



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

FONDS INTERNATIONAUX
D'INDEMNISATION POUR
LES DOMMAGES DUS À LA
POLLUTION PAR LES
HYDROCARBURES

FONDOS INTERNACIONALES
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A
CONTAMINACIÓN POR
HIDROCARBUROS

The February 2006 sessions of the governing bodies - In brief

6 March 2006

From 27 February to 2 March 2006, the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held a number of meetings. The 1992 Fund held an extraordinary session of its Assembly, which deals with administrative matters and issues of principle. The 1992 Fund also held a meeting of its Executive Committee, which considers individual incidents. The Supplementary Fund held an extraordinary session of its Assembly and the 1971 Fund held a meeting of its Administrative Council, both of which dealt with administrative matters and incidents.

Status of Conventions

The 1992 Fund now has 93 Member States and an additional five States have deposited instruments of accession, which will bring the total to 98 by the end of 2006. The Supplementary Fund now has 15 Member States and two additional States (Slovenia and Croatia) have deposited instruments of accession, which will bring the total to 17 by 3 June 2006. A number of other States have indicated that they expect to ratify the Supplementary Fund Protocol by the summer of 2006. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

Establishment of a Working Group of the 1992 Fund on non-technical measures to promote quality shipping for carriage of oil by sea

At the October 2005 session of the 1992 Fund Assembly, a majority of delegations had supported in principle the idea of setting up a working group to consider economic measures to promote quality shipping and the Assembly had decided that the next step would be to develop draft terms of reference for such a working group.

The 1992 Fund Assembly therefore considered, at its February 2006 session, draft terms of reference for a new working group and, after lengthy discussions, decided to establish a Working Group on non-technical measures to promote quality shipping for carriage of oil by sea and also agreed the Group's terms of reference.

It was decided that the Working Group would be open to all governments, inter-governmental and non-governmental organisations, which have the right to participate in the 1992 Fund Assembly. Both State representatives and representatives from the industry, eg representatives from shipowners, oil importers, insurance companies and classification societies will be encouraged to participate in the work. Particular emphasis was placed on the participation of the International Maritime Organization (IMO). Specifically, the Working Group will consider non-technical measures and guidelines falling under the responsibility of Contracting States as well as industry procedures and practices. It was emphasised that the Working Group should not stray into the areas of competence of IMO. It was also stressed that the Working Group should not consider issues that would require any reopening of discussions regarding a revision of the 1992 Conventions.

STOPIA and TOPIA

At the 1992 Fund Assembly's March 2005 session, the International Group of P&I Clubs had offered to increase, on a voluntary basis, the limitation amount for small tankers under the 1992 Civil Liability Convention by means of an agreement to be known as the Small Tankers Oil Pollution Indemnification Agreement (STOPIA). STOPIA, which applies to pollution damage in a State for which the Supplementary Fund Protocol is in force, is a contract between owners of small tankers. It applies to all ships insured by one of the P&I Clubs that are members of the International Group of such Clubs and reinsured through the Group's pooling arrangement. The agreement came into force on 3 March 2005, ie the date of the entry into force of the Supplementary Fund Protocol.

At the Assembly's October 2005 session, the International Group of P&I Clubs made another proposal, whereby it would extend STOPIA to all States parties to the 1992 Civil Liability Convention as well as establish a second agreement to be known as the Tanker Oil Pollution Indemnification Agreement (TOPIA) through which the Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by that Fund. The Assembly instructed the Director to collaborate with the International Group of P&I Clubs, acting on behalf of the shipping industry, and the Oil Companies International Marine Forum (OCIMF) before the voluntary agreement package was submitted to the Assembly for consideration at its next session and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

At its February 2006 session, the 1992 Fund Assembly noted that the Director had facilitated meetings between the International Group of P&I Clubs and OCIMF, and that as a result of these meetings, the International Group had developed a revised STOPIA, to be referred to as Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006), and a second agreement, the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006). The agreements entered into force on 20 February 2006.

The main substantive difference between the original STOPIA and STOPIA 2006 is that the former only applied to pollution damage in Supplementary Fund Member States, whereas the new agreement applies also to pollution damage in all other 1992 Fund Member States.

Under TOPIA 2006, the Supplementary Fund is entitled to indemnification by the shipowner of 50% of the compensation payments it has made to claimants if the incident involved a ship covered by the agreement.

The 1992 Fund and the Supplementary Fund would in respect of incidents covered by STOPIA 2006 and TOPIA 2006 continue to be liable to compensate claimants in accordance with the 1992 Fund Convention and the Supplementary Fund Protocol respectively. The Funds would then be indemnified by the shipowner in accordance with STOPIA 2006 and TOPIA 2006.

