



17 June 2022

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 76/72, '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 £747 million (USD 900 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 2022. 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.

In light of the restrictions in place as a result of the pandemic, a number of the usual activities organised or attended by the Secretariat were either cancelled or postponed in 2021. However, the IOPC Funds continued to engage with Member States and key stakeholders by delivering or participating in remote events. In addition, the IOPC Funds annual Short Course, which is a week-long programme for self-funded participants nominated by 1992 Fund Member States, was run online for the first time in 2021. The 2022 course will, however, return as an in-person event in June. Workshops on the claims process and the annual Short Course, in particular, help to prepare Member States ahead of any major oil pollution incident.

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 248 of Resolution 76/72. 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 2022, 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 in due course. 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 (USD 270 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 £747 million (USD 900 million) in compensation. The 1992 Fund is financed through a levy on oil received in Member States after sea transport and currently has 120 Member States¹. A list of 1992 Fund Member States is attached at the Annex.

- 1.3 The Supplementary Fund, 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 6 June 2022, the Secretariat had 24 staff members.
- 1.5 The Director is the chief administrative officer and is responsible for the overall management of the Funds. Following an election, which was held in-person, in a private meeting by secret ballot in November 2021, the 1992 Fund Assembly elected Mr Gaute Sivertsen of Norway as the new Director. A long-standing delegate at IOPC Funds' meetings and former Chair of the 1992 Fund Assembly for ten years, Mr Sivertsen is well known to the organisation. He officially took up his duties as Director on 1 January 2022 for a term of five years.

2 Activities undertaken by the IOPC Funds relevant to the implementation of Resolution 76/72

- 2.1 The provisions contained in paragraphs 235, 245 and 248 of Resolution 76/72 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, Spillcon and the International Oil Spill Conference (IOSC).
- 2.4 The Secretariat regularly gives lectures to students of maritime law from various universities and runs an annual Short Course, 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 Short Course 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

<1> The 1992 Fund Convention will also enter into force for Guinea Bissau on 12 May 2023, bringing the total Member States of the 1992 Fund to 121 on that date.

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 248 of Resolution 76/72, 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.
- 2.10 As at 10 June 2022, 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 in due course.

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 on 19 February 2021 by the Government of Israel. The Government requested assistance with a mystery spill, which had resulted in tar balls being washed up along the Israeli coastline. The Israeli Ministry

of Environmental Protection (MEPD) organised a full response to the spill. After an investigation, the Israeli authorities believe that the oil was released from a tanker which they had identified. An investigation undertaken by the MEPD 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, the 1992 CLC and Fund Convention apply to this incident and the Director has been authorised to make compensation payments for admissible claims. So far 29 claims for compensation have been submitted totalling ILS 10 million (£2.4 million), with further claims expected. A local firm with a long history of assisting P&I Clubs has been engaged to act as a focal point in order to help potential claimants and facilitate the submission and processing of claims.

- 3.3 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 has 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 has 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 has appealed that judgment to support the shipowner and in order to provide for due legal process. If a final judgment were to decide that the 1992 Civil Liability and Fund Conventions apply, the 1992 Fund would pay compensation as required.
- 3.4 Payments of compensation have continued to be made in respect of the *Agia Zoni II* incident that occurred in Greece in 2017. The 1992 Fund has paid 188 claims amounting to EUR 14.93 million in compensation in respect of this incident. Several technical investigations into the cause of the incident have been carried out, with the investigation by the Public Prosecutor still pending. The 1992 Fund continues to assess claims whilst awaiting the outcome of the investigation.
- 3.5 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 have now completed payments of compensation up to the limit under the 1992 Fund Convention, and the case is expected to be closed in 2022. The incident highlighted, in particular, the benefits of strong cooperation between the Government, the P&I insurer and the IOPC Funds.
- 3.6 In addition to the incidents described above, the IOPC Funds Secretariat has also been in contact with and offered its assistance to the French Government in respect of an incident which took place off La Réunion. A small tanker drifted aground avoiding a cyclone. Fortunately, the tanker was only laden with a small amount of bunkers, but after the vessel foundered on the shore of La Réunion, the strong winds and waves broke the vessel into several pieces and a small amount of oil was released. At present, no claims have been submitted to the IOPC Funds. Assistance has also been provided to other States in relation to incidents and the admissibility of the Conventions to potential claims.
- 3.7 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.

- 3.8 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.

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 3.7 and 3.8 above, are a 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 looks forward 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.

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ANNEX

**States Parties to both the 1992 Civil Liability Convention and the 1992 Fund Convention
as at 1 June 2022
(and therefore Members of the 1992 Fund)**

120 STATES FOR WHICH 1992 FUND CONVENTION IS IN FORCE

Albania	Greece	Panama
Algeria	Grenada	Papua New Guinea
Angola	Guinea	Philippines
Antigua and Barbuda	Guyana	Poland
Argentina	Hungary	Portugal
Australia	Iceland	Qatar
Bahamas (the)	India	Republic of Korea
Bahrain	Iran (Islamic Republic of)	Russian Federation
Barbados	Ireland	Saint Kitts and Nevis
Belgium	Israel	Saint Lucia
Belize	Italy	Saint Vincent and the Grenadines
Benin	Jamaica	Samoa
Brunei Darussalam	Japan	San Marino
Bulgaria	Kenya	Senegal
Cabo Verde	Kiribati	Serbia
Cambodia	Latvia	Seychelles
Cameroon	Liberia	Sierra Leone
Canada	Lithuania	Singapore
China ^{<2>}	Luxembourg	Slovakia
Colombia	Madagascar	Slovenia
Comoros	Malaysia	South Africa
Congo (the)	Maldives	Spain
Cook Islands	Malta	Sri Lanka
Costa Rica	Marshall Islands	Sweden
Côte d'Ivoire	Mauritania	Switzerland
Croatia	Mauritius	Syrian Arab Republic
Cyprus	Mexico	Thailand
Denmark	Monaco	Tonga
Djibouti	Montenegro	Trinidad and Tobago
Dominica	Morocco	Tunisia
Dominican Republic	Mozambique	Turkey
Ecuador	Namibia	Tuvalu
Estonia	Nauru	United Arab Emirates
Fiji	Netherlands	United Kingdom
Finland	New Zealand	United Republic of Tanzania
France	Nicaragua	Uruguay
Gabon	Nigeria	Vanuatu
Gambia (the)	Niue	Venezuela (Bolivarian Republic of)
Georgia	Norway	
Germany	Oman	
Ghana	Palau	

One State which has deposited an instrument of accession but for which the 1992 Fund Convention does not enter into force until date indicated

Guinea Bissau

12 May 2023

States Parties to the Supplementary Fund Protocol
as at 1 June 2022
(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	Turkey
France	Netherlands ^{<3>}	United Kingdom
Germany	New Zealand	

^{<3>} 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.