



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 April 2019 sessions of the governing bodies – In brief

3 April 2019



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held sessions on Monday 1 and Tuesday 2 April 2019 at the headquarters of the International Maritime Organization (IMO) in London. Sixty-two States, representing 59 Member States of the 1992 Fund, 21 Member States of the Supplementary Fund and 3 observer States, as well as 13 observer organisations, attended sessions of the 1992 Fund Administrative Council, the 1992 Fund Executive Committee and the Supplementary Fund Assembly.

Tributes to Mr Jerry Rysanek

At the opening of the sessions, the governing bodies held a minute's silence in memory of Mr Jerry Rysanek, Chairman of the Audit Body, former Chairman of the 1992 Fund Assembly, of the 1992 Fund Executive Committee and Head of the Canadian delegation to the IOPC Funds for over 20 years, who had sadly passed away in January 2019. Time was set aside during the sessions for delegations to pay tribute to Mr Rysanek. The Director, Chairmen of the governing bodies, members of the Audit Body and many delegations expressed their deepest condolences to Mr Rysanek's family and the Canadian delegation and shared fond memories of their interactions with him.

1992 Fund Executive Committee (72nd session)

The 1992 Fund Executive Committee was informed of one new incident which had occurred in Rotterdam, the Netherlands and noted information provided by the Secretariat on a number of recent developments in respect of ongoing incidents involving the Fund. Information was provided on seven open incidents involving the IOPC Funds. In particular, recent developments in the following incidents were reported.

New incident: *Bow Jubail* (Netherlands, June 2018)

On 23 June 2018, the oil and chemical tanker *Bow Jubail* collided with a jetty in a terminal in Rotterdam, the Netherlands, resulting in a spill of bunker oil into the harbour. Pollution damage claims submitted may be over USD 50 million. The shipowner has argued before the Rotterdam District Court that the incident is covered under Article 1.8 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001). However, in November 2018, the Court decided – that the shipowner 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 (1992 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. However, if the shipowner is successful in proving that there were no such residues on board, the incident would fall under the Bunkers Convention 2001, and therefore the limitation amount of the Convention on Limitation of Liability for Maritime Claims (LLMC 76/96) would apply. The Director informed the Executive Committee that the 1992 Fund would continue to monitor developments in this case and report to future sessions of the Committee.

Prestige (Spain, November 2002)

In December 2018 the Spanish Supreme Court delivered a judgment on the quantification of the losses in this case. The total amount awarded, after amendments, is €1 439.08 million (losses €884.98 million + pure environmental and moral damages €554.10 million), as follows:

- The amount awarded to the Spanish State is €1 357.14 million (losses €803.04 million + pure environmental and moral damages €554.10 million).
- The amount awarded to the French State is the full claimed amount i.e. €67.5 million.
- The amount awarded to individual claimants in Spain and France is €14.44 million.

In addition, the judgment awards interest to be quantified by the Court which will enforce the judgment. It also clarifies that moral and pure environmental damages are not recoverable from the 1992 Fund and confirms its previous decision that the London P&I Club is liable for all the damages caused by the incident, including moral and pure environmental damages, up to the limit of its policy of USD 1 000 million.

An order has been issued requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. €28 million. The Director proposed to the Executive Committee that the 1992 Fund should comply with the judgment but pointed out that there were legal proceedings pending in other jurisdictions and that if the 1992 Fund were to pay the full amount available from the 1992 Fund to the Spanish Court, these claimants would not be able to receive compensation from the 1992 Fund. The Director therefore recommended that an amount should be kept available to pay compensation to claimants who could receive a judgment in their favour in the future. The 1992 Fund Executive Committee decided to authorise the Director to pay to the Spanish Court €28 million less:

- €800 000 which should be kept available to pay any judgments by French courts; and
- €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 once the final level of payments is confirmed (currently at 15%).

Hebei Spirit (Republic of Korea, December 2007)

In November 2018, the Limitation Court in Seosan issued the CLC distribution table for this incident. The amount which the Limitation Court required the Skuld Club to deposit (SDR 89.77 million plus interest) was KRW 230.9 billion (£159.2 million)^{<1>}, which included KRW 139.4 billion (£96.1 million) of principal and KRW 91.5 billion (£63.1 million) of interest. By December 2018, 38 claimants had objected to the distribution table. The objections by 36 of these claimants were made against the amounts paid by the Skuld Club and may, therefore, have an impact on the amount of compensation due by the 1992 Fund to the Skuld Club. Based on the exchange rate applied by the Limitation Court, the Skuld Club has paid KRW 47.4 billion (£32.7 million) in excess of its limit (KRW 139.4 billion). In view of this and considering the provisional balancing payment of KRW 22 billion made in April 2017, the amount due to the Skuld Club would be KRW 25.4 billion (£17.6 million). In view of these circumstances, the 1992 Fund Executive Committee decided to authorise the Director to make an additional balancing payment to the Skuld Club totalling KRW 22 billion.

