



16 June 2023

REPORT TO UN DOALOS

Report by the International Oil Pollution Compensation Funds to the Division for Ocean Affairs and the Law of the Sea

Objective of document:

To report to the Secretary-General on the activities undertaken by the IOPC Funds relating to the implementation of the relevant provisions of General Assembly Resolution 77/248, 'Oceans and the law of the sea'. In addition, to highlight key recent developments of the IOPC Funds in the field of oceans and the law of the sea.

Executive summary:

The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) that provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

In operation for over 40 years, the IOPC Funds have been involved in over 150 incidents and have paid over £750 million in compensation. Since the entry into force of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) and the establishment of the original IOPC Fund in 1978, the membership of the Organisation has increased from 14 Member States to 121 States Parties to the 1992 Fund Convention as at 1 June 2023. In addition, 32 States are Parties to the Supplementary Fund Protocol, adopted in 2003, which provides additional compensation over and above that available under the 1992 Fund.

The IOPC Funds continues to provide compensation to victims of oil pollution damage as a result of the transport of oil by sea, and the 1992 Fund is currently involved in 12 open cases.

As well as the handling of claims for compensation, the IOPC Funds Secretariat undertakes a wide variety of activities aimed at encouraging the worldwide adoption and understanding of the international regime for oil pollution compensation and assisting potential claimants. Importantly, it maintains a strong relationship with the International Maritime Organization (IMO), and the two regularly cooperate on matters relating to States' ratification and implementation of the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention.

The IOPC Funds regularly engage with Member States, non-Member States and key stakeholders by delivering or participating in various training events and outreach activities. The Secretariat delivers an annual Academy, which is a week-long programme for self-funded participants nominated by 1992 Fund Member States; a shorter induction course; and customised online training activities. It also organises national and regional workshops on the claims process and is launching a webinar series this year. All of these activities help to prepare Member States ahead of any major oil pollution incident and can create awareness and encourage non-Member States to become Parties of the relevant conventions.

The Secretariat also continues to regularly deliver lectures to students of maritime law from various universities and dedicates significant efforts to enhancing awareness and understanding of the IOPC Funds through the publication of numerous brochures and documentation and increased investment into the Organisation's online information services (iopcfunds.org).

The success of the international liability and compensation regime led it to serve as a model for the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) referred to in paragraph 260 of Resolution 77/248. The IOPC Funds continues to work together with the IMO Secretariat to assist States' ratification of, or accession to, the 2010 HNS Protocol to facilitate the entry into force of the 2010 HNS Convention as soon as possible. As at 1 June 2023, six States have ratified the Protocol, and several others have reported good progress on their preparations of the necessary implementing legislation to enable them to ratify, with a number of those expected to do so within the next two years, which would trigger the entry into force of the Convention. The Secretariat continues to promote this important Convention and regularly urges States to fill the gap in the set of international liability and compensation Conventions by acceding to the 2010 HNS Protocol.

1 Background information

- 1.1 The International Oil Pollution Compensation Fund 1992 (1992 Fund) operates within the framework of an international regime providing compensation for oil pollution damage caused by oil spills from tankers. The regime is created by two international treaties established under the auspices of the International Maritime Organization (IMO), namely the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention or 1992 CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention). The 1992 CLC governs the liability of the shipowner, whereas the 1992 Fund Convention provides supplementary compensation when the amount paid by the shipowner or their insurer is insufficient to compensate all victims in full. It is a unique system that ensures that the costs of major oil spills are shared between the shipowner and the oil industry, with the IOPC Funds being financed by those entities receiving oil in Member States.

- 1.2 The total amount of compensation available under the 1992 Conventions is 203 million Special Drawing Rights (SDR) (USD 274 million). Compensation is available to States, local authorities, private businesses and individuals such as fisherfolk. Since their establishment, the 1992 Fund and the preceding 1971 Fund have been involved in over 150 incidents of varying sizes all over the world and have paid some £753 million (USD 980 million) in compensation. The 1992 Fund is financed through a levy on oil received in Member States after sea transport and currently has 121 Member States. A list of 1992 Fund Member States is attached at the Annex.
- 1.3 The Supplementary Fund Protocol, which entered into force in 2005, makes available additional compensation to victims in the States, which accede to the Supplementary Fund Protocol. The total amount available for compensation for each incident in the States which are Members of the Supplementary Fund is approximately SDR 750 million (USD 1 billion). There are currently 32 States Parties to the Protocol. A list of Supplementary Fund Member States is attached at the Annex.
- 1.4 Together the 1992 and Supplementary Funds are known as the International Oil Pollution Compensation Funds (IOPC Funds). The two Funds share a joint Secretariat, based in London. As at 1 June 2023, the Secretariat had 24 staff members.
- 1.5 The Director, Mr Gaute Sivertsen (Norway), is the chief administrative officer and is responsible for the overall management of the Funds.

