



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 2018 sessions of the governing bodies – In brief

2 May 2018



The governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held meetings from Monday 30 April to Wednesday 2 May 2018 at the headquarters of the International Maritime Organization (IMO) in London. Fifty-eight States, representing 54 Member States of the 1992 Fund, 20 Member States of the Supplementary Fund and four observer States, as well as 13 observer organisations, attended sessions of the 1992 Fund Administrative Council, the 1992 Fund Executive Committee and the Supplementary Fund Assembly.

1992 Fund Executive Committee (70th session)

The 1992 Fund Executive Committee was informed of recent developments in respect of a number of ongoing incidents involving the Fund, in particular with regard to the incidents detailed below, but also in respect of the *Nesa R3* (Oman, June 2013), *Double Joy* (Malaysia, August 2014) and *Trident Star* (Malaysia, August 2016) incidents.

***Prestige* (Spain, November 2002)**

In November 2017, the Court in La Coruña delivered a judgment on the quantification of the compensation payable, awarding a total of €1 652 million. That amount was reduced in January 2018 to a total of €1 648 million as a result of a number of requests for clarifications and corrections by several parties, including the 1992 Fund. A number of parties have appealed before the Supreme Court, including the 1992 Fund which, in its appeal draws the Court's attention in particular to the fact that:

- the 1992 Fund's liability does not include pure environmental damage or moral damage, since these types of damages are outside the scope of the 1992 Fund Convention; and
- the compensation awarded by the judgment exceeds by far the assessment of losses carried out by the 1992 Fund which quantified them at €300 million for the Spanish State and €42 million for the French State.

***Hebei Spirit* (Republic of Korea, December 2007)**

Almost 130 000 claims have been registered in this case. Only four claims remain pending in Court, the Courts having awarded a total of KRW 433 billion in compensation. The total amount available for this incident under the 1992 Conventions, KRW 321.6 billion, is insufficient to pay all established claims in full. The shipowner's insurer (Skuld Club) has paid some KRW 186.8 billion in compensation. Under a Special Law, the Government of the Republic of Korea undertook to pay compensation to all claimants in excess of the Skuld Club's and the 1992 Fund's limits and has been paying all claimants the full established amount of their claims, subrogating those claims against the 1992 Fund. The 1992 Fund has been making compensation payments to the Republic of Korea at a level of payments of 60%, with KRW 107 billion paid. The 1992 Fund

Executive Committee decided to maintain the level of payments at 60% of the amount of the established losses.

Agia Zoni II (Greece, September 2017)

Oil removal and lightering operations from the wreck were undertaken in October 2017 and the wreck was lifted by 30 November 2017. At the time of lifting the wreck some oil escaped and recontaminated the areas around Perama, Piraeus, necessitating further clean-up operations along the mainland. The Claims Submission Office established by the 1992 Fund in Piraeus has been receiving claims and the shipowner's insurer established a limitation fund for the sum of €5.41 million. Eighty-two claims were reported to have been submitted totalling €65.6 million. Compensation totalling €104 000 has been paid to four claimants. The remaining claims are being assessed. An investigation into the cause of the incident is being undertaken.

Alfa I (Greece, March 2012)

The 1992 Fund has attempted to secure its claim against the ship's insurer for reimbursement of compensation paid up to the 1992 CLC limit. In February 2018, the Bank of Greece revoked the ship's insurer's license and placed the ship's insurer under liquidation for failure to maintain the necessary solvency capital requirements under Greek law. Since the insurer has been placed under liquidation, the 1992 Fund will register its claim with the liquidator and explore with its Greek lawyers whether it is worth pursuing further the legal proceedings to obtain security for its claim. The delegation of Greece informed the Committee that a liquidator had now been appointed and that claims should be filed within four months from the date of the announcement on 23 March 2018.

