



International Oil Pollution  
Compensation Funds

Agenda Item 2	IOPC/MAR22/2/1	
Date	24 March 2022	
Original	English	
1992 Fund Assembly	92AES26	●
1992 Fund Executive Committee	92EC78	
Supplementary Fund Assembly	SAES10	●

## REPORT OF THE DIRECTOR

### Note by the Director

**Summary:**

Given the ongoing uncertainty surrounding the pandemic and the refurbishment of the audio-visual facilities of the International Maritime Organization headquarters, the forthcoming meeting will be convened fully remotely (IMO circular letter No.4220/Add.11). I am hopeful, however, that as the global situation improves, we will be able to meet in person again in October and resume the interaction between delegations that is so important when making decisions in respect of the organisation.

This will be the first time that I will be presiding over the sessions of the governing bodies in my capacity as Director. During these sessions, we will be working on a very tight schedule due to the unavoidable reduction in working hours resulting from convening a remote meeting. I am sure, however, that I will be able to update you on the most important issues that the Secretariat has been working on since our last meeting in November 2021. I will also be reporting on issues that the Secretariat will be addressing in the coming months. We will make every effort to ensure that the key items on the agenda are covered for Member States to be able to make all the necessary decisions.

**Action to be taken:**

1992 Fund Assembly and Supplementary Fund Assembly

Information to be noted.

### 1 Introduction

- 1.1 This meeting will be the fifth time the governing bodies have convened remotely since December 2020. We would have very much liked to convene in person, but given the uncertainty surrounding the pandemic and the refurbishment that is being carried out in the International Maritime Organization (IMO) headquarters, the forthcoming meeting will be convened fully remotely (IMO circular letter No.4220/Add.11). I apologise for this inconvenience, and I hope that we will be able to meet in person in October.
- 1.2 I have chaired the sessions of the governing bodies in my capacity as Chair of the 1992 Fund Assembly for over 10 years. This will be the first time that I preside over them in my capacity as Director. Before I start my report, I would like to thank the 1992 Fund Member States once again for the confidence and trust they have bestowed on me when I was elected last November. As I said on that day, I look forward to engaging with you all — the Member States, the members of the Secretariat, the industry and other stakeholders on how best to face the challenges ahead. I am confident that working together, we will be able to secure the continued success of the international liability and compensation regime.

- 1.3 Given that this will be Mr Ranjit Pillai's (Deputy Director/Head of Finance and Administration) last meeting of the governing bodies before he retires in June 2022, some time has been set aside on the last day of the meeting to bid him a preliminary farewell. As with the former Director, there is a plan to organise a more appropriate farewell in person at the next available opportunity, where delegations will have another chance to say goodbye.
- 1.4 During these sessions, we will be working once again on a very tight schedule due to the unavoidable reduction in working hours resulting from convening a remote meeting. However, I am sure that there will be enough time for me to update you on the most important issues that the Secretariat has been working on since our last meeting in November 2021. I will also be reporting on issues that we will be addressing in the coming months. I will be introducing only key items on the agenda for the March 2022 sessions of the governing bodies which merit specific mention.

## **2 Work of the IOPC Funds Secretariat during the COVID-19 pandemic**

- 2.1 Since the outbreak of the COVID-19 pandemic, the IOPC Funds have closely monitored developments of the COVID-19 pandemic and have followed the guidelines provided by the World Health Organization, the Government of the United Kingdom and the IMO. Throughout the pandemic, the Secretariat has adapted to the changing circumstances and has been able to operate successfully at all times.
- 2.2 Following the announcement earlier this year that the UK Government no longer asked people to work from home, Secretariat staff started to gradually return to work from the office based on the IOPC Funds' Working From Home Policy. I am pleased to report that we have all been working back at the office since 21 February 2022.

## **3 Membership of the 1992 Fund and Supplementary Fund**

- 3.1 In terms of membership, at the opening of the 26th extraordinary session of the 1992 Fund Assembly in March 2022, 118 States will be Parties to the 1992 Fund Convention. This year the 1992 Fund Convention will enter into force for the Republic of San Marino and the Republic of Costa Rica on 19 April 2022 and 19 May 2022, respectively, bringing the number of 1992 Fund Member States to 120.
- 3.2 At the opening of the 10th extraordinary session of the Supplementary Fund Assembly in March 2022, 32 States will be Members of the Supplementary Fund (IOPC/2022/Circ.1).

