



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

FONDOS INTERNACIONALES
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS
DE 1971 Y 1992

PRESS NOTE

1971 FUND CONVENTION TO TERMINATE

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One of the two original components of the worldwide regime for compensating victims of oil pollution damage will soon become history. The 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention) will cease to be in force on 24 May 2002.

The international compensation regime

The international compensation regime for oil pollution damage was based initially on two Conventions: the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 Fund Convention. Under these Conventions, compensation payable for an incident involving a spill of persistent oil from a tanker is limited to an aggregate of 60 million Special Drawing Rights (SDR) (about £52 million or US\$76 million).

This 'old' regime was amended in 1992 by two Protocols. The amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996. The maximum amount of compensation payable under the 1992 Conventions is significantly greater than under the original Conventions, at 135 million SDR (about £118 million or US\$172 million), and the scope of application is wider.

The regimes set up by the two Fund Conventions are administered by two intergovernmental organisations set up by States, the International Oil Pollution Compensation Funds 1971 and 1992 respectively, together known as the IOPC Funds.

The 1971 Fund Convention ceases to be in force

Måns Jacobsson, Director of the IOPC Funds, says: "As States have left the 1971 Fund to join the 1992 Fund, the 'old' regime has lost its importance. Moreover, by the end of last year, the total quantity of oil on which contributions to the 1971 Fund are levied had fallen from its maximum of 1 200 million tonnes to just 8 million tonnes. This reduction threatened to increase significantly the financial burden on contributors in the remaining 1971 Fund Member States. There was also considerable concern that, whilst the 1971 Fund Convention remained in force, the 1971 Fund might not be able to meet its obligations to pay compensation to victims in the event of new incidents. Steps were therefore taken to terminate the 1971 Fund Convention."

The 1971 Fund Convention, as originally drafted, would have remained in force until the number of Contracting States fell below three. However, in October 1999, the 1971 Fund's governing body noted that it was unlikely that the number of Contracting States would fall to this level in the foreseeable future and requested the International Maritime Organization (IMO) to convene a Diplomatic Conference to adopt a Protocol to amend this requirement. Accordingly, at a Diplomatic Conference held in September 2000, a Protocol was adopted under which the 1971 Fund Convention would cease to be in force when the number of Contracting States fell below 25. Due to recent denunciations of the 1971 Fund Convention, the number of

Contracting States will fall below 25 on 24 May 2002. The Convention will therefore cease to be in force on that date and will not apply to incidents occurring thereafter.

Måns Jacobsson adds: "I would strongly urge the remaining 18 1971 Fund Member States which have not yet ratified the 1992 Conventions to do so as quickly as possible, as they will be without protection (except for that provided by the shipowner and his insurer under the 1969 Civil Liability Convention) in the event of an oil spill after 24 May 2002. By ratifying the 1992 Conventions, they will also be able to benefit from the higher amount of compensation available under these Conventions."

The termination of the 1971 Fund Convention will not result in the liquidation of the 1971 Fund, which will still have to meet its obligations in respect of pending compensation claims arising from incidents occurring before the Convention ceases to be in force - a process which will be carried out under the control of its Administrative Council and is likely to take several years.

Incidents involving the IOPC Funds

Since its establishment in 1978, the 1971 Fund has been involved in 107 incidents. The 1971 Fund has paid over £283 million or US\$413 million in compensation. So far the 1992 Fund has been involved in 15 incidents and has made compensation payments totalling £61million or US\$88 million.

In the great majority of these incidents, all claims have been settled out of court. So far, court actions against the IOPC Funds have been taken in respect of only seven incidents and in the majority of these cases only in respect of a limited number of claims.

The most serious oil pollution incidents dealt with by the Funds since 1990 are: *Haven* (Italy 1991), *Aegean Sea* (Spain, 1992), *Braer* (United Kingdom, 1993), *Sea Prince* (Republic of Korea, 1995), *Sea Empress* (United Kingdom, 1996), *Nakhodka* (Japan, 1997), *Nissos Amorgos* (Venezuela, 1997), *Evoikos* (Singapore, Malaysia and Indonesia, 1997), *Pontoon 300* (United Arab Emirates, 1998), *Erika* (France, 1999) and *Baltic Carrier* (Denmark and Sweden, 2001).

The future of the international compensation regime

The number of 1992 Fund Member States is still continuing to grow, reaching 77 by May 2003, and the membership now includes many States which were not previously members of the 1971 Fund. It is expected that many more States will become Members of the 1992 Fund in the near future.

In October 2000, following representations by a number of 1992 Fund Member States, the IMO's Legal Committee adopted two Resolutions increasing the limits in the 1992 Civil Liability and 1992 Fund Conventions by some 50%. The new limits will apply from 1 November 2003 and will increase the total amount available under the 1992 Conventions to 203 million SDR (£177 million or \$257 million).

Since 2000, a 1992 Fund Working Group has been considering the need for and the possibilities of improving the international compensation system.

