



International Oil Pollution
Compensation Funds

Agenda Item 2	IOPC/OCT19/2/1	
Date	23 October 2019	
Original	English	
1992 Fund Assembly	92A24	●
1992 Fund Executive Committee	92EC73	
Supplementary Fund Assembly	SA16	●

REPORT OF THE DIRECTOR

Note by the Director

Summary:	<p>A number of key items on the agenda for the October 2019 sessions of the IOPC Funds' governing bodies are introduced, including an update on the incidents in which the 1992 Fund is involved, an update on the oil reports and contributions, and the appointment of the External Auditor. This document also provides information on the external relations and outreach activities of the IOPC Funds since the October 2018 sessions of the governing bodies.</p> <p>Finally, a list of the most important decisions that the governing bodies will be invited to take during the October 2019 sessions is set out (see section 9).</p>
Action to be taken:	<p><u>1992 Fund Assembly and Supplementary Fund Assembly</u></p> <p>Information to be noted.</p>

1 Introduction

- 1.1 I will take this opportunity to report on the work of the IOPC Funds since October 2018 and to look ahead to the challenges which lie in store in the coming 12 months. I will focus on some key items on the agenda for the October 2019 sessions of the governing bodies which will require the open debate of Member States. I will also invite the governing bodies to make key decisions on several of these issues.
- 1.2 In terms of membership, at the opening of the 24th session of the 1992 Fund Assembly in October 2019, 115 States will be Members of the 1992 Fund. The Co-operative Republic of Guyana acceded to the 1992 Fund Convention on 20 February 2019. The Convention will enter into force for this State during 2020, bringing the number of 1992 Fund Member States to 116 on 20 February 2020.
- 1.3 At the opening of the 16th session of the Supplementary Fund Assembly in October 2019, 32 States will be Members of the Supplementary Fund (document IOPC/OCT19/8/1).

2 Compensation Matters

2.1 Incidents involving the 1992 Fund

- 2.1.1 The 1992 Fund is currently dealing with 11 incidents, and the documents relating to these incidents have been submitted to the 1992 Fund Executive Committee. I will be reporting, in particular, with regard to the following:

Prestige — Spain, November 2002

- 2.1.2 In accordance with the judgment of the Spanish Supreme Court, and as authorised by the Executive Committee in April 2019, the 1992 Fund paid EUR 27.2 million into the Court in charge of the enforcement of the judgment (99.5% of the total amount to be paid in relation to this incident) and retained EUR 800 000 to pay the claimants with legal actions pending before the French courts, and EUR 4 800 to pay the Portuguese Government, who was not a party to the legal proceedings in Spain, to ensure that the principle of equal treatment between claimants was maintained.
- 2.1.3 In addition, the 1992 Fund provided the Spanish Supreme Court a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 Civil Liability Convention (CLC))^{<1>}. It is for the Court to distribute the compensation between the claimants. However, as far as I know, the Court has yet to distribute the amounts due to the claimants.
- 2.1.4 In April 2019, the Court of Cassation in France delivered a judgment ruling that the American Bureau of Shipping (ABS) could not avail itself of the defence of sovereign immunity in this case. The case will now go back to the Court of First Instance in Bordeaux to consider the merits of the claims of the French Government and the 1992 Fund against ABS. I have met with the French authorities to coordinate this recourse action, and I will be reporting further developments on this issue to the Executive Committee at its next session (document IOPC/OCT19/3/2).

