



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 1999 sessions of the governing bodies - In brief

29 October 1999

Five sessions in one week

During the week of 18-22 October 1999 the International Oil Pollution Compensation Funds 1992 and 1971 (IOPC Funds) held five different meetings: the Assemblies of the 1992 Fund and the 1971 Fund and the Executive Committees of the 1992 Fund (twice) and the 1971 Fund.

For the second year running the 1971 Fund Assembly did not achieve a quorum, since only 17 of the 45 Member States were present at the required time. As a result, the items on the agenda of the Assembly had to be dealt with by the Executive Committee of the 1971 Fund. By October next year it will be impossible for the Committee to achieve a quorum. A newly created body called the Administrative Council will then become the governing body of the 1971 Fund.

Status of Conventions

Instruments of accession to the 1992 Fund Convention have been deposited by 46 States. Meanwhile, the number of 1971 Fund Member States will have fallen to 39 by October 2000 as a result of further denunciations of the 1971 Fund Convention. The most significant development is that Italy will become a Member of the 1992 Fund in September 2000, leaving the 1971 Fund on 8 October 2000.

Effects of Italy's leaving the 1971 Fund

The 1971 and 1992 Funds are financed by contributions levied on those who receive more than 150 000 tonnes of crude oil and heavy fuel oil ('contributing oil') after sea transport in a Member State in a given year. The levy per tonne of contributing oil received is based on the total quantity of contributing oil received in all Member States. When Italy leaves the 1971 Fund next October, the total quantity of contributing oil received in all Member States will fall from 250 million tonnes to 100 million tonnes. As a result, contributors in remaining 1971 Fund Member States will pay a much greater share of the compensation in any future incident in a 1971 Fund State.

As more States leave the 1971 Fund, the Organisation's difficulties in functioning can only get worse. Several delegations feared a situation in which an incident would occur and the 1971 Fund had an obligation to pay compensation to victims, but where there were no contributors in the remaining Member States.

Winding up of the 1971 Fund

The 1971 Fund Convention states that the Convention will not cease to be in force until there are only two Member States left in the 1971 Fund. Considerable efforts are being made to encourage the remaining 1971 Fund Member States to denounce the 1971 Fund Convention and to accede to the 1992 Protocols to the 1969 Civil Liability Convention and 1971 Fund Convention. As it is unlikely that such steps alone will result in the number of Member States falling to two, Member States considered other approaches. The discussions were based on detailed studies by two eminent experts in public international law: Dr Thomas Mensah and Sir Arthur Watts KCMG QC.

The preferred approach of delegations was to amend the 1971 Fund Convention so as to allow the Convention to terminate sooner. The Director was instructed to request the Secretary-General of the International Maritime Organization (IMO) to convene a Diplomatic Conference to adopt a Protocol amending the Convention. The Executive Committee considered that there should be two criteria on which the Convention ceased to be in force: the number of Member States falling below a certain level or the total quantity of contributing oil received in the remaining Member States falling below a certain level, whichever was the earlier. The text of a draft Protocol was approved using these criteria. Two options for the entry into force of the Protocol were included in the draft text, one based on a tacit amendment procedure (ie a State which does not lodge opposition is deemed to have accepted the amendment) and one on the traditional explicit acceptance procedure.

Following comments from the 1971 Fund's External Auditor, the Director will be studying various issues relating to the liquidation of the 1971 Fund and will report back to the Executive Committee at its April 2000 session.

Non-submission of oil reports

An important obligation of a Fund Member State is to submit annually a report 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 considerably better as regards the 1992 Fund, where only three Member States have reports outstanding.

The non-submission of oil reports by a number of States was considered to be 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 for contributions.

Report of the 2nd Intersessional Working Group's consideration of the definition of 'ship'

The Working Group was held during the week of 26 April 1999. The Group concluded that (i) offshore craft should be regarded as 'ships' under the 1992 Conventions only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate and (ii) offshore craft would fall outside the scope of the 1992 Conventions when they leave an offshore oil field for operational reasons or simply to avoid bad weather. The 1992 Fund Assembly endorsed these conclusions and emphasised that the decision of whether the 1992 Conventions applied to a specific incident would be taken in the light of the particular circumstances of that case.

