



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 2003 sessions of the governing bodies - In brief

31 October 2003

During the week of 20 - 24 October 2003, the governing bodies of the International Oil Pollution Compensation Funds 1992 and 1971 (IOPC Funds) held a number of meetings. The 1992 Fund held meetings of both its Assembly, which deals with administrative matters and issues of principle, and its Executive Committee, which considers individual incidents. The 1971 Fund held a meeting of its Administrative Council which deals with both administrative matters and incidents.

Status of Conventions

The 1992 Fund now has 82 Member States and an additional 4 States have deposited instruments of accession, which will bring the total to 86 by August 2004. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

25th Anniversary

The 1971 Fund Convention entered into force on 16 October 1978 and the 25th anniversary of the 1971 Fund was celebrated during the week's sessions of the Funds' governing bodies. The former Director and a number of former Chairmen attended the sessions and congratulated the IOPC Funds on its achievements over the past 25 years. A commemorative book has been published in the three official languages of the Funds (English, French and Spanish) to mark the occasion of the 25th anniversary.

Increase in amount of compensation available

At its session in October 2000, the Legal Committee of the International Maritime Organization (IMO) adopted two Resolutions increasing the limits contained in the 1992 Civil Liability Convention and the 1992 Fund Convention by some 50.37%. The amendments will enter into force on 1 November 2003. The amendment to the 1992 Fund Convention will bring the total amount available under the 1992 Conventions to 203 million SDR (£176 million).

Supplementary Fund Protocol

A Diplomatic Conference, held under the auspices of IMO from 12 to 16 May 2003, 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. The Supplementary Fund will have available an amount of 547 million SDR (£475 million), in addition to the amount of 203 million SDR (£176 million) which will be available in the present 1992 Fund after the increase which takes effect on 1 November 2003. 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 (£651 million). The 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.

The 1992 Fund Assembly instructed the Director to make the necessary preparations for the setting up of the Supplementary Fund.

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 31 States. The non-submission of oil reports

by a number of States is a matter of serious concern to other Member States, particularly to the contributors in those States, since without oil reports the Secretariat cannot issue invoices to the contributors in the defaulting States. During the discussion it was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1992 Fund Convention.

Winding up of the 1971 Fund

Although the 1971 Fund Convention ceased to be in force on 24 May 2002, the 1971 Fund cannot be wound up until it has settled all claims arising from outstanding incidents.

It is anticipated that by the end of 2004, there would only be outstanding claims in respect of the *Nissos Amorgos* incident (Venezuela, 1997) and, possibly, in respect of the *Iliad* (Greece, 1993), *Pontoon 300* (United Arab Emirates, 1998) and *Alambra* (Estonia, 2000) incidents, although the 1971 Fund might still be involved in recourse proceedings concerning four other incidents.

The Administrative Council decided that reimbursement from surpluses on Major Claims Funds or the General Fund (after offset had been made against any arrears) to contributors in those States which have any oil reports outstanding should be postponed until all such reports have been submitted.

Budgetary decisions

A joint administrative budget for the 1992 and 1971 Funds of £3 292 250 was adopted for 2004.

Contributions

The 1971 Fund and the 1992 Fund each have a General Fund to pay administrative expenses and compensation claims up to a specific amount per incident. They also have Major Claims Funds to pay compensation claims above that amount. The governing bodies decided to levy contributions to certain Funds and repay to contributors surpluses on five Major Claims Funds. The decisions on the levy of contributions and reimbursements to contributors are summarized below. As regards the deferred levies, the Director was authorised to decide whether to invoice all or part of these levies for payment during the second half of 2004.

	TOTAL	For payment by/ reimbursement on 1 March 2003	Deferred
<u>1992 Fund</u>			
General Fund	£7.0 million	£7.0 million	0
<i>Erika</i>	£5.5 million	0	£5.5 million
<i>Prestige</i>	£110.0 million	£75.0 million	£35.0 million
<i>Nakhodka</i> (reimbursement)	<u>-£37.7 million</u>	<u>-£37.7 million</u>	<u>0</u>
TOTAL	£84.8 million	£44.3 million	£40.5 million
<u>1971 Fund</u>			
<i>Vistabella</i>	£0.6 million	£0.6 million	0
<i>Nissos Amorgos</i>	£11.5 million	£11.5 million	0
<i>Osung N°3</i>	£1.7 million	£1.7 million	0
<i>Pontoon 300</i>	£3.0 million	£3.0 million	0
<i>Aegean Sea</i> (reimbursement)	-£17.7 million	-£17.7 million	0
<i>Sea Empress</i> (reimbursement)	-£18.4 million	-£18.4 million	0
<i>Sea Prince/Yeo</i>	-£19.0 million	-£19.0 million	0
<i>Myung/YuilN°1</i> (reimbursement)			
<i>Nakhodka</i> (reimbursement)	<u>-£14.7 million</u>	<u>-£14.7 million</u>	<u>0</u>
TOTAL	-£53.0 million	-£53.0 million	0

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

The Director has been instructed to prepare for the setting-up of the Fund (HNS Fund) to be established under the 1996 Convention on liability and compensation for damage in connection with the carriage of hazardous or noxious substances by sea (HNS Convention). The preparations should be based on the assumption that the HNS Fund will have a joint Secretariat with the IOPC Funds and be based in London.

