



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 Funds meetings: April 2002 - In Brief

10 May 2002

During the week of 29 April - 3 May 2002, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) held various meetings. The 1992 Fund held meetings of its Assembly and Executive Committee and a meeting of an intersessional Working Group. The 1971 Fund held a meeting of its Administrative Council, to deal with Assembly and Executive Committee matters.

Status of Conventions

The 1992 Fund now has 64 Member States and an additional 13 States have deposited instruments of accession which will bring the total to 77 by May 2003.

The 1971 Fund has 26 Member States.

Termination of the 1971 Fund Convention and winding up of the 1971 Fund

The 1971 Fund Convention will cease to be in force on 24 May 2002 when the number of Member States falls below 25 and the Convention will not apply to incidents occurring after that date. It was decided that the Administrative Council will continue to administer the 1971 Fund until that Organisation is wound up.

Audit Body

The governing bodies of the 1971 Fund and the 1992 Fund decided on the mandate and composition of a joint Audit Body. The members of the Audit Body will be elected during the October 2002 sessions of the governing bodies.

HNS Convention

The Director of the 1992 Fund has been instructed to prepare for the setting-up of the 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 Secretariat demonstrated a non-functioning prototype of a computerised system which is being developed to assist with the identification and reporting of contributing cargo under the HNS Convention.

Financing of Diplomatic Conference

The 1992 Fund Assembly decided to make available funds to finance a Diplomatic Conference to consider a draft Protocol to the 1992 Fund Convention to establish a Supplementary Fund which would provide compensation over and above the compensation available under that Convention. The Conference will be held under the auspices of the International Maritime Organization (IMO) from 12 to 16 May 2003.

Review of the international compensation regime

The intersessional Working Group established by the 1992 Fund Assembly to consider the need for and possibilities of further improving the international compensation regime held its fourth meeting.

The Working Group considered the criteria for the admissibility of claims for the costs of measures to reinstate the environment and the costs of post-spill environmental studies. The Working Group agreed a revised text of the relevant section of the 1992 Fund Claims Manual to be submitted to the Assembly for consideration at its October 2002 session.

The Working Group also considered whether amendments should be made to the provisions in the 1992 Civil Liability Convention concerning shipowner's liability and related issues, bearing in mind that this could only be done by means of amendments to that Convention. It was decided to postpone the next meeting of the Group until early 2003 to give delegations time to consider this issue further and, if they so wished, to present concrete proposals for treaty texts on this issue. A number of other issues will also be considered by the Working Group at that meeting.

Future meetings

The following meetings have been scheduled for the remainder of 2002.

2-3 July	1992 Fund Executive Committee 1971 Fund Administrative Council
Week of 14 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council

Various incidents

Erika (France, 1999)

As at 23 April 2002, 6 157 claims for compensation had been submitted for a total of FFr1 004 million or €153 million (£94 million). 5 378 claims totalling FFr772 million or €117 million (£73 million) had been assessed at a total of FFr406 million or €62 million (£38 million). Assessments had thus been carried out of 87% of the total number of claims received. Payments had been made in respect of 4 141 claims for a total of FFr259 million or €39 million (£24 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 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 session.

The Executive Committee considered certain questions of principle as to the admissibility of claims. The Committee decided that claims from a number of communes for reduction in revenue from tourism tax (taxe de séjour) were admissible in principle in the light of the specific nature of the tax, the direct link between the revenue from the tax and the number of tourists visiting the area and the dependency of these communes on beach tourism.

Nakhodka (Japan, 1997)

The great majority of the claims for compensation have been settled at ¥22 119 million (£114 million). Only a few claims, mainly those submitted by Japanese Government agencies and the Japan Maritime Disaster Prevention Centre (JMPDC), have not yet been settled.

The governing bodies decided to approve claims in respect of the construction of a causeway for the removal of oil from the bow section of the *Nakhodka* for a total of ¥2 043 million (£10.4 million) compared with a claimed amount of ¥3 336 million (£17 million). Since the total amount of claims submitted exceed the maximum amount available under the applicable international conventions, ¥23 165 million (£119 million), the Funds are limiting the payments to 80% of the settlement amounts.

The IOPC Funds have brought legal actions in a Japanese District 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 actions have also been brought against the

shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club). The four defendants have opposed these actions.

At their April/May 2002 sessions, the governing bodies of the 1992 and 1971 Funds unanimously approved a proposal made by the UK Club for a global settlement of all pending issues arising out of the incident. The settlement contains the following main elements:

- The compensation payments would be shared between the UK Club and the IOPC Funds on a 42:58 basis in respect of all settled claims.
- The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims.
- The UK Club would pay the 20% balance due to all claimants.
- The UK Club would reimburse the IOPC Funds approximately ¥5 200 million (£26.7 million), this being the amount payable by the Club to the Funds after payment by the Club of the 20% balance due to claimants as a result of the 42:58 split of the compensation payments between them.
- The joint costs incurred by the UK Club and the IOPC Funds would also be apportioned between them on a 42:58 basis.
- All legal actions arising from the incident would cease.

The settlement would be without prejudice to the respective positions of the parties.

The Director of the Funds expressed the view that the proposed global settlement represented a fair compromise taking into account the uncertainty that was inherent in any litigation involving complex issues. He stated that it would have the great advantage that all established claims would be paid in full promptly and would result in the IOPC Funds being reimbursed for a considerable part of their compensation payments.

The governing bodies stated that the acceptance of the proposed settlement and the withdrawal of the actions should not be interpreted in any way as a change in the IOPC Funds' policy in respect of recourse actions, namely that the Funds should take recourse action whenever appropriate to recover any amounts paid by it from shipowners or other parties on the basis of the applicable national law.

Braer (United Kingdom, 1993)

The 1971 Fund Administrative Council noted that as a result of the United Kingdom Government's forgoing its entitlement to compensation, the shipowner's P & I insurer, Assuranceforeningen Skuld (Skuld Club), forgoing its entitlement to indemnification under the 1971 Fund Convention and a guarantee by the Club to pay any deficit, all established claims could be paid in full. All established claims except six have in fact been paid in full.

Sea Empress (United Kingdom, 1996)

The 1971 Fund Administrative Council noted that the 1971 Fund and the Skuld Club had taken recourse actions against the Milford Haven Port Authority (MHPA) on the grounds that the MHPA had failed to give proper consideration to the risk of a laden tanker going aground and causing serious oil pollution and had failed to put in place procedures to control or reduce the risk as much as possible. The Council noted that the MHPA had indicated that it was covered by insurance and that the insurers would be vigorously defending the actions.