



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 November 2023 sessions of the governing bodies – In brief

10 November 2023



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held sessions from Tuesday 7 to Friday 10 November 2023 at the headquarters of the International Maritime Organization (IMO) in London. Seventy-two 1992 Fund Member States, including 25 Supplementary Fund Member States, 4 observer States and 12 observer organisations, attended sessions of the 1992 Fund Assembly, the 1992 Fund Executive Committee and the Supplementary Fund Assembly. This meeting was held in person, complemented by a passive streaming service.

Passing of former Chair of the 1971 Fund Administrative Council and long-serving representative at IOPC Funds' meetings

Prior to opening the sessions of the IOPC Funds' governing bodies, the Chair of the 1992 Fund Assembly announced the sad news that Captain David Bruce, representative of the Marshall Islands and former Chair of the 1971 Fund Administrative Council had passed away in September 2023. The Director expressed his sincere condolences on behalf of the IOPC Funds to Captain Bruce's family and colleagues. He reminded delegations that Captain Bruce had attended sessions of the IOPC Funds' governing bodies for over 20 years and referred, in particular, to his time as Chair of the 1971 Fund Administrative Council, a post which he held for over six years. As Chair, his excellent diplomatic skills and wisdom proved pivotal to the successful winding up of the

original IOPC Fund (the 1971 Fund) in 2014. Throughout the week many delegations, when intervening for the first time, expressed their sincere condolences.

1992 Fund Executive Committee (81st 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.

Princess Empress, the Philippines (February 2023)

Clean-up and response operations relating to the *Princess Empress* incident have been officially finalised and all fishing and swimming bans have been lifted. Since the incident in February 2023, the 1992 Fund has continued to work closely with the insurer (the Shipowners' P&I Club) and the Government of the Philippines. Members of the Secretariat, including the Director and Deputy Director/Head of Claims, have visited locations impacted by the spill and have spent time at the joint Claims Submission Office established by the Club and the IOPC Funds in Calapan, Oriental Mindoro. Given the characteristics, accessibility and extent of the affected areas, temporary claims submission offices (collection centres) were opened in various locations to provide claimants with an opportunity to submit their claims.

Over 35 500 claims have been received totalling approximately PHP 1.4 billion, USD 26.4 million and EUR 2.7 million. The total amount paid so far in compensation for this incident is PHP 42.5 million, USD 24.8 million and EUR 2.6 million. The vast majority of claims received (some 33 000) are from the fisheries sector. The compensation process has been complicated by the fact that most claimants in that sector do not have bank accounts. However, working together with the Club, the Secretariat quickly found alternative ways to make payments and has also continued with the process of making provisional payments in order to alleviate the financial hardship on those affected.

Claims for compensation have surpassed both the 1992 Civil Liability Convention (1992 CLC) limit and the Small Tanker Oil Pollution Indemnification Agreement, 2006 (as amended 2017) (STOPIA 2006) limit. Cooperation with the Shipowners' P&I Club continues to be excellent. The Club has already been reimbursing the Fund in accordance with STOPIA 2006 and in May 2023, the two parties signed an agreement on interim payments in respect of the incident. The cooperation and regular engagement with the Philippine Government and local authorities has also greatly facilitated the claims process.

Incident in Israel (February 2021)

In February 2021, the Government of Israel contacted the 1992 Fund requesting assistance with a mystery spill, which resulted in tar balls being washed up along the Israeli coastline. An investigation undertaken by the Israeli Ministry of Environmental Protection failed to conclusively identify the tanker responsible for the spill. Since the 1992 Fund Convention also applies to spills of persistent oil even if the ship from which the oil is released cannot be identified, provided it is shown that the oil originated from a ship as defined in the 1992 CLC, both the 1992 CLC and Fund Convention apply to this incident and the Director has been authorised to make compensation payments for admissible claims. At the November 2023 meeting, it was reported that a total of 385 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 28.5 million. Six claims have been paid for a total of ILS 4.2 million and further claims have been assessed at ILS 2.4 million. The 1992 Fund continues to receive claims for this incident, and the Secretariat is working to assess all claims received before the three-year time bar in February 2024.

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 has stated that this case might have implications for the definition of a ship under the 1992 CLC or a ship under the Bunkers Convention 2001.

In May 2023, the 1992 Fund Executive Committee authorised the Director to make payments in respect of this incident. At the first hearing of the Rotterdam Limitation Court in September 2023, some of the claimants argued that the guarantee to be provided by the shipowner's P&I Club should also include legal interest accruing between the date of the incident and the date of the setting up the limitation fund. In October 2023, the Rotterdam District Court rejected the shipowner's application to limit its liability to the amount of the 1992 CLC. The shipowner will have to decide whether to appeal the decision, or to resubmit an application to limit its liability to the amount of the 1992 CLC, this time including interest.

