



International Oil Pollution
Compensation Funds

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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

HAEKUP PACIFIC

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of developments regarding this incident.
Summary:	<p>In April 2013, the Secretariat was informed of an incident which took place in April 2010 in the Republic of Korea. The <i>Haekup Pacific</i>, an asphalt carrier of 1 087 GT, was involved in a collision with the <i>Zheng Hang</i>.</p> <p>The <i>Haekup Pacific</i> was heavily damaged on its aft port quarter as a consequence of the collision on 20 April 2010 and subsequently sank in waters approximately 90 metres deep on 21 April 2010 off Yeosu, Republic of Korea. The <i>Haekup Pacific</i> was laden with 1 135 metric tons of asphalt cargo together with bunkers comprising 23.37 metric tons of intermediate fuel oil (IFO) and 13 metric tons of marine diesel oil (MDO).</p> <p>The <i>Haekup Pacific</i> was entered as a ‘relevant ship’ within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and, therefore, STOPIA 2006 will apply, increasing the limit to SDR 20 million (USD 26.56 million)^{<1>}.</p> <p>Shortly after sinking, a small spill of some 200 litres of oil occurred resulting in some minor pollution. The <i>Haekup Pacific</i>’s P&I Club (UK P&I Club) paid some USD 136 000 for clean-up and preventive measures costs.</p> <p>In early May 2010, the City of Yeosu and Marine Police issued removal orders to the shipowner, requesting it to remove the wreck (with the asphalt cargo on board) and the bunkers remaining on board.</p> <p>In April 2013, the shipowner/insurer issued legal proceedings against the 1992 Fund in the Seoul Central District Court. This was done before the expiry of the three-year anniversary of the date when the damage occurred in order to protect their rights in respect of any future liability for costs of the removal. The UK P&I Club indicated that if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had yet been incurred in respect of the potential claim for removal operations), then only the six-year time bar under the 1992 Fund Convention would be applicable.</p>

<1>

Based on the exchange rate of 30 June 2022 (SDR 1 = USD 1.327780).

Therefore, the UK P&I Club and the 1992 Fund settled the terms of an agreement on the facts, stating that since the costs of the potential claim for the removal operation had not been incurred by the shipowner/insurer as the removal operation had not yet taken place, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. The legal proceedings commenced by the shipowner/insurer against the 1992 Fund were withdrawn in June 2013.

In November 2015, the shipowner instructed surveyors to conduct an environmental assessment so as to submit a report to the City of Yeosu and Marine Police. The report concluded that the sunken vessel with the asphalt cargo on board did not pose a hazard to the environment and it was safe to leave the wreck with the asphalt cargo, lying in its present position and condition.

On 19 April 2016, the shipowner and insurer filed a claim against the 1992 Fund for USD 46.9 million^{<2>} plus interest.

In December 2016, the shipowner/insurer amended the claim to USD 53.27 million to reflect a revised estimate of the costs that would be incurred to remove the asphalt cargo, bunkers and wreck, and served the 1992 Fund through diplomatic channels.

The claim was subsequently amended to USD 25.13 million (taking into consideration the STOPIA 2006 limit) before the expiry of the six-year time bar, in order to preserve the shipowner and insurer's rights against the 1992 Fund in the event that they are instructed to comply with the wreck and oil removal orders. The 1992 Fund has not yet been served with the amended claim form for USD 25.13 million in accordance with the STOPIA 2006 arrangement.

In April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Court agreed to stay the proceedings until further notice.

In September 2019, the City of Yeosu urged the shipowner/insurer to implement the wreck and oil removal orders by 10 February 2020, and to submit a document to the City and the Korean Coast Guard by the same date, containing information regarding the current situation on the ship and the shipowner/insurer's plans for: (1) the removal of oil residue and the cargo; (2) the wreck removal; and (3) the prevention of oil pollution that might occur during the removal operation.

The shipowner hired a salvage company to examine the wreck's current condition. In June 2020, the salvage company conducted a remotely operated vehicle (ROV) survey of the wreck and provided its results to a firm of naval architects and marine engineers retained by the *Haekup Pacific's* P&I Club, to prepare a report. The report recommended that the *Haekup Pacific* be left undisturbed but the City of Yeosu and Marine Police instructed the shipowner to remove the bunker fuels from the wreck since, in their view, the possibility could not be ruled out that there were bunker fuels remaining in the wreck.

Recent developments:

The bunker fuel oil removal operation was completed in December 2021 at a cost of approximately USD 10 million.