2 Activities undertaken by the IOPC Funds relevant to the implementation of Resolution 77/248

- 2.1 The provisions contained in paragraphs 244, 257 and 260 of Resolution 77/248 are of particular relevance to the IOPC Funds, and as such, the Organisation's recent activities relevant to those provisions are set out below.
- 2.2 The Secretariat undertakes a wide variety of activities aimed at strengthening the IOPC Funds' relationship with Member and non-Member States, encouraging the worldwide adoption and understanding of the international regime for oil pollution compensation and assisting potential claimants. The IOPC Funds maintain a strong relationship with the International Maritime Organization (IMO), and the two organisations regularly cooperate on matters relating to States' ratification and implementation of the 1992 Civil Liability and Fund Conventions. This cooperation has strengthened further since 2016 when the IOPC Funds relocated to the building which houses the IMO Headquarters.
- 2.3 The Secretariat regularly organises and participates in events such as national and regional workshops and gives presentations at conferences. The IOPC Funds also supports and actively participates in the major international oil spill conference and exhibitions, including Interspill, Oil Spill India and Spillcon.
- 2.4 The Secretariat regularly gives lectures to students of maritime law from various universities and runs an annual Academy, a week-long programme for self-funded participants nominated by 1992 Fund Member States, covering all aspects of the work of the IOPC Funds and the international compensation regime. Workshops on the claims process and the annual Academy in particular help prepare Member States ahead of any major oil pollution incident.
- 2.5 The Secretariat also dedicates significant efforts to enhancing awareness and understanding of the IOPC Funds through the publication of numerous brochures and documentation and increased investment into the Organisation's online information services. The Claims Information Pack is specifically aimed at preparing States and potential claimants for a spill. As well as the 1992 Fund Claims Manual which sets out the admissibility criteria followed by the 1992 Fund, the pack also

includes sector-specific guidelines to assist claimants from the fisheries and mariculture sector and the tourism sector. It also includes guidelines for presenting claims for clean-up and preventive measures, as well as guidelines for presenting claims for environmental damage.

- 2.6 The governing bodies of the IOPC Funds usually meet twice a year in order to fulfil the requirements set out under Article 18 of the 1992 Fund Convention and Article 16 of the Supplementary Fund Protocol. Under those Articles, the governing bodies are required, amongst other things, to give instructions concerning the administration of the Funds to the Director and to supervise the proper execution of the Conventions and their own decisions. These sessions are also used to adopt new policy and practice to ensure the Conventions continue to function as intended. The 1992 Fund Assembly has established a number of Working Groups over the years to consider certain issues relating to the transport of oil by sea. These Working Groups have provided a forum for States to share their practices and experiences in dealing with large scale oil pollution incidents and related issues and, in many cases, have led to States agreeing to uniform practices or criteria.
- 2.7 Amongst the outcomes of the Working Groups in recent years has been the publication of guidance materials for Member States relating to particularly challenging areas, such as how to facilitate the claims-handling process, understanding the definition of 'ship' under the 1992 Civil Liability Convention and the management of fisheries closures and restrictions following an oil spill.
- 2.8 With regard to paragraph 260 of Resolution 77/248, which encourages States to consider becoming Parties to the 2010 HNS Protocol, as requested by the International Conference that adopted the HNS Convention, the IOPC Funds Secretariat has been tasked with assisting the IMO Secretariat in setting up the HNS Fund and with making preparations for the first session of the HNS Fund Assembly.
- 2.9 The IOPC Funds continues to actively work together with the IMO Secretariat to assist States' ratification of, or accession to, the Protocol in order to facilitate the entry into force of the 2010 HNS Convention as soon as possible. The IOPC Funds maintains a website (hnsconvention.org) and an online database (the HNS Finder) of HNS substances that are covered by the Convention, as well as those that fall within the definition of contributing cargo under the 2010 HNS Protocol. Engagement with States considering ratifying the Protocol and the industry stakeholders potentially affected by the Convention has continued through workshops and other means. Most recently, in April 2023, a workshop, which was organised by Canada in co-operation with IMO and the IOPC Funds, was held at the IMO Headquarters. It was attended by over 200 representatives from States and industry who participated either in person or remotely, and it focussed on assisting States in their work towards ratification of the 2010 HNS Protocol, with particular emphasis on preparing implementing legislation and HNS cargo reporting.
- 2.10 As at 1 June 2023, six States had ratified the Protocol, and several others have reported good progress on their preparations of the necessary implementing legislation to enable them to ratify, with a number of those expected to do so within the next two years, which would trigger the entry into force of the Convention.