The Working Group has developed a Protocol to the 1992 Fund Convention which would establish a Supplementary Fund to provide compensation over and above the compensation available under the 1992 Fund Convention, with the aim of ensuring that full compensation can be paid to victims in even the most serious oil spill incidents. The Supplementary Fund would only pay compensation for pollution damage in those States which ratified the Protocol. The proposed Supplementary Fund would be financed by oil receivers in the same way as the 1992 Fund, ie on the basis of the quantities of oil received in the States which ratified the proposed Protocol. The Protocol would be optional so that States would decide whether to ratify it or just to stay within the 1992 system. A Diplomatic Conference will be held under the auspices of IMO from 12 to 16 May 2003 to consider the proposed Protocol.

The International Group of P & I Clubs, with the support of shipowners, has developed a proposal for a voluntary increase in the limit of liability for small ships under the 1992 Civil Liability Convention which

would apply only to pollution damage in the States which ratified the proposed Supplementary Fund Protocol. The precise level of the increase has not yet been decided but a figure of 20 million SDR (£17 million or \$25 million) is being considered.

The Working Group has also considered the need for clarification of the criteria for the admissibility of claims for the costs of measures to reinstate the environment and the costs of post-spill environmental studies. The Working Group agreed a revised text of the relevant section of the 1992 Fund Claims Manual to be submitted to the Assembly for consideration at its October 2002 session.

The Working Group will meet again early in 2003 to consider a number of issues, including whether amendments should be made to the provisions in the 1992 Civil Liability Convention concerning shipowner's liability and related issues, bearing in mind that this could only be done by means of amendments to that Convention.

Måns Jacobsson says "These developments in the international compensation regime are of great importance as it is essential to ensure that the regime continues to meet the needs of society."

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Notes for Editors :

1) The international regime for compensation of victims of oil pollution damage was originally based on two international Conventions, the International Convention on Civil Liability for Oil Pollution Damage, 1969 ("1969 Civil Liability Convention") and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 ("1971 Fund Convention"). This old regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention.

2) The above-mentioned Conventions were established with the aim of ensuring prompt payment of compensation after an oil spill without the need for victims to prove any negligence.

3) The Civil Liability Conventions therefore impose strict liability (liability without fault) for pollution damage upon the shipowner. The shipowner is normally entitled to limit his liability to an amount calculated by reference to the tonnage of his ship and is required to insure against that liability up to that limit.

4) The insurance for the shipowner's oil pollution liability is normally given by one of the protection and indemnity associations (P & I Clubs) which are mutuals. Most of them belong to the International Group of P & I Clubs.

5) The International Oil Pollution Compensation Funds (IOPC Funds) are intergovernmental organisations set up by States. The Funds' purpose is to provide supplementary compensation in cases where the amount payable by the shipowner or his insurer is insufficient to provide full compensation to the victims of oil pollution damage.

6) The 1971 Fund is governed by an Administrative Council composed of all States which at any time were Members of the 1971 Fund. The 1992 Fund has an Assembly, composed of all Member States, and an Executive Committee composed of 15 States elected by the Assembly.

7) The IOPC Funds are funded by contributions from receivers of crude oil or heavy fuel oil in Member States after sea transport. The contributions are determined by the governing bodies.

8) The currency unit in the Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. At 15 May 2002, 1 SDR corresponded to £0.87 or US\$1.27.

Table: Maximum amounts of compensation available under the Civil Liability and Fund Conventions for various sizes of tanker

Gross tonnage ^{<1>}	1969 Civil Liability Convention			1971 Fund Convention ^{<2>}			1992 Civil Liability Convention			1992 Fund Convention ^{<2>}		
	SDR (mill.)	£ (mill.)	\$ (mill.)	SDR (mill.)	£ (mill.)	\$ (mill.)	SDR (mill.)	£ (mill.)	\$ (mill.)	SDR (mill.)	£ (mill.)	\$ (mill.)
5 000	0.6	0.5	0.8	60	52	76	3.0	2.6	3.8	135	118	172
25 000	3.0	2.6	3.8	60	52	76	11.4	10.0	14.5	135	118	172
50 000	6.0	5.2	7.6	60	52	76	21.9	19.1	27.8	135	118	172
100 000	12.0	10.5	15.2	60	52	76	42.9	37.5	54.5	135	118	172
117 000	14.0	12.2	17.8	60	52	76	50.0	43.7	63.6	135	118	172
140 000	14.0	12.2	17.8	60	52	76	59.7	52.1	75.9	135	118	172
160 000	14.0	12.2	17.8	60	52	76	59.7	52.1	75.9	135	118	172

^{<1>} The maximum amount of compensation available under the 1992 Civil Liability Convention is based on the gross tonnage of the tanker. The maximum amount available under the 1969 Civil Liability Convention is based on a different tonnage measurement, which, for the purposes of this table, has been assumed to be 90% of the gross tonnage of the tanker.

^{<2>} Including the amounts actually paid by the shipowner or his insurer under the applicable Civil Liability Convention.