In the legal proceedings between the shipowner/insurer of the *Haekup Pacific* and the shipowner/insurer of the *Zheng Hang*, the appeal by the shipowner/insurer of the *Zheng Hang* against the shipowner/insurer of the *Haekup Pacific* was heard by the

	Supreme Court. Matters were delayed by the outbreak of the COVID-19 virus, but the Supreme Court referred the case back to the appellate court so that the appellate court could reconsider the question concerning whether the vessel's removal was necessary and whether the administrative orders to salvage and remove the vessel should be revoked.
Relevant documents:	The online <i>Haekup Pacific</i> incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u>
	Information to be noted.

1 Summary of incident

Ship	<i>Haekup Pacific</i>
Date of incident	20.04.2010
Place of incident	Yeosu, Republic of Korea
Cause of incident	Collision and subsequent sinking
Quantity of oil spilled	Estimated to be approximately 200 litres (one barrel)
Area affected	No immediate impact on coastline
Flag State of ship	Republic of Korea
Gross tonnage	1 087 GT
P&I insurer	UK P&I Club
CLC limit	SDR 4.51 million (USD 5.99 million) ^{<1 & 2>}
STOPIA/TOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 26.56 million) ^{<1>}
CLC + Fund limit	SDR 203 million (USD 269.54 million) ^{<2 & 3>}
Compensation paid	None paid to date by the 1992 Fund. USD 136 000 paid in respect of clean-up and preventive measures, and USD 10 million paid in respect of oil removal operations from the wreck, by UK P&I Club.

2 Background information

The background information to this incident is summarised above. Further details on the background information and claims submitted are provided in the online *Haekup Pacific* incident report.

3 Applicability of the Conventions

- 3.1 At the time of the incident, the Republic of Korea was a Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The limit of liability of the shipowner is estimated to be SDR 4.51 million. The *Haekup Pacific* was also entered as a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.
- 3.2 Under the terms of STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner for the difference between the limitation amount applicable to the tanker under the

^{<2>} The limitation court will establish the exchange rates when the shipowner's right to limit liability is established.

^{<3>} The CLC and Fund limit (SDR 203 million) will be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision of the 1992 Fund Assembly as to the first date of payment of compensation in accordance with Article 4(4)(e) of the 1992 Fund Convention.

1992 CLC (SDR 4.51 million) and the total amount of admissible claims, or SDR 20 million, whichever is less.

4 Claims for compensation

As at 28 July 2022, the only claim which remains filed against the 1992 Fund is the claim filed by the shipowner/insurer in the Seoul Central District Court. This includes the estimate of the costs that would be incurred to remove the asphalt cargo, bunkers and wreck, and takes into consideration the fact that the vessel falls under the provisions of STOPIA 2006 under which the insurer voluntarily agreed to increase its liability to SDR 20 million.

Revised claim filed at court

Claim item	Amount
Clean-up and preventive measures	USD 0.13 million
Estimated salvage costs to remove the asphalt cargo, bunkers and wreck	USD 53.14 million
Less	-
Shipowner's STOPIA 2006 limit of liability amount (based on SDR 20 million) at date of filing of claim ^{<4>}	USD 28.14 million
Value of revised claim filed at court	USD 25.13 million

5 Limitation proceedings

No limitation proceedings have been commenced.

6 Civil proceedings

- 6.1 In April 2013, the shipowner/insurer commenced legal proceedings against the 1992 Fund in the Seoul Central District Court.
- 6.2 At the time of filing the proceedings against the 1992 Fund, the UK P&I Club indicated to the Secretariat that they had no wish to further pursue the matter through the courts but only wished to protect their rights in respect of the costs already incurred and their potential claim for the costs of the removal operations before the expiry of the three-year anniversary of the date of the damage. The UK P&I Club indicated that because the authorities had not yet officially withdrawn the removal orders originally issued in 2010, the shipowner/insurer might yet be required to undertake or bear the costs of the removal operations at some stage in the future.
- 6.3 In this regard, the UK P&I Club indicated that if the shipowner/insurer and the 1992 Fund could agree that the pollution damage which triggered the three-year time bar under the 1992 Fund Convention had not yet occurred (as no costs had yet been incurred in respect of the potential claim for removal operations), then only the six-year time bar under the 1992 Fund Convention would be applicable. Assuming such an agreement could be reached, the shipowner/insurer would withdraw the lawsuit they had filed and would await developments regarding the potential claim for the removal operations until the six-year period expired. Such a contractual agreement would be in the interests of the shipowner/insurer and the 1992 Fund, as neither party would wish to continue with potentially costly legal proceedings.

