



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 May 2023 sessions of the governing bodies – In brief

26 May 2023



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held sessions from Tuesday 23 to Thursday 25 May 2023 at the headquarters of the International Maritime Organization (IMO) in London. Sixty-three 1992 Fund Member States, including 22 Supplementary Fund Member States, two observer States and 11 observer organisations, attended sessions of the 1992 Fund Administrative Council^{<1>}, the 1992 Fund Executive Committee and the extraordinary session of the Supplementary Fund Assembly. This meeting was held in-person, complemented by a passive streaming service.

1992 Fund Executive Committee (80th session)

Information was provided to the 1992 Fund Executive Committee on seven of the 12 open incidents currently involving the IOPC Funds. In particular, recent developments in the following incidents were reported.

Princess Empress, the Philippines (March 2023)

A new incident involving the 1992 Fund was reported to the Executive Committee. The *Princess Empress* had sunk off the coast of the Philippines in March 2023, whilst carrying 800 000 litres of fuel oil as cargo. Subsequently, an oil spill was detected around the location of the ship, which extended to other areas, causing pollution damage. The 1992 Fund has been working closely with the insurer, the Shipowners' P&I Club, and the Government of the Philippines and the Director visited the affected area in April 2023. The Club and the Fund have opened a joint Claims Submission Office in Calapan, Oriental Mindoro, as well as several other claims

<1> From this point forward, references to 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'.

collection centres, in order to facilitate the submission of claims. Claims for compensation will imminently surpass the 1992 Civil Liability Convention (1992 CLC) limit and it is highly likely that claims will reach and exceed the Small Tanker Oil Pollution Indemnification Agreement, 2006 (as amended 2017) (STOPIA 2006) limit. The 1992 Fund Executive Committee decided to authorise the Director to make payments in respect of losses arising out of this incident. The Committee also authorised him to sign an agreement on interim payments with the Club, which 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.

Bow Jubail (Netherlands, June 2018)

On 31 March 2023, a judgment was issued 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 CLC. It is anticipated that the total pollution damage will exceed the limit applicable to the ship under the 1992 CLC, in which case the 1992 Fund Convention will apply to this incident. STOPIA 2006 will apply to this case and the 1992 Fund will be indemnified by the shipowner up to a limit of SDR 20 million.

The Director stated at the meeting that this case might have implications for the definition of ship under the 1992 CLC or a ship under the Bunkers Convention 2001. The Committee authorised him to make payments in respect of this incident and to sign an agreement on interim payments with the insurer of the ship, the Gard P&I Club, which would apply retrospectively. Further discussions regarding the funding of the payments in this incident and the possible postponement of payment of any claims by the Government of the Netherlands took place within the session of the 1992 Fund Administrative Council (see below).

1992 Fund Administrative Council (23rd session) and extraordinary session of the Supplementary Fund Assembly (11th session)

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

Lessons learned from the *Trident Star* Incident

The governing bodies noted that in November 2022, the 1992 Fund had held a meeting with the Shipowners' Club, the insurers of the *Trident Star*, to discuss and review 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. Among the conclusions drawn from that meeting were: the agreement that the excellent cooperation between the 1992 Fund and the Club under STOPIA 2006 had sped up the process of reimbursement of the amounts paid by the Fund in compensation; that the case had benefited from the knowledge and experience of the Singapore branch of the Shipowners' Club, in particular regarding the use of local experts; and that recent technological advances and new practices, such as online meetings, will be of benefit for future incidents, facilitating communication between the insurers, the IOPC Funds, the experts and claimants, and providing more opportunities for the Fund to contribute to instructions given to experts and discussions with claimants on complex claims.

Potential impact of sanctions on the international liability and compensation regime

The governing bodies considered a document presented by the Secretariat on the potential impact of international sanctions. The Director 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 and that port States, under the Convention, were obliged to ensure that ships entering the port, wherever they were registered, had been properly insured. A number of delegations shared the concerns of the Director. During the debate on this subject, reference was made by Member States to the significant threats to the environment caused by ship-to-ship transfers in open waters, the growth of the 'ghost fleet' and the age and quality of ships within it, the undermining of IMO Conventions and the inevitable increase in the risk of incidents occurring and exposure to the IOPC Funds.

