



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 June 2008 sessions of the governing bodies - In brief

27 June 2008

On 23 to 27 June 2008, the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held a number of meetings. 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. The 1992 Fund Administrative Council therefore dealt with the items on the Assembly's agenda. The 1992 Fund held meetings of its Executive Committee, which considers individual incidents, and of its fourth and fifth Intersessional Working Groups.

1992 Fund Executive Committee

Erika (France, 1999)

Civil proceedings

Legal actions against the shipowner, his insurer and the 1992 Fund have been taken by some 800 claimants. Out-of-court settlements have been reached with a great number of these claimants. The courts have rendered 134 judgements and 43 actions remain 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 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. 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.

Criminal proceedings

The Executive Committee noted that the judgement of the Criminal Court in Paris in January 2008 holding the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society Registro Italiano Navale (RINA) and Total SA criminally liable for the damage caused by the incident had been appealed and that it was expected that the Court of Appeal would reach its decision in 2009. The Director stated that the Secretariat would examine the implications the judgement might have for the 1992 Fund once the Court of Appeal had reached its decision.

The Executive Committee also noted that, as a result of an agreement between the French State and Total SA, whereby Total SA had paid the French State in full, ie the amount awarded by the Criminal Court to the French State (€153.9 million (£121.2 million)), and that the French State had withdrawn all its civil actions, including those against the 1992 Fund.

Slops (Greece, 2000)

The Executive Committee noted that in February 2008 the Greek Court of Appeal had rendered its judgement confirming the judgement of the Court of first instance which had awarded the two companies which had submitted claims for costs of clean-up operations the claimed amount (€ 323 360 (£1.8 million) plus legal interests and costs, and that since this judgement was final and the owner of the *Slops* did not have any assets

to pay in accordance with the judgement, the 1992 Fund was making the necessary arrangements to pay the amounts awarded.

The Executive Committee instructed the Director to examine further the possibility of bringing a recourse action against the Greek State to recover the sums that the 1992 Fund would have to pay in compensation as a result of this incident, taking into account all the policy implications, in particular the earlier decisions by the 1992 Fund governing bodies regarding the definition of 'ship', and to report to the Committee at its next session in October 2008.

Prestige (Spain, 2002)

The Executive Committee noted that the Spanish Government had submitted almost all its claims arising from this incident and that the only outstanding item was the costs for the treatment of oily residues since the treatment process had not been completed.

It also noted that the Spanish Government had sent a letter to the Director showing the amount of European funds received by Spain and clearly identifying the ministerial departments and the headings to which each amount of European funding was allocated.

Shosei Maru (Japan, 2006)

The Executive Committee noted that the total cost of all claims paid by the Japan P&I Club (£4.45 million) exceeded the limitation amount applicable to the *Shosei Maru* (£3.7 million) and that the 1992 Fund would be liable to pay the difference between the limitation amount and the total amount paid in compensation, ie £800 000.

The Committee also noted that the owner of the *Shosei Maru* had established a limitation fund in the Takamatsu District Court on 31 March 2008 and that the 1992 Fund had filed an application for intervention in the limitation proceedings.

Volgoneft 139 (Russian Federation and Ukraine, 2007)

The Executive Committee noted that the shipowner was insured for protection and indemnity liability by Ingosstrakh but that the insurance cover was limited to US\$5 million (£2.5million), well below the minimum limit under the 1992 Civil Liability Convention of 4.51 million SDR (£3.7 million) and that there was therefore an 'insurance gap' of some 1.5 million SDR (£1.2 million). The Committee noted the Russian delegation's statement that the Arbitration Court of Saint Petersburg and Leningrad Region would resolve the 'insurance gap' issue in its judgement.

The Committee noted that the total amount claimed so far (£180 million), exceeded the amount available for compensation under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (£166.8 million).

The Committee also noted that Ingosstrakh had pleaded before the Arbitration Court of Saint Petersburg and Leningrad Region the defence that the spill resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and Ingosstrakh were not liable for the pollution damage caused by the spill. If this defence were to be successful, the 1992 Fund would be liable to pay compensation to victims of the spill from the outset.

Hebei Spirit (Republic of Korea, 2007)

Claims for compensation

The Executive Committee noted that, as at 24 June 2008, 176 claims totalling Won 172 billion (£84.5 million) had been submitted and that further claims were expected. It was further noted that of these claims, 63 had been assessed at Won 19 billion (£9.3 million), and that, pursuant to the Cooperation Agreement between the Korean Government and the Assuranceöforeningen Skuld (Gjensidig) (Skuld Club), the latter had made

payments totalling Won 11.2 billion (£5.5 million) in respect of 42 of these claims.