Hebei Spirit — Republic of Korea, December 2007

- 2.1.5 Following an advance payment to the Skuld Club of KRW 22 billion, on account of the amount ultimately due to it, in April 2019 I was authorised by the Executive Committee to make an additional payment to the Club of KRW 22 billion, setting aside a balance of some KRW 3.4 billion to be paid when the legal proceedings have been concluded. This additional payment was made in April 2019.
- 2.1.6 In April 2019, the Executive Committee also authorised me to enter into a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund was allowed to transfer the remaining amount available for compensation i.e. some KRW 27.5 billion to the Government for it to pay all remaining claims. In return, the Government provided the safeguards the 1992 Fund needs to be protected from further actions in the Courts against the 1992 Fund. The Fund will continue working in cooperation with the Government of the Republic of Korea until all litigation comes to an end and all claims are paid in full.
- 2.1.7 The 1992 Fund has brought a recourse action in the Republic of Korea to recover a proportion of the amounts paid for this incident from the Samsung Heavy Industries Co., Ltd (SHI) Limitation Fund. I will report on any developments on this matter at a future session of the Executive Committee.
- 2.1.8 In 2020, I intend to hold a wash-up meeting with the Government of the Republic of Korea, the Skuld Club and the experts involved in the handling of the claims to discuss what lessons can be learned from the case, so as to enable the IOPC Funds to deal with claims more efficiently in the future. I will then submit a document on the lessons learned at a subsequent session of the governing bodies.
- 2.1.9 I am extremely grateful for the close cooperation and assistance provided to the 1992 Fund by the Government of the Republic of Korea in resolving this major incident so efficiently (document IOPC/OCT19/3/4).

<1> See section 2 of document IOPC/APR19/3/2/1.

Agia Zoni II — Greece, September 2017

- 2.1.10 I am pleased to report that progress has been made in the assessment of the 373 claims filed against the 1992 Fund, with 300 claims approved and compensation payments totalling some EUR 11 million paid to date, and that the assessment continues.
- 2.1.11 There are a number of investigations being conducted into the cause of the incident. The investigations conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor and the investigation by the Technical University of Athens have concluded. However, we are still awaiting the results of the other investigations. I will continue to follow the investigations and report to the Executive Committee at a future session (document IOPC/OCT19/3/11).

Bow Jubail — Netherlands, June 2018

- 2.1.12 In April 2019, I reported on the *Bow Jubail* incident in Rotterdam which may involve the 1992 Fund. As I explained at the April meeting of the governing bodies, the shipowner had argued that the incident was covered under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001). The Rotterdam District Court had decided that the shipowner had not proved that the *Bow Jubail* did not contain residues of persistent oil at the time of the incident and that therefore the vessel qualified as a ship as defined under the 1992 CLC. The shipowner appealed the decision to the Court of Appeal in The Hague, and a decision is expected to be rendered in November 2019 (document IOPC/OCT19/3/12).

Nesa R3 – Oman, June 2013

- 2.1.13 At the April 2019 sessions of the governing bodies, I reported that the 1992 Fund had reached a settlement of all the claims with the Government of the Sultanate of Oman and that the total losses amounted to some OMR 3.5 million (£6.7 million). It is now expected that the Omani Government will shortly withdraw from the legal proceedings in Oman. The 1992 Fund is taking steps to recover the amount paid in compensation from the shipowner and insurer of the *Nesa R3*. I would like to thank the Omani Government for its continued cooperation which has permitted the 1992 Fund to make prompt payments of compensation in relation to this incident and to resolve all pending claims (document IOPC/OCT19/3/8).

2.2 Incidents involving the Supplementary Fund

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

3 Financial matters**3.1 Oil reports and contributions**

- 3.1.1 I am pleased to report that 101 States have submitted reports for 2018 to the 1992 Fund, representing 97.31% of the expected total contributing oil. Oil reports for the year 2018 and/or previous years are outstanding for 17 States in respect of the 1992 Fund.
- 3.1.2 Thirty States have submitted reports for 2018 to the Supplementary Fund, representing 99.39% of the expected total contributing oil. Oil reports for the year 2018 and/or previous years are outstanding for two States with respect to the Supplementary Fund (document IOPC/OCT19/5/1).
- 3.1.3 Contributions of some £660 000 due by 1 March 2019 from one contributor in India remain outstanding, amounting to some 40.44% of the total outstanding contributions due to the 1992 Fund. I have requested the assistance of the Indian authorities to enable these outstanding contributions to be paid as soon as possible.

