

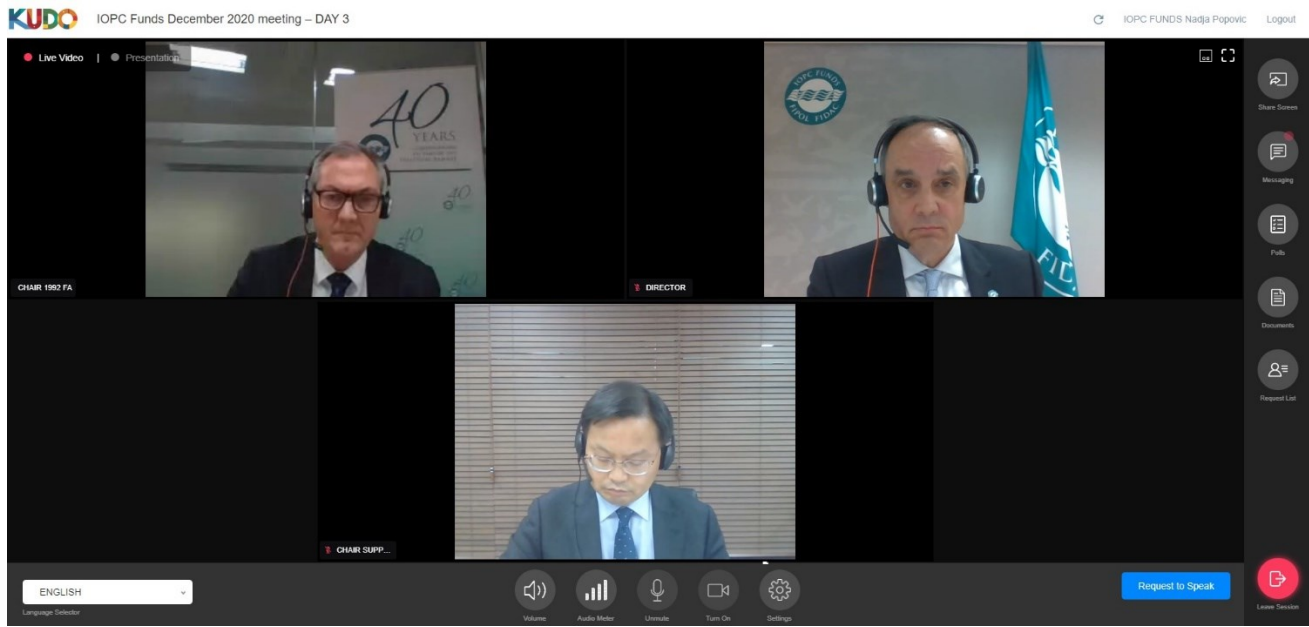


International Oil Pollution
Compensation Funds

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 December 2020 sessions of the governing bodies – In brief 10 December 2020



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held remote sessions from Wednesday 2 to Friday 4 December 2020 via the e-conferencing platform KUDO. Seventy-one States, representing 70 Member States of the 1992 Fund, 26 Member States of the Supplementary Fund and one observer State, as well as 16 observer organisations, attended sessions of the 1992 Fund Assembly, the 1992 Fund Executive Committee and the Supplementary Fund Assembly. Due to the COVID-19 pandemic, the meeting was postponed to December 2020 following the cancellation of the March 2020 sessions and was held remotely in order to undertake decisions vital to the successful functioning of the IOPC Funds in 2021. A series of procedural decisions were taken, amending or temporarily suspending the Rules of Procedure, to allow the sessions to be conducted remotely and facilitate discussion of meeting items.

1992 Fund Executive Committee (74th 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)

The Court in La Coruña had issued an order on the distribution of the amount deposited in Court by the 1992 Fund and the amount corresponding to the limitation fund. Following this, in November 2020, the Spanish Court made payments totalling EUR 51 537 619 to claimants in the Spanish legal proceedings and the Spanish State, who had advanced compensation to victims in Spain, received EUR 40 740 852 from the Court. In addition, the French State, who had carried out clean-up operations on the French coast after the spill, received EUR 9 268 952 and the local government in Galicia and private claimants in Spain received EUR 1 527 815.