## **4 Compensation Matters**

### **4.1 Incidents involving the 1992 Fund**

- 4.1.1 The 1992 Fund is currently involved in 13 incidents. Since the November 2021 sessions of the governing bodies, the Secretariat has not been informed of any new incidents which at this stage may involve the 1992 Fund. As at 8 February 2022, no incidents have occurred that will involve the Supplementary Fund (document IOPC/MAR22/3/1). I will be reporting, in particular, with regard to the following:

*Hebei Spirit — Republic of Korea, December 2007*

- 4.1.2 I am happy to report that the 1992 Fund will be holding a meeting on 15 and 16 June in Seoul with all those involved in the handling of the claims arising from the *Hebei Spirit* incident to discuss the case and the lessons to be learned. This will enable the IOPC Funds to deal with claims even more efficiently

in the future. I would like to thank the Government of the Republic of Korea for assisting us with the organisation of this meeting (document IOPC/NOV21/3/4).

*Agia Zoni II — Greece, September 2017*

- 4.1.3 The 1992 Fund continues to deal with claims that have been validly presented. The investigations into the cause of the incident by the Public Prosecutor remain pending. It is not known when the Public Prosecutor will conclude the investigation, which is awaited to determine the cause of the incident. We will continue to monitor this matter, and I will be reporting the latest developments to the 1992 Fund Executive Committee at its next session (document IOPC/MAR22/3/4).

*Bow Jubail — The Netherlands, June 2018*

- 4.1.4 The *Bow Jubail* incident has broad implications for the international liability and compensation regime as it involves a chemical tanker capable of carrying both persistent oil and other chemical substances as cargo, so that at different times it could be considered as a ship under the 1992 Civil Liability Convention (1992 CLC) or a ship under the Bunkers Convention 2001. The issue in question in this case is whether the *Bow Jubail*, which was in ballast at the time of the incident, had in its tanks any residues of persistent oil cargoes from previous voyages.
- 4.1.5 Initially, the 1992 Fund should not have been involved and the Bunkers Convention 2001 would have normally applied. However, the Court of Appeal in The Hague rendered its judgment in October 2020, confirming the decision of the Rotterdam District Court that the shipowner had not sufficiently substantiated that the *Bow Jubail* did not contain residues of persistent oil at the time of the incident and that, therefore, the *Bow Jubail* could be considered as a ship under the 1992 CLC.
- 4.1.6 The 1992 Fund has a financial interest in this case, since if a final judgment were to decide that the 1992 Civil Liability and Fund Conventions apply, the 1992 Fund would pay compensation as the claims arising from this incident are expected to exceed the shipowner's limit under the 1992 CLC and the STOPIA 2006 (as amended 2017) limit. If, however, the shipowner were to be successful in its appeal to the Supreme Court, the Bunkers Convention 2001 would apply, and the 1992 Fund would not be involved in this case.
- 4.1.7 In a ruling on 24 December 2021, the Supreme Court decided that the Fund could not intervene in the limitation proceedings based on the 1992 Fund Convention. However, the Court considered that the Fund is an interested party in the proceedings that had not appeared in the previous instances through no fault of its own. The Court has therefore decided to grant the Fund's subsidiary application to be admitted as an interested party in the proceedings, based on the civil procedural law of the Netherlands. The Supreme Court has also accepted the Fund's request to give the parties an opportunity to present their views in writing in the proceedings. Following this decision, the Fund's Dutch lawyers prepared a reply to the Court's decision, which was submitted on 14 March 2022.
- 4.1.8 In addition, legal actions have been brought by several claimants before the District Court in Rotterdam against the shipowner, its insurer, and other parties. The 1992 Fund has been notified or included as a defendant in some of the actions, in case the 1992 Civil Liability and Fund Conventions were to apply to this incident. The 1992 Fund, through its lawyers in the Netherlands, is monitoring these cases and trying to obtain a stay in these proceedings until the Supreme Court delivers its decision on the question of whether the *Bow Jubail* qualifies as a ship under the 1992 CLC or not. Further developments in this case will be reported at the next meeting (document IOPC/MAR22/3/5).

*Incident in Israel — February 2021*

- 4.1.9 In February 2021, the Government of Israel contacted the 1992 Fund requesting assistance with oil found along the Israeli coastline believed to be caused by a mystery spill. Tar balls affected the entire

Mediterranean coastline of Israel to various degrees. Clean-up operations were carried out under the direction of the Marine Environment Protection Division of the Israeli Ministry of Environmental Protection following their National Contingency Plan, with local authorities organising the response on the beaches.

