



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: May 2004 - In brief

1 June 2004

During the week of 24 - 28 May 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, which dealt with various incidents, as well as an extraordinary session of its Assembly, which focused on preparations for entry into force of the Supplementary Fund Protocol. The 1971 Fund held a meeting of its Administrative Council, 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 (£600 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. Three States (Denmark, Finland and Norway) have 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 and the first Assembly of the Supplementary Fund will have to be held within 30 days of the entry into force.

In order to prepare for the setting up of the Supplementary Fund, the 1992 Fund Assembly considered a number of issues in respect of the structure and operation of the Supplementary Fund. The 1992 Fund Assembly endorsed a number of proposals made by the Director of the 1992 Fund but noted that any decisions on these issues would have to be taken by the Assembly of the Supplementary Fund.

Extraordinary sessions of the 1992 Fund Assembly and the 1971 Fund Administrative Council will be held during the same week as the 1st session of the Supplementary Fund Assembly.

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 whether the international compensation regime should include provisions to discourage substandard oil transportation. There was a considerable divergence of opinion between Member States as to the need for a revision of the 1992 Conventions. A number of States considered that a revision of the Conventions was indispensable whereas a number of other States did not think that there was a need for a revision, at least not at this stage.

The Working Group also considered a study which the Secretariat had carried out 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.

The next meeting of the Working Group is expected to be held in February 2005.

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 €1 014 million (£680 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 May 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.

To date based on a provisional assessment, the 1992 Fund has paid a total of €7 555 000 (£39.9 million) to the Spanish Government which has been used to pay compensation to claimants. The French Government has submitted claims totalling €7.5 million (£45 million) in relation to the costs incurred for clean-up and preventive measures and these claims are currently being assessed by the 1992 Fund and the London Club. The Portuguese Government has submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures in Portugal and this claim is also being assessed by the 1992 Fund and the London Club.

The Spanish Government has concluded a contract with Repsol YPF to remove the remaining oil from the wreck of the *Prestige* and the work is due to take place during May - October 2004.

Erika (France, 1999)

The total claims arising out of this incident by far exceeded the amount of compensation available, some €185 million or £130 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%.

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 of national courts taking into account the decisions of the Funds' governing bodies.

A number of claims, which have been rejected by the 1992 Fund on the grounds that they do not fulfil the criteria for admissibility laid down by the Fund have been brought before the French Courts. The claims were submitted by individuals or businesses whose property was not contaminated by the oil from the *Erika*, but had nevertheless allegedly suffered economic loss (so called pure economic loss).

Two courts of first instance (the Civil Court in Nantes and the Commercial Court in Rennes) rejected claims brought before it, namely by the owner of two hotels in Nantes and a tour operator in Rennes, on the basis of the Fund's criteria.

A third claim by the owner of a property in the affected area which was to be let to other businesses in the tourism sector (and not directly to tourists) was for loss of revenue, allegedly due to the negative effects of the *Erika* incident. The 1992 Fund appealed against the decision of the Commercial Court in Rennes, which had accepted this claim in principle. Although the Court of Appeal in Rennes held that the Fund's criteria were not binding on the Courts, it rejected the claim on the grounds that there was not a sufficient link of causation between the *Erika* incident and the alleged loss and that, in addition, the claimant had not proven that he had suffered any loss.

Incident in Bahrain (Bahrain, 2003)

In March 2003 the coast of Bahrain was polluted by oil from an unknown source. Analyses of the pollution indicated that it had a chemical 'fingerprint' that closely matched Iraq (Basrah) crude oil. Satellite imagery and oil slick trajectory analyses indicated that the oil was most probably spilled on or around 8 March 2003 in the vicinity of the Al Ju'aymah oil terminal off the coast of Saudi Arabia, although the Bahrain authorities were unable to identify any specific vessel. Further trajectory analyses indicated that the oil could not have originated from any offshore oil fields, pipelines or shore based facilities, including the oil terminal at Al-Baker (Iraq) from where Iraq (Basrah) crude oil was exported.

The Executive Committee considered the question of whether claims for compensation arising from the incident were covered by the 1992 Conventions. In October 2002, the Committee had decided that the 1992 Conventions applied to spills of persistent oil, even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 Fund Convention.

As regards the oil spill in Bahrain, a large number of delegations expressed the view that the evidence pointed overwhelmingly to the source of the pollution having been a ship as defined in the 1992 Conventions and expressed their appreciation for the systematic way in which the authorities in Bahrain had carried out their investigations. The Committee decided that the claims arising from the incident were covered by the 1992 Fund Convention and that the claims by the Bahrain authorities in respect of clean-up costs and damage to fisheries were admissible in principle.

Nissos Amorgos (Venezuela, 1997)

The total amount available for compensation in this incident 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. In July 2003 the 1971 Fund Administrative Council fixed the level of payments at 65% of the loss or damage actually suffered by each claimant as approved by the 1971 Fund and the shipowner's insurer. However, concerns had been expressed that this level would have to be maintained for a long time unless a solution could be found to the outstanding issues. At its February 2004 session, the Administrative Council 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.

During the week of the 1971 Fund Administrative Council's May 2004 session the Fund received a letter from the Vice-Minister of the Venezuelan Ministry of Foreign Affairs in which he indicated that the claims submitted by the Republic of Venezuela would 'stand last in the queue'. The Council authorised the Director to increase the level of payments to 100% of the established claims, subject to him receiving assurance from the Republic of Venezuela that its understanding of the meaning of the term 'standing last in the queue' coincided with his, ie that the Government undertook not to seek payment for its claims for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention until all other admissible claims had been paid in full.

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.

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| Week of 18 October | 1992 Fund Assembly |
| | 1992 Fund Executive Committee |
| | 1971 Fund Administrative Council |