The Fund Secretariat is carrying out the final phase of the development of a computerised system to assist with the identification and reporting of contributing cargo under the HNS Convention.

Various incidents

Sea Empress (United Kingdom, 1996)

The Liberian tanker *Sea Empress* grounded in February 1996 off Milford Haven (United Kingdom), spilling some 72 000 tonnes of crude oil and causing widespread pollution at sea and along the adjacent shoreline. The 1971 Fund and the shipowner's insurer, the Skuld P&I Club, paid compensation to victims of the oil pollution totalling £36.8 million, of which the Fund paid £29.9 million and Skuld Club £6.9 million.

In February 2002 the 1971 Fund and the Skuld Club commenced recourse actions in the Admiralty Court in London against Milford Haven Port Authority (MHPA) to recover the amounts they had paid to the victims of the oil pollution damage caused by the incident. The Fund and Skuld maintained that MHPA had failed to take reasonable care to avoid the risk of a laden tanker grounding and causing serious oil pollution. The Fund and Skuld also alleged that MHPA was negligent in that it had failed properly to monitor vessel entry and to have in place effective radar, that its system of pilot allocation and training was defective and that its response to the grounding was negligent. MHPA strongly rebutted the allegations and denied any liability for the incident.

The 1971 Fund, Skuld and MHPA agreed with a proposal by the Court that the parties should seek settlement through mediation, thereby avoiding protracted and costly legal proceedings. Following the mediation, which was held in October 2003, it was agreed that MHPA would pay £20 million to the 1971 Fund in full and final settlement of all claims in the recourse action. This settlement was approved by the 1971 Fund Administrative Council, which expressed its satisfaction with the result.

Erika (France, 1999)

The total claims arising out of this incident by far exceeded the amount of compensation available, some €185 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 Total Fina undertook to pursue their claims only if and to the extent that all other claimants were compensated in full, the claim by Total Fina 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. As a result of the uncertainty as to the total amount of the admissible claims having been reduced, the level of payments for claimants other than the French Government and Total Fina was increased to 100% in April 2003.

Since April 2003 the uncertainty as to the total amount of the established claims has been reduced further. As a result, the Executive Committee 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.

Prestige (Spain, 2002)

In respect of the *Prestige* incident, which affected Spain, France and Portugal, the total losses will also greatly exceed the amount of compensation available, €71.5 million (£108 million). It is estimated that the losses could total €1 100 million (£780 million). For this reason the 1992 Fund 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 the light of the remaining uncertainty as to the level of admissible claims, the Executive Committee decided in October 2003 to maintain the level of compensation payments at 15% of a claimant's proven losses.

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At the October 2003 session the Spanish Government requested that the 1992 Fund should make advance payments on account, subject to certain conditions.

The Assembly decided that the Fund should, in accordance with normal procedures, make a preliminary assessment of the claim submitted in October 2003 by the Spanish Government for €83.7 million (£243 million) and pay 15% of the preliminarily assessed amount. In view of the exceptional circumstances of the *Prestige* incident, the Committee further decided that the Director should make a general assessment of the total admissible damage in Spain arising from the incident and, subject to that general assessment, authorised him to make a payment of the balance between 15% of the assessed amount of the claim submitted by the Spanish Government for €83.7 million and 15% of that claim as submitted (15% of €83.7 million = €7 555 000). The Assembly further decided that before such a further payment is made, the Spanish Government must provide a guarantee from a financial institution with the financial standing laid down in the 1992 Fund's Internal Investment Guidelines, so as to protect the 1992 Fund if an overpayment situation were to arise.

Victoriya (Russian Federation, 2003)

On 30 August 2003 the Russian tanker *Victoriya* suffered a fire and explosion at a terminal near Syzran on the Volga River in the Russian Federation, while loading crude oil. A significant but unknown quantity of the oil was spilled into the river. The *Victoriya*, which was registered for river and sea navigation, had been trading regularly in the Mediterranean, Black Sea and Baltic Sea areas. The 1992 Conventions apply to damage caused in the territory of Contracting States and rivers are part of the territory.

The 1992 Fund Executive Committee decided that, although the incident occurred 1 300 km up the Volga River, the 1992 Civil Liability and Fund Conventions applied to this incident.

Incidents in the Republic of Korea (2003) (Buyang, Hana, Duck Yang, Kyung Won)

Four incidents occurred in the Republic of Korea in 2003. Two of these (*Duck Yang* and *Kyung Won*) were due to the passing of the typhoon 'Maemi' through the country in September 2003. Three of the incidents (*Byang, Hana* and *Duck Yang*) will probably only give rise to claims for fairly low amounts, and it is unlikely that the 1992 Fund will have to pay compensation in respect of these incidents. However, the vessel involved in the fourth incident (*Kyung Won*) was not insured for pollution liabilities and it is unlikely that the shipowner will have the financial resources to make any significant compensation payments. The 1992 Fund Executive Committee therefore authorised the Director to settle claims for compensation arising out of that incident. It further decided that the 1992 Fund should pay settled claims even if the shipowner does not make any payments.

Future meetings

The following meetings have been scheduled for 2004. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 23 February	1992 Fund Executive Committee 1971 Fund Administrative Council 1992 Fund 3rd intersessional Working Group
Week of 24 May	1992 Fund Executive Committee 1971 Fund Administrative Council 1992 Fund 3rd intersessional Working Group (if required)
Week of 18 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council