The Working Group is to be 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'.

Website

The Director announced that the IOPC Funds' website had opened at the following address:

<http://www.iopcfund.org>

The IOPC Funds' News Briefings are included in the web site.

Re-appointment of the Director

The present Director, Mr Måns Jacobsson, was re-appointed for a further term of office of five years as Director of the 1971 Fund and of the 1992 Fund.

Relocation of the IOPC Funds' offices

Due to the growth of the IOPC Funds' Secretariat and the lack of extra space within its existing premises in the IMO building, it has been decided that the Secretariat will have to relocate. Subject to negotiations with a

prospective landlord being successfully completed, it is hoped that the Secretariat will move some time during the spring of 2000.

Budgetary decisions

A joint administrative budget for the 1971 and 1992 Funds of £3 225 040 was adopted for 2000.

The 1992 Fund's working capital was increased from £12 million to £15 million, but the 1971 Fund's was maintained at £5 million.

The 1992 Fund Assembly decided to levy contributions totalling a net of £9.3 million, £3.7 million to be credited on 1 March 2000 and a deferred levy of £13 million to be made in the second half of 2000. For the 1971 Fund, the contributions were fixed at a net total of £5.8 million, £3.8 million to be paid by 1 March 2000 and the remainder deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment later in 2000, if and to the extent required.

Various incidents

Haven (Italy, 1991)

An agreement on a global settlement of all outstanding issues was signed on 4 March 1999 by the Italian State, the shipowner, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund.

As regards the 1971 Fund the agreement was based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million Special Drawing Rights (SDR). The amount paid by the 1971 Fund did not relate to environmental damage. The shipowner/UK Club made a payment to the Italian State on an *ex gratia* basis and without admission of liability of any party to the extent that the payment exceeded the shipowner's limitation amount under the 1969 Civil Liability Convention.

All legal actions in the Italian courts have been withdrawn. In May 1999 the 1971 Fund paid Lit 70 000 million (£25.5 million) to the Italian State and the UK Club paid Lit 47.6 million (£17.3 million). In addition the Fund paid the outstanding amounts to the French State (FFr12.6 million or £1.3 million) and the Principality of Monaco (FFr270 000 or £29 000) in respect of their claims, as well as indemnification of £2.5 million to the UK Club.

Aegean Sea (Spain, 1992)

Claims have been paid for a total amount of £7.7 million. Payments are limited for the time being to 40% of the agreed losses. The Court of Appeal in La Coruña has awarded specific amounts of compensation in respect of certain claims. However, the Court considered the evidence presented by a number of claimants to be insufficient to substantiate the amount of the losses suffered, and these claimants have to prove their losses in further court proceedings.

Further claims by various claimants in the mariculture sector have been brought in the civil court. The question has arisen whether these claims are time-barred.

In September 1999 the Spanish Government made available to the 1971 Fund a study carried out by the Instituto Español de Oceanografía containing an assessment of the losses suffered by the majority of the claimants in the fishery and mariculture sectors.

Differences of opinion remain between the Spanish State and the 1971 Fund in respect of the distribution of liability between the State and the shipowner/P & I insurer/1971 Fund. An agreement (similar to one signed in June 1998) between the Spanish State and the 1971 Fund was signed in June 1999 by the Spanish Ambassador in London and the Director. Under this agreement the Spanish State undertook not to invoke time bar if the competent bodies of the Fund were to decide to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund, provided that such an action was taken before 12 June 2000.

The 1971 Fund will focus its efforts on an examination of the documentation presented by the Spanish Government in support of the claims in the fishery and mariculture sectors, the distribution of liabilities between the Spanish State and the shipowner/P & I insurer/1971 Fund and the legal issue relating to time bar. In addition the 1971 Fund will pursue its discussions with the Spanish Government with the objective of reaching a global agreement settling all outstanding issues.

