



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

FONDS INTERNATIONAUX
D'INDEMNISATION POUR
LES DOMMAGES DUS À LA
POLLUTION PAR LES
HYDROCARBURES

FONDOS INTERNACIONALES
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS

Our ref. FDC-001/vt

30 June 2015

UNLOS REPORT

Report by the International Oil Pollution Compensation Fund 1992 to the Division for Ocean Affairs and the Law of the Sea

Objective of document:

To report to the Secretary-General on the activities undertaken by the IOPC Funds relating to the implementation of the relevant provisions of General Assembly Resolution 69/245, 'Oceans and the law of the sea'. In addition, to highlight key developments in the IOPC Funds in the field of oceans and the law of the sea since the previous report in 2014.

Executive summary:

The IOPC Funds continue to provide compensation to victims of oil pollution damage as a result of the transport of oil by sea. The original International Oil Pollution Compensation Fund, 1971 (1971 Fund) was dissolved in 2014. However, the 1992 Fund, with its higher limits of compensation and broader scope, continues to deal with incidents, currently with 13 open cases, and its membership continues to grow, with 114 States Parties to the 1992 Fund Convention as at 30 June 2015. In addition, 31 States are Parties to the Protocol to the 1992 Fund Convention (Supplementary Fund Protocol), adopted in 2003, which provides additional compensation over and above that available under the 1992 Fund.

In addition to the handling of claims for compensation, the IOPC Funds Secretariat undertakes a wide variety of activities aimed at encouraging the worldwide adoption and understanding of the international regime for oil pollution compensation and assisting potential claimants. Importantly, it maintains a strong relationship with the International Maritime Organization (IMO) and the two regularly cooperate on matters relating to States' ratification and implementation of the 1992 CLC and Fund Conventions.

The Secretariat regularly gives lectures to students of maritime law from various universities and runs an annual Short Course which is a week-long programme for self-funded participants nominated by 1992 Fund Member States, covering all aspects of the work of the IOPC Funds and the international compensation regime. The claims workshops and annual short course in particular help to prepare Member States ahead of any major oil pollution incident.

The Secretariat also dedicates significant efforts into enhancing awareness and understanding of the IOPC Funds through the publication of numerous brochures and documentation and increased investment into the Organisations' online information services.

Recent 1992 Fund Working Group meetings have provided a forum for States to share their practices and experiences in dealing with large scale oil pollution incidents and related issues and in many cases have led to States agreeing uniform practices or criteria.

The IOPC Funds continues to work together with the IMO Secretariat to assist

States' ratification of or accession to the 2010 HNS Protocol in order to facilitate the entry into force of the 2010 HNS Convention as soon as possible.

In general, whilst there may well be fewer incidents in comparison to the days of the 1971 Fund, the risks nevertheless remain and the incidents that have occurred in recent years, although small in terms of damage incurred, have often raised new challenges for the 1992 Fund and its Member States. Around handling claims for compensation, the IOPC Funds therefore, uses its time to improve the preparedness of Member States for the next major oil pollution incident at sea.

1 Background information

- 1.1 The International Oil Pollution Compensation Fund 1992 (1992) Fund operates within the framework of an international regime providing compensation for oil pollution damage caused by oil spills from tankers. The regime is created by two international treaties established under the auspices of the International Maritime Organization (IMO), namely the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention). The Civil Liability Convention governs the liability of the shipowner, whereas the Fund Convention provides supplementary compensation when the amount paid by the shipowner or his insurer is insufficient to compensate all victims in full.
- 1.2 The total amount of compensation available under the 1992 Conventions is 203 million Special Drawing Rights (US\$280 million.). Compensation is available to States, local authorities, private businesses and individuals such as fishermen. Since their establishment, the 1992 Fund and the preceding 1971 Fund have been involved in 149 incidents of varying sizes all over the world and have paid some £570 million (US\$790 million) in compensation. The 1992 Fund is financed through a levy on oil received in Member States after sea transport and currently has 114 Member States. A list of 1992 Fund Member States is attached at the annex.
- 1.3 The Supplementary Fund, which entered into force in 2005, makes available additional compensation to victims in the States which accede to the Supplementary Fund Protocol. The total amount available for compensation for each incident in the States which are Members of the Supplementary Fund is approximately US\$1 150 million. There are currently 31 States Parties to the Protocol. A list of Supplementary Fund Member States is attached at the annex.
- 1.4 Together the 1992 and Supplementary Funds are known as the International Oil Pollution Compensation Funds (IOPC Funds).

