



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 2024 sessions of the governing bodies – In brief 1 May 2024



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held sessions from Monday 29 April to Wednesday 1 May 2024 at the headquarters of the International Maritime Organization (IMO) in London. Sixty-one 1992 Fund Member States, including 22 Supplementary Fund Member States, one observer State and 13 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 (82nd session)

Information was provided to the 1992 Fund Executive Committee on four of the twelve open incidents currently involving the IOPC Funds. Specifically, recent developments in the following incidents were reported:

NEW INCIDENT - Incident in Trinidad and Tobago (February 2024)

The Secretariat reported that, following the occurrence of an oil pollution incident in Trinidad and Tobago in February 2024, it had conducted a fact-finding mission to the 1992 Fund Member State in March, where the Deputy Director/Head of Claims Department and a Claims Manager had visited the site of the incident and met

^{<1>} From this point forward, references to the '1992 Fund Administrative Council' should be taken to read '24th session of the 1992 Fund Administrative Council, acting on behalf of the 28th extraordinary session of the 1992 Fund Assembly'.

with representatives from the Ministry of Energy and Energy Industries (MEEI). The 1992 Fund Executive Committee noted that the articulated barge *Gulfstream*, towed by the tug *Solo Creed*, had capsized some 16 km off the coast of Tobago and had lodged on a reef some 150 metres off Canoe Bay on the South Eastern coast of Tobago, spilling an unknown quantity of its 4 652 mt of persistent Bunker Fuel C cargo, which had polluted some 15 km of the coastline of Tobago. Subsequently, traces of oil and tar balls were washed up on the coast of Bonaire (Kingdom of the Netherlands), which were cleaned up by the local authorities.

The delegation of the Republic of Trinidad and Tobago, led by the Member State's Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister, presented a document and made a statement detailing the investigations it had undertaken into the incident, particularly into the owner and insurer of the vessel, and noting the impact of the spill on the country's environment and economy.

It has been confirmed that the oil carried onboard the barge was persistent and that the barge had been engaged in sea-going voyages for many years. However, the Executive Committee noted that the incident involved a barge which appeared to have no insurance, was in poor condition, for which no registered owner had yet been identified, and which appeared to be leaking oil at the start of its voyage suggesting the vessel was unseaworthy before and at the commencement of the voyage.

Member States agreed that the 1992 Civil Liability and 1992 Fund Conventions applied to this incident and the Executive Committee decided to authorise the Director to make payments of compensation. However, a number of delegations considered that the absence of insurance in this case raised serious concerns and undermined the integrity of the compensation regime. It was requested that the subject should be discussed further by the 1992 Fund Assembly.

Princess Empress, the Philippines (February 2023)

The Executive Committee recalled its authorisation of the Director to make payments in respect of losses arising from the *Princess Empress* incident and the subsequent opening by the 1992 Fund and the Shipowners' P&I Club of a central Claims Submission Office (CSO) in Calapan, Oriental Mindoro, and a number of temporary collection centres in different areas, to facilitate the submission of claims for those in remote locations.

Substantial progress has been made in relation to this incident and some 38 675 claims had been registered at the time of the meeting, mainly in the fisheries sector. Provisional payments were completed in February 2024 and payment of some £10 million to 23 238 fishers has begun. It was noted that, given the number of claimants involved and the logistical challenges, this process would likely take months to complete.

During the meeting, the Director thanked the Philippine Government, and in particular the Philippine Coast Guard for their assistance during the visits by members of the IOPC Funds' Secretariat to the State. He expressed his gratitude to the local authorities in the affected areas for their help, especially regarding the opening of temporary local claims submission offices and the facilitation of the payment process in the fisheries sector. The Director further recognised the excellent cooperation with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' P&I Club) and thanked them for their proactive approach to the incident.

Bow Jubail, the 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 Civil Liability Convention (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. The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) 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. Soon after, the shipowner resubmitted an application to limit its liability to the amount of the 1992 CLC, this time including interest. The Court is expected to take a decision whether to accept the shipowner's application by the end of May 2024.

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 April 2024 meeting, it was reported that a total of 470 claims had been submitted for clean-up operations, property damage and economic losses, totalling ILS 39.8 million. Twelve claims have been paid for a total of ILS 4.6 million and further claims have been assessed at ILS 3.6 million. Following the official notice to advise all claimants of the approaching time bar sent by the IOPC Funds in early February 2024, three lawsuits were filed in the Admiralty Court in Haifa against the 1992 Fund

Agia Zoni II, Greece (September 2017)

Two investigations were conducted into the cause of the incident, and each reached different conclusions: one determining that the *Agia Zoni II* sank after an explosion, and the other that it sank after the seawater ballast valves were intentionally opened. The Marine Accident Investigation Council (ASNA) report considered that the incident was attributed to the deliberate and negligent actions of a number of key parties.