3 Recent key developments in the IOPC Funds in the field of oceans and the law of the sea

- 3.1 There are currently 121 States Parties to the 1992 Fund Convention and the 1992 Fund is currently dealing with claims and/or recourse actions in respect of 12 incidents. Whilst that Fund is dealing with two incidents from a Supplementary Fund Member State, namely the *Alfa I* and *Agia Zoni II* incidents (Greece), it is unlikely that claims for compensation, in either case, will exceed the limits under the 1992 CLC and Fund Convention.

- 3.2 The most recent pollution incident in a 1992 Fund Member State was reported to the IOPC Funds in March 2023. The *Princess Empress* sunk off the coast of the Philippines, 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 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. Under that voluntary Agreement, the P&I Club will indemnify the 1992 Fund, up to a certain amount, for the compensation paid.
- 3.3 At its session in May 2023, 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.
- 3.4 One incident that occurred in the Port of Rotterdam, the Netherlands, in 2018, has raised interesting questions in respect of the applicability of the 1992 Conventions. The oil spilled from the *Bow Jubail* was bunker oil, and the shipowner argued that the incident was covered under Article 1.8 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001). However, a Court of Appeal decided that since the shipowner had not proved that the *Bow Jubail* did not contain residues of persistent oil at the time of the incident, it therefore qualified as a ship as defined under the 1992 CLC. The 1992 Fund appealed that judgment to support the shipowner and in order to provide for due legal process. However, on 31 March 2023, a judgment was issued by the Supreme Court of the Netherlands confirming that the 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.
- 3.5 The Director stated at the May 2023 IOPC Funds 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 1992 Fund Executive 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.
- 3.6 Payments of compensation have continued to be made in respect of the Incident in Israel, which occurred in February 2019 and the *Agia Zoni II* incident that occurred in Greece in 2017.
- 3.7 The *Hebei Spirit* (Republic of Korea, 2007) remains one of the most significant incidents to have involved the IOPC Funds. With an excess of 128 000 claims submitted, the assessment process proved particularly challenging in this case, however, the shipowner's insurer and the IOPC Funds completed payments of compensation up to the limit under the 1992 Fund Convention, and the case was closed in 2022. The incident highlighted, in particular, the benefits of strong cooperation between the Government, the P&I insurer and the IOPC Funds.

- 3.8 In May 2022, IMO issued a circular to Member States containing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates, relating to the conflict in Ukraine (LEG.1/Circ.12). The circular, which was already circulated to the IOPC Funds' governing bodies at their March 2022 sessions, lists IMO instruments that are affected by the conflict in Ukraine, including the 1969 and 1992 Civil Liability Conventions. It states, in particular, that the absence of insurance or other financial security in accordance with the requirements of the conventions may lead to insufficient compensation for States and victims of pollution and other incidents. It may also expose the IOPC Funds and its contributors to the risk of having to pay all of the compensation for oil spills from tankers because there is not sufficient insurance to cover the shipowner's liability. With this in mind, the circular sets out a number of action points for States. The IOPC Funds governing bodies have fully endorsed those action points and has encouraged Member States to adhere to the recommendations in the circular.
- 3.9 Over recent years, the 1992 Fund has had to deal with a growing number of incidents involving unreliable insurers that have required the Fund to pay compensation from the outset, missing the first tier of compensation which should be payable by the shipowner's insurer under the 1992 CLC. As set out in the circular issued by IMO, the IOPC Funds could be further exposed to such situations as a result of the latest sanctions imposed since they have increased the risk of larger tankers sailing without any or insufficient insurance coverage.
- 3.10 The Director has presented documents to the governing bodies at both their October 2022 and May 2023 meetings, drawing the attention of Member States to the potential impact of international sanctions. The Director has 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. In May 2023 he referred to the *MT Pablo* incident, which occurred off the coast of Malaysia, noting that it was a stark reminder of this increased risk. He pointed out that Flag States, in accordance with the 1992 Fund Convention, are obliged to ensure that ships have proper insurance and port States, under the Convention, are obliged to ensure that ships entering the port, wherever they are registered, have been properly insured. A number of delegations shared the concerns of the Director at that meeting. 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.