STOPIA 2006 and TOPIA 2006 also provide that a review should be carried out after 10 years of the experience of pollution damage claims during the period 2006-2016, and thereafter at five-year intervals, in consultation with representatives of oil receivers and the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers and consider the efficiency, operation and performance of the agreements. The agreements further provide that, if the review were to reveal that either shipowners or oil receivers had borne a proportion exceeding 60% of the overall costs of such claims, measures would be taken for the purpose of maintaining an approximately equal apportionment.

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 Secretariat intends to organise a further Workshop on the HNS Convention, focussing on more practical aspects of the implementation of the HNS Convention, in conjunction with the next session of the 1992 Fund Executive Committee, to be held during the week beginning 22 May 2006.

Incidents

Erika (France, 1999)

The total claims arising out of this incident by far exceeded the amount of compensation available, some €185 million or £127 million. In order to enable the 1992 Fund to make substantial payments to claimants, the French Government and the French oil company Total SA undertook to pursue their claims only if and to

the extent that all other claimants were compensated in full, the claim by Total SA 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 Total SA was increased to 100% in April 2003.

In December 2003 the Director had decided that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State and the Fund had initially paid €10.1 million (£7.0 million), corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector. In October 2004 a further payment of €6.0 million (£4.2 million) was made relating to the French Government's supplementary payments made under a scheme set up to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors. In December 2005 the 1992 Fund made a payment on account to the French State of €15 million (£10.3 million) towards the costs incurred by the French authorities in the clean-up response.

The total claim by the French State in respect of costs incurred by French authorities in the clean-up response is for €178.8 million (£122 million). Since the maximum amount likely to be available for payment to the French State after all other claims (other than that of Total SA) had been settled and paid is some €65 million (£45 million), the Director had sought a pragmatic way of assessing the French State's claim in order to determine the lowest conceivable admissible amount.

The Executive Committee noted that, based on a broad assessment of the three major components of the Government's claim, the minimum total admissible amount was estimated at some €81 million (£55.5 million), well in excess of the maximum amount that was likely to be available. Whilst a full assessment of the claim by the French State would inevitably result in the admissible amount increasing substantially, in the Director's view such a full assessment would not be justified given the enormous amount of time that would be required to complete the work and the limited amount of money that would be available to pay the claim.

The Executive Committee gave its unanimous support for the Director's approach to the assessment of the French State's claim for clean-up costs, although it was recognised that this would be without prejudice to the French Government's position in any recourse action against third parties.

Prestige (Spain, 2002)

Removing of the oil from the wreck

At its October 2005 session, the Executive Committee considered whether a claim for €109 million (£75 million) by the Spanish Government relating to the cost of the operation to remove oil from the wreck of the *Prestige* was admissible in accordance with the 1992 Fund's criteria.

The *Prestige* had broken in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. Following extensive studies and trials the decision was taken by the Spanish Government to remove as much cargo as possible using aluminium shuttle containers, which were lowered down to the wreck and then filled with oil by gravity through holes cut in the wreck's cargo tanks. Using this procedure some 13 000 tonnes of oil was successfully removed from the forepart, following which nutrients were added to the cargo tanks to promote the biodegradation of the remaining residues.

In the light of the findings of two separate studies (see Annexes I and II to document 92FUND/EXC.30/9/2) on the technical reasonableness of the operation, one commissioned by the Director and the other by the Spanish Government, the Director expressed the view at the October 2005 session that the oil remaining in the wreck did not pose a significant pollution threat and that the costs of the operation were disproportionate to any potential economic and environmental consequences of leaving the oil where it was. He had therefore concluded that the claim did not fulfil the Funds' admissibility criteria.

Some delegations had disagreed with the Director's conclusions, since in their view, it was not possible to predict with any certainty what the outcome of leaving the oil in the wreck would have been, and it would have

been difficult for any government to resist the pressure from the public to ensure that the risk was eliminated or for it not to comply with various United Nations Conventions on protecting the environment.

Other delegations had agreed with the Director that the claim did not fulfil the Funds' admissibility criteria, making the point that if the decision to remove the oil was based on potential social, non-economic effects, these could not be taken into account when assessing the admissibility of the claim. However, some of those delegations made the point that some of the costs of studies and surveys may have been reasonable up to the point when the actual cost of the oil removal operation was known and therefore recommended carrying out assessments of the different elements of the claim to see if some were admissible.