^{<4>} Based on the exchange rate of 18 April 2016 (SDR 1 = USD 1.407450) when the claim was submitted to the Seoul Central District Court by the UK P&I Club. The final exchange rates will be set by the limitation court when the shipowner's right to limit liability is established.

- 6.4 Therefore, in conjunction with the 1992 Fund's lawyers and noting that the ultimate decision regarding the time bar issue would be a matter for the national courts to decide, the 1992 Fund agreed the terms of an agreement on facts stating that, since the removal operations had not yet taken place and the estimated costs had not been incurred by the shipowner/insurer, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention.
- 6.5 As a consequence of signing the agreement, the legal proceedings commenced by the shipowner/insurer were withdrawn in June 2013 and the parties agreed to let matters lie, pending the possible revocation of the removal orders.
- 6.6 In September 2016, the City of Yeosu and Marine Police and the Ministry of Oceans and Fisheries (MOF) had a meeting to consider issues regarding the *Haekup Pacific* and agreed to continue discussing the management plan for the vessel, taking into consideration the environmental assessment report conducted in November 2015.
- 6.7 As it appeared that the removal orders would not readily be lifted, in April 2016, the shipowner/insurer took the precaution of filing a claim against the 1992 Fund to protect their rights in respect of the costs already incurred and their potential claim for the costs of the removal operations, before the expiry of the six-year anniversary of the date of the incident which caused the damage.
- 6.8 The claim originally filed against the 1992 Fund in April 2016 amounted to USD 46.9 million plus interest, based on a shipowner's limit of liability of SDR 4.51 million.
- 6.9 Subsequently, in December 2016, the shipowner/insurer amended the claim to USD 53.27 million to reflect a revised estimate of the costs that would be incurred to remove the asphalt cargo, bunkers and wreck. From that sum they deducted an amount equivalent to SDR 20 million due to the fact that the vessel fell under the provisions of STOPIA 2006, under which the insurer voluntarily agreed to increase its liability to SDR 20 million. Accordingly, following these amendments, the revised claim against the 1992 Fund amounts to USD 25.13 million.
- 6.10 In April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Seoul Central District Court agreed to stay the proceedings until further notice. At that time, the 1992 Fund's lawyers advised that the courts may, of their own volition, resume court hearings at a future date to check the status of the dispute and ascertain whether the parties wish to request a further stay of proceedings.
- 6.11 In December 2017, the 1992 Fund was advised that in the related litigation between the shipowners/insurers of the colliding vessels, the Seoul High Court had ruled that although experts opined that the wreck removal of the *Haekup Pacific* was very difficult or almost impossible and there was no detailed plan for the wreck removal, since the authorities' wreck removal order remained effective despite repeated requests for its withdrawal, it was difficult to consider the wreck removal order to be null and void simply based on the experts' opinion/parties' submissions; accordingly the shipowner of the *Haekup Pacific* was still obliged to remove the vessel. Therefore, the Court stated that it was reasonable to deem that the damages for the wreck removal costs had in fact arisen.
- 6.12 The shipowner/insurer of the *Zheng Hang* appealed against the Seoul High Court's judgment to the Supreme Court of the Republic of Korea and in early July 2020, the Supreme Court rendered its judgment.

6.13 The 1992 Fund's lawyers particularly noted various extracts of the Supreme Court judgment, as follows:

Facts recognised by the Court

- (a) The *Haekup Pacific* sank in waters 90 meters deep and was buried to the bottom of the seabed and, provided the keel clearance of at least 50 meters is maintained, ships are safe to sail through this area.
- (b) There has been no trace of either the oil or the asphalt cargo from the *Haekup Pacific* since it sank and considering the temperature of the seabed, any oil or asphalt remaining in the vessel should have stabilised through solidification. Furthermore, no diesel oil appears to have remained in the vessel as it would have been diffused with seawater or evaporated following the sinking, so the risk of environmental pollution appears to be minimal.
- (c) If the *Haekup Pacific*, which has remained in the seabed for a prolonged period of time is to be salvaged or removed, there is a high risk of destroying the hull leading to the exposure of the remaining oil or asphalt which poses further pollution concerns.
- (d) The operation of salvaging or removing the vessel would be a technically difficult task requiring advanced diving technology in the environment involving strong currents, limited visibility and the risk of the destruction of the vessel's hull. It would also be difficult to assess the costs for salvaging/removing the vessel and the overall risk level, as there has been no prior cases where a wreck was salvaged/removed from a similar depth as the *Haekup Pacific*.