4 Considerations

Since the Director of the IOPC Funds, Mr Sivertsen, took up his position in January 2022, he has underlined his commitment to serving the Member States, protecting the IOPC Funds' interests and adapting to the changing needs of society in respect of major oil pollution incidents. The current issues facing the 1992 Fund, referenced in paragraphs 3.8 – 3.10 above, are of significant concern to Mr Sivertsen and he will be monitoring developments in that regard closely. His priority, and that of the organisation, will remain the prompt and fair payment of compensation to victims of oil pollution damage. He remains committed to working together with the Member States, the members of the Secretariat, the industry and other stakeholders to face the challenges ahead and secure the continued success of the international liability and compensation regime.

ANNEX

States Parties to both the 1992 Civil Liability Convention and the 1992 Fund Convention

as at 1 June 2023

(and therefore Members of the 1992 Fund)

121 STATES FOR WHICH 1992 FUND CONVENTION IS IN FORCE

Albania	Greece	Panama
Algeria	Grenada	Papua New Guinea
Angola	Guinea	Philippines
Antigua and Barbuda	Guinea-Bissau	Poland
Argentina	Guyana	Portugal
Australia	Hungary	Qatar
Bahamas (the)	Iceland	Republic of Korea
Bahrain	India	Russian Federation
Barbados	Iran (Islamic Republic of)	Saint Kitts and Nevis
Belgium	Ireland	Saint Lucia
Belize	Israel	Saint Vincent and the Grenadines
Benin	Italy	Samoa
Brunei Darussalam	Jamaica	San Marino
Bulgaria	Japan	Senegal
Cabo Verde	Kenya	Serbia
Cambodia	Kiribati	Seychelles
Cameroon	Latvia	Sierra Leone
Canada	Liberia	Singapore
China ^{<1>}	Lithuania	Slovakia
Colombia	Luxembourg	Slovenia
Comoros	Madagascar	South Africa
Congo (the)	Malaysia	Spain
Cook Islands	Maldives	Sri Lanka
Costa Rica	Malta	Sweden
Côte d'Ivoire	Marshall Islands	Switzerland
Croatia	Mauritania	Syrian Arab Republic
Cyprus	Mauritius	Thailand
Denmark	Mexico	Tonga
Djibouti	Monaco	Trinidad and Tobago
Dominica	Montenegro	Tunisia
Dominican Republic	Morocco	Türkiye
Ecuador	Mozambique	Tuvalu
Estonia	Namibia	United Arab Emirates
Fiji	Nauru	United Kingdom
Finland	Netherlands	United Republic of Tanzania
France	New Zealand	Uruguay
Gabon	Nicaragua	Vanuatu
Gambia (the)	Nigeria	Venezuela (Bolivarian Republic of)
Georgia	Niue	
Germany	Norway	
Ghana	Oman	
	Palau	

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The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

States Parties to the Supplementary Fund Protocol
as at 1 June 2023
(and therefore Members of the Supplementary Fund)

32 STATES PARTIES TO THE SUPPLEMENTARY FUND PROTOCOL

Australia	Greece	Norway
Barbados	Hungary	Poland
Belgium	Ireland	Portugal
Canada	Italy	Republic of Korea
Congo (the)	Japan	Slovakia
Croatia	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Montenegro	Sweden
Finland	Morocco	Türkiye
France	Netherlands ^{<2>}	United Kingdom
Germany	New Zealand	

^{<2>} The Netherlands, Aruba, Curaçao and Sint Maarten are autonomous partners within the Kingdom of the Netherlands. The Supplementary Fund has not been extended to Aruba, Curaçao or Sint Maarten.