The Committee decided in October 2005 to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all elements of the claim with a view to identifying possible admissible items for consideration by the Committee.

During this examination, the total costs of the oil removal operation of €109.2 million (£74.4 million) were broken down into two main parts, namely the costs incurred in 2003 totalling €33.1 million (£22.6 million) and those incurred in 2004 totalling €76.1 million (£51.9 million). The 2003 costs related to further operations to seal the oil leaking from the wreck and various studies into the feasibility of recovering oil from the cargo tanks as well as work preparatory to the commencement of the recovery operation. Costs incurred in 2004 related to the actual oil removal operation and the addition of nutrients to the fore part of the wreck.

In December 2003 and March 2005 the European Commission made concessions of aid to the Spanish Government of €27.1 million (£18.5 million) in respect of the costs incurred in 2003 and €56.8 million (£38.7 million) in respect of costs incurred in 2004. Because of the amounts awarded by the European Commission, the Spanish Government reduced its claim in February 2006 to €24.2 million (£16.5 million).

During discussions at the Executive Committee's February 2006 session, most delegations that intervened expressed the view that, on the basis of the Funds' existing admissibility criteria, and in the interest of applying those criteria in a uniform way, the claim for the costs incurred by the Spanish Government in 2004 for the removal of the oil from the wreck was inadmissible. However, some delegations considered that it was important that the Funds were prepared to deal with similar claims in the future in a more flexible manner. To that end, those delegations expressed the view that the Director should be instructed to examine the existing admissibility criteria in respect of preventive measures and to submit to the Assembly detailed proposals for clarifying the criteria within the framework of the existing Conventions.

In the light of the Director's analysis of all the elements of the claim, the Executive Committee decided that some of the costs incurred in 2003 relating to the additional sealing of leaks emanating from the wreck and various surveys and studies were admissible in principle, but that the costs incurred in 2004 relating to the actual removal of the oil from the wreck were inadmissible for compensation under the 1992 Fund's criteria.

The Executive Committee instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the 1992 Fund Assembly at its October 2006 session to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions.

N^o7 Kwang Min (Republic of Korea, 2005)

On 24 November 2005 the Korean tanker *N^o7 Kwang Min* (161 GT) collided with a Korean fishing boat in the port of Busan, Republic of Korea, and a total of 64 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil onboard the *N^o7 Kwang Min* has been transferred to a number of other vessels and the *N^o7 Kwang Min* has subsequently been taken to a shipyard in Busan.

Due to the lack of liability insurance in respect of the vessel and the limited assets of the shipowner, it was considered unlikely that he would be financially capable of meeting his obligations under the 1992 Civil Liability Convention to pay compensation in full to persons suffering pollution damage arising out of the incident. Although the total amount of the admissible claims would fall below the limitation amount applicable

to the *N^o7 Kwang Min*, the 1992 Fund, in the Director's view, was liable in accordance with Article 4.1 (b) of the 1992 Fund Convention to pay compensation.

The Executive Committee endorsed the position taken by the Director as regards his authority to settle claims and also authorised him to make final settlement of all further claims arising out of the incident.

Plate Princess (Venezuela, 1997)

On 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) discharged 3.2 tonnes of oil together with ballast water into Lake Maracaibo (Venezuela) whilst loading a cargo of 44 250 tonnes of Lagotreco crude oil at an oil terminal at Puerto Miranda.

In June 1997 a fishermen's trade union brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US\$10 060 per boat (£5 650), ie a total of US\$17 million (£9.5 million) for damage to fishing boats and nets and for loss of earnings. The same union also brought a claim for fishermen's loss of earnings against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US\$10 million (£5.6 million). In June 1997 another fishermen's union presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US\$20 million (£11.2 million).

At the October 2005 session of the Administrative Council, the Venezuelan delegation stated that although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention.

The 1971 Fund had recently learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions, but it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought by the unions against the shipowner and the master of the *Plate Princess* in June 1997.

The Director stated that while he recognised that the final decision on whether the claims were time-barred vis-à-vis the 1971 Fund was a matter for the Venezuelan Courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention and expressed the view that the claims were without any doubt time-barred in relation to the 1971 Fund.

The Administrative Council instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan Courts.

Future meetings

The following meetings have been scheduled for 2006. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 22 May	1992 Fund Executive Committee 1992 Fund intersessional Working Group on non-technical measures to promote quality shipping for carriage of oil by sea HNS Workshop
Week of 23 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council Supplementary Fund Assembly