2 Activities undertaken by the IOPC Funds relevant to the implementation of Resolution 69/345

- 2.1 The provisions contained in paragraphs 133, 161, 173, 178, 185, 208 and 210 of Resolution 69/345 are of particular relevance to the IOPC Funds and as such the organisation's recent activities relevant to those provisions are set out.
- 2.2 The Secretariat undertakes a wide variety of activities aimed at strengthening the IOPC Funds' relationship with Member States, encouraging the worldwide adoption and understanding of the international regime for oil pollution compensation and assisting potential claimants. The IOPC Funds maintains a strong relationship with the International Maritime Organization (IMO) and the two regularly cooperate on matters relating to States' ratification and implementation of the 1992 CLC and Fund Conventions.
- 2.3 The Secretariat regularly organises and participates in events such as national and regional workshops and gives presentations at conferences. Since June 2014 the Secretariat has run or cooperated on such events in Egypt, Finland, Gabon, Malaysia, Morocco, Qatar, Saudi Arabia and Thailand. The IOPC Funds also participated in the European oil spill conference and exhibition, Interspill, in Amsterdam, Netherlands in March 2015.

- 2.4 The Secretariat regularly gives lectures to students of maritime law from various universities and runs an annual Short Course which is a week-long programme for self-funded participants nominated by 1992 Fund Member States, covering all aspects of the work of the IOPC Funds and the international compensation regime. The claims workshops and annual short course in particular help to prepare Member States ahead of any major oil pollution incident.
- 2.5 The Secretariat also dedicates significant efforts into enhancing awareness and understanding of the IOPC Funds through the publication of numerous brochures and documentation and increased investment into the Organisations' online information services. The Claims Information Pack, published in 2014 is specifically aimed at preparing States and potential claimants for a spill. As well as the 1992 Fund Claims Manual which sets out the admissibility criteria followed by the 1992 Fund, it also includes an example claim form and sector specific guidelines to assist claimants from the fisheries and mariculture sector and from the tourism sector in presenting a valid claim. Further guidelines are under development for other sectors such as guidelines for presenting claims for clean up and preventive measures and also those for claims for environmental damage. All Guidelines are considered and adopted by Member States at sessions of the 1992 Fund Assembly.
- 2.6 The governing bodies of the IOPC Funds meet twice a year in order to fulfill the requirements set out under Article 18 of the 1992 Fund Convention and Article 16 of the Supplementary Fund Protocol. Under those Articles the governing bodies are required, amongst other things, to give instructions concerning the administration of the Funds to the Director and to supervise the proper execution of the Conventions and of their own decisions. These sessions are also used to adopt new policy and practice to ensure the Conventions to continue to function as intended. The 1992 Fund Assembly has established a number of Working Groups over the years to consider certain issues relating to the transport of oil by sea. These Working Groups have provided a forum for States to share their practices and experiences in dealing with large scale oil pollution incidents and related issues and in many cases have led to States agreeing uniform practices or criteria.
- 2.7 As a result of the 1992 Fund sixth intersessional Working Group, in July 2014 the 1992 Fund published a booklet entitled 'Guidance for Member States'. This Guidance document contains measures which Member States might wish to consider in preparation for, or in the event that they suffer, pollution damage as a result of an oil spill. Such measures are aimed at facilitating the claims handling process following an incident.
- 2.8 The 1992 Fund seventh intersessional Working Group was set up by the Assembly in October 2011 to consider issues relating to the definition of 'ship' under Article I.1 of the 1992 Civil Liability Convention. It held its fourth and final meeting on 23 April 2015 where it considered a number of proposals, including a possible guidance document to assist Member States when considering an issue involving the definition of 'ship' under Article I.1 of the 1992 Civil Liability Convention. The Chairman agreed to submit the report of the fourth meeting of the Working Group, containing the Group's final conclusions and proposals to the 1992 Fund Assembly in October 2015.
- 2.9 With regard to paragraph 210 of Resolution 69/245, which encourages States to consider becoming Parties to the 2010 HNS Protocol, as requested by the International Conference that adopted the HNS Convention, the IOPC Funds' Secretariat has been tasked with assisting the IMO Secretariat in setting up the HNS Fund and with making preparations for the first session of the HNS Assembly.
- 2.10 The IOPC Funds continues to work together with the IMO Secretariat to assist States' ratification of or accession to the Protocol in order to facilitate the entry into force of the 2010 HNS Convention as soon as possible. The IOPC Funds maintains a website (www.hnsconvention.org) and also a blog for the HNS Correspondence Group, which was established by the IMO Legal Committee and advocates for the ratification of the 2010 HNS Protocol through information and experience sharing. An online database (the HNS Finder) of HNS substances which are covered by the Convention as well as those that fall within the definition of contributing cargo under the 2010 HNS Protocol has been developed and made available via the website and engagement with States considering ratifying the Protocol and the industry stakeholders potentially affected by the Convention has continued through workshops and other means.

