



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 2000 sessions of the governing bodies - In brief

3 November 2000

During the week of 23-27 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 a specially created Administrative Council, which has only met once before. This is the first time that it has dealt with Assembly as well as Executive Committee matters.

Status of Conventions

The 1992 Fund now has 46 Member States and the number is still rising: an additional 16 States have deposited instruments of accession which will bring the total to 62 by October 2001. The membership of the 1971 Fund is decreasing as Member States denounce the 1971 Fund Convention and join the 1992 Fund: the 1971 Fund currently has only 39 Member States and the number will fall to 27 by October 2001.

The problems facing the 1971 Fund

Both the 1971 and 1992 Funds are financed by contributions paid by companies or other entities in Member States which, in a given year, receive more than 150 000 tonnes of crude oil and heavy fuel oil ('contributing oil') after sea transport. The levy per tonne of contributing oil received is calculated using the total quantity of contributing oil received in all Member States. As a result of Italy leaving the 1971 Fund in October 2000, the total quantity of contributing oil received in all 1971 Fund Member States has fallen from 250 million tonnes to 110 million tonnes. Consequently, contributors in the remaining Member States will pay a much greater share of the compensation for any future incident in a 1971 Fund Member State.

As more States leave the 1971 Fund, the Organisation's difficulties in functioning can only get worse. There is a risk that an incident will occur in the future for which the 1971 Fund has an obligation to pay compensation, but where there are no contributors in the remaining Member States. Two steps have been taken to try to avoid this situation occurring: a new Protocol has been adopted in order to terminate the 1971 Fund Convention quickly; and insurance has been taken out to ensure that compensation is available for future incidents.

Termination of the 1971 Fund Convention

Currently, the 1971 Fund Convention will remain in force until the 1971 Fund has only two Member States left. Despite considerable efforts to encourage the remaining Member States to denounce the Convention, it is unlikely that this will happen in the foreseeable future. A Diplomatic Conference was therefore organised by the International Maritime Organization (IMO) in September 2000 and a new Protocol ('the 2000 Protocol') to the Convention was adopted. Under the Protocol, the 1971 Fund Convention will cease to be in force **either** when the number of Member States falls below 25 **or** one year after the Assembly, or the Administrative Council, notes that the total quantity of contributing oil has fallen below 100 million tonnes, whichever is the earlier.

The 2000 Protocol will enter into force on 27 June 2001 unless at least one third of the 1971 Fund Member States formally object by 27 March 2001. This procedure, under which a State which does not object to an amendment is deemed to have accepted it, is known as 'tacit acceptance', and this is the first time that such a procedure has been used to terminate a Convention.

At least three more Member States are expected to denounce the 1971 Fund Convention this autumn, so the number of Member States may fall to 24 by the end of 2001. In any event, the total quantity of contributing oil will fall below 100 million tonnes when India's denunciation takes effect on 21 June 2001. The 1971 Fund Convention could therefore cease to be in force by the end of 2001 or, at the very latest, by the end of June 2002.

Insurance covering the liabilities of the 1971 Fund for future incidents

The 1971 Fund has taken out insurance to cover its liabilities to pay compensation for pollution damage resulting from any incidents which occur after 1700 hours GMT on 25 October 2000 until 31 December 2001. If necessary, the insurance can be extended until 31 October 2002. In this way, the availability of compensation for incidents which occur in the remaining 1971 Fund Member States has been ensured until the anticipated termination of the 1971 Fund Convention.

Increase in the 1992 Fund Convention limit

At its session in October 2000, the IMO Legal Committee adopted proposals to increase the limits in the 1992 Civil Liability and Fund Conventions by 50.37% so that the maximum amount of compensation available under the 1992 Conventions would rise from 135 million Special Drawing Rights (SDR) (£120 million) to 203 million SDR (£180 million). The tacit acceptance procedure has also been used for these amendments, and the new limits will enter into force on 1 November 2003, unless more than a quarter of the 1992 Fund Member States formally object before 1 May 2002.

Non-submission of oil reports

Each Fund Member State is obliged to submit a report every year on the quantities of contributing oil received in that State. However, oil reports are outstanding in respect of over two-thirds of the remaining 1971 Fund Member States. The situation is better for the 1992 Fund but, even so, seven Member States have reports outstanding.

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.

Report of the 2nd Intersessional Working Group of the 1992 Fund on the definition of 'ship'

This Working Group had been reconvened for a one day meeting in April 2000 to give further consideration to the circumstances in which an unladen tanker would fall within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. The Group had reaffirmed the conclusions of its previous meeting and had suggested that any remaining ambiguity in the definition of 'ship' could be considered by the 3rd Intersessional Working Group. The 1992 Fund Assembly endorsed the Working Group's conclusions.