Budgetary matters and assessment of contributions

Following the decisions by the 1992 Fund Executive Committee to authorise the Director to make payments of compensation in respect of the *Princess Empress* and of the *Bow Jubail* incidents, the 1992 Fund Administrative Council approved the Director's proposal that any expenditure exceeding the amount payable from the General Fund in respect of either of those incidents prior to 1 March 2024, should be financed through a loan to the *Princess Empress* Major Claims Fund or the *Bow Jubail* Major Claims Fund accordingly.

Measures to encourage the submission of oil reports – Application of 1992 Fund Resolution N°12 in respect of the *Bow Jubail* incident

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. However, it was noted that reports from Bonaire and Sint Eustatius were outstanding for the years 2004 to 2009 for two contributors, and for 2019 to 2021 for one contributor. In light of the *Bow Jubail* incident, the Director drew the Administrative Council's attention to 1992 Fund Resolution N°12 which provides that where a State is responsible for two or more oil reports in arrears, any claim submitted by the Administration of that State will be assessed for admissibility, but actual payment will be deferred pending rectification of the reporting deficiency. 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 and, by a large majority, agreed with the Director's proposal that Resolution N°12 be applied in respect of the *Bow Jubail* incident. It was agreed that the issue should 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 should be deferred pending rectification of the reporting deficiency.

2010 HNS Convention

At the time of the sessions, the number of Contracting States to the 2010 HNS Convention remained at six (Canada, Denmark, Estonia, Norway, South Africa and Türkiye). An action plan of tasks to be undertaken by the 1992 Fund Secretariat in relation to the preparations for the entry into force of the 2010 HNS Convention is now established and being worked towards by the relevant members of the Secretariat. The report given at this meeting focused on the recent note published by the Secretariat which summarises the main HNS reporting issues to be resolved before entry into force of the Convention and proposes a number of possible solutions to those issues. The Secretariat also reported on the results of two questionnaires which had been issued to contracting States, and those expected to soon ratify, requesting information on their domestic legislation regarding HNS reporting.

A summary of the April 2023 workshop, organised by Canada in cooperation with IMO and the IOPC Funds, was also provided and 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. Further information on all matters relating to the 2010 HNS Convention can be found at [hnsconvention.org](https://www.hnsconvention.org).

Other decisions

The governing bodies also took decisions regarding the following:

- the amendment of the relevant Rules of Procedure of the governing bodies to bring forward the deadline for the submission of credentials for Member State representatives to no later than five working days prior to the opening of the sessions; and
- the authorisation of the Director to make the necessary transfer from Chapter I (Personnel) to 'External Audit Fees' (Chapter VII) within the 2022 budget of the 1992 Fund to cover the cost to the Secretariat for the 2022 audit.
- The authorisation of the Director to make payment of £44 325 from the Chapter 'Unforeseen expenditure' of the 2023 budget of the 1992 Fund to cover an extraordinary increase to the 2023 service charge payable to IMO.

They also noted information reported in respect of:

- the upcoming election of members of the joint Audit Body in November 2023 and the anticipated call for nominations that will be announced in a Circular shortly after the May 2023 meeting; and
- the support services provided by the Secretariat to Member States, in particular the various in-person and online training activities it offered on request and the annual training and educational events it delivered.

Dates and format of next meeting

Following a discussion of the possible options for the format of future IOPC Funds' meetings, it was decided that no decision should be made before the results are confirmed of the experience of IMO, who will continue to hold hybrid meetings on a trial basis until September 2023. The next meeting of the IOPC Funds' governing bodies will therefore be held in-person, during the week of 6 November 2023. The meeting will again be complemented by a passive streaming service. Prior to that meeting, the Director will continue to liaise with the IMO Secretariat on a regular basis; 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 report on developments, in particular with regards to the amendments of Rules of Procedure and on the human and financial resources required to deliver such meetings, at the November meeting.

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.