



11 June 2020

REPORT TO UN DOALOS

Report by the International Oil Pollution Compensation Funds 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 74/19, 'Oceans and the law of the sea'. In addition, to highlight key recent developments of the IOPC Funds in the field of oceans and the law of the sea.

Executive summary:

The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

In October 2018, the IOPC Funds celebrated 40 years since the entry into force of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) and the establishment of the original IOPC Fund. During the forty years since, the membership of the Organisation has increased from 14 Member States to 118, the IOPC Funds have been involved in over 150 incidents and have paid over £740 million (USD 931 million) in compensation.

Despite the impact of the global COVID-19 pandemic, the IOPC Funds continue to provide compensation to victims of oil pollution damage as a result of the transport of oil by sea. The 1992 Fund continues to deal with incidents, currently with 11 open cases, and its membership continues to grow, with 118 States Parties to the 1992 Fund Convention as at 9 June 2020. In addition, 32 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.

As well as 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 Civil Liability Convention (CLC) and the 1992 Fund Convention.

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. Workshops on the claims process and the 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 Organisation's online information services (iopcfunds.org).

The success of the international liability and compensation regime led it to serve as a model for the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) referred to in paragraph 241 of Resolution 74/19. 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. As at 9 June 2020, five States have ratified the Protocol and several others have reported good progress on their preparations of the necessary implementing legislation to enable them to ratify in due course.

In general, whilst there may well be fewer incidents in comparison to the days of the original 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. Concerning the handling claims for compensation, therefore, the IOPC Funds 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 or 1992 CLC) 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 their insurer is insufficient to compensate all victims in full. It is a unique system which ensures that the costs of major oil spills are shared between the shipowner and the oil industry, with the IOPC Funds being financed by those entities receiving oil in Member States.
- 1.2 The total amount of compensation available under the 1992 Conventions is 203 million Special Drawing Rights (USD 277 million.). Compensation is available to States, local authorities, private businesses and individuals such as fisherfolk. Since their establishment, the 1992 Fund and

the preceding 1971 Fund have been involved in over 150 incidents of varying sizes all over the world and have paid some £740 million (USD 931 million) in compensation. The 1992 Fund is financed through a levy on oil received in Member States after sea transport and currently has 118 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 USD 1 024 million. There are currently 32 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 74/19

- 2.1 The provisions contained in paragraphs 192, 228, 238, 241 and 287 of Resolution 74/19 are of particular relevance to the IOPC Funds and as such, the Organisation's recent activities relevant to those provisions are set out below.
- 2.2 With regard to paragraph 228 of Resolution 74/19, the Secretariat undertakes a wide variety of activities aimed at strengthening the IOPC Funds' relationship with Member and non-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. This cooperation has strengthened further since 2016, when the IOPC Funds relocated to the building which houses the IMO Headquarters.
- 2.3 The Secretariat regularly organises and participates in events such as national and regional workshops and gives presentations at conferences. The Secretariat has run or cooperated on over 45 of such events in 43 countries in the past three years. The IOPC Funds also supported and participated in the major international oil spill conference and exhibitions, including InterSpill, Spillcon and International Oil Spill Conference (IOSC).
- 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. Workshops on the claims process and the 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 Organisation's online information services. The Claims Information Pack 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, the pack also includes sector specific guidelines to assist claimants from the fisheries and mariculture sector and from the tourism sector. It also includes guidelines for presenting claims for clean-up and preventive measures as well as guidelines for presenting claims for environmental damage.

- 2.6 The governing bodies of the IOPC Funds meet twice a year in order to fulfil 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 Amongst the outcomes of the Working Groups in recent years has been the publication of guidance materials for Member States relating to particularly challenging areas, such as how to facilitate the claims handling process, understanding the definition of 'ship' under the 1992 Civil Liability Convention and the management of fisheries closures and restrictions following an oil spill.
- 2.8 With regard to paragraph 241 of Resolution 74/19, 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.
- 2.9 The IOPC Funds continues to actively 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 (hnsconvention.org) and 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. Engagement with States considering ratifying the Protocol and the industry stakeholders potentially affected by the Convention has continued through workshops and other means.
- 2.10 As at 9 June 2020, five States have ratified the Protocol and several others have reported good progress on their preparations of the necessary implementing legislation to enable them to ratify in due course.

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

- 3.1 The 1992 Fund has 118 Member States and is currently dealing with claims and/or recourse actions in respect of 11 incidents. The most recent major pollution incident in a 1992 Fund Member State is the *Agia Zoni II* incident (Greece, 2017). An IOPC Funds Claims Submissions Office was established in Piraeus, Greece, to receive claims arising from the pollution caused by the sinking of the tanker. As at 9 June 2020, EUR 14.4 million has been paid in compensation and further claims are being assessed.
- 3.2 The *Hebei Spirit* (Republic of Korea, 2007) remains one of the most significant incidents to have involved the IOPC Funds. With an excess of 128 000 claims submitted, the assessment process proved particularly challenging in that case, however, the shipowner's insurer and the IOPC Funds have now completed payments of compensation up to the limit under the 1992 Fund Convention and the case is expected to be closed in 2020.
- 3.3 The Supplementary Fund has 32 Member States and whilst the 1992 Fund is dealing with two incidents from a Supplementary Fund Member State, namely the *Alfa I* and *Agia Zoni II* incidents

(Greece), it is unlikely that claims for compensation in either case 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. 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 31 March 2020
(and therefore Members of the 1992 Fund)

116 STATES FOR WHICH 1992 FUND CONVENTION IS IN FORCE

Albania	Grenada	Papua New Guinea
Algeria	Guinea	Philippines
Angola	Guyana	Poland
Antigua and Barbuda	Hungary	Portugal
Argentina	Iceland	Qatar
Australia	India	Republic of Korea
Bahamas	Iran (Islamic Republic of)	Russian Federation
Bahrain	Ireland	Saint Kitts and Nevis
Barbados	Israel	Saint Lucia
Belgium	Italy	Saint Vincent and the Grenadines
Belize	Jamaica	Samoa
Benin	Japan	Senegal
Brunei Darussalam	Kenya	Serbia
Bulgaria	Kiribati	Seychelles
Cabo Verde	Latvia	Sierra Leone
Cambodia	Liberia	Singapore
Cameroon	Lithuania	Slovakia
Canada	Luxembourg	Slovenia
China ^{<1>}	Madagascar	South Africa
Colombia	Malaysia	Spain
Comoros	Maldives	Sri Lanka
Congo (the)	Malta	Sweden
Cook Islands	Marshall Islands	Switzerland
Côte d'Ivoire	Mauritania	Syrian Arab Republic
Croatia	Mauritius	Thailand
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	
Greece	Panama	

2 States which have deposited instruments of accession but for which the 1992 Fund Convention does not enter into force until date indicated

Gambia (the)	30 October 2020
Nauru	23 March 2020

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

States Parties to the Supplementary Fund Protocol
as at 31 March 2020
(and therefore Members of the Supplementary Fund)

32 STATES PARTIES TO THE SUPPLEMENTARY FUND PROTOCOL

Australia	Greece	Norway
Barbados	Hungary	Poland
Belgium	Ireland	Portugal
Canada	Italy	Republic of Korea
Congo (the)	Japan	Slovakia
Croatia	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Montenegro	Sweden
Finland	Morocco	Turkey
France	Netherlands ^{<2>}	United Kingdom
Germany	New Zealand	

^{<2>} The Netherlands, Aruba, Curaçao and Sint Maarten are autonomous partners within the Kingdom of the Netherlands. The Supplementary Fund has not been extended to Aruba, Curaçao or Sint Maarten.