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. At its first meeting in July 2000, a number of issues which could merit further consideration had been discussed: ranking of claims/priority treatment (including prescription periods); uniform application of the Conventions; sanctions for failure to submit oil reports; dissolution and liquidation of the Fund; maximum

compensation levels; weighting of contributions according to the quality of ships used for the transport of oil; and environmental damage. A number of other issues proposed by Member States had not been discussed by the Working Group due to lack of time. The 1992 Fund Assembly decided that the Working Group should continue its work.

Budgetary decisions

A joint administrative budget for the 1992 and 1971 Funds of £2 776 970 was adopted for 2001. The 1992 Fund's working capital was increased from £15 million to £18 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 when to invoice all or part of the deferred levies, as required:

	TOTAL	For payment by 1 March 2001	Deferred
<u>1992 Fund</u>			
General Fund	£7.5 million	£7.5 million	-
<i>Nakhodka</i>	£35 million	£17 million	£18 million
<i>Erika</i>	£50 million	£25 million	£25 million
TOTAL	£92.5 million	£49.5 million	£43 million
<u>1971 Fund</u>			
General Fund	-	-	-
<i>Nissos Amorgos</i>	£25 million	-	£25 million
TOTAL	£25 million	-	£25 million

The Secretariat

It was agreed that the 1992 and 1971 Funds would continue to have the same Director and a joint Secretariat. The Secretariat relocated to new premises in Victoria on 19 June 2000.

Future meetings

The following meetings have been scheduled for 2001. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

29-30 January	1992 Fund Executive Committee
12,13 and 15 March	3rd Intersessional Working Group
25-29 June	1992 Fund Executive Committee 3rd Intersessional Working Group
15-19 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Assembly/Administrative Council

Various incidents

Aegean Sea (Spain, 1992)

A provisional agreement has been reached on the admissible quantum of all claims for compensation arising out of the incident. The agreement on an admissible amount of Ptas11 832 million (£44 million) is subject to agreement on two other outstanding issues, namely the distribution of liabilities between the Spanish State/the pilot and the master/shipowner/his insurer/the 1971 Fund and whether a number of claims brought in the civil court are time-barred. Discussions are continuing with the Spanish Government with a view to reaching a global settlement.

Nakhodka (Japan, 1997)

As at 27 October 2000, ¥13 800 million (£91 million) had been paid in compensation. Since April 2000 the level of payments in the *Nakhodka* case has been limited to 70% of the approved amount of the claims for compensation, in view of the uncertainty as to the level of the total amount of claims. It was decided to authorise the Director to increase the level of payments for both Funds from 70% to 80%, when the total of the settled and pending claims falls below ¥27 800 million (£184 million), which is expected to happen in the near future.

Nissos Amorgos (Venezuela, 1997)

A claim by six shrimp processors and 2 000 fishermen for US\$25 million (£15.6 million) for a reduction in shrimp catches in Lake Maracaibo during 1998, ie the year after the incident, was considered admissible in principle. Although the claimants had been unable to provide conclusive evidence establishing a direct link between the oil spill and the downturn in shrimp catches, it was nevertheless considered on the basis of opinions of various biologists that the oil from the *Nissos Amorgos* was most probably a significant contributing factor to this downturn. It was decided that in quantifying the losses attributable to the incident, account should be taken of other factors as reflected in normal fluctuations in shrimp catches.

Erika (France 1999)

The Executive Committee of the 1992 Fund decided at its July 2000 session that, in view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the payments by the 1992 Fund should for the time being be limited to 50% of the amount of the cost or damage actually suffered by the individual claimants. The Committee reviewed the level of payments at its October 2000 session. It was noted that there remained significant uncertainties in the estimates of claims in the tourism sector. In view of the continuing uncertainty as to the total amount of claims arising from the incident, the Committee decided that the level of payments should be maintained at 50%. The level of payments will be reviewed at the Committee's next session, to be held in January 2001.

The 1992 Fund Executive Committee considered the admissibility of a number of claims for pure economic loss and two claims in respect of publicity campaigns intended to mitigate economic losses.

Al Jaziah 1 (United Arab Emirates, 2000)

It was decided that, since the United Arab Emirates was a Party to both the 1971 Fund Convention and the 1992 Fund Convention at the time of the *Al Jaziah 1* incident, both Conventions applied to the incident. It was also decided that the liabilities should be distributed between the 1971 Fund and the 1992 Fund on a 50:50 basis.

Natuna Sea (Indonesia, 2000)

This incident, which occurred in the Singapore Strait on 3 October 2000, has caused pollution damage in Singapore, Malaysia and Indonesia. Singapore is Party to the 1992 Civil Liability Convention and to the 1992 Fund Convention, whereas Indonesia is a Party to the 1992 Civil Liability Convention only, and Malaysia is Party to the 1969 Civil Liability Convention and to the 1971 Fund Convention. It is not possible to predict the level of claims for compensation arising from this incident.