely in Fujairah on 8 November. Fortunately, a major oil spill was prevented.

FSO Safer off the coast of Yemen

- 5.3.2 Even though the Republic of Yemen is not a Member State of the 1992 Fund, the Secretariat is participating with the IMO Task Force that has been established by the Secretary-General of IMO to provide recommendations to him to prevent an oil spill.
- 5.3.3 The *FSO Safer* is a floating storage and offloading unit located approximately 4.8 nautical miles off the coast of Ras Isa, Republic of Yemen. It was originally built as an ultra-large crude carrier (ULCC) in Japan in 1976 and converted to an FSO in 1986. It has been moored at Ras Isa since 1988, where it had been receiving, storing, and exporting crude oil flowing from the Marib oil fields in Yemen.
- 5.3.4 Due to the ongoing civil conflict in Yemen, all production and export operations related to *FSO Safer* have been suspended. An estimated quantity of 150 000 metric tons of crude oil remains on board. The unit is located in an area controlled by Houthi authorities (de facto authorities) who continue to deny access to the United Nations (UN) to assess the condition of the unit and carry out necessary maintenance or oil recovery. No maintenance operations have taken place since 2015 due to the conflict situation, which means the FSO constitutes a threat of pollution to the countries which border the Red Sea. It is understood there is currently no oil leaking from the unit.
- 5.3.5 For the past year, UN organizations have been collectively considering possible actions to mitigate the risk arising from *FSO Safer*. The work of the Task Force is ongoing.

6 Financial matters

6.1 2019 Financial Statements for the 1992 Fund and the Supplementary Fund

- 6.1.1 The approval of the Financial Statements for the 1992 Fund and the Supplementary Fund for the financial year 2019 is one of the most important decisions to be made by the governing bodies at their regular sessions.
- 6.1.2 The 1992 Fund Assembly and the Supplementary Fund Assembly will be invited to approve the Financial Statements of 2019 for the 1992 Fund and the Supplementary Fund. The 2019 Financial Statements have been audited by the External Auditor, BDO and have been reviewed by the Audit Body at their meeting of June 2020 (documents IOPC/NOV20/5/6/1 and IOPC/NOV20/5/6/2).

6.2 Oil reports and contributions

Oil reports

- 6.2.1 I am pleased to report that 98 States have submitted reports for 2019 to the 1992 Fund, representing 96.55% of the expected total contributing oil. Oil reports for the year 2019 and/or previous years are outstanding for 26 States with respect to the 1992 Fund.
- 6.2.2 Thirty-two States have submitted reports for 2019 to the Supplementary Fund, representing 94.82% of the expected total contributing oil. Oil reports for the year 2019 are outstanding for two States with respect to the Supplementary Fund.
- 6.2.3 I am very grateful for the continued cooperation and engagement of Member States with respect to the submission of oil reports. This has been a very difficult year for all of us, but I am pleased that the number of oil reports outstanding remains relatively low and that it will be addressed in the coming months once the lockdown measures adopted by many States due to COVID-19 are lifted (document IOPC/NOV20/5/1).

Report on contributions

- 6.2.4 I am pleased to report that the contributions system functions in a sound manner considering that contributions outstanding represent 0.37% of the total contributions levied since the establishment of the 1992 Fund. This is a reflection of the strong support the IOPC Funds have from their Member States and the oil industry in Member States.
- 6.2.5 I continue to engage with the authorities in Ghana, India, and Venezuela with respect to their outstanding contributions and I am relying on the authorities in those Member States to assist the Funds in correcting this situation soon. I will also continue the dialogue with the authorities in the Russian Federation, and I hope to receive a positive response soon in relation to outstanding contributions from two contributors in that Member State as well.
- 6.2.6 In addition, I will continue to liaise with the Russian Federation to seek reimbursement, of the amounts written-off in October 2017, in view of the Russian Federation's obligation under Article 15.4 of the 1992 Fund Convention.
- 6.2.7 As at 25 September 2020, outstanding contributions to the Supplementary Fund relate to the Republic of Congo and represent 0.05% of contributions levied to date (document IOPC/NOV20/5/2).
- 6.2.8 In October 2019, the governing bodies instructed me to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates in the event that no reports were submitted. I will be examining this matter with the Audit Body in 2021 and will be reporting back to the governing bodies on the progress made at a future session.

