



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 2004 sessions of the governing bodies - In brief

25 October 2004

During the week of 18 - 22 October 2004, the governing bodies of the International Oil Pollution Compensation Funds 1992 and 1971 (IOPC Funds) held a number of meetings. The 1992 Fund held meetings of both its Assembly, which deals with administrative matters and issues of principle, and its Executive Committee, which considers individual incidents. The 1971 Fund held a meeting of its Administrative Council which deals with both administrative matters and incidents.

Status of Conventions

The 1992 Fund now has 86 Member States and an additional 5 States have deposited instruments of accession, which will bring the total to 91 by October 2005. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

Re-appointment of the IOPC Funds' Director

The 1992 Fund Assembly decided to extend the contract of the present Director, Mr Måns Jacobsson, for a further term of office of two years, as from 1 January 2005, to include a transition period for the handover to his successor.

Report of the Working Group of the 1992 Fund on the adequacy of the international compensation regime

This Working Group was set up in April 2000 to consider the need to improve the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention in order to ensure that the regime continues to meet the needs of society.

The 1992 Fund Assembly considered the reports of the Working Group's meetings, held in February and May 2004. The reports reflected the divergence of opinion between Member States who oppose any revision of the 1992 Conventions and those who believe revision is indispensable. Discussions that followed reiterated these different viewpoints with a number of Member States questioning the continuation of the Working Group and others deeming it necessary for the Working Group to complete its mandate with regard to outstanding issues not yet addressed. The 1992 Fund Assembly decided that the Working Group should meet in February 2005 as planned and make final recommendations to the October 2005 session of the Assembly on whether or not the Conventions should be revised, and if so, which items required revision.

Revision of Claims Manual

A revised text of the 1992 and 1971 Funds' Claims Manual, which is a guide to presenting compensation claims against the Funds, was approved by the 1992 Fund Assembly. The revised Claims Manual is easier to read and gives further assistance to claimants.

Supplementary Fund Protocol

In May 2003 a Diplomatic Conference adopted a Protocol establishing a Supplementary Fund to provide additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Protocol. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund will be 750 million SDR (£600 million).

The Supplementary Fund Protocol will enter into force three months after it has been ratified by at least eight States and the aggregate quantity of contributing oil received in these States after sea transport is at least 450 million tonnes. Six States (Denmark, Finland, France, Ireland, Japan and Norway) have already ratified

the Protocol and a number of other States have indicated that they expect to ratify the Supplementary Fund Protocol by the end of 2004. The Protocol is likely to enter into force early in 2005 and the first Assembly of the Supplementary Fund will have to be held within 30 days of the entry into force.

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. The non-submission of oil reports by 29 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. During the discussion, it was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1992 Fund Convention. It was also suggested that States that did not fulfil their duties had no rights.

Winding up of the 1971 Fund

Although the 1971 Fund Convention ceased to be in force on 24 May 2002, the 1971 Fund cannot be wound up until it has settled all claims arising from outstanding incidents.

It is anticipated that by the end of 2005, there would only be outstanding compensation and indemnification claims in respect of the *Nissos Amorgos* incident (Venezuela, 1997) and, possibly, in respect of the *Iliad* (Greece, 1993), *Pontoon 300* (United Arab Emirates, 1998) and *Alambra* (Estonia, 2000) incidents. The 1971 Fund might however still be involved in recourse proceedings concerning the *Vistabella* (Caribbean, 1991), *Pontoon 300*, *Al Jaziah 1* (United Arab Emirates, 2000) and *Nissos Amorgos* incidents.

Budgetary decisions

A joint administrative budget for the 1992 and 1971 Funds of £3 372 600 was adopted for 2005.

Contributions

The 1971 Fund and the 1992 Fund each have a General Fund to pay administrative expenses and compensation claims up to a specific amount per incident. They also have Major Claims Funds to pay compensation claims above that amount. The governing bodies decided to levy contributions to certain Funds and repay to contributors surpluses on five Major Claims Funds. The decisions on the levy of contributions and reimbursements to contributors are summarised below.

	For payment by/ reimbursement on 1 March 2005 £
<u>1992 Fund</u>	
General Fund	5 400 000
<i>Prestige</i>	33 000 000
<i>Nakhodka</i> (reimbursement)	-600 000
TOTAL	37 800 000
<u>1971 Fund</u>	
<i>Aegean Sea</i> (reimbursement)	-800 000
<i>Keumdong N°5</i> (reimbursement)	-8 100 000
<i>Sea Empress</i> (reimbursement)	-350 000
<i>Nakhodka</i> (reimbursement)	-400 000
TOTAL	-9 650 000

The Administrative Council decided that reimbursement from surpluses on the Major Claims Funds referred to above (after offset had been made against any arrears) to contributors in those States which have any oil reports outstanding should be postponed until all such reports have been submitted.

HNS Convention

The Director 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 preparations should be based on the assumption that the HNS Fund will have a joint Secretariat with the IOPC Funds and be based in London.

The Fund Secretariat has completed the development of a computerised system to assist with the identification and reporting of contributing cargo under the HNS Convention. The final system will be circulated shortly in the form of a CD-ROM containing software for installation on a user's personal computer. The Secretariat will also set up a dedicated website for the system, which several States indicated would be crucial to their preparations for ratification of the Convention.

