



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FONDS INTERNATIONAL
D'INDEMNISATION DE 1992
POUR LES DOMMAGES DUS
À LA POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A
CONTAMINACIÓN POR
HIDROCARBUROS 1992

The June 2007 sessions of the governing bodies - In brief

29 June 2007

From 12 to 15 June 2007, the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held a number of meetings which, at the invitation of the Government of Canada, took place at the Headquarters of the International Civil Aviation Organization (ICAO), in Montreal, Canada. The 1992 Fund Assembly had been scheduled to hold an extraordinary session to deal with a number of administrative matters but was unable to achieve the required quorum and so the 1992 Fund Administrative Council dealt with the items on the Assembly's agenda. The 1992 Fund also held the 37th session of its Executive Committee which dealt with incidents. The 4th intersessional Working Group on non-technical measures to promote quality shipping for carriage of oil by sea, which was set up in February 2006, held its 3rd meeting.

Incidents

Erika (France, 1999)

Legal actions have been taken against the shipowner, his insurer and the 1992 Fund by some 800 claimants. Out-of-court settlements have been reached with 440 of these claimants. The Courts have rendered judgements in respect of 115 claims and actions by some 100 claimants are pending. The 1992 Fund will continue to hold discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

The majority of the 115 judgements rendered by the French Courts have been in favour of the 1992 Fund. In most cases the judgements made the statement that the 1992 Fund's criteria for admissibility of claims were not binding on the national courts, and that it was for the courts to decide whether a claimant had an admissible claim under the Conventions as implemented in French law. However, in spite of this statement, the judgements rendered had in almost all cases arrived at the same conclusions as those that the Fund had reached on the basis of its criteria.

More detailed information of these judgements is available in documents 92FUND/EXC.37/4, 92FUND/EXC.37/4/Add.1 and 92FUND/EXC.37/4/Add.2 which can be found via the IOPC Funds' website: <http://www.iopcfund-docs.org/docs.html>.

Prestige (Spain, 2003)

The shipowner's P&I insurer and the 1992 Fund have established Claims Handling Offices in La Coruña (Spain) and Lorient (France). Claims totalling €610.7 million (£415 million) have been received by the office in Spain and claims totalling €18.7 million (£80.7 million) have been received by the office in France. The Portuguese Government submitted claims for €4.3 million (£2.9 million) in respect of clean up and preventive measures in Portugal. The process of assessing claims has been ongoing since the last session of the Committee, especially in respect of the claims from the Spanish Government for the costs incurred in the at sea and on shore clean-up operations.

Solar 1 (Philippines, 2006)

The Executive Committee noted that by 2 May 2007 a further 11 323 claimants in the fishery sector in Iloilo Province had been paid compensation totalling £600 000. Claims had also been received from seaweed farmers for alleged damage to their crops and from fish pond operators and these claims were being assessed. With regard to claims for the costs of clean-up operations, a claim for £4.7 million which had been submitted by the

Philippine Coastguard in respect of its role in the response to the spill, as well as other miscellaneous claims, were being assessed.

The Executive Committee considered a claim for the cost of a 'cash for work' programme initiated to relieve economic hardship. The Committee decided that the claim was not admissible because the work carried out under the programme did not relate to clean up or preventive measures. A claim for the loss of a barge transporting oily waste which had sunk due to adverse weather conditions was also considered by the Committee but was rejected on the grounds that there was not a sufficiently close link of causation between the preventive measures (the clean-up operations carried out following the spill from the *Solar I*) and the damage resulting from the sinking of the barge.

Shosei Maru (Japan, 2006)

The Executive Committee noted that, since its last session in March 2007, it had become clear that the total amount claimed for damages admissible for compensation arising out of this incident was likely to exceed the limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention, ie 4.51 million SDR (£3.4 million). Since the *Shosei Maru* was not entered into STOPIA, the 1992 Fund is likely to have to pay compensation for this incident.

STOPIA

The Executive Committee noted that the list of vessels entered in STOPIA submitted by the International Group of P&I Clubs to the IOPC Fund Secretariat in the first half of 2007 contained 5 680 tankers entered in International Group Clubs. The Executive Committee noted that STOPIA had entered into force in the knowledge that a small number of tankers entered in a P&I Club in the International Group of P&I Clubs would not be entered in STOPIA by virtue of the fact that they were not reinsured through the Group's pooling arrangements and did not therefore have the benefit of insurance cover up to the higher limits provided by these pooling arrangements. It further noted that the Clubs in the International Group were continuously encouraging those entered tanker members that were not covered through the Group's pooling arrangements to enter STOPIA.