6.3 Budget for 2021 for the 1992 Fund

- 6.3.1 The 1992 Fund Assembly will be asked to approve the joint Secretariat budget for 2021 of £4 708 287 million. This is 3.4% less than the 2020 budget as a result of reductions in the personnel, meeting and travelling chapters.
- 6.3.2 I am also proposing that the 1992 Fund maintains the working capital at £15 million as this should be sufficient to cover the initial compensation and expenses of a new spill before establishing a Major Claims Fund.
- 6.3.3 I am further proposing that there should be no levy of contributions to the General Fund but that the amount required would be taken as a loan from the *Hebei Spirit* Major Claims Fund (document IOPC/NOV20/9/1/1).

6.4 Budget for 2021 for the Supplementary Fund

6.4.1 The Supplementary Fund Assembly will be asked to approve the budget for 2021 of £50 400 which consists of the management fee paid to the 1992 Fund for the running the joint Secretariat and the cost of the external audit.

6.4.2 I am also proposing that the Supplementary Fund maintains the working capital at £1 million and that there should be no levy of contributions (document IOPC/NOV20/9/1/2).

6.5 Assessment of contributions — General Fund and Major Claims Funds – 1992 Fund

6.5.1 I will be inviting the 1992 Fund Assembly not to levy 2020 contributions. The 1992 Fund budget for 2021 in the General Fund could be met through a loan from the *Hebei Spirit* Major Claims Fund (document IOPC/NOV20/9/1/1).

6.5.2 I will also be inviting the 1992 Fund Assembly not to levy 2020 contributions to the Major Claims Funds established for the *Prestige*, *Hebei Spirit*, *Alfa I*, *Nesa R3* and *Agia Zoni II* incidents. In relation to the *Nesa R3*, I will invite the 1992 Fund Assembly to note that any expenditure exceeding the balance available in the Major Claims Fund will be met with loans from General Fund or a Major Claims Fund (document IOPC/NOV20/9/2/1).

6.6 Assessment of contributions — Supplementary Fund

6.6.1 I will be inviting the Supplementary Fund Assembly to decide not to levy contributions to the General Fund (document IOPC/NOV20/9/1/2).

6.6.2 I will also be inviting the Supplementary Fund Assembly to note that there is no need to levy contributions to any Claims Fund as there have been no incidents involving the Supplementary Fund (document IOPC/NOV20/9/2/2).

7 Appointment of the Investment Advisory Body

7.1 The mandate of the current Investment Advisory Body (IAB) is expiring at the forthcoming regular sessions of the governing bodies in December 2020. Both Ms Beate Grosskurth and Mr Alan Moore have accepted the offer to be reappointed for the next three-year period until the regular sessions of the IOPC Funds' governing bodies in 2023.

7.2 Even though there is no requirement for a prescriptive rotation of the IAB members, I believe that the IAB would benefit from a change in its composition from time to time. Mr Brian Turner has kindly accepted to be reappointed for the next two years, until the regular sessions of the IOPC Funds' governing bodies in 2022, while a suitable replacement is sought. I consider Mr Turner's experience and knowledge of the organisation to be especially important given the challenges lying ahead in 2021 as a result of the COVID-19 crisis. The governing bodies will be invited to appoint the members of the new joint Investment Advisory Body during the forthcoming December 2020 sessions (document IOPC/NOV20/6/2).

8 Joint Audit Body

Election of the joint Audit Body

8.1 As the mandate of the current joint Audit Body is expiring at the forthcoming meeting of the governing bodies in December 2020, a circular was issued in April 2020 calling for nominations by 1992 Fund

Member States of candidates for the new Audit Body (circular IOPC/2020/Circ.6). I am pleased to report that eight candidates were nominated by Member States by the deadline of 30 June 2020.

