



INTERNATIONAL FUNDS  
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 1992

## February 1999 Executive Committee meetings - In brief

*10 February 1999*

The Executive Committees of the 1971 and 1992 International Oil Pollution Compensation Funds (1971 and 1992 Funds) each held a session from 1 to 3 February 1999.

### *Various incidents*

#### *Keumdong N°5 (Republic of Korea)*

A Korean Court has recently awarded compensation to a number of unlicensed fishing boat claimants. The Court has also granted compensation to a group of claimants for 'pain and suffering' since it was unable to calculate losses due to oil pollution damage. The Court has awarded compensation to arkshell fishermen on the basis of an assumption that if oil reached a certain area, the marine life in that area would be affected. For the following reasons the Director was instructed to lodge appeals against these three decisions: payment of compensation to unlicensed fishermen is not consistent with Fund policy, 'pain and suffering' does not fall within the definition of pollution damage, and the Fund's experts maintain that arkshells living on the seabed could not have been affected by surface oil.

#### *Sea Prince (Republic of Korea)*

A number of complex legal issues have arisen concerning whether or not certain claims filed in the limitation proceedings have become time barred. Central to the question is the relationship between the Conventions and the applicable national legislation implementing them. These claims will be considered further at the 1971 Fund Committee's next session, to be held during the week of 26 April 1999.

#### *Yuil N°1 and Osung N°3 (Republic of Korea)*

In the case of the *Osung N°3*, the amount of compensation available under the 1969 Civil Liability Convention is small. To avoid delays in the payment of compensation, it was decided that the 1971 Fund should pay all approved claims in full once the shipowner's limitation fund is established. The 1971 Fund will then present subrogated claims against the limitation fund.

#### *Sea Empress (United Kingdom)*

The 1971 Fund Executive Committee considered a number of claims for losses allegedly suffered as a result of the closure of the Port of Milford Haven and restrictions on ship movements, including claims for demurrage, chartering vessels and a reduction of refinery throughput. Although such claims might be admissible in other circumstances, the Committee decided to reject these particular claims since the alleged losses were not caused by either contamination or preventive measures, but were a result of a decision by the Port Authority for the safety of navigation.

A claim by a fire brigade for costs in providing fire fighting cover during salvage operations was examined.

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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.

Following a request by the United Kingdom delegation to consider the claim in the context of the wider issue of health and safety requirements in connection with oil pollution response, the Committee decided to defer a decision on the admissibility of this claim.

The three-year time bar period for claims arising from the *Sea Empress* incident expires on or shortly after 15 February 1999.

The Director was instructed to consider as a matter of urgency whether to pursue a recourse action against third parties to recover the amounts paid in compensation.

***Nissos Amorgos (Republic of Venezuela)***

Since payments are currently limited to 25% of the accepted amounts, an oil company requested payment of the balance of the assessed amount of its claim for clean-up costs against a bank guarantee. Although the 1971 Fund has made similar payments in previous cases, the Committee rejected the request on the grounds that making payments against bank guarantees could be seen as giving preferential treatment to those claimants with sufficient financial resources to obtain bank guarantees, and since practical difficulties could arise if large numbers of claimants requested full compensation against such guarantees.

The shipowner and his insurer have notified the Director of their intention to resist a claim by an agency of the Venezuelan Government for expenses incurred in monitoring the clean-up operations, on the grounds of the contributory negligence of another Government agency. The 1971 Fund Executive Committee decided that, unlike the shipowner under the 1969 Civil Liability Convention, the 1971 Fund was not allowed under the 1971 Fund Convention to invoke contributory negligence as a defence against claims for compensation in respect of the cost of preventive measures.

***Kyungnam N°1***

The shipowner has paid the limitation amount into court and is not prepared to make payments to claimants as well. To avoid a long delay before claimants could receive compensation on completion of the limitation proceedings and distribution of the limitation fund, and in view of the relatively small amounts involved, it was decided that the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund.

***Irving Whale***

The legal action brought against the 1971 Fund by the Canadian Government in respect of the cost of refloating the *Irving Whale* in 1996 (the barge having sunk in 1970) has been dismissed by the Canadian Court as the Fund could not be liable for events which occurred prior to the entry into force of the 1971 Fund Convention in respect of Canada.

***Milad 1 (Bahrain)***

The 1992 Fund Executive Committee gave further consideration to the claim by the Marine Emergency Mutual Aid Centre (MEMAC) arising out of the *Milad 1* incident. The *Milad 1* had developed a crack in its hull off the coast of Bahrain. MEMAC has claimed compensation for the cost of providing a salvage tug and ship repair team. In the light of the critical condition of the vessel and the prevailing wind conditions, the Committee decided that the incident constituted a grave and imminent threat of causing pollution damage in the territory and territorial sea of Bahrain. However, the Committee was not convinced that MEMAC had taken all reasonable steps to pursue its claim against the shipowner under the 1992 Civil Liability Convention. The Director will therefore discuss with MEMAC what courses of action may be available to it and will report developments to the Committee's April 1999 session. The Director will also examine whether the 1992 Fund should pursue a recourse action against the shipowner if further steps by MEMAC prove unsuccessful, bearing in mind the likely costs involved in relation to the low amount which could be recovered.

### *Other issues*

#### *Apportionment of compensation payments between P & I Clubs and the IOPC Funds*

At present the Funds compensate victims only when the shipowner's payments have reached the limitation amount under the relevant Civil Liability Convention. A member of the International Group of P & I Clubs proposed that the current procedure for the apportionment of payments between the Clubs and the Funds should be revised, so as to ensure that payments remained within the respective limits when there was a risk that the total amount of the established claims would exceed the maximum amount of compensation available under the Conventions. Under the proposed procedure the applicable Fund and P & I Club would from the outset make payments to claimants in proportion to their respective ultimate liabilities.

Although the importance of continuing co-operation between P & I Clubs and the IOPC Funds was recognised, the Executive Committees decided that since the existing arrangements have worked well for the 1971 Fund in most cases and as the system of the 1992 Conventions has not been in existence for very long, no change in the existing practice and procedures was needed.

#### *Compensation of unlicensed fishermen*

The 1971 Fund Executive Committee considered a study of fisheries legislation in a number of countries carried out by a firm of international fisheries consultants. The 1971 Fund Committee decided to maintain its general policy of not accepting claims from commercial fishermen who carried out their activities in breach of national licensing requirements or who exceeded quotas laid down in national legislation. However, it was considered that some flexibility should be exercised, especially with regard to subsistence fishing. The Director will study further the question of the admissibility of claims for subsistence fishing and will consider whether admissibility guidelines for such claims should be developed.

#### *Status of Conventions*

Instruments of accession to the 1992 Fund Convention have now been deposited by 41 States. Meanwhile, by February 2000 the number of 1971 Fund Member States will have fallen to 42. The 1971 Fund Executive Committee reiterated its concern about the increasing difficulties facing the 1971 Fund with regard to its ability to function in the face of declining membership.

Some delegations expressed concerns about the instrument of accession recently deposited by the People's Republic of China acceding to the 1992 Fund Convention in respect of the Hong Kong Special Administrative Region only. The Chinese observer delegation stated that a full explanation would be submitted to the 1992 Fund Assembly at its next session in October 1999.