



International Oil Pollution
Compensation Funds

Fonds internationaux
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures

Fondos internacionales
de indemnización de daños
debidos a contaminación por
hidrocarburos

The October 2019 sessions of the governing bodies – In brief 1 November 2019



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held sessions from Monday 28 to Thursday 31 October 2019 at the headquarters of the International Maritime Organization (IMO) in London. Sixty-seven States, representing 63 Member States of the 1992 Fund, 25 Member States of the Supplementary Fund and four observer States, as well as 15 observer organisations, attended sessions of the 1992 Fund Assembly, the 1992 Fund Executive Committee and the Supplementary Fund Assembly.

1992 Fund Executive Committee (73rd session)

Information was provided to the 1992 Fund Executive Committee on all open incidents involving the IOPC Funds. In particular, recent developments in the following incidents were reported.

Prestige (Spain, November 2002)

In accordance with the December 2018 judgment of the Spanish Supreme Court, the 1992 Fund has paid EUR 27.2 million into Court and has retained EUR 800 000 to pay those claimants with legal actions pending before the French courts, and EUR 4 800 to pay the Portuguese Government. The 1992 Fund has also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings, which has not yet been distributed by the Court. The Court of Cassation in France has ruled that the American Bureau of Shipping (ABS) cannot avail itself of the defence of sovereign immunity in this case. The case will go back to the Court of First Instance in Bordeaux to consider the merits of the claims of the French Government and the 1992 Fund against ABS. The Director has recently met with the French authorities to coordinate this recourse action.

Hebei Spirit (Republic of Korea, December 2007)

All claims for this incident have been finalised by either mediation or judgment and a total of KRW 432.9 billion has been awarded. The 1992 Fund has paid a total of KRW 107.3 billion in compensation to the Government of the Republic of Korea. Following the conclusion of a bilateral agreement, the 1992 Fund paid to the Government the balance of compensation due totalling KRW 27 486 198 196 for it to pay all remaining claims. In return, the Government has provided the safeguards the 1992 Fund needs to be protected from further actions in the Courts against the 1992 Fund. The Fund has brought a recourse action in the Republic of Korea to recover a proportion of the amounts paid for this incident from the Samsung Heavy Industries Co. Ltd (SHI) Limitation Fund. In April 2019 the 1992 Fund made an additional payment of KRW 22 billion to the shipowner's insurer, the Skuld Club, and set aside a balance of some KRW 3.4 billion to be paid when the legal proceedings have been concluded. Since this major incident, which led to some 128 000 claims for compensation, is now drawing to a close, the Director has announced that a meeting will soon be held with key parties to discuss the lessons learned from the case.

Agia Zoni II (Greece, September 2017)

In total the 1992 Fund has received 373 claims amounting to EUR 94.64 million and USD 175 000 and has already made compensation payments totalling some EUR 11.27 million in respect of this incident. The 1992 Fund's experts have assessed 312 claims, 307 of which were approved. The 1992 Fund has 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. Proceedings against the 1992 Fund have also been filed by 78 fisherfolk, claiming EUR 2.18 million.

Two separate investigations into the cause of the incident have been carried out: the first concluded that the incident occurred as a result of an explosion and the second concluded that it resulted from the opening of the seawater ballast valves and the undue opening of the cargo tank seals or manifolds, which could only have been done from on board the vessel. In July 2018, the 1992 Fund was informed that the district attorney was also investigating the terms of the granting of the antipollution services agreement to the clean-up contractors. The Director reported to the Executive Committee that whilst there were indeed peculiarities in this incident, it was too early to draw conclusions and that he would monitor the incident and report any developments to the Committee at its next session.

Trident Star (Malaysia, August 2016)

Claims for pollution damage arising from the *Trident Star* incident exceed the 1992 CLC limit applicable to the *Trident Star*. Therefore, the 1992 Fund is liable to pay compensation in respect of this incident and the 1992 Fund Executive Committee has authorised the Director to do so. However, the amounts paid by the 1992 Fund should be recovered from the shipowner's insurer under the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

Nathan E. Stewart (Canada, October 2016)

The application of the Conventions is not clear in this case as there is a question over whether the *Nathan E. Stewart*/DBL 55 ATB falls within the definition of 'ship' under Article I(1) of the 1992 CLC. In addition, at the time of the incident, the barge was empty and therefore, was not carrying oil in bulk as cargo. Furthermore, it has not been established whether during any previous voyage it had carried any persistent oil in bulk as cargo. The 1992 Fund has not received any claims in relation to this incident. However, a legal action has been brought against the owners, operators, the master and an officer of the *Nathan E. Stewart*/DBL 55 ATB in the Supreme Court of British Columbia and the claimants have included the 1992 Fund and the Supplementary Fund as third parties. The IOPC Funds are taking steps to obtain a clear confirmation of the product carried by the barge so as to obtain a declaration, by consent or by determination of the Court, that the 1992 Civil Liability and Fund Conventions do not apply to this case.

Bow Jubail (Netherlands, June 2018)

In November 2018, the Rotterdam District Court decided that the shipowner of the *Bow Jubail* had not proved that the tanker did not contain residues of persistent oil at the time of the incident and that, therefore, the *Bow Jubail* qualified as a ship as per Article I(1) of the 1992 Civil Liability Convention (CLC). The shipowner has appealed to the Court of Appeal in The Hague. Since it is likely that the total pollution damage will exceed the limit that would apply to the ship under the 1992 CLC, the 1992 Fund Convention could apply to this incident. A decision by the Court of Appeal is expected in November 2019.