The Committee noted that the Republic of Korea had paid, or would shortly pay, Won 117.2 billion (£57 million) to residents of the affected areas and that these payments did not constitute payments of compensation for pollution damage that would enable the Government to exercise subrogation rights at a later date.

The Committee further noted that the Korean Government had passed a Special Act which had entered into force on 15 June 2008 to support the local population suffering damages from the *Hebei Spirit* incident and that, in accordance with this Act, if the 1992 Fund and the Skuld Club paid claimants compensation on a pro-rata basis, the Korean Government would pay the claimants the remaining percentage so that they would be paid 100% of their claims as assessed by the 1992 Fund.

Level of payments

The Committee recalled that in March 2008, in view of the uncertainty as to the total amount of the potential claims, it had decided that any payments should for the time being be limited to 60% of the amount of the damage actually suffered by each claimant, as assessed by the Fund's experts.

However, in view of the significant increase in the estimated exposure of the 1992 Fund since its March 2008 session, the Executive Committee decided that, in view of the uncertainty as to the total amount of the potential claims and in view of the need to ensure equal treatment for all claimants, any payments made by the 1992 Fund should for the time being be limited to 35% of the amount of the damage actually suffered by the respective claimant as assessed by the Fund's experts. The Executive Committee also decided to review the situation at its next session.

Incident in Argentina (Argentina, 2007)

The Executive Committee dealt with this incident for the first time. The Committee noted that a significant quantity of oil had impacted the shoreline in Caleta Cordova, Chubut Province, Argentina, on 26 December 2007 and that a total of 5.7 kilometres of coastline had been reported to have been affected. It also noted that clean-up operations on the shoreline had been undertaken by local contractors under the supervision of the provincial government and that claims were expected for clean-up costs, losses in the fisheries and tourism sectors and for environmental damage.

The Committee noted that several vessels were being investigated as a possible source of the pollution, one of which was the *Presidente Umberto Arturo Illia (Presidente Illia)*. It was also noted that an inspection of the *Presidente Illia* had revealed a crack in the ballast line whilst passing through the cargo tank.

The Committee also noted that the owner of the *Presidente Illia* and its insurer contested liability and argued that the oil which impacted the coast must have come from another source. It further noted that if they were successful with their defence, and it was proved that the spill that impacted the coast had come from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

1992 Fund Administrative Council acting on behalf of the 1992 Fund Assembly

Election of Members of the Audit Body

The Administrative Council noted that only five nominations for the six positions had been received in response to the Director's circular calling for nominations, including two from those members who had only served one term on the Audit Body. The Administrative Council decided that the candidates whose nominations had been received within the deadline given in the circular would be automatically elected in October 2008 and that a second circular would be sent by the Director to 1992 Fund Member States calling for further nominations to fill the remaining position. The Council noted that if more than one candidature was received in response to the second circular, an election would take place.

The Administrative Council further decided to endorse the Chairman's proposal that Mr Nigel Macdonald, the outside expert, be recommended for re-election for a further and final three years so that the new Audit Body to be elected in October 2008 could benefit from the experience that he had obtained during his time in office.

Guidelines for claimants in the subsistence fisheries sector

The Administrative Council reviewed the draft Guidelines for claimants in the subsistence fisheries sector which had been prepared on the basis of the Technical Guidelines for experts for assessing fisheries sector claims and decided that the 1992 Fund should publish them as a Fund document.

Fifth Intersessional Working Group of the 1992 Fund ('HNS Focus Group')

The 5th intersessional Working Group ('the HNS Focus Group') was established by the 1992 Fund Assembly at its 12th session, held in October 2007, with the aim of facilitating the entry into force of the HNS Convention.

The Group held its second meeting on 23 and 24 June 2008 under the Chairmanship of Mr Alfred Popp QC (Canada) and submitted a Report to the Administrative Council acting on behalf of the 1992 Fund Assembly.

The Administrative Council noted that the HNS Focus Group had considered a draft text of a Protocol to the HNS Convention which had been revised in the light of the discussions at its first meeting in March 2008.

The Council also noted that the Group had considered proposals by IMO to amend the text of Article 1 of the 1996 HNS Convention (definition of HNS) and Article 16 of the draft Protocol (signature, ratification, acceptance, approval and accession). It noted that the Group had decided to amend the text of the draft Protocol subject to any change that might be necessary in respect of Article 1, paragraph 5(a)(vii) of the Convention being agreed between the Secretariats of the IOPC Funds and IMO.

The Council noted that, after a lengthy discussion, the HNS Focus Group had decided to maintain the current wording of Article 7 of the draft Protocol, ie that the person liable for contributions to the LNG Account would be the receiver as defined in Article 1.4 of the Convention. However, it noted that, whilst the majority of the Group had been in favour of maintaining the current wording, a significant number of delegations had supported the concept of the titleholder being the primary person liable for contributions.