3 Recent key developments in the IOPC Funds in the field of oceans and the law of the sea

- 3.1 The International Oil Pollution Compensation Fund, 1971 (1971 Fund) was the original IOPC Fund, set up under the 1971 Fund Convention, when the latter entered into force in 1978. Following the entry into force of the 1992 Fund Convention, with its higher limits of compensation and broader scope, the membership of the 1971 Fund decreased and the 1971 Fund Convention ceased to be in force on 24 May 2002. At the October 2014 session of the 1971 Fund Administrative Council, 1971 Fund Member States decided to wind up the 1971 Fund with effect from 31 December 2014. Consequently the 1971 Fund ceased to exist as of that date. At its peak the 1971 Fund had 77 Member States. It dealt with more than 100 incidents and paid some £331 million in compensation over its 36 year life-span.
- 3.2 The 1992 Fund has 114 Member States and is currently dealing with claims and/or recourse actions in respect of 13 incidents. The most recent major pollution incident in a 1992 Fund Member State remains the *Hebei Spirit* (Republic of Korea, 2007). With in excess of 128 000 claims submitted, the assessment process proved particularly challenging in that case, however, since the shipowner's insurer has now completed payments of compensation up to its limit under the 1992 CLC, the 1992 Fund is expected to commence payments very soon.
- 3.3 The Supplementary Fund has 31 Member States and whilst the 1992 Fund is dealing with an incident from a Supplementary Fund Member State, namely the *Alfa I* (Greece), it is unlikely that claims for compensation will exceed the limits under the 1992 CLC and Fund Convention.

4 Considerations

The Director of the IOPC Funds would like to take this opportunity to highlight in particular the importance for States parties to the 1992 CLC and 1992 Fund Convention to consider whether or not those conventions have been correctly implemented in national law. Effective implementation was the theme of the IMO's World Maritime Day in 2014 and an issue on which both organisations have been cooperating effectively for many years. The 1992 Fund Assembly has repeatedly stated that correct implementation of the 1992 Civil Liability and Fund Conventions is essential for the proper functioning of the international compensation regime established by these Conventions. Unless the Conventions are implemented correctly into national law the regime cannot function in a proper, uniform and equitable manner. Significant difficulties can arise as a result at the time of an incident which can lead to delays in compensation being paid.

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ANNEX

**States Parties to both the
1992 Civil Liability Convention and the
1992 Fund Convention**
as at 30 June 2015
(and therefore Members of the 1992 Fund)

114 States for which 1992 Fund Convention is in force

Albania	Greece	Panama
Algeria	Grenada	Papua New Guinea
Angola	Guinea	Philippines
Antigua and Barbuda	Hungary	Poland
Argentina	Iceland	Portugal
Australia	India	Qatar
Bahamas	Ireland	Republic of Korea
Bahrain	Islamic Republic of Iran	Russian Federation
Barbados	Israel	Saint Kitts and Nevis
Belgium	Italy	Saint Lucia
Belize	Jamaica	Saint Vincent and the Grenadines
Benin	Japan	Samoa
Brunei Darussalam	Kenya	Senegal
Bulgaria	Kiribati	Serbia
Cambodia	Latvia	Seychelles
Cameroon	Liberia	Sierra Leone
Canada	Lithuania	Singapore
Cape Verde	Luxembourg	Slovakia
China ^{<1>}	Madagascar	Slovenia
Colombia	Malaysia	South Africa
Comoros	Maldives	Spain
Congo	Malta	Sri Lanka
Cook Islands	Marshall Islands	Sweden
Côte d'Ivoire	Mauritania	Switzerland
Croatia	Mauritius	Syrian Arab Republic
Cyprus	Mexico	Tonga
Denmark	Monaco	Trinidad and Tobago
Djibouti	Montenegro	Tunisia
Dominica	Morocco	Turkey
Dominican Republic	Mozambique	Tuvalu
Ecuador	Namibia	United Arab Emirates
Estonia	Netherlands	United Kingdom
Fiji	New Zealand	United Republic of Tanzania
Finland	Nicaragua	Uruguay
France	Nigeria	Vanuatu
Gabon	Niue	Venezuela (Bolivarian Republic of)
Georgia	Norway	
Germany	Oman	
Ghana	Palau	

<1> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

States Parties to the Supplementary Fund Protocol
as at 30 June 2015
(and therefore Members of the Supplementary Fund)

31 States Parties to the Supplementary Fund Protocol

Australia	Greece	Poland
Barbados	Hungary	Portugal
Belgium	Ireland	Republic of Korea
Canada	Italy	Slovakia
Congo	Japan	Slovenia
Croatia	Latvia	Spain
Denmark	Lithuania	Sweden
Estonia	Montenegro	Turkey
Finland	Morocco	United Kingdom
France	Netherlands	
Germany	Norway	