A case management hearing had also taken place in January 2020, at which both the American Bureau of Shipping (ABS) and the 1992 Fund had argued the issue of sovereign immunity together with the other admissibility arguments raised by ABS. ABS are planning on challenging the question of sovereign immunity up to the level of the Court of Cassation. If the Fund's action against ABS is considered admissible by the Court, the 1992 Fund will have to prove that ABS was negligent in the way it carried out its work in respect of the classification of the vessel. Currently, the 1992 Fund's lawyer is working together with the French Government's lawyers to consider how to proceed with their respective actions against ABS.

Hebei Spirit (Republic of Korea, December 2007)

In July 2020, it was confirmed that all legal proceedings related to the *Hebei Spirit* incident had been finalised, and the 1992 Fund made a payment to the insurer, Assurancéföreningen Skuld (Gjensidig) (Skuld Club), for the balance of KRW 3.4 billion (£2.3 million) and thus, the entirety of the overpayment by the Skuld Club has been reimbursed. All lawsuits have been withdrawn or dismissed by the Seosan Court and therefore, all legal proceedings relating to the incident have been finalised. The Samsung Heavy Industries Co., Ltd (SHI) Limitation Court is expected to issue a decision on the distribution of the SHI limitation fund before the end of 2020. Due to the global COVID-19 situation, the meeting planned between the Secretariat, the Skuld Club and the Government of the Republic of Korea, on the lessons learnt from the incident has been postponed until travel restrictions ease.

Agia Zoni II (Greece, September 2017)

The 1992 Fund has received 421 claims amounting to EUR 98.58 million and USD 175 000 and has made compensation payments totalling EUR 14.66 million.

Several investigations into the cause of the incident have been carried out: one of them concluded that the incident occurred as a result of an explosion. A separate investigation, for the Public Prosecutor, concluded that the sinking had been caused by the opening of the seawater ballast valves which could only have done from on board the vessel. It considered that the accident was attributed to the deliberate and negligent action of the shipowner and other parties including representatives of the salvor/one of the clean-up contracting companies.

The 1992 Fund's Greek lawyers have advised that the exercise of the right to claim clean-up expenses under the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention, by a party that had intentionally caused the pollution in order to benefit from the right to claim compensation, would be considered an abuse by the Greek courts under the provisions of Greek legislation. However, the lawyers have advised that the burden of proof would rest upon the 1992 Fund and that mere suspicion of such action would not be sufficient to deny payment. If, however, the claimant was eventually condemned by a criminal court to have intentionally caused the pollution, the 1992 Fund could commence a recourse action.

Since the investigation into the cause of the incident by the Public Prosecutor remained pending, the Director stated that 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.

Bow Jubail (Netherlands, June 2018)

The Court of Appeal in the Hague delivered its judgment on 27 October 2020, confirming the decision of the Rotterdam District Court 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 and therefore, the Bunkers Convention 2001, and the Convention on Limitation of Liability for Maritime Claims 1976, as modified by the 1996 Protocol (LLMC 76/96), would not apply.

The shipowner appealed (filed for cassation) against the judgment to the Supreme Court of the Netherlands on several grounds, mainly on the undue burden of proof imposed on the shipowner. The 1992 Fund could

apply to join the shipowner in the proceedings before the Supreme Court, but it would be for the Supreme Court to decide whether to allow the 1992 Fund to join the proceedings.

After a discussion, in which many delegations intervened, the 1992 Fund Executive Committee agreed that the 1992 Fund should apply to join the shipowner in the appeal proceedings in the Supreme Court in order to request clarification from the Court on the question of the legal test to decide whether there were residues on board the *Bow Jubail*.

Other incidents

The Secretariat also provided information in respect of the *Solar 1* (Philippines 2006), *Redfferm* (Nigeria, March 2009), *Haekup Pacific* (Republic of Korea, April 2010), *Alfa I* (Greece, March 2012), *Nesa R3* (Oman, June 2013), *Trident Star* (Malaysia, August 2016) and *Nathan E. Stewart* (Canada, October 2016) incidents.

1992 Fund Assembly (25th session) and Supplementary Fund Assembly (17th session)

During their simultaneous sessions, the governing bodies took several 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 Republic of the Gambia acceded to the 1992 Fund Convention on 30 October 2019, and the Convention came into force for that State on 30 October 2020, bringing the number of 1992 Fund Member States to 117. This figure will rise to 118 on 23 March 2021 when the Republic of Nauru will also become a 1992 Fund Member State, having deposited an instrument of accession to the 1992 Fund Convention on 23 March 2020. The Supplementary Fund has 32 Member States.

