



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

The October 2001 sessions of the governing bodies - In brief

29 October 2001

During the week of 15-19 October 2000, the governing bodies of the International Oil Pollution Compensation Funds 1992 and 1971 (IOPC Funds) held a number of meetings. Assembly meetings deal with administrative matters and issues of principle, and are normally held only in October, whilst Executive Committee meetings consider individual incidents and are usually held several times during the year.

The 1992 Fund held meetings of both its Assembly and its Executive Committee. However, the 1971 Fund was unable to achieve a quorum for a meeting of either its Assembly or its Executive Committee because too few Member States were present. The responsibilities of both these bodies were therefore delegated to its Administrative Council.

Status of Conventions

The 1992 Fund now has 62 Member States and an additional nine States have deposited instruments of accession which will bring the total to 71 by October 2002.

The 1971 Fund Convention will cease to be in force when the number of Member States falls below 25. The 1971 Fund currently has 27 Member States and the number will fall to 24 on 24 May 2002. The 1971 Fund Convention will therefore cease to be in force on 24 May 2002 and the Convention will not apply to incidents occurring after that date. The 1971 Fund has taken out insurance to cover its liabilities to pay compensation for incidents causing pollution damage in the remaining 1971 Fund Member States whilst the Convention remains in force.

Report of the 3rd Intersessional Working Group of the 1992 Fund on the adequacy of the international compensation system

This Working Group was set up to consider the need to improve the 1992 Civil Liability Convention and the 1992 Fund Convention in order to ensure that the international compensation system continues to meet the needs of society. The 1992 Fund Assembly considered the Report of the Working Group on its second and third meetings which were held in March and June 2001.

The Assembly considered a proposal to establish, by means of a Protocol to the 1992 Fund Convention, a Supplementary Fund which would provide compensation over and above the compensation available under the 1992 Fund Convention. The Supplementary Fund would only pay compensation for pollution damage in those States which ratified the Protocol. The proposed Supplementary Fund would be financed by oil receivers in the same way as the 1992 Fund. However contributions to the Supplementary Fund would only be payable for oil received in the States which ratified the proposed Protocol. The Protocol would be optional so that States could decide whether to ratify it or to just stay within the 1992 system.

The International Group of P & I Clubs informed the Assembly that the P & I Clubs, with the support of shipowners, were developing a proposal for a voluntary increase in the limit of liability for small ships under the 1992 Civil Liability Convention which would apply only in the States which ratified the proposed Supplementary Fund Protocol. It was stated that the precise level of the increase had not yet been decided.

The Assembly adopted the draft Protocol prepared by the Working Group with some modifications. The Assembly instructed the Director to submit the text of the draft Protocol to the Secretary-General of the International Maritime Organization, requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

The Working Group had examined what could be achieved within the present definition of 'pollution damage' in the 1992 Conventions as regards the admissibility of claims for reinstatement of the environment and for costs of environmental impact studies. The Assembly considered a document submitted by some delegations, which contained a proposal for additional criteria for the admissibility of claims for measures of reinstatement of the environment and for post-spill studies. The Assembly noted that although there was a clear majority in favour of the proposals set out in the document, a significant number of delegations had expressed serious doubts about the wording of the proposed criteria in respect of reinstatement measures. It was decided for this reason that the matter should be referred back to the Working Group for further consideration.

The Assembly gave the Working Group a revised mandate, namely to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including certain issues which had already been identified by the Working Group, but had not yet been resolved.

Payment of contributions and non-submission of oil reports

The governing bodies noted that payment of more than 99% of the annual contributions for previous years had been received in respect of each Fund and expressed their satisfaction with the situation.

However, each Fund Member State is obliged to submit a report every year on the quantities of contributing oil received in that State. These reports are outstanding in respect of 30 Member States: 28 States in respect of the 1971 Fund and 11 States in respect of the 1992 Fund. The non-submission of oil reports by a number of States is a matter of serious concern to other Member States and in particular to the contributors in those States, since without oil reports the Secretariat cannot issue invoices to the contributors in the defaulting States. It was decided that the Chairmen of the governing bodies should write to these States individually to express these concerns.

Budgetary decisions

A joint administrative budget for the 1992 and 1971 Funds of £2 816 663 was adopted for 2002. The 1992 Fund's working capital was increased from £18 million to £20 million, but the 1971 Fund's was maintained at £5 million.

The 1992 and 1971 Funds decided to levy the following contributions, with the Director being authorised to decide whether and when to invoice all or part of the deferred levies, as required:

	TOTAL	For payment by 1 March 2002	Deferred
<u>1992 Fund</u>			
General Fund	£5 million	£5 million	-
<i>Nakhodka</i>	£11 million	£11 million	-
<i>Erika</i>	£46 million	£25 million	£21 million
	_____	_____	_____
	_____	_____	_____
TOTAL	£62 million	£41 million	£21 million
<u>1971 Fund</u>			
General Fund	£3.2 million	-	£3.2 million
<i>Nissos Amorgos</i>	£21 million	-	£21 million
	_____	_____	_____
	_____	_____	_____
TOTAL	£24.2 million	-	£24.2 million

Note: This is a summary of certain aspects of the sessions held and does not reflect the sessions in full. Records of Decisions of each session may be obtained from the Secretariat of the IOPC Funds.