8.2 The mandate of the joint Audit Body provides that if the nominations for election to the Audit Body are not sufficient to fill the vacancies at an election, existing members of the Audit Body having served two terms will be eligible for a once-only re-election, provided they are re-nominated by one or more 1992 Fund Member States. Since on this occasion there are sufficient nominations to fill the vacancies, the candidate nominated by Mexico for a third term, Mr José Luis Herrera Vaca, withdrew his nomination on 13 October 2020, and will not be put forward for election.

8.3 The remaining seven nominations received from 1992 Fund Member States are as follows:

Mr Alfred H. E. Popp, CM, Q.C.	Nominated by Canada (for a first term)
Mrs Birgit Sølling Olsen	Nominated by Denmark (for a second term)
Mr Arnold Rondeau	Nominated by France (for a first term)
Mr Vatsalya Saxena	Nominated by India (for a second term)
Dr Hideo Osuga	Nominated by Japan (for a first term)
Captain Thomas F. Heinan	Nominated by the Marshall Islands (for a first term)
Mr Watchara Chiemanukulkit	Nominated by Thailand (for a first term)

8.4 The 1992 Fund Assembly will have to elect six out of the seven nominated candidates for the seventh Audit Body. In addition, the Chair and Vice-Chair of the seventh Audit Body will be appointed by the Assembly from the members elected, on a proposal of the Chair of the 1992 Fund Assembly.

8.5 In relation to the election for the Audit Body, in accordance with the 1992 Fund's Resolution N°12, the Assembly would need to make a determination as to those States that are found to be in breach of their obligations under Articles 13.2, 15.1 or 15.2 of the 1992 Fund Convention, in which event those States shall neither be eligible to nominate candidates for membership of the Audit Body nor be elected as members of the 1992 Fund Executive Committee. I shall at the opening of the Assembly inform Member States accordingly.

8.6 Mr Michael Knight (United Kingdom) was appointed as the external expert for a first term in October 2011 and reappointed in October 2014 and October 2017 for a second and third term, respectively. The Chair of the 1992 Fund Assembly is recommending that Mr Knight's tenure be extended, exceptionally, beyond his third three-year term until 31 December 2021. The 1992 Fund Assembly will have to decide whether to reappoint Mr Knight as the external expert for one year more, until 31 December 2021 (document IOPC/NOV20/6/1).

Proposed ballot procedure

8.7 In previous years, the 1992 Fund Assembly has adopted a ballot procedure for the election of members of the Audit Body which is in accordance with the relevant Rules of Procedure governing voting (Rules 32–40). The December 2020 sessions of the governing bodies will be held remotely, and this standard established practice will need to be adapted.

8.8 I have made every effort for remote sessions to retain established practices of in-person meetings to the extent that it is possible, and the Secretariat has followed IMO in decisions concerning procedural matters. However, IMO was not required to take any decision in respect of voting or ballot procedures. Against this background and in these unprecedented circumstances, the IOPC Funds will have to find a solution to enable the election of the Audit Body. I have given consideration to the Rules of Procedure governing voting, consulted with the Chairs and explored three possible options for conducting the ballot procedure on this occasion, namely by using an online voting system, voting by email, or voting by correspondence.

8.9 Document IOPC/NOV20/6/1/1 provides my views on the advantages and disadvantages of each of the three possible options for conducting the ballot procedure and my recommendation to use the online voting system to elect the joint Audit Body (document IOPC/NOV20/6/1/1).

9 Secretariat and administrative matters

9.1 Staff matters

Departure and appointment of staff members

9.1.2 In June 2020, Mr Kensuke Kobayashi resigned from his post of Legal Counsel after having served the IOPC Funds for almost five years. He is greatly missed by his colleagues at the organisation, and we are all very grateful for all the hard work he did for the Funds. Following his departure, I have reviewed the need for this post within the Secretariat, and I have decided that it will only be filled if it is operationally needed in the future. The cost of this post has not been included in the Secretariat's budget for 2021.