Other incidents

The Secretariat also provided information in respect of the *Solar 1* (Philippines, August 2006), *Redfferm* (Nigeria, March 2009), *Haekup Pacific* (Republic of Korea, April 2010), *Alfa I* (Greece, March 2012) and *Nesa R3* (Oman, June 2013),

1992 Fund Assembly (24th session) and Supplementary Fund Assembly (16th session)

During their simultaneous sessions, the governing bodies took a number of decisions and took note of a wide range of information provided in relation to compensation matters, treaty matters, financial policies and procedures and secretariat and administrative matters.

Status of the Conventions

The Co-operative Republic of Guyana acceded to the 1992 Fund Convention on 20 February 2019, and the Convention will enter into force for that State on 20 February 2020, bringing the number of 1992 Fund Member States to 116. The Supplementary Fund has 32 Member States. During discussions at the 1992 Fund Assembly session, the delegation of Jamaica pointed out that a number of Member States within the Caribbean Community (CARICOM) would benefit from the assistance of the IOPC Funds in ensuring the correct implementing legislation was in place. The Secretariat offered its assistance in this matter to CARICOM States and others, wherever possible.

Election of members of the 1992 Fund Executive Committee

In accordance with 1992 Fund Resolution N°5, the 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee to hold office until the end of the next regular session of the 1992 Fund Assembly:

Canada (Chair, Ms Gillian Grant)	Jamaica	South Africa
China ^{<1>}	Japan	Thailand
France	Mexico	Turkey
Georgia	Republic of Korea	United Arab Emirates
Ghana (Vice-Chair, Ms Azara Prempeh)	Singapore	United Kingdom

Budgetary matters and assessment of contributions

The 1992 Fund Assembly made the following decisions relating to the 2020 budget and 2019 contributions:

- To adopt an administrative budget for the 1992 Fund of £4 875 731 for 2020.
- To levy contributions to the General Fund of £2.3 million, payable by 1 March 2020.
- To reduce the working capital of the 1992 Fund to £15 million in the budget year 2020.
- To levy contributions of £5 million to the *Agia Zoni II* Major Claims Fund, payable by 1 March 2020.
- To levy contributions of £3.6 million to the *Nesa R3* Major Claims Fund, payable by 1 March 2020.

The Supplementary Fund Assembly adopted an administrative budget for 2020 of £52 400.

Report of the joint Audit Body – Risk management (Insurance Problems)

The joint Audit Body is currently reviewing the risks arising from incidents involving the IOPC Funds where the ships were insured by insurers that were not members of the International Group of P&I Associations. The Audit Body provided an update on that review and gave details of potential measures they were considering to deal with the three key problem areas. These included the development of a template or insurance card that could be used by non-IG insurers as evidence of insurance. After a lengthy discussion of its report and the measures proposed, the Audit Body stated that it would consider the points raised by delegations in detail and report to the governing bodies at a future session.

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

2010 HNS Convention

South Africa has joined Canada, Denmark, Norway and Turkey to become a Contracting State to the 2010 HNS Convention. At the meeting, a number of States reported on the progress made by their State towards implementation and ratification of the Convention. The Assembly was encouraged by the positive steps being taken and noted that the Convention could enter into force in the next three - four years. The Secretariat reported on the recent work undertaken to promote the benefits of the Convention and on the changes it had introduced to the HNS website, maintained by the IOPC Funds. In particular, significant updates and improvements have been made to the HNS Finder, which facilitates the identification of HNS that would be considered contributing cargo. A new blog section has also been introduced which is now being used by States and others to share information and ask questions about specific elements of the Convention. The IOPC Funds continues to work in close cooperation with IMO to provide assistance to those States considering ratification and to prepare for the entry into force of the Convention.

Other decisions

The governing bodies also took decisions regarding the following:

- the re-appointment of BDO International as the IOPC Funds' External Auditor for the financial years 2020–2023 inclusive;
- the approval of a new selection process of the External Auditor for the future; and
- the appointment of members and substitute members of the Appeals Board.

Future meetings

The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly during the week of 2 November 2020. They also agreed that the next sessions of the governing bodies would take place during the week of 9 March 2020.

Visit from former Secretary-General of the United Nations, Mr Ban Ki-moon

During the first day of the sessions, Mr Ban Ki-moon, former Secretary-General of the United Nations (UN), visited IMO. As part of his visit he took the opportunity to address the IOPC Funds' governing bodies, IMO Member States, affiliated organisations, IMO staff and the IOPC Funds' Secretariat. Mr Ban shared his experience as head of the UN and discussed key issues concerning climate change and sustainability. He spoke on these particular challenges that face the world and the vital role that governments have both locally and internationally, in order to find global solutions to protect the environment for present and future generations. He acknowledged that the shipping industry also had an important responsibility in tackling climate change and for protecting the marine environment and referred to UN Sustainable Development Goal 14, which advocates the conservation and sustainable use of the oceans, seas and marine resources.

Note: This is a summary of key aspects of the sessions held and does not reflect the sessions in full. A comprehensive Record of Decisions may be obtained via the Document Services section of the IOPC Funds' website at www.iopcfunds.org.