- 4.1.10 The Israeli authorities collected samples of the tar balls found along the Israeli coastline and it was concluded that the pollution was caused by crude oil. The experts engaged by the IOPC Funds also undertook a range of analytical tests on Israel beach pollutant samples taken in mid-February and mid-March 2021 and issued a report in June 2021. According to the 1992 Fund's experts, the pollution was caused by crude oil, and it could not have originated from any other source but a passing oil tanker. The composition of the pollutant was consistent with it being crude oil tanker washings which must have been illegally ejected into the Mediterranean, and not a crude oil cargo that had been spilled. The pollutant appeared to be resistant to weathering due to its nature and thus, it was not possible from the analytical data generated to determine when the pollutant had actually entered the environment.
- 4.1.11 Initial estimates of the cost of the response to the oil spill so far are in the region of ILS 55 million (£13 million)<sup><1></sup>. Further costs and claims for economic losses are expected. Bulk clean-up operations were completed by mid-April 2021.
- 4.1.12 In July 2021, the 1992 Fund Executive Committee decided that the pollution which has affected the coastline of Israel could be considered as a spill from an unknown source (a so-called 'mystery spill') and that, for this reason, the 1992 Civil Liability and Fund Conventions would apply to this incident. The Executive Committee, therefore, authorised the Director to pay compensation with respect to the incident.
- 4.1.13 During a meeting in February 2022, the Israeli authorities informed me that they had tried to further investigate into the *MT Emerald's* movements at the time of the incident, but they could not obtain more than the circumstantial evidence already gained and were therefore unable to pursue the matter further.
- 4.1.14 We travelled to Israel at the beginning of March and held meetings with the Israeli authorities including the Minister of Environmental Protection. We also met with the Funds' focal point in Israel and had working meetings with the Administration of Shipping and Ports, and the Marine Environment Protection Division of the Ministry of Environmental Protection (document IOPC/MAR22/3/6).

*Trident Star — Malaysia, August 2016*

- 4.1.15 Claims arising from this incident exceed the 1992 CLC limit applicable to the *Trident Star*, although they have not reached the STOPIA limit of SDR 20 million (USD 28.5 million). The 1992 Fund has been paying compensation to claimants when the 1992 CLC limit was reached, albeit all payments have been recovered from the shipowner's insurer, the Shipowners' Club, under STOPIA 2006.
- 4.1.16 I would like to thank the Shipowners' Club for their excellent cooperation in this case, both in respect of the handling of claims and the prompt reimbursement of payments under STOPIA 2006.
- 4.1.17 Since all the outstanding claims have now been settled and corresponding legal actions have been withdrawn or are in the process of being withdrawn, this incident can now be considered as closed.

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<1> The exchange rate used in this document is based on the exchange rate as at 31 December 2021 of £1 = ILS 4.2156.

*Redfferm – Nigeria, March 2009*

- 4.1.18 In late February, the 1992 Fund was notified by its Nigerian lawyers that the Federal High Court had delivered summary judgment against the 1st and 2nd Defendants (the owners/charterers of the *MT Concep* and *Redfferm*, respectively) and granted the claimants' claim as per their Statement of Claim in the sum of ninety-two million, six hundred and two thousand dollars (USD 92 602 000). The Judge also awarded the claimants, five million dollars (USD 5 000 000) as "general damages".
- 4.1.19 The Judge did not refer to pleadings filed by various of the Defendants (including the 1992 Fund) in opposition to the claimants' application for final judgment. The 1992 Fund's lawyer requested a certified copy of the judgment, and upon receipt of which, a more complete understanding of the judgment may be obtained. The Director will continue to monitor the case closely.

4.2 Incidents involving the Supplementary Fund

The Supplementary Fund has not been involved in any incidents so far and has, therefore, paid no compensation.

**5 Financial matters**

5.1 Oil reports

I am pleased to report that, on 15 February 2022, the Secretariat received a submission from the Dominican Republic providing information on oil receipts in this Member State going back several years. The Secretariat will now analyse the data and liaise with the Member State to ensure that the correct quantities of oil are recorded and the corresponding contributions invoiced. This development has come after continued efforts by the Secretariat and Member States to establish a reporting relationship.