9.1.3 Mr Modesto Zotti also resigned from his post of Office Manager in 2020 having served the IOPC Funds for over 35 years; the longest ever serving staff member of the Secretariat. Following his departure in the first half of 2020, I reviewed the staff requirements in the Secretariat. The role of Office Manager has changed since the Secretariat relocated to the IMO building. I have therefore decided to reallocate the Office Manager tasks which are still required to the IT/Office Manager (formerly IT Manager). I have retained the post of Office Manager should there be a requirement for such post in the future, but I will not be filling this post. The cost of this post has not been included in the Secretariat's budget for 2021.

9.1.4 Following the departure of the Legal Counsel who was part of the Management Team, I have invited Mr Robert Owen (IT/Office Manager) to join the Management Team to provide key advice on IT-related matters. This decision has not involved a promotion.

9.1.5 I have decided to create the position of Policy Officer at the P3 level within the Director's Office to provide expertise and be a key adviser on policy matters. Mr Yuji Okugawa (Japan) has been offered the post, and he will be joining the Secretariat whenever work is resumed from the office on a more permanent basis. The cost of this post has been included in the Secretariat's budget for 2021 (document IOPC/NOV20/7/1).

9.2 Appointment of the Director

At its regular session in 2021, the 1992 Fund Assembly will have to appoint a new Director as my second term expires on 31 December 2021. A circular inviting 1992 Fund Member States to submit nominations for candidates in 2021 and the details as to how the nominations should be presented will be issued in 2021. The document that has already been issued on this appointment for this meeting includes the details on the responsibilities of the Director as well as desirable experience, skills, and competences of the candidates (document IOPC/NOV20/7/3).

9.3 Headquarters Agreement

9.3.1 During 2019, the Secretariat held meetings with representatives of the Foreign and Commonwealth Office (FCO) and the Department for Transport (DfT) of the UK Government to consider amendments to the Headquarters Agreement with the UK Government and to discuss the new Headquarters Agreement for the Supplementary Fund, and I am pleased that we have reached an agreement which I would like to present to the governing bodies for approval.

9.3.2 I believe it is important to conclude the Headquarters Agreements as early as possible since the number of Supplementary Fund Member States is steadily increasing, and the risk of incidents involving the Supplementary Fund is therefore also increasing. In addition, the Agreements would protect the 1992 Fund and the Supplementary Fund from a freezing order. In this context, it is imperative that the Headquarters Agreements are implemented, through the Immunities and Privileges Order, into UK national legislation.

9.3.3 I will invite the governing bodies to approve the Headquarters Agreements for the UK Government to submit the required UK domestic legislation to Parliament. The Agreements will enter into force once all necessary procedures have been completed and notification is made by the UK Government to both Funds in accordance with the Agreements.

9.3.4 Once the new texts have been approved by the 1992 Fund and Supplementary Fund Assemblies, and after having reviewed the draft Order and confirmed that I am satisfied with the draft Order, I intend to sign both Headquarters Agreements. I would like to take this opportunity to thank the UK Government for their efforts to finalise this long-outstanding matter (document IOPC/NOV20/7/5).

9.4 Impact of the General Data Protection Regulation (GDPR)

9.4.1 The European Union General Data Protection Regulation (GDPR) and its accompanying Directive 2016/680 have been applied within the European Union as of 2018. Due to the nature of the work of the Funds, the collection and processing of personal data are required, in particular with regard to the payment of compensation to victims of oil pollution and the receipt of oil reports from Member States.

9.4.2 In order to receive assistance to develop policies and procedures reflecting the data protection principles laid out by the GDPR, the Secretariat engaged an expert in the implementation of the GDPR. To date, the Secretariat has worked on identifying personal data which the Funds hold and drafting a Data Protection Policy, Data Privacy Notices for claimants and all other persons who have dealings with the Funds, a Data Retention Policy, and the provisions necessary to be inserted in various types of contracts which the Funds conclude with third parties. The Secretariat has also engaged a data protection lawyer to review the various policies and procedures. I will be reporting the developments on this issue at future sessions of the governing bodies (document IOPC/NOV20/7/4).