<1> The exchange rate used in this document (as at 14 January 2019) is £1 = KRW 1 449.96, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

The 1992 Fund Executive Committee also authorised the Director to enter into a bilateral agreement with the Government of the Republic of Korea under which the 1992 Fund will pay KRW 27 486 198 196 to the Government of the Republic of Korea in exchange for a hold harmless agreement from the Government.

Nesa R3 (Oman, June 2013)

It was reported to the Executive Committee that all claims relating to this incident had been settled and all compensation due from the 1992 Fund, totalling OMR 3.5 million (£6.7 million)^{<2>}, had been paid. The Executive Committee recognised the continuous and very efficient cooperation of the Government of the Sultanate of Oman, which had been instrumental to the 1992 Fund in making prompt payments of compensation. The 1992 Fund will continue to pursue recovery of the compensation paid from the shipowner and insurer of the *Nesa R3*.

Agia Zoni II (Greece, September 2017)

In total, the 1992 Fund has received 361 claims amounting to €92.48 million. The 1992 Fund's experts have assessed 219 claims, and the Fund has paid some €10.8 million in compensation. The 1992 Fund has closely followed the investigations into the cause of the incident, but no reports have yet been made public. In late 2018, there were widespread reports in the Greek media regarding the conclusion of the technical report ordered by the Judge investigating the cause of the incident. The report is said to conclude that the incident was caused by an explosion but does not conclude what caused the explosion. Further media reports have stated that the report prepared by the Third Marine Accident Investigation Council, finds that the incident was caused by the 'intentional acts and omissions and negligence' of specific persons and companies. The Committee agreed that the 1992 Fund should not speculate on the cause of the incident and should await the official report from the Greek authorities.

Other incidents

The Secretariat also provided information in respect of the *Alfa I* (Greece, March 2012) and *Trident Star* (Malaysia, August 2016) incidents.

1992 Fund Administrative Council (19th session) and Supplementary Fund Assembly (7th extraordinary session)

During their simultaneous sessions, the governing bodies took note of information provided in relation to compensation matters, treaty matters, financial policies and procedures and secretariat and administrative matters. Decisions included:

Financial reporting

Appointment of the External Auditor – 2020 Accounting Year

Since the current term of the existing External Auditor, BDO International, will end in 2020, the governing bodies were invited to consider a number of options with regards to the selection process for the appointment of the next External Auditor. Having considered the options presented, the 1992 Fund Administrative Council and Supplementary Fund Assembly requested the Audit Body to conduct a formal review of the current External Auditor, including an assessment of their performance and their proposals for a further term and to make a recommendation to the governing bodies at their October 2019 sessions.

^{<2>} The exchange rates used in this document are SDR 1 = £0.9242, £1 = OMR 0.4970 and £1 = BHD 0.4868 (as at 14 January 2019), except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

Appointment of the Chairperson of the joint Audit Body

Following the sad passing of the Chairman of the Audit Body in January 2019, the 1992 Fund Administrative Council was required to make a number of decisions regarding the composition of the Audit Body for the remainder of its three-year term. It decided to appoint Mr Makoto Harunari as Chairperson. In addition, the Administrative Council created the post of Vice-Chairperson and appointed Mrs Birgit Sjølling Olsen to that position.

Secretariat and administrative matters

Quorum requirement for the 1992 Fund Administrative Council

The 1992 Fund Administrative Council decided to amend the quorum requirement for the 1992 Fund Administrative Council to one-third of Member States and amended 1992 Fund Resolution N°7 accordingly.

Other matters

The governing bodies also noted the following information:

- Since its last report on HNS matters in November 2018, the 1992 Fund Secretariat has focused on updating some of the existing tools developed to support the better understanding of the 2010 HNS Convention, namely the HNS Convention website and the HNS Finder.
- The Memorandum of Understanding relating to the agreement on rates for the use of the European Maritime Safety Agency's (EMSA) Pollution Response Assets has been signed, and the Secretariat has offered its services to Member States and other companies that may also wish to discuss similar possible agreements.
- Following an exchange of correspondence with the European Commission on the application of the General Data Protection Regulations (GDPR) and Directive 2016/680 (Directive) to the IOPC Funds, the Director has been informed that it would depend on the privileges and immunities applicable under the Headquarters Agreement. As a result, the Director will discuss the issue with the Government of the United Kingdom.

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.