HNS Convention

In 1996 the 1992 Fund Assembly had instructed the Director to carry out the administrative tasks necessary for setting up the Fund to be established under the Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention). The 1992 Fund Assembly now instructed the Director to develop a system in the form of a website or CD-ROM to assist States and potential contributors in the identification and reporting of contributing cargo under the HNS Convention.

Future meetings

The following meetings have been scheduled for 2002. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 11 February (if required)	1992 Fund Executive Committee 1971 Fund extraordinary Assembly
Week of 29 April	1992 Fund Executive Committee 1971 Fund extraordinary Assembly 3rd intersessional Working Group
Week of 1 July (if required)	1992 Fund Executive Committee 1971 Fund Administrative Council 3rd intersessional Working Group
Week of 14 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council

Various incidents***Aegean Sea (Spain, 1992)***

In July 2001, the Director made a formal offer to the Spanish Government with a view to reaching a global settlement of all outstanding issues arising out of the *Aegean Sea* incident. This offer was subject to the Spanish Government by 30 November 2001 obtaining the withdrawals by the victims of their legal actions representing at least 90% of the principal of all the losses or damages claimed. The Spanish Government has accepted the conditions of the offer and is making its best endeavours to obtain these withdrawals by the end of November 2001.

Braer (United Kingdom, 1993)

By October 1995 some 2 000 claims for compensation had been settled and payments had been made by the Skuld Club and the 1971 Fund for a total amount of approximately £44.9 million. Some 270 claimants took action in the Court of Session in Edinburgh against the shipowner, the Skuld Club and the 1971 Fund. The total amount claimed in court was approximately £80 million. The court actions related mainly to claims which had been rejected by the 1971 Fund. Some claimants took legal action to preserve their right to make it possible to continue discussions for the purpose of arriving at out-of-court settlements. As a result of the legal actions, the total amount of the claims exceeded the amount available for compensation under international treaties and United Kingdom legislation, £50.6 million. The 1971 Fund decided therefore in October 1995 to suspend further payments.

As a result of a number of claims having been dismissed by the court, withdrawn from court proceedings or reduced in amount, the 1971 Fund resumed payments in May 2000 by paying each claimant 40% of the approved amount of their claims. The total amount paid to claimants stands at £48.2 million.

Recently a number of other claims have been dismissed by the court or have been withdrawn. It is therefore now possible to pay all approved claims in full. Payments will commence shortly.

Only three claims remain pending in court. Payment will be made in respect of these claims for the amounts, if any, awarded by the court.

Mary Anne (Philippines, 1999)

Total claims in respect of this incident fall well below the shipowner's limit under the 1992 Civil Liability Convention, but a claim has been submitted to the 1992 Fund because the shipowner is insolvent and the insurer has refused to settle the claim. The Executive Committee decided that the claimant should be informed that he should pursue all legal remedies available to him against the shipowner and/or his insurer before he could obtain compensation from the 1992 Fund.

Erika (France, 1999)

As at 11 October 2001, 5 637 claims for compensation had been submitted for a total of FFr863 million (£82 million). Of these claims 1 614 (29%) were presented during the period March - October 2001. Some 4 096 claims totalling FFr469 million (£45 million) had been assessed at a total of FFr280 million (£27 million). Payments had been made in respect of 2 857 claims for a total of FFr157 million (£15 million).

At its June 2001 session, the Executive Committee had decided to increase the level of the 1992 Fund's payments from 60% to 80% of the loss or damage actually suffered by the respective claimants. In the light of the remaining uncertainties as to the level of admissible claims arising out of the *Erika* incident, the Executive Committee decided that the level of payments should be maintained at 80%, but that the level should be reviewed again at the Committee's next meeting.

Zeinab (United Arab Emirates, 2001)

The *Zeinab* sank on 14 April 2001 off Dubai (United Arab Emirates), spilling an estimated 400 tonnes of fuel oil, following its interception by the multi-national Maritime Interception Forces. Under Article 4.2(a) of the 1971 and 1992 Fund Conventions, the IOPC Funds would not be liable to pay compensation if the pollution damage resulted from an act of war, hostilities, civil war or insurrection. The question was raised whether the Funds could invoke a defence on the grounds set out in that Article. The governing bodies of the 1992 and 1971 Funds decided, however, that the interception could not be considered as an act of war, hostilities, civil war or insurrection and that the Funds could not be exonerated from paying compensation on these grounds. The Director was therefore authorised to settle all claims resulting from this incident.