It was further noted that the differences between the two sides were of a political, economic and policy nature and not just a matter of drafting. It was further noted that it was essential for efforts to be made to bridge the gap between the two sides in order to reach a consensus on this issue quickly. It was noted that failure to reach a consensus by the time of the meeting of IMO's Legal Committee in October 2008 could threaten the viability of the Protocol, since the Legal Committee could only decide to recommend holding a Diplomatic Conference with the aim of adopting a Protocol if it were clear that there would be a good chance of success.

It was noted that a revised proposal on this issue could be considered by the Legal Committee at its October 2008 meeting. Delegates were reminded that any such proposal would have to be submitted to the IMO Secretariat in accordance with the Committee's deadlines, ie that basic and bulky documents (over six pages of

text) should reach the IMO Secretariat not later than Friday 15 August 2008 and all other documents, including information documents, not later than Friday 19 September.

The Administrative Council noted the recommendations of the HNS Focus Group and that a full report of the meeting, including a detailed account of the discussion of all the proposals that had been considered by the HNS Focus Group, would be prepared for circulation to delegations after the meeting, in accordance with normal practice.

The delegation of Malaysia offered to coordinate an informal correspondence group with the aim of developing a compromise proposal in respect of contributions to the LNG Account that would make the HNS Convention attractive to as many States as possible and that the Correspondence Group would hopefully be able to submit a compromise proposal in the form of a document to the October meeting of the Legal Committee. That delegation invited any interested States and organisations to participate in the work of the Correspondence Group and advised that those who wished to participate in the work of the Group should give their contact details to the Malaysian delegation in person or by email to razifahmad@marine.gov.my.

The Administrative Council expressed its gratitude to the Malaysian delegation for its very helpful and constructive proposal and noted that many States from both sides of the divide had expressed their intention to participate in the Correspondence Group.

The Administrative Council approved the text of the draft Protocol and instructed the Director to finalise the text, retaining footnotes of a technical or editorial nature in order to aid the interpretation of the draft Protocol.

The Administrative Council further instructed the Director to submit the text of the draft Protocol to the Secretary-General of IMO requesting him to refer it to the Legal Committee for consideration with a view to convening a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

The Administrative Council also instructed the Director to include with his letter to the Secretary-General the Record of Decisions of this session of the Administrative Council and to bring the following topics to his attention, where consideration of amendments to the Protocol by the Legal Committee might be beneficial:

- The time periods for the amendment procedure in Article 48, which might be brought into line with Article 24 of the Supplementary Fund Protocol.
- The entry into force conditions in Article 46, since these will be crucial to ensuring the successful entry into force of the Convention.

Observer status

The Administrative Council decided to confirm the decision of the Executive Committee at its March 2008 session and grant observer status to Ukraine on a permanent basis.

Levy of contributions

The Administrative Council decided to levy contributions of £50 million to the *Hebei Spirit* Major Claims Fund payable by 1 November 2008. The Administrative Council also decided that, should the 1992 Fund be called upon to make payments in relation to the Hebei Spirit incident exceeding the amount payable from the General Fund prior to 1 November 2008, these payments should be financed through loans to the *Hebei Spirit* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and, if required, from the General Fund.

Entry into force of the Bunkers Convention (21 November 2008)

The delegation of the International Group of P&I Clubs informed the Administrative Council that since the March 2008 session of the Executive Committee, when this issue was first raised, contact had been made with a number of States Parties to the Bunkers Convention to determine the situation with regard to the issue of

certificates to vessels registered in non-contracting States and that, to date, the International Group was not aware of any State Party that was prepared to issue certificates to such vessels unless they were calling at a port or terminal in that State. The International Group reiterated its view that this situation was of concern to the industry and had the potential to cause significant problems when the Convention entered into force, in particular the risk of delays of vessels entering ports or terminals in a State Party.

That delegation further pointed out that prudent shipowners were likely to want to have certificates even in the absence of immediate plans to call at a State Party and urged States to adopt a more flexible approach which would lead to a close cooperation among States Parties to facilitate the issue of such certificates to vessels registered in non-Contracting States.

Fourth Intersessional 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.

At its fifth and final meeting, held on 25 June 2008, the Working Group concluded its discussions relating to the study carried out by the Secretariat to consider which measures concerning hull insurance would be capable of promoting quality shipping of oil. The Group then reached final conclusions in respect of all other issues covered by its mandate for submission to the Assembly at its October 2008 session.

Future meetings

The following meetings have been scheduled for the remainder of 2008. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 13 October	1992 Fund Assembly 1992 Fund Executive Committee 1971 Fund Administrative Council Supplementary Fund Assembly
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