A disciplinary tribunal, established by the Greek Mercantile Marine published its findings in 2021 and held that the Master was liable in negligence for the loss of the ship. Furthermore, the 1992 Fund's lawyers have recently been provided with a copy of the criminal file for the incident by the District Attorney, which reported a decision of the criminal judges sitting in Council which concluded that there appeared strong indications of criminal liability against five of the nine parties originally examined. Those persons are set to stand trial in October 2024. In respect of claims for compensation, the 1992 Fund has received 424 claims amounting to EUR 100.21 million and one claim for USD 175 000. It has approved 418 claims and paid 192 claims amounting to EUR 16.88 million in compensation. Further offers of compensation and advance payments have been made to a number of claimants whose responses are awaited.

1992 Fund Administrative Council (24th session) and extraordinary session of the Supplementary Fund Assembly (12th session)

During their simultaneous sessions, the governing bodies took several decisions and noted a wide range of information provided in various documents and presentations. In particular, they considered the following items:

Potential impact of sanctions on the international liability and compensation regime

A document was presented during the sessions and the Director referred in his report to the governing bodies to the potential impact of international sanctions. Once again, he expressed concern regarding the large number of tankers conducting unsafe operations with little or no insurance which put the Member States, the

environment, and the contributors to the IOPC Funds at risk. He added that the IOPC Funds had been following closely the increase of the illegal operations in the maritime sector by the 'dark fleet' or 'shadow fleet'. He referred to the incidents in Trinidad and Tobago and the Danish Straits and other near miss situations that could have resulted in serious incidents. The Director noted that he had raised this issue during the meeting of the 111th session of the IMO Legal Committee held the previous week and added that his concern had been shared by several of the Member States present at that meeting. Many delegations spoke on this subject at the IOPC Funds' meeting also and the governing bodies concluded that more was needed to be done by anyone engaged in oil transportation to ensure the highest levels of safety. It was specifically noted that most of the States that spoke were members of the Supplementary Fund who were concerned about the potential consequences of an incident affecting a Supplementary Fund Member State and the impact on contributors to the Supplementary Fund.

Risk of uninsured and unsafe ships

Following discussions within the Executive Committee on the circumstances surrounding the incident in Trinidad and Tobago, several delegations had supported further discussion of the wider issues related to the risk of uninsured and unsafe ships within the 1992 Fund Administrative Council. The vast majority of delegations present at the meeting contributed to the debate on this subject and all agreed that the risk of uninsured and unsafe ships was an important issue. Noting the concerns expressed, and taking into account the discussions on the potential impact of sanctions also, those delegations all agreed that a Resolution for each Fund, clarifying the concerns of Member States and setting out measures to address the key issues resulting from incidents involving such ships, should be adopted. Initial draft texts were presented and considered during the sessions. An overwhelming majority confirmed that the contents of the Resolution should be broadly along the lines of the texts prepared.

However, despite the agreed urgency of the matter, given the importance of the subject, a sizeable majority of delegations requested more time to consider the text of the Resolution, to conduct consultations and discuss specific amendments to the text. The draft Resolutions will be circulated for consideration in advance of the November 2024 sessions of the governing bodies, together with any comments received from delegations. In the meantime, the Director was instructed to develop, in consultation with the Audit Body, an internal procedure to be followed by the IOPC Funds' Secretariat which it would follow in order to gather necessary information to determine the applicability of the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol and the parties involved. He was also instructed to develop, in consultation with the Audit Body, guidance for Member States for investigating the circumstances surrounding an oil pollution incident, in order to identify ships and persons involved, including, but not limited to, shipowners and their insurers.

2010 HNS Convention

It was reported that Slovakia had become the most recent State to deposit an instrument of accession to the 2010 Hazardous and Noxious Substances Protocol (2010 HNS Protocol), bringing the number of Contracting States to eight. The Secretariat also reported on the various tasks and efforts it continued to make in order to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and prepare for the first session of the HNS Fund Assembly. These included regular engagement with contracting States and several other States who are committed to or interested in implementing the Convention. It 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. In order to allow for further discussions on the practical implementation of the Convention, in particular with regards to the reporting requirements, the Secretariat had organised, in cooperation with IMO, a workshop on the 2010 HNS Convention to take place immediately after the closure of the IOPC Funds' meeting, on 1 and 2 May 2024. A summary report of that workshop will be published on the HNS Convention website in due course.

Appointment of the External Auditor

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. It was noted that the Audit Body had identified three commercial firms to be invited to tender.

Guide to persistent and contributing oils

It was reported that the Director had engaged the services of external experts to review the IOPC Funds' Guide to persistent and contributing oils and ensure it was updated with the most recent oil products. The governing bodies endorsed the updated text of the Guide and approved consequential amendments to the Form for reporting contributing oil, which is contained in the Annex to the Internal Regulations of each Fund.

Next meeting

The next sessions of the IOPC Funds' governing bodies will take place during the week of 4 November 2024.

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.