Agia Zoni II (Greece, September 2017)

The assessment of the 423 claims filed against the 1992 Fund in this incident has continued. 416 of those claims have been approved and 191 have been paid. Further offers of compensation and advance payments have been made to a number of claimants whose responses are awaited. The results of the investigation into the cause of the incident by the Public Prosecutor remain pending. It is not known when the Public Prosecutor will conclude the investigation, which is awaited to determine the cause of the incident, although the Greek State reported to the Executive Committee that progress had been made. It is not known whether the District Attorney will decide to pursue criminal charges against the owner and clean-up contractor. During the 81st session of the 1992 Fund Executive Committee, the delegation of Greece referred to the legal actions brought by the Greek State and the re-calculation of the cost for the disposal of liquid waste to the amount of EUR 317 389.54. A settlement offer for that claim was with the Greek State and both the State and the IOPC Funds were hopeful that the matter would be concluded before further legal costs were incurred. The Director will continue to monitor this incident and report the latest developments to the Committee at its next session.

Other incidents

The Secretariat also provided information in respect of the *Prestige* (Spain, November 2002), *Solar 1* (Philippines, August 2006), *Redferm* (Nigeria, March 2009), *Haekup Pacific* (Republic of Korea, April 2010), *Alfa I* (Greece, March 2012), *Nesa R3* (Oman, June 2013), *Nathan E. Stewart* (Canada, October 2016) and *MT Harcourt* (Nigeria, November 2020) incidents.

1992 Fund Assembly (28th session) and Supplementary Fund Assembly (20th 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.

Election of Chairs of the governing bodies

The 1992 Fund Administrative Council reappointed Ambassador Antonio Bandini (Italy) as Chair of the 1992 Fund Assembly and Professor Tomotaka Fujita (Japan) as First Vice-Chair. It also elected Ms Stellamaris Muthike (Kenya) as the new Second Vice-Chair.

The Supplementary Fund Assembly reappointed Mr François Marier (Canada) as Chair and Mr Andrew Angel (United Kingdom) as First Vice Chair. It also elected Ms Safiye Tecen (Türkiye) as the new Second Vice-Chair.

Election of members of the 1992 Fund Executive Committee

In accordance with 1992 Fund Resolution N°5, the 1992 Fund Administrative Council 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:

Algeria	Denmark (Vice-Chair, Ms Karen Andersen)	Republic of Korea
Bahamas	India	South Africa
Canada	Italy	Spain
Colombia	New Zealand	Thailand
Cyprus	Poland (Chair, Ms Malgorzata Buszynska)	United Kingdom

Budgetary matters and assessment of contributions

The 1992 Fund Assembly made the following decisions relating to the 2024 budget and 2023 contributions:

- to adopt an administrative budget for the 1992 Fund of £5 382 018 for 2024;
- to levy contributions to the General Fund for the sum of £10 million in 2023, payable by 1 March 2024;
- to levy 2023 contributions of £20 million to the *Bow Jubail* Major Claims Fund, payable by 1 March 2024;
- to levy 2023 contributions of £10 million to the *Princess Empress* Major Claims Fund, payable by 1 March 2024;
- to maintain the working capital of the 1992 Fund at £15 million.

The Supplementary Fund Assembly adopted an administrative budget for 2024 of £58 100 and decided to maintain the working capital of the General Fund at £1 million.

Report of the joint Audit Body and appointment of External Auditor

The joint Audit Body presented its annual report to the governing bodies, setting out the work it had undertaken since the October 2022 meeting of the IOPC Funds, describing in detail its areas of focus in line with its agreed work programme and making a number of recommendations. Since this was the last time the current Audit Body would report to the governing bodies, it also set out the conclusions of a review it had undertaken of its functioning over the previous three years. Finally, the Audit Body updated the governing bodies on plans for the appointment of the next External Auditor, which the governing bodies will be required to appoint in November 2024. The Audit Body proposed a specific audit tender evaluation process and timetable, which were both approved, and the governing bodies instructed the Director to seek Member State and commercial firm nominees for the position.

The Director took the opportunity to express appreciation to the outgoing Audit Body members and presented Ms Birgit Sjølling Olsen, the outgoing Chair, with an inscribed glass ornament in recognition of her years of service as Chair.