- 3.1.4 In October 2017, the 1992 Fund Assembly instructed me to write off contributions and interest due from two contributors in the Russian Federation amounting to some £826 000 (document IOPC/OCT17/11/1, paragraph 5.2.14). In view of this financial loss, the Assembly instructed me to write to the authorities of the Russian Federation requesting their cooperation and a response on its obligation under Article 15.4 of the 1992 Fund Convention. Since October 2018, I have had further meetings with representatives of the Russian Federation. I have recently received a letter from the Russian authorities who have informed me that they have set up an interagency working group to deal with the matter.
- 3.1.5 In addition, there are outstanding contributions to the 1992 Fund from two other contributors in the Russian Federation which amount to some £55 000, which represent some 3.35% of the total outstanding contributions due to the 1992 Fund. In both cases, I have sought assistance from the Russian Government to persuade the contributors to settle the amounts due rather than reverting to legal action. I have been informed by the authorities of the Russian Federation that the Ministry has sent follow-up letters to these contributors. I am confident that I can count on the Russian Federation to assist the Fund with the recovery of these contributions due.
- 3.1.6 In April 2019, I was pleased to report that contributions in the amount of EUR 849 000 had been received in January 2019 from the Islamic Republic of Iran, which had been deposited in the 1992 Fund's bank account in Spain. I would like to thank the Iranian authorities again for their assistance in solving this matter (document IOPC/OCT19/5/2).

3.2 Assessment of contributions — 1992 Fund

- 3.2.1 I will be inviting the 1992 Fund Assembly to consider my proposal to levy 2019 contributions of £2.3 million to the 1992 Fund's General Fund, payable by 1 March 2020 (document IOPC/OCT19/9/1/1).
- 3.2.2 I will also be inviting the 1992 Fund Assembly to decide whether to endorse my proposal not to levy 2019 contributions to the Major Claims Funds established for the *Prestige*, *Hebei Spirit* and *Alfa I* incidents. I will be proposing to levy 2019 contributions of £11.5 million to the *Agia Zoni II* Major Claims Fund (with £5 million payable by 1 March 2020 and £6.5 million, or part thereof, to be deferred if it proves necessary). I will also be proposing to levy 2019 contributions of £3.6 million to the *Nesa R3* Major Claims Fund, payable by 1 March 2020 (document IOPC/OCT19/9/2/1).

3.3 Assessment of contributions — Supplementary Fund

I will be inviting the Supplementary Fund Assembly to decide whether to endorse my proposal to not levy contributions to any Claims Fund (document IOPC/OCT19/9/2/2).

4 Appointment of the External Auditor

- 4.1 The current term of the External Auditor, BDO International (BDO), that covers financial years 2016–2019 will end following their report on the 2019 Financial Statements at the 2020 regular sessions of the governing bodies. The management of the selection process of the External Auditor falls within the mandate of the Audit Body, who conducted a formal review and interview session with BDO in June 2019. As a result, the Audit Body will be recommending that BDO be re-appointed as the IOPC Funds' External Auditor for a second four-year term commencing with the 2020 financial year, subject to continuing satisfactory performance.
- 4.2 As requested by the governing bodies at the April 2019 sessions, the Audit Body will also be submitting a proposal on the possible selection process of future External Auditors to the governing bodies for their consideration (document IOPC/OCT19/6/1).

5 Secretariat and administrative matters

5.1 Staff matters

- 5.1.1 As I mentioned in my oral report at the April 2019 sessions of the governing bodies, Mr Ranjit Pillai (Deputy Director) has decided to stay with the Secretariat until his retirement in June 2022.
- 5.1.2 Following a job classification review, a Claims Administrator post was reclassified from General Services to Professional Services, and the title was changed to Claims Manager. I am pleased to report that Ms Ana Cuesta, the incumbent, was promoted to the grade of P2 with effect from January 2019.
- 5.1.3 Mr Thomas Moran, External Relations and Conference Coordinator, resigned from his post effective from January 2019. Ms Julia Sukan del Rio, who has been working in the Secretariat for the past four years, was appointed as the new External Relations and Conference Coordinator with effect from February 2019.
- 5.1.4 Miss Nadja Popovic was appointed to the position of External Relations and Conference Assistant with effect from August 2019 (document IOPC/OCT19/7/1).

