



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 2002 sessions of the governing bodies - In brief

28 October 2002

During the week of 14 - 18 October 2002, 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. Since the 1971 Fund Convention is no longer in force, the functions of the 1971 Fund Assembly and Executive Committee have been taken over by the 1971 Fund Administrative Council which is composed of all States that have at any time been Members of the 1971 Fund.

The 1992 Fund held meetings of both its Assembly and its Executive Committee. The 1971 Fund held a meeting of its Administrative Council, which dealt with both administrative matters and incidents.

Status of Conventions

The 1992 Fund now has 71 Member States and an additional 11 States have deposited instruments of accession, which will bring the total to 82 by October 2003. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

Report of the 3rd Intersessional Working Group of the 1992 Fund on the adequacy of the international compensation system – revision of the Claims Manual

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. The 1992 Fund Assembly considered the Report of the Working Group on its fourth meeting, which was held in April/May 2002, in particular the Working Group's proposal to revise the section of the Claims Manual dealing with claims for environmental damage as regards post spill environmental studies and measures to reinstate the polluted environment. The Assembly approved the Working Group's proposal for a new text of that section and a new version of the Claims Manual will be published by the end of the year.

The Working Group will meet again in February 2003 to continue its work.

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 Member States: 16 States in respect of the 1971 Fund and 19 States in respect of the 1992 Fund. 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. It was decided to refer the matter to the Working Group for consideration at its February 2003 meeting, but that the Director should continue to make every effort to obtain the outstanding reports.

Budgetary decisions

A joint administrative budget for the 1992 and 1971 Funds of £3 012 857 was adopted for 2003. The 1992 Fund's

working capital was maintained at £20 million, and 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 whether and when to invoice all or part of the deferred levy, as required:

	TOTAL	For payment by 1 March 2003	Deferred
1992 Fund			
General Fund	£3 million	£3 million	-
<i>Erika</i>	£28 million	£28 million	-
TOTAL	£31 million	£31 million	-
1971 Fund			
<i>Nissos Amorgos</i>	£21 million	-	£21 million
TOTAL	£21 million	-	£21 million

Election of members of the joint Audit Body

The 1992 Fund and 1971 Fund had decided, in October 2001, to set up a joint Audit Body, consisting of six members from Member States and one member not related to the Organisations.

The following members were elected:

Mr Charles Coppolani (France) – Chairman

Professor Eugenio Conte (Italy)

Mr Maurice Jaques (Canada)

Mr Heikki Muttilainen (Finland)

Dr Reinhard Renger (Germany)

Professor Hisashi Tanikawa (Japan)

Mr Nigel Macdonald – (member not related to the Organisations)

The Chairman of the Audit Body will present his first report to the Assembly in October 2003.

Winding up of the 1971 Fund

The Director anticipated that by the end of 2003, there would be outstanding claims for compensation and indemnification in respect of only five incidents, although the 1971 Fund might still be involved in recourse proceedings concerning three other incidents.

It was decided, therefore, that the question of the distribution of the 1971 Fund's remaining assets should be considered in October 2003, when the situation would be clearer and the Director would have had the opportunity to study the different options available for an equitable distribution.

HNS Convention

The Director of the 1992 Fund 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 1992 Fund Assembly invited the Director to present a document on this issue to its October 2003 session. The 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

Aegean Sea (Spain, 1992)

On 17 October 2002, the Spanish Parliament approved a decree authorising the Minister of Finance to sign on

behalf of the Spanish Government an agreement between Spain, the shipowner, the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), and the 1971 Fund, on a global solution of all outstanding issues in the *Aegean Sea* incident. The total amount payable by the 1971 Fund to the Spanish Government is approximately £24 million. The agreement will be signed and payments made by 31 October 2002.

Nakhodka (Japan, 1997)

In April/May 2002 the governing bodies approved a proposal by the shipowner's insurer, the UK Club, for a global solution of all outstanding issues. The global settlement will result in all claims being paid in full. The 1971 and 1992 Funds will withdraw their recourse actions against the shipowner and the UK Club and the Funds will receive approximately £27.8 million from the UK Club, which will be distributed between the two Funds in proportion to their respective liabilities. The settlement agreement will be signed on 28 October 2002 and payment is expected to be made by 1 November 2002.

Erika (France, 1999)

In the light of the remaining uncertainties as to the level of admissible claims arising out of the *Erika* incident, the Executive Committee decided to maintain the level of payments at 80% of the loss or damage actually suffered by the respective claimants. In view of the fact that claimants who have outstanding claims are likely to take legal action against the 1992 Fund before the third anniversary of the incident (12 December 2002) in order to prevent their claims from becoming time-barred, the situation should be clearer by the time of the Committee's next meeting in February 2003, when the level will be reviewed again.

The Executive Committee decided to authorise the Director to challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention. He was also authorised to take recourse actions, in order to prevent the actions becoming time-barred, against the registered owner of the *Erika*, his insurer and various other parties.

Al Jaziah I (United Arab Emirates, 2000)

The 1971 Fund Administrative Council and the 1992 Fund Executive Committee decided that the Funds should oppose any attempt by the shipowner to limit his liability under the 1969 Civil Liability Convention and to pursue a recourse action against him on the grounds that the sinking of the ship was caused by its unseaworthy condition and that he must have known about the ship's condition prior to the incident.

The governing bodies recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing its decision, in part, on the prospects of recovery in the event of a favourable judgement.

Future meetings

The following meetings have been scheduled for 2003. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 3 February	1992 Fund 3rd intersessional Working Group 1992 Fund Executive Committee 1971 Fund Administrative Council
Week of 6 May	1992 Fund Executive Committee 1971 Fund Administrative Council
Week of 20 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council