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)	Italy	Netherlands
Ecuador	Liberia	Republic of Korea
Germany	Malaysia (Vice-Chair, Mr Kanagalingam Selvarasah)	Philippines
Ghana	Marshall Islands	Spain
India	Morocco	Thailand

Budgetary matters and assessment of contributions

The 1992 Fund Assembly made the following decisions relating to the 2021 budget and 2020 contributions:

- To adopt an administrative budget for the 1992 Fund of £4 708 287 for 2021.
- To meet the estimated deficit on the General Fund for 2021 by taking out a loan of £3.9 million from the *Hebei Spirit* Major Claims Fund on 1 March 2021 until 1 March 2022 when 2021 contributions shall be due.
- To maintain the working capital of the 1992 Fund at £15 million in the budget year 2021.

The Supplementary Fund Assembly adopted an administrative budget for 2021 of £50 400 and decided to maintain the working capital of the General Fund at £1 million.

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 ships are insured by insurers that are 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 key problem areas.

Election of the joint Audit Body

Since the December 2020 sessions were being held remotely, the established practice of the 1992 Fund Assembly for the election of members of the Audit Body, which in part presupposes in-person meetings, required adaptation. Following discussions on voting methods, the 1992 Fund Assembly carried out a vote using an online voting tool organised by a third-party provider. Heads of delegation were invited to vote online to elect six members of the joint Audit Body and the following candidates were elected for a period of three years:

Mr Alfred H.E. Popp, CM, Q.C. (Canada)	Mr Vatsalya Saxena (India) (Vice-Chair)
Mrs Birgit Sjølling Olsen (Denmark) (Chair)	Dr Hideo Osuga (Japan)
Mr Arnold Rondeau (France)	Captain Thomas F. Heinan (Marshall Islands)

The tenure of Mr Michael Knight as external expert was also extended until 31 December 2021.

2010 HNS Convention

At the time of the sessions, the number of Contracting States to the 2010 HNS Convention remained at five (Canada, Denmark, Norway, South Africa and Turkey). A number of States had reported to the Secretariat their progress made towards implementation and ratification of the Convention, in particular, Belgium, Germany, the Netherlands and the Republic of Korea. Furthermore, France presented a document on the implementation of the HNS Convention in France. It also detailed the development of a national reporting system, highlighted the benefits to be derived from coordination between States and confirmed that it expected to be in a position to ratify in 2022. The Secretariat reported that a full review had been undertaken of the HNS Finder, which facilitates the identification of HNS that would be considered contributing cargo, and that the updated and improved Finder was now operational at hnsconvention.org. The Secretariat also informed the Assembly that meetings with external organisations were underway to work on a draft HNS manual. 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.

Review of the 1992 Civil Liability and Fund Conventions

The delegation of India submitted a document proposing a review of the 1992 CLC and 1992 Fund Convention which suggested a number of proposed amendments to the Conventions. A preliminary discussion followed, and it was ultimately agreed that it would not be possible to have a meaningful discussion with regard to the various points raised in the document or the proposal to establish a Working Group. A full discussion was therefore postponed until the 1992 Fund Assembly can meet in person to ensure that a thorough discussion between Member States could take place .

Appointment of the Director

The Chair of the 1992 Fund Assembly informed the governing bodies that the second term of the Director of the IOPC Funds will expire on 31 December 2021 and therefore, the post of Director will become vacant on 1 January 2022. He explained that a circular would be issued in 2021 inviting 1992 Fund Member States to submit nominations for candidates and that at its regular session in November 2021, the 1992 Fund Assembly will have to elect a new Director.

Other decisions

The governing bodies also took decisions regarding the following:

- the approval of both of the 2019 Financial Statements;
- the approval of the wording of the revised 1992 Fund's Headquarters Agreement and the new Headquarters Agreement of the Supplementary Fund and authorised the Director to sign both Agreements; and
- the appointment of members of the joint Investment Advisory Body.

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 8 November 2021. They also agreed that the next sessions of the governing bodies would take place during the week of 29 March 2021.

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.