5.2 Appointment of members and substitute members of the Appeals Board

I will be proposing a new practice for filling vacant posts on the Appeals Board when members resign before the end of their term of office. I hope that this new practice will assist newcomers to the Appeals Board by giving them time to become familiar with the workings of the Fund and will facilitate a degree of rotation in the post holders of the Board (document IOPC/OCT19/7/3).

5.3 Headquarters Agreement

- 5.3.1 We have met with representatives of the Foreign and Commonwealth Office (FCO) and the Department for Transport (DfT) of the United Kingdom (UK) Government to discuss the revised draft of the Headquarters Agreements for the 1992 Fund and the new draft of the Headquarters Agreement of the Supplementary Fund and the domestic implementing legislation. However, despite the efforts from both sides, an agreement has not been reached in time for approval by the governing bodies at these sessions.
- 5.3.2 I believe it is important to conclude the Headquarters Agreements as early as possible, since the number of Supplementary Fund Member States is steadily increasing, and the risk of incidents involving the Supplementary Fund is therefore also increasing. I appreciate the continuous positive actions taken by the UK Government in order to finalise this long-outstanding matter and I am hopeful that an agreement will be reached very soon and that the new Headquarters Agreements for the two organisations will be ready for approval at the next sessions of the governing bodies (document IOPC/OCT19/7/2).

5.4 Impact of the General Data Protection Regulation (GDPR)

- 5.4.1 In February 2019, the European Commission clarified the position of the 1992 Fund and the Supplementary Fund in connection with new EU-wide data protection instrument, the General Data Protection Regulation (GDPR) and the accompanying Directive 2016/680. The European Commission stated that its application depends on the privileges and immunities applicable under the Headquarters Agreement. The Secretariat, therefore, sought clarification from the UK Government on this matter, who confirmed that the GDPR applies to the Funds and that the Funds can have its own position as to its application.
- 5.4.2 Since the IOPC Funds by the very nature of its work hold personal data (e.g. claimants' data), the Secretariat always makes every effort to ensure that personal data are protected and managed appropriately. In this regard, I am of the view that the Funds should apply the same principles guiding the GDPR and ensure that policies and procedures are in place. Experts in the field will be engaged with this in mind when reviewing the data management process and procedures within the Secretariat. I will report on developments at future sessions of the governing bodies (document IOPC/OCT19/7/5).

5.5 Information services

The Annual Report 2018 and a shortened version of the Guidelines for presenting claims for environmental damage were published in March 2019. The new edition of the 1992 Fund Claims Manual was published in April 2019. The content management system which sits behind the IOPC Funds' website has undergone an essential upgrade and is now functioning on a new platform. In addition, the Secretariat has identified some areas for improvement on the front end of the website, which will be developed in the future. In June 2019, the Secretariat published an updated version of the introductory video of the IOPC Funds (document IOPC/OCT19/7/4).

6 Treaty matters

6.1 Review of the 1992 Civil Liability and Fund Conventions

At the April 2019 sessions of the governing bodies, India submitted a document, which contained a proposal for a review of the 1992 Civil Liability and Fund Conventions (document IOPC/APR19/5/2). As noted by the Chair of the 1992 Fund Administrative Council at the time, the document presented some interesting points which India had raised in previous meetings and which deserved due consideration. However, since the delegation of India could not be present at the meeting to introduce the document, the Chair had proposed that the matter be deferred to the next session of the 1992 Fund Assembly in October 2019 to provide India with the opportunity to fully introduce the document and enable the Assembly to hold an informed discussion on the issues raised. This item had therefore been included in the provisional agenda for the October 2019 session, however, I have had discussions with the Indian delegation, and they have informed me that they will not be resubmitting the document on this occasion. This item will therefore not be included in the final agenda for the October 2019 meeting but may still be raised at a future session.

