



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/NOV23/4/4	
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1992 Fund Assembly	92A28	●
1992 Fund Executive Committee	92EC81	
Supplementary Fund Assembly	SA20	●

DEVELOPMENT OF A GUIDANCE DOCUMENT

PROCEDURES FOR DETERMINING WHETHER A SHIP FALLS UNDER THE 1992 CIVIL LIABILITY CONVENTION OR THE BUNKERS CONVENTION 2001

Note by the Secretariat

Summary:

The *Bow Jubail* incident (see document IOPC/NOV23/3/10) may have broad implications for the definition of a ‘ship’ under the 1992 Civil Liability Convention (1992 CLC) or a ‘ship’ under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001), in particular with reference to tankers capable of carrying both persistent oil and other chemical substances as cargo.

In the court proceedings derived from the *Bow Jubail* incident, the Court of Appeal in The Hague considered that there was no generally accepted standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceases to be a ‘ship’ under the 1992 CLC. The Court of Appeal further remarked that consideration should be given by the Parties to the 1992 Fund Convention to the creation of such a standard procedure that could then be followed, with a view to invoking the exception provided for in Article I(1) of the 1992 CLC (document IOPC/NOV20/11/2, paragraph 3.12.7).

At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceased to be a ‘ship’ under the 1992 CLC. The Executive Committee also requested that Director consider an interpretation of the meaning of the word ‘residues’ in Article I(1) of the 1992 CLC (document IOPC/MAY23/9/1, paragraphs 3.6.25 and 3.6.33).

Action to be taken:

1992 Fund Assembly and Supplementary Fund Assembly

Information to be noted.

1 Background information

- 1.1 At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 Civil Liability Convention (1992 CLC) and as a chemical tanker under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001), ceased to be a 'ship' under the 1992 CLC (document IOPC/MAY23/9/1, paragraph 3.6.33).
- 1.2 During the discussion, it was also suggested that, as part of the investigation, the Secretariat could investigate the possible number of dual tankers that may be on various registers, to determine whether this was a narrow pool or if it extended to a point whereby, going forward, a guidance document could meaningfully impact on the industry itself.
- 1.3 At that same session, the Director noted that the 1992 Fund's position in this case had been that there was already a standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL). He also acknowledged that, following the decision of the courts in the Netherlands, further guidance might need to be developed.
- 1.4 The Executive Committee also requested that the Director consider an interpretation of the meaning of the word 'residues' in Article I(1) of the 1992 CLC, to ensure that there was a common understanding among Member States as to whether the wording of 'no residues of such carriage of oil' in that Article required that physically, no oil would be found in the oil tank, or rather that tank would be sufficiently cleaned that the risk of pollution was essentially the same as a tanker which was not carrying oil on board as cargo.

2 Director's considerations

- 2.1 Following the request by the 1992 Fund Executive Committee at their May 2023 session, the Director has met with industry representatives and has been consulting with the joint Audit Body of the 1992 Fund and the Supplementary Fund, in order to develop a proposal for the way forward, to determine whether a ship falls under the Bunkers Convention 2001 or the 1992 CLC.
- 2.2 At the same time, the Director has also begun an historical review of the interpretation of 'oil residues' in existing conventions and guidance documents, in order to achieve a fuller picture of the current understanding of its meaning.
- 2.3 The Director intends to conduct these two streams of work concurrently, with a view to submitting more detailed document to the 1992 Fund Assembly at a future session.
- 2.4 The Director will report on the progress of the work at the next session of the 1992 Fund Assembly.

3 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.