9.5 Information services

As part of its commitment to increasing awareness of the international liability and compensation regime and improving engagement with Member States, the Secretariat has been exploring ways in which the organisation can widen its audience by creating information and training opportunities which are accessible remotely (for example webinars). Demand for such remote services has inevitably increased in recent months following the pandemic (document IOPC/NOV20/7/2).

10 Treaty matters

10.1 Review of the 1992 Civil Liability and Fund Conventions

10.1.1 In 2019, India submitted a document with proposals for a review of the 1992 Civil Liability and Fund Conventions. The document presented some interesting points which India had raised in previous meetings and which deserved due consideration. Since the delegation of India could not be present at that meeting to introduce the document, the Chair had proposed that the matter be deferred.

10.1.2 India has presented the document with proposals again, and the Assembly will have to examine and discuss the proposals. Since the time available for the December meetings will be very limited, I would expect that only a preliminary consideration and discussion will be possible and that, if the Assembly so wishes, further discussions could take place in 2021 (document IOPC/NOV20/8/3).

10.2 2010 HNS Convention

10.2.1 As of July 2020, there are five Contracting States to the Protocol, namely, Canada, Denmark, Norway, South Africa, and Turkey. However, a number of States have continued to work towards the implementation of the HNS Convention into their domestic legislation, and it is hoped that more States will be able to ratify or accede to the Protocol in the next few years.

- 10.2.2 During 2020 Belgium, France, Germany, and the Netherlands have all reported positive progress towards accession or ratification of the 2010 HNS Protocol. The authorities of the Republic of Korea have also reported progress towards the ratification of the HNS Convention.
- 10.2.3 For the administrative tasks related to the handling of claims for compensation, the Secretariat has approached a number of organisations with the relevant expertise in that field in order to discuss the way forward. Other activities had also been planned in 2020, such as organising a conference in Europe focusing on the entry into force of the 2010 HNS Protocol in cooperation with European Union Member States and the European Commission. Malaysia also approached the Secretariat to discuss the possibility of conducting a national workshop on the implementation of the HNS Convention. However, all these activities have been put on hold until further notice as a consequence of the COVID-19 pandemic.
- 10.2.4 The Secretariat has continued to use the opportunity of national and regional workshops and other overseas trips to give presentations on the HNS Convention. In December 2019, I participated in a regional workshop on IMO's liability conventions for the Arab States in Dubai. I also took part in an event dedicated to the HNS Convention and organised by the European Community Shipowners' Associations (ECSA) in February 2020 in Brussels, in which the IMO and IOPC Funds made a joint presentation (document IOPC/NOV20/8/2).
- 10.2.5 I would like to welcome the document submitted by France that provides an update on the latest developments in the implementation of the 2010 HNS Convention. It is very encouraging to see that Member States continue to work towards the implementation of the HNS Convention, and I thank the French delegation for having submitted this document (document IOPC/NOV20/8/2/1).

11 External Relations

11.1 IOPC Funds' Short Course

The annual IOPC Funds' Short Course had to be cancelled for 2020 due to the pandemic and the resulting travel restrictions and lockdown conditions. The Secretariat concluded that it would not be practical to deliver this course remotely. However, those candidates who were due to attend the 2020 course will be contacted when the dates for the 2021 course are confirmed and will be offered a place as a priority (circular IOPC/2020/Circ.8).

11.2 Induction course for delegates

The Secretariat has explored the possibility of making the IOPC Funds' Induction Course accessible to remote users as this course takes place in one location and involves internal speakers only. The Secretariat is now looking into how it could ensure remote users benefit from the Induction Course in the same way as local participants. We will keep delegations informed of developments (document IOPC/NOV20/7/2).