**6 Secretariat and administrative matters**

6.1 Staff matters

- 6.1.1 During my first three months at the Secretariat, I have devoted substantial time to meeting the staff on an individual basis. I found these meetings to be very valuable to get to know the staff members on a professional and personal basis and obtain a thorough understanding of the day-to-day work of the Secretariat. I am pleased to report that I am working with a very capable and highly professional team.
- 6.1.2 Mr Ranjit Pillai (Sri Lanka), Deputy Director/Head, Finance and Administration Department, is retiring on 6 June 2022. After having thorough discussions with the Deputy Director and considering this succession issue with the other members of the Management Team, I have decided to create a new Administration Department that will comprise the four functional areas/sections of Finance, Human Resources, IT and Office Management. This Department will be overseen by Mr Robert Owen as Head of Administration at his current D1 level.
- 6.1.3 In recognising the importance of the Finance function to the organisation, I have also decided to establish the post of Chief of Finance to head the Finance Section within the Administration Department and to be responsible for the finance function of the organisation. The Finance Section will consist of the Chief of Finance, a Finance Manager and three Finance Assistants.
- 6.1.4 In addition, I have also decided that Mrs Liliana Monsalve (Colombia) will be taking over the role of Deputy Director upon Mr Pillai's retirement effective 1 June 2022. Mrs Monsalve will continue in her position as Head of the Claims Department, thus combining the role of Deputy Director/Head of the

Claims Department. I will recommend the 1992 Fund Assembly that the position of Deputy Director/Head of the Claims Department should be graded at the D2 level (document IOPC/MAR22/7/1).

- 6.1.5 Since the last meeting of the governing bodies in November 2021, Ms Sarah Hayton, Oil Reporting Administrator, has left the organisation. Mr Yuji Okugawa has taken over Ms Hayton's responsibilities as Oil Reporting Administrator, which have now been combined with those of his Policy Officer role.
- 6.1.6 Mr Thomas Liebert has been on medical leave since November 2021 and working part-time on HNS matters. Mrs Victoria Turner has since coordinated the work of the External Relations and Conference Department. I very much hope that Mr Liebert will make a speedy recovery.

## 6.2 Headquarters Agreement

- 6.2.1 I am pleased to announce that on 23 March 2022, the new Headquarters Agreements between the United Kingdom and the 1992 Fund and the Supplementary Fund were signed at the IOPC Funds Headquarters in London.
- 6.2.2 I was honoured to welcome Parliamentary Under Secretary of State at the Department of Transport, Mr Robert Courts, who attended the IOPC Funds offices to sign the Headquarters Agreements on behalf of the Host State.
- 6.2.3 These Agreements, which were approved by the governing bodies at their November 2020 sessions, will provide the necessary privileges and immunities to the IOPC Funds to discharge its responsibilities and functions fully and efficiently. This is of particular importance to the Supplementary Fund, as it is the first Headquarters Agreement for the organisation since the Protocol entered into force in 2005.
- 6.2.4 I would like to express my appreciation to the Foreign and Commonwealth Office and the Department for Transport of the United Kingdom for their continued efforts and commitment to finalising the text of the Agreements and facilitating the legislative process through Parliament. I would also like to thank them both, as the governmental Departments responsible for IOPC Funds matters, for their continued cooperation and support to the organisation.

## 7 Treaty matters

### 7.1 Review of international non-governmental organisations having observer status

- 7.1.1 Every three years, a review is carried out of international non-governmental organisations (IGOs) having observer status in order to determine whether the continuance of this status is of mutual benefit. The last review was due to be conducted at the November 2021 meeting of the governing bodies. However, given the reduction in working hours resulting from convening a remote meeting and considering that Member States had to take several substantial decisions in addition to electing the new Director of the organisation, the observer review was postponed to the March 2022 meeting.
- 7.1.2 The 1992 Fund Assembly will have to take note of the report of the group of five States and decide whether the continuance of observer status for each international non-governmental organisation is of mutual benefit (document IOPC/MAR22/5/2).

### 7.2 2010 HNS Convention

- 7.2.1 I am pleased to report that Estonia has become the sixth State to accede to the 2010 HNS Protocol, bringing this important treaty one step closer to entering into force. An instrument of accession was deposited with the Secretary-General of IMO on 10 January 2022. Estonia joins Canada, Denmark,

Norway, South Africa and Turkey, which have already deposited instruments of ratification to the Protocol.

- 7.2.2 The Estonian Ministry of Environment submitted their 2020 receipts for contributing cargo in accordance with Article 28(2)(a)(i) of the 2010 HNS Protocol. Among the conditions for the entry into force of the 2010 HNS Convention is the requirement for the total volume of contributing cargo to the general account to be at least 40 million tonnes. The HNS contributing cargo received by Estonia in 2020 regarding the HNS general account (bulk and solid) is just over 66 000 tonnes.
- 7.2.3 Other criteria for the entry into force of the 2010 HNS Convention require at least 12 States to ratify or accede to the Protocol, four of which must each have a merchant shipping fleet of no less than 2 million units of gross tonnage. That unit of tonnage has already been achieved with these six Contracting States.
- 7.2.4 I am also pleased to note that Canada, France and Cefic have submitted documents on their forthcoming work to advance the ratification of the 2010 HNS Convention. I would also like to take this opportunity to thank them and all Member States for their efforts towards facilitating the entry into force and implementation of the 2010 HNS Convention (document IOPC/MAR22/5/2).