Election of the joint Audit Body

In accordance with established practice, 1992 Fund Member States voted by secret ballot and elected the following six members of the joint Audit Body for a period of three years:

Mr Alfred H.E. Popp, CM, K.C. (Canada)	Dr Hideo Osuga (Japan)(Vice-Chair)
Mr Volker Schöfisch (Germany)(Chair)	Captain Thomas F. Heinan (Marshall Islands)
Captain Anish Joseph (India)	Mr Christoph Kagame Mungandjela (Namibia)

The position of external expert on the Audit Body is held by Ms Alison Baker, who was previously appointed for a term of three years from 1 January 2022 to 31 December 2024.

Fulfilment of obligations by Member States to submit oil reports and ensure payment of contributions

At the time of the meeting, all Supplementary Fund Member States had submitted reports on contributing oil received in 2022. However, 28 Member States of the 1992 Fund had yet to submit their 2022 reports and a number of those States had reports outstanding for several years. This issue remains a significant concern to the governing bodies and, as instructed at previous sessions, the Director has, together with the Audit Body, explored ways to incentivise States to fulfil their obligations under the 1992 Conventions. A new document was presented at the November 2023 meeting identifying 22 States which would currently be subject to 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3, under which payment of compensation to

Government authorities in a State affected by an incident would be postponed if they had outstanding oil reports or unpaid contributions for more than two years. The Director urged all States to submit oil reports in a timely and accurate manner and ensure the prompt payment of contributions since it affects the IOPC Funds' ability to implement an equitable system of levying contributions to ensure that victims of oil pollution in Member States are compensated in full for their loss or damage.

To further address this issue, as previously instructed, the Director presented new draft Resolutions for the 1992 Fund and Supplementary Fund authorising him to invoice contributors based on estimates when no oil reports are submitted. The governing bodies approved the Resolutions and consequential amendments to the relevant Internal Regulations.

Potential impact of international sanctions on the international liability and compensation regime

The Director presented a document for the consideration of the governing bodies which highlighted his concern for the potential impact of international sanctions on the international liability and compensation regime. Recent data has shown a substantial increase in the size of the so-called 'ghost' or 'dark' fleet between January and June 2023, which in turn could lead to a higher threat of accidents and oil spills, an increased difficulty in assigning liability when ship-source spills did occur, and a lack of proper insurance or other financial security. The Director reported that the IOPC Funds and its contributors were exposed to an increased risk of having to pay the full compensation for oil spills if no sufficient insurance was available to cover the shipowner's liability. The Secretariat is therefore continuing to monitor the situation and to liaise with Member States, IMO and the International Group of P&I Associations on this issue. The Director took the opportunity to remind Member States of their obligation under the 1992 CLC, to ensure that tankers had a CLC certificate and noted that failure to do so might result in Flag State liability. During the discussions on this matter at the meeting, several delegations shared the Director's concerns.

2010 HNS Convention

On 23 October 2023, France deposited an instrument of ratification to the 2010 Hazardous and Noxious Substances Protocol (2010 HNS Protocol) with the Secretary-General of the International Maritime Organization (IMO), bringing the number of Contracting States to the Protocol to seven. Several more States reported good progress towards ratification of the Protocol at the meeting. The Secretariat continues to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and prepare for the first session of the HNS Fund Assembly. It has continued to promote the entry into force of the 2010 HNS Convention, has carried out outreach and technical assistance activities, has continued to work on the development of the HNS reporting and contributions system, and to make progress on the drafting of a Claims Manual. A workshop focusing on reports and contributions will take place in conjunction with the next sessions of the governing bodies in 2024.

The 1992 Fund Assembly approved an appropriation of £424 000 in the 2024 budget for the 1992 Fund to cover the costs for the preparations and other administrative tasks in respect of the HNS Fund.

Other decisions

The governing bodies also took decisions regarding the following:

- the approval of the 2022 Financial Statements of the 1992 Fund and Supplementary Fund;
- a transfer within the 1992 Fund budget from 'Travel' to cover the cost of the 2023 external audit;
- the introduction of rotation and succession planning guidelines for members of the joint Investment Advisory Body and an amendment of its mandate;
- amendments to the Internal and Financial Regulations to take into account changes in the structure of the Secretariat;
- the appointment of members and substitute members of the Appeals Board; and
- amendments to the Staff Rules and Regulations.

They also noted information reported in respect of:

- the payment of contributions to the IOPC Funds;
- the report of the joint Investment Advisory Body;
- the application of the European Union General Data Protection Regulation; and
- the outreach activities and information services delivered since 2022 and those planned for 2024.

Dates and format of future meetings

It was decided that the next sessions of the governing bodies would be held during the weeks of 29 April and 4 November 2024. Whilst awaiting the outcome of the trial of holding hybrid meetings by the International Maritime Organization (IMO), meetings of the IOPC Funds will continue to be held in person, complemented by a passive streaming facility.

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.