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:	In April 2013, the Secretariat was informed of an incident which took place in April 2010 in the Republic of Korea. The *Haekup Pacific*, an asphalt carrier of 1 087 GT, was involved in a collision with the *Zheng Hang*. The *Haekup Pacific* was heavily damaged on her aft port quarter as a consequence of the collision on 20 April 2010 and subsequently sank in waters of approximately 90 metres depth on 21 April 2010 off Yeosu, Republic of Korea. The *Haekup Pacific* was laden with 1 135 metric tons of asphalt cargo together with bunkers of 23.37 metric tons of intermediate fuel oil (IFO) and 13 metric tons of marine diesel oil (MDO). The *Haekup Pacific* 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 28.14 million) [<1>]. Shortly after sinking, a small spill of some 200 litres of oil occurred resulting in some minor pollution. The local coastguard launched a clean-up operation and ordered the shipowner to monitor any further oil spill at the site for one month. No oil was reportedly found during that period. The *Haekup Pacific*'s P&I Club (UK P&I Club) paid some USD 136 000 for clean-up and preventive measures costs. In early May 2010, the Yeosu City 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. 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

[<1>] 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.

	operations), then only the six-year time bar under the 1992 Fund Convention would be applicable. Therefore, the UK P&I Club and the 1992 Fund settled the terms of an agreement on facts, stating that since the costs of the potential claim for the removal operations had not been incurred by the shipowner/insurer, as the removal operations 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. As a consequence of signing the agreement, 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 Yeosu City 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 for USD 53.27 million[<2>], (subsequently amended to USD 25.13 million taking into consideration the STOPIA 2006 limit) against the 1992 Fund 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. In December 2016, the 1992 Fund was served with a claim form for USD 46.9 million plus interest through diplomatic channels. 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.
Recent developments:	During 2019, there were no substantive developments to report in the legal proceedings against the 1992 Fund. 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* remains pending. Given that the appeal was filed in 2017, the 1992 Fund's lawyers are hopeful that the judgment may be rendered by the end of 2020.
Relevant documents:	The online *Haekup Pacific* incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	1992 Fund Executive Committee Information to be noted.

[<2>] Amending the original claim of USD 46.9 million.

1 Summary of incident

Ship	*Haekup Pacific*
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 6.34 million)[1]
STOPIA/TOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 28.14 million) [1]
CLC + Fund limit	SDR 203 million (USD 285.7 million) [1]
Compensation paid	None paid to date by the 1992 Fund. USD 136 000 paid by insurers in respect of clean-up and preventive measures.

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 Developments since October 2018

3.1 There have been no developments to report regarding the revocation of the wreck and oil removal orders or further discussions between the Yeosu City and Marine Police and shipowner/insurer regarding the management plan of the vessel.

3.2 However, in related litigation between the shipowners/insurers of both colliding vessels, the Seoul High Court had ruled that since the authorities' wreck removal order remained effective despite repeated requests for its withdrawal, it was reasonable to deem that the damages for the wreck removal costs had in fact arisen.

3.3 The shipowner/insurer of the *Zheng Hang* has appealed this judgment to the Supreme Court of the Republic of Korea.

4 Applicability of the Conventions

4.1 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.

4.2 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 1992 CLC (SDR 4.51 million) and the total amount of admissible claims, or SDR 20 million, whichever is less.

5 Claims for compensation

As at 1 August 2019, 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 (USD 28.14 million).

Revised claim filed

Claim Item	**Amount**
Clean-up and preventive measures	USD 0.136 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	USD 28.14 million
Value of revised claim filed	**USD 25.13 million**

6 Limitation proceedings

No limitation proceedings have been commenced.

7 Civil proceedings

7.1 In April 2013, the shipowner/insurer commenced legal proceedings against the 1992 Fund in the Seoul Central District Court.

7.2 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.

7.3 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 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 wished to continue with potentially costly legal proceedings.

7.4 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.

7.5 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.

7.6 Despite the intervening time, it appears that the removal orders will not be lifted soon. In early 2016, the shipowner/insurer's lawyers were advised by the Ministry of Oceans and Fisheries (MOF) of the Republic of Korea that it would not take any action regarding the wreck removal order since, in its view, the decision should be taken by the Yeosu City and Marine Police.

7.7 In September 2016, the Yeosu City and Marine Police and the 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.

7.8 Since it appears 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.

7.9 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.

7.10 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 (USD 28.14 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.

7.11 Shortly thereafter, the 1992 Fund was served with a claim form for USD 46.9 million through diplomatic channels. 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.

7.12 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.

7.13 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 and the shipowner of the *Haekup Pacific* was currently 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.

7.14 The shipowner/insurer of the *Zheng Hang* have appealed against the Seoul High Court's judgment and the matter is now pending at the Supreme Court of the Republic of Korea.

Developments since 2018

7.15 There have been no substantive developments to report in the legal proceedings against the 1992 Fund during 2018. The appeal by the shipowner/insurer of the *Zheng Hang* against the shipowner/insurer of the *Haekup Pacific* remains pending. Given that the appeal was filed in 2017, the 1992 Fund's lawyers are hopeful that the judgment may be rendered by the end of 2020.

7.16 The 1992 Fund's lawyers informed the 1992 Fund that the damages claimed by the shipowner of the *Haekup Pacific* against the colliding vessel 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[<3>]. Accordingly, if the Supreme Court affirms the Seoul High Court judgment, the shipowner of the *Haekup Pacific* would ordinarily be in a position

[<3>] Based on the contributory negligence of the colliding vessel.

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 therefore, it is unclear how much money, if any, the shipowner of the *Haekup Pacific* may recover from the shipowner of the *Zheng Hang*.

8 Director's considerations

8.1 The Director notes that, at present, the wreck and oil removal orders remain in place but have not been enforced. The Director also notes that, as a consequence, 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 wreck and oil removal operation can be assessed since the costs of the wreck and oil removal operation have not yet been incurred by the shipowner/insurer.

8.3 The Director notes that the Yeosu City and 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 Supreme Court of the Republic of Korea to issue its judgment in the related litigation and thus, should agree to any further requests to stay the litigation with the shipowner/insurer of the *Haekup Pacific*.

8.4 Therefore, the Director considers that the most prudent step to take is to let matters lie pending the decision of the authorities and in the meantime, if steps are required to be taken in defence of the shipowner/insurer's claim, it would be on the basis that no damages for the costs of the removal operations have in fact yet been incurred by the shipowner/insurer of the *Haekup Pacific*.

8.5 The Director will report any developments in the legal proceedings 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.