The Supreme Court judgment

- 6.14 The Supreme Court judgment also notes that even though the Korean authorities had, at the time the vessel sank, issued orders to salvage and remove the vessel in circumstances where it was considered to be a risk to other ships navigating the area and to the ocean environment, this was difficult to undertake as the vessel had sunk to a depth of 90 meters below the surface. Furthermore, it notes that the local authorities had not attempted to enforce those orders. It is understood that this was because: (1) it was extremely difficult, if not impossible, to salvage or remove the vessel because of the high costs and technical difficulties; and (2) there was a possibility that the administrative orders could be revoked as the vessel no longer posed the aforementioned risks.
- 6.15 The judgment stated that it was not, therefore, reasonable to conclude that the owners had actually suffered foreseeable losses from incurring costs related to salvaging or removing the vessel, just because the administrative orders were still in effect, especially when a detailed plan for salvaging or removing the vessel was not even in place at the time the hearings took place.
- 6.16 The Supreme Court referred the case to the appellate court so that the appellate court could reconsider the question concerning whether the vessel's removal would be necessary and whether the administrative orders to salvage and remove the vessel should be revoked.
- 6.17 The 1992 Fund's lawyers are of the view that the judgment from the Supreme Court appears to have opened a way so that the City of Yeosu could revoke the wreck removal order should it choose to do so. However, it appears that the City of Yeosu has not yet revoked the wreck removal order which remains in place thus far and at the date of drafting the document, the appellate proceedings are still underway.
- 6.18 The shipowner's lawyers intend to open discussions with the new Head of the City of Yeosu in the near future, to discuss the possibility of lifting the wreck removal order.

Possible recourse action against the owner of the Zheng Hang

- 6.19 The 1992 Fund's lawyers informed the 1992 Fund that the damages claimed by the shipowner of the *Haekup Pacific* against the colliding vessel, the *Zheng Hang*, amounted to USD 30.79 million and 70% of the claim was recognised by the Seoul High Court judgment, which was rendered in October 2017^{<5>}.
- 6.20 Accordingly, the shipowner of the *Haekup Pacific* would ordinarily be in a position to recover approximately USD 21.55 million from the shipowner/insurer of the *Zheng Hang*. However, the shipowner of the *Zheng Hang*, is believed to be close to entering into liquidation and although the owning company is still listed as active in Hong Kong, the only ship that was registered under its ownership was the *Zheng Hang* and since records show that the ship was sunk in 2011, it is therefore unclear how much money, if any, the shipowner of the *Haekup Pacific* may recover from the shipowner of the *Zheng Hang*.
- 6.21 Under Korean law, the time bar for a recourse action is 10 years from the date of payment but as the 1992 Fund has not yet paid any compensation in respect of this incident, it is not appropriate to consider commencing a recourse action against the owner of the *Zheng Hang*, at this stage.
- 6.22 Furthermore, given the financial status of the owner of the *Zheng Hang*, the 1992 Fund's Korean lawyers advise that it may not be financially worthwhile for the Fund to pursue a recourse action against the *Zheng Hang*'s interests in any event.

7 Recent developments

- 7.1 In late September 2019, the City of Yeosu urged the shipowner/insurer to implement the wreck and oil removal orders by 10 February 2020 and in order to do so, to submit a document to the City and the Korean Coast Guard by the same date, containing information regarding the current situation on the ship and the shipowner/insurer's plans for: (1) the removal of oil residue and cargo; (2) the wreck removal; and (3) the prevention of oil pollution that might occur during the removal operation.
- 7.2 The shipowner obtained a time extension from the City of Yeosu, in order to hire a salvage company to examine the wreck's current condition. In July 2020, the salvors used a remotely operated vehicle (ROV) to survey the wreck, determine the condition and disposition of the wreck, and the presence or absence of hydrocarbon leaks, and subsequently provided the results of their survey to a firm of naval architects and marine engineers retained by the P&I Club, to advise and prepare a report upon the status of the wreck and the risk of oil related pollution originating from the wreck.

The status of the wreck and risk of oil pollution

- 7.3 The report prepared by the naval architects and marine engineers concluded that, considering the absence of evidence of oil leaks from the wreck, the minimal likelihood of further leaks from the wreck given the disposition of the wreck in relation to the seabed, and the prevailing currents in the region of the wreck which flow to the north-east, if any remaining oil leaked from the wreck, it would likely be carried away from the wreck location. The report stated that it was unlikely that significant quantities of oil would land on the Korean Peninsula^{<6>}.
- 7.4 The report also concluded that given the probability that there were only minimal amounts of free hydrocarbons remaining on the wreck and noting the high risk of oil spills associated with any

<5> Based on the contributory negligence of the colliding vessel.

