



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

FONDOS
INTERNACIONALES
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS
DE 1971 Y 1992

PRESS STATEMENT

12 November 2002

The IOPC Funds have concluded global settlements of the *Aegean Sea* and *Nakhodka* incidents

The International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds 1971 and 1992) are intergovernmental organisations set up to pay compensation to victims of oil pollution. The IOPC Funds have recently concluded global settlements in respect of two major incidents, the *Aegean Sea* (Spain, December 1992) and the *Nakhodka* (Japan, January 1997).

The settlement agreement in the *Aegean Sea* case was signed at a special ceremony in Madrid on 30 October 2002. The Minister of Finance, Mr Cristóbal Montoro Romero, signed the agreement on behalf of the Spanish Government. The *Nakhodka* agreement was concluded on 28 October 2002 in the IOPC Funds' office in London.

The IOPC Funds are very pleased that these cases have finally been settled so that all victims of these incidents can be paid in full and all ongoing litigation can cease, says the IOPC Funds' Director, Måns Jacobsson. These cases are amongst the most important but also the most complex which the IOPC Funds have dealt with since the creation of the international compensation regime in 1978. Måns Jacobsson says that, although it has taken a considerable time to resolve these cases, the conclusion of the agreements shows that the international compensation regime based on international treaties fulfils its objective of ensuring compensation to victims of tanker oil spills.

Aegean Sea

On 3 December 1992, the Greek tanker *Aegean Sea*, carrying 80 000 tonnes of crude oil, ran aground during heavy weather while approaching La Coruña harbour in north-west Spain. The majority of the cargo was spilt causing serious pollution over a large area.

Claims for compensation totalling £177 million were submitted to the shipowner, his insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club), and the 1971 Fund.

The total amount of compensation available in this case under the international compensation regime was £37 million. The claims presented therefore exceeded by far that amount. As a result, payments to claimants had to be limited to 40% of their proven losses. In fact it was not possible to reach agreement with the majority of claimants because they had not submitted sufficient documentation to prove their losses.

The Spanish Courts had decided that the pilot responsible for the entry of the ship into the port of La Coruña and the master of the *Aegean Sea* were equally liable for the grounding. The Fund/shipowner/Club considered therefore that the liability to pay compensation should be split between the Spanish State and the Fund/shipowner/Club since the Spanish State was responsible for the pilot.

The main elements of the global settlement agreement are as follows. All claims have been settled for a total of £67 million. On 31 October 2002 the 1971 Fund paid £24.5 million to the Spanish State in addition to amounts previously paid to claimants by the Fund (£5.2 million) and the UK Club (£3.8 million). The Spanish Government will pay the balance of the settlement amounts. All legal actions will be withdrawn.

Nakhodka

On 2 January 1997, the Russian tanker *Nakhodka*, carrying 19 000 tonnes of medium fuel oil, broke in two some 100 kilometres north-east of the Oki islands (Japan), resulting in a spill of some 6200 tonnes of oil. The stern section sank soon after the incident. The upturned bow section, containing up to 2 800 tonnes of cargo, drifted towards the coast and grounded on rocks some 200 metres from the shore. Following the grounding, a substantial quantity of oil was released heavily contaminating more than 1 000 kilometres of the adjacent shoreline.

Claims for compensation totalling £192 million were submitted to the shipowner, Prisco Traffic Limited, his insurer, the UK Club, and to the 1971 and 1992 IOPC Funds.

The total amount available for compensation in this case under the international compensation regime was £120 million. Since the claims presented exceeded this amount, payments to claimants had to be limited to 80% of their proven losses.

The IOPC Funds' Member States have taken a policy decision that the Funds should, in respect of any oil pollution incident, endeavour to recover the amounts they have paid in compensation for pollution damage from any person whose fault is believed to have caused the pollution.

The IOPC Funds brought legal actions in a Japanese Court against Prisco Traffic Limited, (the owner of the *Nakhodka*), against Primorsk Shipping Corporation, and against the Russian Maritime Register of Shipping, to recover the amounts paid by the Funds in compensation. Legal action was also brought against the shipowner's insurer, the UK Club. The four defendants opposed these actions.

All claims have been agreed at some £114 million. As a result of the settlement agreement the UK Club made available £17 million for compensation payments so that all claimants can be paid in full. The Club also reimbursed the IOPC Funds £27.3 million of the amounts paid by the Funds to the victims and contributed £3.6 million to the Funds' costs of claims handling. All legal actions will be withdrawn.

Notes for Editors :

- 1) The shipowner's Protection and Indemnity insurer who has paid compensation in both cases is the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited known as "UK Club" for short.
- 2) The international regime for compensation of victims of oil pollution damage was originally based on two international Conventions, the International Convention on Civil Liability for Oil Pollution Damage, 1969 ("1969 Civil Liability Convention") and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 ("1971 Fund Convention"). This old regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 3) The above-mentioned Conventions were established with the aim of ensuring prompt payment of compensation after an oil spill without the need for victims to prove any negligence.
- 4) The Civil Liability Conventions therefore impose strict liability (liability without fault) for pollution damage upon the shipowner. The shipowner is normally entitled to limit his liability to an amount calculated by reference to the tonnage of his ship and is required to insure against that liability up to that limit. Under the 1969 Convention the shipowner is deprived of his right to limitation of liability if the incident is caused by his personal fault ("fault or privity").
- 5) The International Oil Pollution Compensation Funds are intergovernmental organisations set up by States. The Funds' purpose is to provide supplementary compensation in cases where the amount payable by the shipowner or his insurer is insufficient to provide full compensation to the victims of oil pollution damage.
- 6) The IOPC Funds are funded by contributions from receivers of crude oil or heavy fuel oil after sea transport.
- 7) The amount available for compensation to victims is significantly higher under the 1992 Conventions (£120 million) than under the 1969/1971 Conventions (£37 million).
- 8) The *Aegean Sea* incident occurred before the 1992 Conventions entered into force in 1996. For this reason only the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident. The *Nakhodka* occurred after the entry into force of the 1992 Conventions, so the higher compensation limit applied in this case.