## **8 External Relations**

### **8.1 IOPC Funds Short Course**

I am pleased to announce that the annual IOPC Funds Short Course will be held in person on the week of 27 June this year. I would also like to take this opportunity to thank the organisations that continue to support the Funds with the organisation of this course (circular IOPC/2022/Circ.3).

### **8.2 Induction course for delegates**

Due to the reduced hours available for remote sessions, it was not possible to organise a remote edition of the Induction Course for delegates prior to the November 2021 meeting; but the Secretariat is committed to delivering the induction course for delegates, hopefully in person this year, most probably during the weeks before the October 2022 sessions of the governing bodies.

## **9 Decisions to be made during the March 2022 sessions**

To facilitate the work of delegations and since we will have to hold our March 2022 meetings remotely and in a very short period of time, I am including below the list of the main decisions to be made during the meeting:

- Decide whether to temporarily suspend or amend the Rules of Procedure in respect of their March 2022 sessions as set out in section 2 of document IOPC/MAR22/1/3.
- Decide whether, having taken note of the report of the group of five States, the continuance of observer status of each international non-governmental organisation is of mutual benefit (document IOPC/MAR22/5/2).
- Decide to approve the establishment of the post of Chief of Finance and to note the Director's intention to promote Ms Claire Montgomery to this post at the Professional Grade of P5 with effect from 1 June 2022 (document IOPC/MAR22/7/1).
- Decide to approve the grade of Mrs Liliana Monsalve, as Deputy Director/Head of Claims Department at the D2 level with effect from 1 June 2022 (document IOPC/MAR22/7/1).
- Approve the proposed amendments to the Internal Regulations of the 1992 Fund and the Supplementary Fund, respectively, to take into account the changes to Internal Regulation 12 in respect of the delegation of authority (document IOPC/MAR22/6/1).

- Approve the proposed amendments to the Financial Regulations of the 1992 Fund and Supplementary Fund, respectively, to take into account the changes to Financial Regulation 9 relating to the management of monies (document IOPC/MAR22/6/2).

## **10 Looking ahead**

- 10.1 The membership of the IOPC Funds has continued to increase with two new Member States joining the IOPC Funds this year, which reflects the commitment of Member States to the international liability and compensation regime. There is still a lot of work to be done to assist Member States with the uniform implementation and interpretation of the Conventions. With this in mind, the Secretariat will be offering in-person and online courses and exercises to assist Member States and to promote the benefits of the international liability and compensation regime.
- 10.2 The Secretariat will continue to work with the Audit Body and IMO to advance the review of the risks arising from incidents involving the IOPC Funds and insurers that are not members of the International Group.
- 10.3 In October 2019, the governing bodies instructed the Director to examine other ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates in the event that no reports were submitted (document IOPC/OCT19/11/1, paragraph 5.1.17). Throughout 2021, the Audit Body and the Secretariat discussed this matter at length. In November 2021, the Audit Body and the Secretariat had the opportunity to further examine this matter with Professor Dan Sarooshi Q.C., the 1992 Fund's legal counsel in public international law. The Secretariat and the Audit Body will further address this matter throughout 2022.
- 10.4 The Secretariat will continue to provide guidance to Member States that are working towards the ratification of the 2010 HNS Convention and to make the preparations for the first session of the 2010 HNS Fund Assembly, which will be convened by the Secretary-General of IMO.
- 10.5 I will continue to review the Secretariat's needs and working methods with the aim of adapting to changing situations and making the best possible use of the resources available.
- 10.6 I look forward to working and engaging with you all — the Member States, the members of the Secretariat, the industry and other stakeholders on how best to face the challenges ahead. It is a privilege for me to work closely together with all of you to ensure that the international liability and compensation regime is strengthened and continues to serve and protect the victims of oil pollution in the future.
- 10.7 I trust that the solid foundations of the Funds, the commitment of Member States, P&I Clubs, IMO, the oil industry and the international shipping community, will allow the IOPC Funds to continue its success story and face the challenges that lie ahead.

## **11 Action to be taken**

### 1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information contained in this document.

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