<6> For a more extensive summary of the report, please see document IOPC/NOV21/3/6.

operation to remove or verify the quantities remaining, the report's authors were of the opinion that the wreck of *Haekup Pacific* should have remained undisturbed.

- 7.5 After receiving the report, the Secretariat requested that the 1992 Fund's lawyers contact the *Haekup Pacific's* lawyers to ascertain the next steps and were told that after the salvor's report was published, the City of Yeosu and the MOF issued an order to the *Haekup Pacific's* owners, to remove all remaining oil from the wreck, as it was unclear from the salvage report whether all the *Haekup Pacific's* bunker fuels had already leaked out and thus, whether a further risk of pollution remained.

Developments since October 2021

- 7.6 In 2022, the 1992 Fund was informed that in late 2021, a contract had been awarded to a Japanese salvage company (not Chinese as previously advised) to remove any remaining heavy fuel oil and diesel from the wreck.

The bunker fuel removal operation

- 7.7 In December 2021, the bunker fuel removal operation took place using the hot-tapping process^{<7>} by divers working from a diving bell suspended at a depth of 80 metres. In total, some 29.5 tonnes of oil were removed from the fuel tanks^{<8>}. The fuel removal operation was completed by 28 December 2021, with no oil leakage from the wreck location. The bunker fuel removal report notes that the asphalt cargo had solidified and was considered irrecoverable from the wreck by conventional means.

- 7.8 The report concludes that the wreck continues to settle and will likely eventually disappear into the seabed, poses no threat to safe navigation or to the marine environment, and that a wreck removal operation is neither required nor feasible given existing technology.

The costs of the bunker fuel removal operation

- 7.9 The total costs for the bunker fuel removal operation were reported as being approximately USD 10 million, which is less than the amount available from the insurer pursuant to STOPIA 2006. To date, no claim has been submitted to the 1992 Fund for the costs incurred.
- 7.10 Following the completion of the bunker oil removal operation and based on previous discussions with the City of Yeosu, the shipowner/insurer's lawyers were hopeful that the wreck removal order would be lifted. However, due to a reshuffle of officials, the temporary Head of City of Yeosu did not wish to abide by the predecessor's wishes pending the election of the new Head of City of Yeosu, who subsequently took office in July 2022.
- 7.11 The shipowner/insurer's lawyers intend to meet with the new Head of City of Yeosu to discuss the possibility of lifting the wreck removal order, at the first opportune moment.
- 7.12 If the wreck removal order is lifted, the shipowner/insurer would then be able to claim the costs of the bunker fuel oil removal operation during the court proceedings against the owner of the colliding ship, the *Zheng Hang*, at the appellate court, and hopefully, the legal proceedings against the 1992 Fund will be dropped.

<7> The divers attached valves to the wreck's hull plating outside of the fuel tanks, to pump hot seawater to mobilise the oil which did not flow easily due to the cold seawater temperature.

<8> At the time of sinking, the six fuel oil tanks and two diesel oil tanks onboard the vessel were reported as holding approximately 33 tonnes of oil.

7.13 The 1992 Fund's lawyers advise that it will likely take at least a year, or possibly two years, depending on the outcome of the discussions between the shipowner/insurer and the City of Yeosu, and the progress of the appellate court proceedings, for this matter to be concluded.

8 Director's considerations

8.1 The Director notes that an operation took place to remove the bunker fuels from the wreck of the vessel and, at present, the wreck removal order remains in place. The Director also notes that in April 2016, the shipowner/insurer of the *Haekup Pacific* took the precaution of filing a claim against the 1992 Fund in respect of the costs already incurred and their potential claim for the costs of the removal operations, before the expiry of the six-year anniversary of the date of the incident which caused the damage.

8.2 The Director is aware that, at present, no claim for the costs of the bunker fuel removal operation has been presented to the 1992 Fund and that in any event, the bunker fuel removal operation costs (reported as approximately USD 10 million) should be below the STOPIA 2006 limit of SDR 20 million (USD 26.56 million).

8.3 The Director also notes that the City of Yeosu, Marine Police and the MOF have been closely considering the next actions to be taken by each side in respect of the removal orders currently in place. The Director is also aware that the 1992 Fund's lawyers have advised that since the litigation against the 1992 Fund by the shipowner/insurer of the *Haekup Pacific* is dependent on the result of the related litigation between the colliding vessels, the 1992 Fund should wait for the appellate court to issue its judgment and thus, should agree to any further requests to stay the litigation with the shipowner/insurer of the *Haekup Pacific*.

8.4 The Director will report any developments in respect of this incident at the next session of the 1992 Fund Executive Committee.

9 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