Braer (United Kingdom, 1993)

Further payments of compensation by the 1971 Fund remain suspended as a result of the total claims presented exceeding the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

Claims being pursued in court have decreased from £80 million to £34 million as a result of having been settled, reduced or withdrawn or having been rejected by the Courts.

In view of the reduced amounts of the claims in court, the Executive Committee authorised the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings and the claims which had been approved but not paid fell below £20 million. The Committee decided that the proportion of the approved amounts to be paid should be decided by the Director on the basis of the total amount of all outstanding claims.

Sea Empress (United Kingdom, 1996)

A claim by a county fire brigade for expenses incurred in providing fire fighting services during the salvage operations was considered. The 1971 Fund Executive Committee decided that the fire brigade's operations had a dual purpose, ie both to prevent pollution damage and to protect the life of personnel involved in salvage operations. For this reason the Committee took the view that the costs of these operations should be apportioned equally between pollution prevention and other activities. Any similar claims presented in the future to the Funds will be considered on a case by case basis, taking into account the particular circumstances of each operation.

The Committee decided that the 1971 Fund should take recourse action against the Milford Haven Port Authority (MHPA). The basis for the action will be that MHPA, as a harbour authority and a pilotage authority, was in breach of both common law and statutory duties (under the Milford Haven Conservancy Act 1983 and the Pilotage Act 1987). In the view of the 1971 Fund's legal and technical advisers, the standards of training and authorisation of pilots at Milford Haven, as well as the system for the classification of vessels for the purpose of allocation of pilots, were inadequate and it was likely that this particular pilot's limited experience in piloting tankers of the size of the *Sea Empress* lead to his having committed an error which caused the grounding.

Nakhodka (Japan, 1997)

Claims totalling £204 million have been presented. Provisional payments of £38.8 million have been made by the 1971 Fund. Both the 1971 Fund Convention and the 1992 Fund Convention apply to this incident. The total amount of compensation available is therefore some £110 million. As the total amount of claims arising from the incident remains uncertain, the level of the 1971 and 1992 Funds' payments has been maintained at 60% of the proven losses.

Having considered the investigations into the cause of the incident carried out by the Japanese and Russian authorities, the Executive Committees of the 1971 Fund and the 1992 Fund took the view that the *Nakhodka* was unseaworthy at the time of the incident and that the defects which caused the ship to be unseaworthy were causative to the incident. The Committees also took the view that the shipowner was or at least should have been aware of the defects that caused the ship to be unseaworthy, that the incident was therefore caused by the fault or privity of the shipowner and that consequently, under the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability. It was confirmed that the 1969 Civil Liability Convention applied and not the 1992 Civil Liability Convention.

The Committees decided that the IOPC Funds should take recourse action against the shipowner (Prisco Traffic Limited), against Primorsk Shipping Corporation (the parent company of Prisco Traffic Limited), the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the UK Club) and the Russian Maritime Register of Shipping.

Mary Anne (Philippines, 1999)

The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.5 million), and it is unlikely that the total amount of the established claims will exceed the maximum amount of compensation available under the 1992 Civil Liability Convention which is applicable in this case. However, the shipowner's insurer, Terra Nova Insurance Company Limited (Terra Nova), has informed the 1992 Fund that it is investigating a number of apparent anomalies surrounding the incident which, if substantiated, could, in Terra Nova's view, put the shipowner in breach of the insurance policy in respect of the vessel. Although it is understood that the investigations are not yet complete, Terra Nova has also informed the 1992 Fund that it might request reimbursement from the shipowner and/or the 1992 Fund of the amounts it has paid to claimants.

Laura d'Amato (Australia, 1999)

The shipowner's insurer has estimated that claims for clean-up costs, associated claims in respect of oiled vessels and claims for loss of income incurred by public venues will be in the region of US\$2.8 million (£1.8 million). Since the limitation amount applicable to the *Laura d'Amato* is 24 million SDR (£20 million), it is highly unlikely that the 1992 Fund will be called upon to pay any compensation as a result of this incident.