1992 Fund Administrative Council

Credentials for 1992 Fund meetings

The Administrative Council decided to amend Rule 9 of the 1992 Fund Assembly's Rules of Procedures and noted that a revised version of the 1992 Fund Circular providing detailed guidance in respect of the form and content of credentials would be issued shortly.

Submission of oil reports

The Administrative Council noted that an information document which could assist Member States in establishing procedures for the submission of oil reports had been produced by the Secretariat.

Headquarters Agreement

The Administrative Council noted that advice had been received from the United Kingdom Foreign and Commonwealth Office that representatives of Member States were exempt from immigration control and visa requirements and that representatives of Member States for which a visa was required for entry into the United Kingdom, were entitled to an 'exempt status visa', which was provided free of charge (*gratis*). However, where a person qualified under the 'exempt' category but was only intending to visit the United Kingdom for a short official visit, it was common practice for British Embassies/High Commissions overseas to issue *gratis* 'visit' visas for periods not exceeding six months. UK Visas Department had indicated that it would not issue *gratis* 'visit' visas for a period longer than six months.

Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors

The Administrative Council approved the revised draft of the Technical Guidelines which had been prepared by the Funds for use by their experts and instructed the Secretariat to prepare it as a Fund document. It also instructed the Secretariat to develop a simplified version for claimants which should be compatible with the experts' version and to present it to the Assembly for consideration at its next session.

Admissibility criteria relating to claims for costs of preventive measures

The Administrative Council adopted the set of sub-criteria proposed by the Director which took into account the views expressed by the 1992 Fund Assembly at its October 2006 session, and instructed him to include the proposed text in the 1992 Fund's Claims Manual.

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea***Annual contributions to the LNG Account***

The Administrative Council decided to set up an informal correspondence group, to be led by Professor Erik Røsæg of Norway (erik.rosag@jus.uio.no), with the mandate of reflecting on and recommending elements that would be helpful in the implementation legislation of States Parties to the HNS Convention in order to ensure as far as possible the payment of contributions to the LNG Account from contributors which were not subject to the jurisdiction of any State Party. The Administrative Council noted that finding a solution to this issue was crucial to the successful implementation of the HNS Convention and strongly encouraged all delegations, both States and observers, to monitor the work of the group, even if they were not able to participate actively.

Definition of 'receiver'

The Administrative Council took note of a document submitted by Canada and the Netherlands which proposed a common approach to the definition in the HNS Convention of 'physical receiver' in the HNS Convention, in particular with respect to packaged goods. As agreement could not be reached on this definition, the Administrative Council invited the delegations of Canada and the Netherlands to continue to work on the subject with a view to making a revised proposal to the next session of the Assembly in October 2007.

Depositing instruments of ratification without accompanying contributing cargo reports

The Administrative Council took note of documents submitted by the Director and by Canada, Denmark, the Netherlands and the United Kingdom and noted that the failure of a number of States which have ratified the HNS Convention to submit the required reports on contributing cargo was a problem which could not be ignored. It noted that the delegation of the United Kingdom would continue to work on this issue together with the other co-sponsors of the document and with IMO, the IOPC Funds Secretariat and any other interested delegations with a view to making proposals to the October 2007 meetings of the 1992 Fund Assembly and of IMO's Legal Committee.

Future sessions

The Administrative Council noted that the IMO Building would be closed for refurbishment until early spring 2008 and that another venue would have to be found for the sessions of the governing bodies which were scheduled to be held in March 2008. The Council accepted the kind invitation of the Government of Monaco to hold the March 2008 sessions of the governing bodies of the Funds in Monaco.

Co-operation with P&I Clubs

The Administrative Council instructed the Director to investigate further the possible amendment of the TOPIA agreement to bring it into line with STOPIA in respect of Clause 10F of the Memorandum of Understanding between the International Group of P&I Clubs, on the one part, and the 1992 Fund and Supplementary Fund, on the other, relating to TOPIA.

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

At its February 2006 session, the 1992 Fund Assembly decided to establish a Working Group on non-technical measures to promote quality shipping for the carriage of oil by sea.

The Working Group held its 3rd meeting on 14 June 2007. A report on the outcome of this meeting will be available in due course and will be put on the IOPC Funds' website. The Working Group will report on its deliberations to the October 2007 session of the 1992 Fund Assembly.

Future meetings

The following meetings have been scheduled for 2007 and 2008.

Week of 15 October 2007

1992 Fund Assembly
1992 Fund Executive Committee
1971 Fund Administrative Council
Supplementary Fund Assembly

Week of 10 March 2008

1992 Fund Assembly
1992 Fund Executive Committee
1992 Fund intersessional Working Group on non-technical
measures to promote quality shipping for carriage of oil by sea