6.2 2010 HNS Convention

In July 2019, South Africa deposited with the International Maritime Organization (IMO) an instrument of accession to the 2010 HNS Protocol, becoming the fifth Contracting State to the Protocol, joining Canada, Denmark, Norway and Turkey. The Secretariat will be presenting a document reporting on the status of the entry into force of the 2010 HNS Protocol, as well as an update on the work carried out by the 1992 Fund Secretariat with regard to the administrative tasks necessary for the setting up of the HNS Fund and the preparations for the first session of the HNS Fund Assembly (document IOPC/OCT19/8/2).

6.3 Request for observer status

The Government of the Republic of Paraguay has recently notified me that Paraguay is considering accession to the 1992 Fund Convention and has requested to be given observer status with the 1992 Fund. I endorse the application of the Republic of Paraguay, and I will be inviting the 1992 Fund Assembly to decide whether to grant Paraguay observer status (document IOPC/OCT19/1/3).

7 External Relations

7.1 IOPC Funds' Short Course

The ninth annual IOPC Funds' Short Course took place from 17 to 21 June 2019 at the Funds' headquarters in London. This year's course was attended by representatives from 17 Member States of the 1992 Fund, who gave very positive feedback, which confirms that the course continues to be a success. I would like to thank IMO, the International Group of P&I Associations (International Group), ITOPI and the International Chamber of Shipping (ICS), who have kindly supported the Short Course this year. The dates for the 2020 Short Course and the deadline for nominations by governments will be announced later this year.

7.2 Induction course for delegates

A half-day Induction Course for delegates of the 1992 Fund took place on Friday, 18 October 2019 at the Funds' headquarters in London. This induction course was organised with the objective of providing an inside perspective into how the IOPC Funds work and a better understanding of the interaction between Member States and the IOPC Funds in the event of an oil spill. The course, which was attended by 18 participants, was very well received.

7.3 Outreach activities

7.3.1 Our outreach efforts during this last year have been focused in three main areas. The first area was related to the promotion of the benefits of joining the 1992 Fund and the Supplementary Fund, in particular in Latin America where a number of States have recently acceded to the 1992 CLC but are not yet parties to the 1992 Fund Convention or the Supplementary Fund Protocol. The second area of focus was to support States' efforts towards effective implementation of the international liability and compensation regime, including activities aimed at the review of existing implementing legislation for some Member States. Finally, the third area of focus related to the uniform interpretation of the Conventions by the national courts. Those outreach activities have helped to consolidate the Secretariat's relationship with Member States even further while encouraging some of them to accede to the Supplementary Fund Protocol. The Secretariat has also continued to provide support to IMO in its efforts to encourage States to ratify the 2010 HNS Protocol and bring about the entry into force of the 2010 HNS Convention.

7.3.2 Since October 2018, the Secretariat has participated in national and regional seminars, workshops, conferences and different events worldwide to promote the understanding of the international liability and compensation regime, often in cooperation with IMO, the International Group and other organisations. In this regard, the IOPC Funds has been represented in events held in Australia, Colombia, Costa Rica, Croatia, Malta, Mexico, Nigeria, Portugal and the United States of America, among others. I was also delighted to participate in the celebration of the 30th anniversary of the Canadian Ship-source Oil Pollution Fund (SOPF) in Ottawa in May.

7.3.3 Since October 2018, the Secretariat has also provided lectures to students of the International Maritime Law Institute (IMLI), the International Tribunal for the Law of the Sea (ITLOS), the World Maritime University (WMU) and to an increasing number of other universities and institutions, thus reaching out to a younger audience not easily accessible otherwise.

8 Looking ahead

8.1 The wide membership of the IOPC Funds reflects the importance that States give to the international liability and compensation regime. I note, however, that there is still work to be done to assist Member States in the implementation and interpretation of the Conventions. Looking ahead to 2020, the Secretariat will therefore endeavour to further advance the uniform and effective implementation and interpretation of the Conventions in Member States. We will also continue to promote the benefits of the international liability and compensation regime in States which have not yet acceded to the 1992 Fund Convention and the Supplementary Fund Protocol.

8.2 The Secretariat has worked with the Audit Body to advance the review of the risks arising from incidents involving the IOPC Funds and insurers that are not members of the International Group. This is an increasingly important and complex issue, and I welcome the work of the Audit Body to continue to assist the IOPC Funds in trying to find feasible solutions to deal with it.