Various incidents

Prestige (Spain, 2002)

It is estimated that the losses in respect of the *Prestige* incident, which affected Spain, France and Portugal, could total €1 038 million (£700 million) which greatly exceeds the amount of compensation available, €71.5 million (£121 million). For this reason the Executive Committee decided in May 2003 that the 1992 Fund's payments should be limited to 15% of the loss or damage actually suffered by the respective claimants. In view of the figures provided in October 2004 by the Governments of the three States concerned and the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain this level of payments.

The Spanish Government has so far submitted claims totalling €13.8 million (£357 million). Based on a provisional assessment, in December 2003 the 1992 Fund paid a total of €7 555 000 (£39.9 million) to the Spanish Government which has been used by the Government to pay compensation to claimants. It is expected that the Spanish Government will shortly submit an additional claim for €120 million (£81 million).

The French Government has submitted a claim for €7.5 million (£45 million) in relation to the costs incurred for clean-up and preventive measures, and this claim is being assessed.

The Portuguese Government has submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures in Portugal and this claim is also being assessed.

The Spanish Government made a presentation to the Executive Committee on the operation to remove the remaining oil from the wreck of the *Prestige*. The work commenced in May 2004 and was finalised in September 2004 at an estimated cost of some €100 million (£68 million).

The Governments of the Fund Member States have taken a policy decision that the Fund should, in respect of any oil pollution incident, endeavour to recover from third parties the amounts it has paid in compensation for pollution damage.

In the case of the *Prestige*, the 1992 Fund has so far not been able to obtain any detailed information as to the cause of the incident since the investigations carried out in Spain and France have not been completed. However, Spain and the Basque Region have taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before a Court in New York. The Executive Committee therefore considered whether the Fund should also pursue recourse action against ABS, and if so, in which jurisdiction, namely the United States where ABS is incorporated or in Spain where the major part of the pollution damage occurred.

After having considered the implications and costs associated with legal action in the United States and Spain, the Executive Committee decided that the Fund should not take recourse action against ABS in the United States. It further decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident are available.

Erika (France, 1999)

The total claims arising out of this incident by far exceeded the amount of compensation available, some €185 million or £126 million. In order to enable the 1992 Fund to make substantial payments to claimants, the French Government and the French oil company TotalFinaElf undertook to pursue their claims only if and to the extent that all other claimants were compensated in full, the claim by TotalFinaElf to rank after the Government's claim. Initially, as a result of the uncertainty as to the total amount of the admissible claims, the Fund had to limit its payments to a certain percentage of the loss or damage actually suffered by the respective claimants. However, as that uncertainty diminished, the level of payments for claimants other than the French Government and TotalFinaElf was increased to 100% in April 2003.

The Executive Committee has previously authorised the Director to make payments in respect of the French Government's claim to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims. On 29 December 2003, the 1992 Fund paid €10 106 004 (£6 973 146) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments made by the Government to claimants in the tourism sector.

In light of developments during 2004, the Director decided that there was sufficient margin to enable the 1992 Fund to make a further payment to the French State. As a result, on 14 October 2004, an amount of €964 338 (£4 145 215) was paid to the French State relating to the Government's supplementary payments to claimants in the fishery, mariculture, oyster farming and salt producing sectors.

Dolly (Caribbean, 1999)

The *Dolly* sank in 20 metres depth in Robert Bay (Martinique), while carrying some 200 tonnes of bitumen and so far no cargo has escaped. However, since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by bitumen.

Subsequently, the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally FF1.2 million or €232 000 (£151 000) in respect of the costs of removing the bunker oil from the *Dolly* indicating that further costs will be claimed in respect of the removal of the wreck and cargo.

The French authorities informed the 1992 Fund that a contract to remove the tanks containing the bitumen from the wreck had been awarded to a consortium comprising a French diving company and the managers of a yacht marina in Martinique. The operations commenced in late October 2004.

Nissos Amorgos (Venezuela, 1997)

The total amount of the claims assessed for this incident exceeded the amount of compensation available under the 1971 Fund Convention, 60 million SDR (£49 million). In view of the uncertainty as to the total amount of claims, the 1971 Fund Administrative Council had decided to limit payments to 65% of the loss or damage actually suffered by each claimant.

Following the decision by the Republic of Venezuela to 'stand last in the queue', ie that the Government undertook not to seek payment for its claims for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention until all other admissible claims had been paid in full, the 1971 Fund Administrative Council at its May 2004 session authorised the Director to increase the level of payments to 100% of the established claims. As a result, a payment of US\$5.6 million was made by the 1971 Fund to the shrimp fishermen and processors of Lake Maracaibo.

Future meetings

The following meetings have been scheduled for 2005.

Week of 28 February

1992 Fund Executive Committee
1971 Fund Administrative Council
1992 Fund 3rd intersessional Working Group

Week of 31 May

1992 Fund Executive Committee
1971 Fund Administrative Council

Week of 17 October

1992 Fund Assembly
1992 Fund Executive Committee
1971 Fund Administrative Council

It is expected that the first Assembly of the Supplementary Fund will be held in spring 2005, concurrently with extra meetings of the 1992 Fund Assembly and the 1971 Fund Administrative Council. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.