Insurance issues

During the discussions of various incidents, the issue of difficulties faced by the 1992 Fund in cases involving unreliable insurers was raised. The 1992 Fund Executive Committee expressed its concerns regarding how the compensation regime could continue to work in cases where there was non-compliance with the Conventions or with national legislation. At a later time during the meetings, the Chairman of the joint Audit Body informed the governing bodies that the problems arising from ships insured with unreliable insurers were being considered by the Audit Body as part of its current workplan and that it hoped to provide an interim report on its findings for consideration at the October 2018 sessions.

1992 Fund Administrative Council (17th session) and Supplementary Fund Assembly (6th extraordinary session)

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

Criteria for the admissibility of claims for compensation

The governing bodies adopted refined assessment criteria on the admissibility of claims for compensation made by employees who have suffered a reduction in wages, been placed on part-time work or been made redundant as a consequence of an incident. The text of the refined criteria was approved for inclusion in the Claims Manual. A number of subsequent editorial amendments to the Claims Manual, the Guidelines for presenting claims in the fisheries, mariculture and fish processing sector and the Guidelines for presenting claims in the tourism sector were also approved.

Other decisions

The governing bodies also took decisions regarding the following:

- The appointment of Ms Beate Grosskurth as a member of the joint Investment Advisory Body from 1 May 2018 to October 2020.
- The revision of the Guidelines on relations between the 1992 Fund and intergovernmental and international non-governmental organisations to introduce a practice for the consideration of requests for observer status, similar to that followed by the 1992 Fund Assembly when undertaking the review of organisations having observer status, i.e. the establishment of a group of five States to consider the application and make recommendations to the Assembly for decision.
- The approval of amendments to Internal Regulation 4 and the form for reporting receipts of contributing oil to allow for the electronic submission of oil reports and to define Member State and Secretariat responsibilities with regard to the use and verification of electronic signatures by contributors.
- The authorising of the Director to make the necessary transfer to 'Meetings' (Chapter III) within the 2017 budget from 'Unforeseen expenditure' (Chapter VI) to cover the excess costs over the budget appropriation.

Information noted included:

Legal proceedings arising from the Plate Princess incident (Bolivarian Republic of Venezuela, May 1997)

A further attempt by the Puerto Miranda Union to obtain recognition and enforcement of the 2017 judgment of the Venezuelan Supreme Court against the 1992 Fund has been rejected. The Director has recently been informed that the National Assembly of the Bolivarian Republic of Venezuela has decided to bring this matter to the United Nations to request an explanation concerning the lack of payment of compensation to the fishermen. He has also received a progress report from the Permanent Commission of Energy and Petroleum regarding an inquiry in relation to the incident. The Director has confirmed that he will defend the 1992 Fund in the English courts if required and report any developments to a future session of the governing bodies.

Treaty matters

The 2010 HNS Convention

The IOPC Funds' governing bodies noted with satisfaction the ratifications by both Canada and Turkey to the 2010 HNS Protocol on 23 April 2018. These ratifications, together with that of Norway last year, have provided particularly encouraging progress towards the entry into force of the Convention. A two-day HNS workshop organised by IMO in cooperation with the IOPC Funds on 26 and 27 April 2018 proved both very popular and successful with over 100 delegates representing more than 40 States and various interested organisations having attended.

During discussions on this agenda item a number of other States provided positive updates on their progress towards ratification of the Protocol and other States requested assistance from IMO and the IOPC Funds in the form of national or regional workshops focusing specifically on the 2010 HNS Convention.

Other matters

The governing bodies also noted the following:

- An agreement reached between the International Group of P&I Associations (International Group) and the IOPC Funds on the specific circumstances under which lawyers can be included within the term 'other experts' as contained in the 2006 Memorandum of Understanding (2006 MoU) between the two parties.
- A presentation of the online Claims Submission System developed by the Secretariat to facilitate the claims handling process for both claimants and the Secretariat.

- A presentation of a short film produced by the Secretariat for inclusion on the website as a tool to provide a general overview of the role of IOPC Funds and to be used as an introduction to the organisation at suitable events and outreach activities.

Future meetings

The next sessions of the IOPC Funds' governing bodies are set to take place during the week of 29 October 2018, when the organisation will be celebrating 40 years since the establishment of the first IOPC Fund.

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.