8.3 Other organisations dealing with potential liability issues in case of environmental damage have approached the Secretariat to discuss opportunities for cooperation; namely the Secretariat of the Antarctic Treaty and the International Seabed Authority. I have been engaging with these two organisations in sharing the IOPC Funds' expertise in the management of an international compensation fund and the handling of claims, as they consider the setting up of internal mechanisms to deal with potential liabilities

arising from their own area of work. I intend to continue maintaining engagement with these two organisations to provide assistance as required.

8.4 I attach great importance to ensuring that the Secretariat continues to operate in an efficient and effective manner. In 2020, the Secretariat will therefore continue to review its objectives and working methods with the aim of making the best possible use of the resources available.

8.5 Since five States have already ratified the 2010 HNS Convention and a number of other States have indicated their intention to ratify or accede to the Convention in the next few years, the Secretariat will continue to work towards setting up the HNS Fund and making preparations for the first session of the HNS Fund Assembly which will be convened by the Secretary-General of IMO and will take place in the IMO building.

9 Decisions to be made during the October 2019 sessions

I look forward to the discussions during the October 2019 sessions when the governing bodies will be invited to decide whether:

1992 Fund Executive Committee

- to authorise the final settlements on behalf of the 1992 Fund of claims arising from the *Trident Star* incident (document IOPC/OCT19/3/9).

1992 Fund Assembly and Supplementary Fund Assembly

- to elect 15 States to be the members of the Executive Committee and its Chair and Vice-Chair (document IOPC/OCT19/4/1);
- to approve the Financial Statements of the 1992 Fund for 2018 (document IOPC/OCT19/5/6/1);
- to approve the Financial Statements of the Supplementary Fund for 2018 (document IOPC/OCT19/5/6/2);
- to re-appoint BDO as the IOPC Funds' External Auditor for the financial years 2020–2023 inclusive as proposed by the Audit Body (document IOPC/OCT19/6/1);
- to approve the selection process of the External Auditor for the future as proposed by the Audit Body (document IOPC/OCT19/6/1);
- to appoint members and substitute members of the Appeals Board for a term of two years, i.e. until the October 2021 session of the 1992 Fund Assembly (document IOPC/OCT19/7/3);
- to adopt the budget for 2020 for the 1992 Fund and approve the General Fund levy of £2.3 million (document IOPC/OCT19/9/1/1);
- to adopt the budget for 2020 for the Supplementary Fund and that there should be no levy of contributions (documents IOPC/OCT19/9/1/2 and IOPC/OCT19/9/2/2);
- to endorse the Director's recommendation not to levy 2019 contributions to the *Prestige*, *Hebei Spirit* and *Alfa I* Major Claims Funds (document IOPC/OCT19/9/2/1); and
- to approve the levy of contributions of £11.5 million to the *Agia Zoni II* Major Claims Fund for 2020 (with £5 million payable by 1 March 2020 and £6.5 million, or part thereof, to be deferred if it proves necessary); and £3.6 million to the *Nesa R3* Major Claims Fund for 2020 (document IOPC/OCT19/9/2/1).

10 **Gratitude**

- 10.1 I would like to express my gratitude to all Member States, IMO, P&I Clubs and fellow international organisations with whom the IOPC Funds work closely together, the oil industry in Member States, and the international shipping community for their help in ensuring that the international regime continues to function as intended.
- 10.2 I would like to particularly thank the Secretary-General of IMO, Mr Kitack Lim, and IMO staff for the continued cooperation and support provided to the Secretariat throughout this year.
- 10.3 I would also like to thank the Chairs and Vice-Chairs of the governing bodies who are called upon on occasion outside of sessions to provide views and assistance to me and the Secretariat on key issues affecting the IOPC Funds.
- 10.4 I would also like to thank the Audit Body, the Investment Advisory Body, the representatives of the External Auditor (BDO), and the lawyers and experts who work for the Funds. Last but not least, I would like to thank all my colleagues in the Secretariat for their dedication to the Funds over the past 12 months.

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.
