



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971
AND 1992

FONDS INTERNATIONAUX
D'INDEMNISATION DE 1971
ET DE 1992 POUR LES
DOMMAGES DUS À LA
POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS
DE 1971 Y 1992

IOPC Fund meetings: February 2004 - In brief

5 March 2004

During the week of 23 - 27 February 2004, the International Oil Pollution Compensation Funds 1992 and 1971 (IOPC Funds) held a number of meetings. The 1992 Fund held a meeting of its Executive Committee and the 1971 Fund held a meeting of its Administrative Council, both of which dealt with incidents. The 1992 Fund also held a meeting of an intersessional Working Group, which was set up in April 2000 to consider the adequacy of the international compensation regime.

Supplementary Fund Protocol

In May 2003, a Diplomatic Conference adopted a Protocol establishing a Supplementary Fund to provide additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Protocol. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund will be 750 million SDR (£650 million).

The Supplementary Fund Protocol will enter into force three months after it has been ratified by at least eight States and the aggregate quantity of contributing oil received in these States after sea transport is at least 450 million tonnes. One State (Denmark) has already ratified the Supplementary Fund Protocol and a number of other States have indicated that their preparations are very advanced. The Protocol is likely to enter into force late in 2004. The first Assembly of the Supplementary Fund will have to be held within 30 days of the entry into force and an extraordinary session of the 1992 Fund Assembly will therefore be held during the week of 24 May 2004 to prepare for the setting up of the Supplementary Fund.

HNS Convention

A meeting about the 1996 Convention on liability and compensation for damage in connection with the carriage of hazardous or noxious substances by sea (HNS Convention) has been organised by a number of industry organisations. The meeting will take place in Barcelona, Spain on 19 May 2004 and aims to bring together representatives of the shipping, oil and chemical industries as well as governments. Further information about the meeting will be available via the IOPC Funds' website.

Working Group of the 1992 Fund on the adequacy of the international compensation system

This Working Group was set up in April 2000 to consider the need to improve the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention in order to ensure that the regime continues to meet the needs of society.

The Working Group focused its discussions on shipowners' liability and substandard oil transportation. The Secretariat had previously been instructed to carry out a study on the costs of past oil spills with a view to determining the extent to which the tanker industry and the oil industry have shared those costs and will continue to do so in the future. It is hoped that the results of this study will be available for the next meeting of the Working Group in May 2004.

Various incidents

Prestige (Spain, 2002)

It is estimated that the total losses in respect of the *Prestige* incident, which affected Spain, France and Portugal, could total €1 100 million (£780 million) which greatly exceeds the amount of compensation available, €71.5 million (£121 million). For this reason the Executive Committee decided in May 2003 that the 1992 Fund's payments should be limited to 15% of the loss or damage actually suffered by the respective claimants. In view of the figures provided in February 2004 by the Governments of the three States concerned and the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain this level of payments.

In view of the exceptional circumstances of the *Prestige* incident, the 1992 Fund Assembly had decided at its October 2003 session that the 1992 Fund should make advance payments to the Spanish Government on account, subject to certain conditions. The Director has therefore made a preliminary assessment of a claim by the Spanish Government for €83.7 million and made a payment of €16 million (£11.1 million), corresponding to 15% of the interim assessment of €107 million (£75 million). The Director has also made a general assessment that the total admissible damage in Spain arising from the incident would be at least €303 million (£213.4 million) and has made a further payment of €1.5 million (£28.8 million), corresponding to the difference between €7.5 million (15% of €83.7 million) and €16 million. In order to protect the 1992 Fund if an overpayment situation were to arise, this further payment was made against a bank guarantee and an undertaking by the Spanish Government to repay up to the amount of that payment if the Executive Committee so decided.

Erika (France, 1999)

The total claims arising out of this incident by far exceeded the amount of compensation available, some €85 million or £117 million. In order to enable the 1992 Fund to make substantial payments to claimants, the French Government and the French oil company TotalFinaElf undertook to pursue their claims only if and to the extent that all other claimants were compensated in full, the claim by TotalFinaElf to rank after the Government's claim. Initially, the Fund had nevertheless to limit its payments to a certain percentage of the loss or damage actually suffered by the respective claimants, however in April 2003 the level of payments for claimants other than the French Government and TotalFinaElf was increased to 100%.

The Executive Committee has previously authorised the Director to make payments in respect of the French Government's claim to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims. As a result, on 29 December 2003 the 1992 Fund paid €10.1 million (£7.0 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments made by the Government to claimants in the tourism sector.

A uniform application of the Conventions is vital for the functioning of the international compensation regime. The IOPC Funds' governing bodies have therefore adopted a number of criteria for the admissibility of claims for compensation. In May 2003 the 1992 Fund Administrative Council adopted a Resolution emphasising the importance that the decisions of the Funds' governing bodies are taken into account by national courts.

The criteria for admissibility are a major issue in a number of court actions in the *Erika* case. In four court cases a French court held that it should take its decision as to admissibility in accordance with the criteria of French law and that the Funds' criteria were not binding. On the other hand another French court rejected a claim in the light of the Funds' criteria. Considering the importance of this issue for the proper functioning of the international compensation regime, the Executive Committee decided that the 1992 Fund should pursue appeals against the four judgements.

Nissos Amorgos (Venezuela, 1997)

The total amount available for compensation in this case is US\$83.2 million. The total amount of settled claims is US\$24.4 million, however, a further \$150.5 million of claims have been pending in court for several years. The Administrative Council recalled that a number of delegations had expressed concern that the level of payments would remain at 65% of the loss or damage actually suffered by each claimant as assessed by the 1971 Fund's experts, the level which had been set in July 2003, unless a solution could be found to the outstanding claims.

Claimants, such as the 2000 shrimp fishermen from the Lake of Maracaibo, have only received 65% of their settled claims. A number of delegations expressed their regret that it was claimants such as these who were most in need of full compensation that were suffering because of the legal difficulties which had arisen in this case. The Administrative Council therefore instructed the Director to approach, as a matter of urgency, the Venezuelan authorities and other interested parties to search for a global solution of all significant outstanding issues.

Future meetings

The following meetings have been scheduled for the remainder of 2004. Additional meetings may be necessary, depending on developments in respect of existing incidents, the occurrence of new ones and the date of entry into force of the Supplementary Fund Protocol.

Week of 24 May	1992 Fund Assembly (extraordinary session) 1992 Fund Executive Committee 1992 Fund third intersessional Working Group 1971 Fund Administrative Council
Week of 18 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council