11.3 Outreach activities

Since October 2019 and until March 2020, the IOPC Funds participated in different events relating to the international liability and compensation regime in Brussels, Dubai, Lisbon, Rio de Janeiro, Shanghai, The Hague, Tokyo and we have also provided lectures to students from several universities and institutions (Universities of Bilbao, Ghent and ITLOS).

12 Decisions to be made during the December 2020 sessions

To facilitate the work of delegations and since we will have to hold our December 2020 meetings remotely and in a very short period of time, the Secretariat has issued a document listing the decisions to be made during the meetings (document IOPC/NOV20/1/5).

13 **Looking ahead**

- 13.1 The wide membership of the IOPC Funds reflects the importance that States give to the international liability and compensation regime. There is a lot of work to be done to assist Member States in the implementation and interpretation of the Conventions. With the COVID-19 pandemic, the Secretariat had to adapt to the current travel restrictions and other limitations imposed in terms of quarantine and social distancing, which made outreach undertakings very difficult. Should these conditions continue, I am confident that with all the experience acquired throughout 2020 and the improvements achieved from the technological point of view, the Secretariat will be in a much better position to conduct webinars and remote activities in 2021. This will allow us to continue to further advance the uniform and effective implementation and interpretation of the Conventions in Member States and to promote the benefits of the international liability and compensation regime in States which have not yet acceded to the 1992 Fund Convention and the Supplementary Fund Protocol.
- 13.2 Throughout 2020, the Secretariat has continued to work with the Audit Body to advance the review of the risks arising from incidents involving the IOPC Funds and insurers that are not members of the International Group. This is an increasingly important and complex issue, and I welcome the work of the Audit Body to continue to assist the IOPC Funds in trying to find solutions to deal with it.
- 13.3 I have always been committed to ensuring that the Secretariat is lean and fit and continues to operate in an efficient and effective manner. I am aware that 2021 will be a difficult year for Member States and the oil industry, and I am more committed than ever to continue to review the Secretariat's working methods with the aim of making the best possible use of the resources available.
- 13.4 The Secretariat will continue to assist Member States that are working towards the implementation of the HNS Convention and to make its best efforts towards setting up the HNS Fund and making preparations for the first session of the HNS Fund Assembly which will be convened by the Secretary-General of IMO and will take place in the IMO building.

14 **Gratitude**

- 14.1 I would like to express my sincere gratitude to the sixth Audit Body members at the end of their mandate: its Chair, Mr Makoto Harunari (Japan), its Vice-Chair Mrs Birgit Sølling Olsen (Denmark), Mr José Luis Herrera (Mexico), Mr Eugène Ngango Ebandjo (Cameroon), Mr Vatsalya Saxena (India) and Mr Michael Knight (external expert). Their combined knowledge, experience and expertise have been of great assistance to the work of the Secretariat. Their cooperation during this difficult year and readiness to meet and discuss documents virtually was highly appreciated. I would like to thank Mr Makoto Harunari, in particular, who took over the leadership of the Audit Body following the sad passing of Mr Jerry Rysanek in January 2019.
- 14.2 I would like to thank the Secretary-General of IMO, Mr Kitack Lim, and IMO staff for the continued cooperation and support provided to the Secretariat to ensure the safety of IOPC Funds' staff and that work could continue to be carried out even in these difficult times.
- 14.3 I would also like to thank the Chairs and Vice-Chairs of the governing bodies who are called upon on occasion outside of sessions to provide views and assistance to me and the Secretariat on key issues affecting the IOPC Funds.
- 14.4 I would like to express my gratitude to all Member States, the P&I Clubs and fellow international organisations with whom the IOPC Funds work closely together, the oil industry in Member States, and the international shipping community for their help in ensuring that the international regime continues to function as intended, even in a very difficult year.
- 14.5 I would also like to thank the Investment Advisory Body, the representatives of the External Auditor (BDO), and the lawyers and experts who work for the Funds. Last but not least, I would like to thank all my colleagues in the Secretariat for their dedication to the Funds over the past 12 months.

15 **Action to be taken**

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information contained in this document.
