



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 October 2008 sessions of the governing bodies - In brief

31 October 2008

During the week of 13-17 October 2008 the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds) held a number of meetings. The 1992 Fund held meetings of both its Assembly, which deals with administrative and financial matters, and its Executive Committee, which considers individual incidents. The Supplementary Fund held a session of its Assembly and the 1971 Fund held a session of its Administrative Council which dealt with both administrative and financial matters and incidents.

IOPC Funds' 30th Anniversary

The attention of the governing bodies was drawn to the fact that the 1971 Fund Convention had entered into force on 16 October 1978 and that on that same date in 2008 the IOPC Funds would have been in operation for 30 years. The Director expressed his view that it was therefore particularly apt that the 1992 Fund's 100th Member State had become part of the international compensation regime in this anniversary year.

Status of Conventions

The 1992 Fund now has 101 Member States and an additional State (Ecuador) has deposited an instrument of accession, which will bring the total to 102 in December 2008. The Supplementary Fund has 21 Member States. During the course of the meeting week the Secretariat was notified that Estonia had ratified the Supplementary Fund Protocol on 14 October 2008, bringing the total number of Supplementary Fund Member States to 22 on 14 January 2009. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

Credentials

The 1992 Fund Assembly endorsed the Director's view that the current arrangements for credentials as laid out in Circular 92FUND/Circ.58, SUPPFUND/Circ.8 should be maintained and should only be revisited at a future session if further improvements seemed possible or if any unexpected problems arose.

At the request of the Supplementary Fund Assembly, the 1992 Fund Assembly agreed to invite its Credentials Committee to also examine the credentials of Member States of the Supplementary Fund. In addition, the Supplementary Fund Assembly decided that, should a session of the Supplementary Fund Assembly be held not in conjunction with a session of the 1992 Fund's governing bodies, it should, at the beginning of the session, appoint a Credentials Committee consisting of three members to examine the credentials of delegations of States members of the Supplementary Fund.

Adoption of International Public Sector Accounting Standards (IPSAS)

The governing bodies approved the adoption in principle of IPSAS by the IOPC Funds from the financial year 2010 and noted the proposed tentative timetable for its implementation.

Non-submission of oil reports

Under the Fund Conventions, each Fund Member State is obliged to submit a report every year on the quantities of contributing oil received in that State. Although there were no outstanding oil reports in respect of the Supplementary Fund, 34 States had outstanding reports in respect of the 1971 and/or 1992 Funds. This continues to be a matter of serious concern to other Member States, particularly to the contributors in those States, since without oil reports the Secretariat cannot issue invoices to the contributors in the defaulting States.

The governing bodies discussed a revised proposal by the IOPC Funds' joint Audit Body that the governing bodies should take a policy decision that admissible claims submitted by a public authority or agent of the administration of a Member State which was in arrears with the submission of its oil reports could be assessed as normal but that payment of all such claims would be deferred until the reporting deficiency was fully rectified. The 1992 Fund Assembly decided to adopt the policy proposal submitted by the Audit Body and to apply the policy after a grace period of 90 days. The Assembly also decided that, after the grace period, the policy decision would apply to all claims in Member States with outstanding oil reports. The Director was instructed to prepare, in consultation with the Chairman of the 1992 Fund Assembly, a circular containing the policy decision together with appropriate background information and to circulate it to all Member States. The Assembly also instructed the Director to bring the policy to the attention of Member States by any appropriate means.

Election of members of the joint Audit Body

The 1992 Fund Assembly elected the following members of the joint Audit Body for a second period of three years:

Mr Mendim Me Nko'o (Cameroon)
Mr Wayne Stuart (Australia)

The Assembly elected the following as new members of the Audit Body for a period of three years:

Mr Emile Di Sanza (Canada)
Professor Seiichi Ochiai (Japan)
Mr Thomas Johansson (Sweden)
Mr John Wren (United Kingdom)

The Assembly re-elected Mr Nigel Macdonald (United Kingdom) as the 'external expert' with expertise and experience in audit matters, as an exceptional measure for a further and final three-year term.

The Assembly expressed its gratitude to Mr Charles Coppolani (France), who had chaired the Audit Body during the first six years of its existence, Mr Maurice Jaques (Canada), Dr Reinhard Renger (Germany) and Professor Hisashi Tanikawa (Japan), the out-going members, for their valuable contribution to the work of the Audit Body.

Assessment of contributions

The 1992 Fund and the 1971 Fund each have a General Fund to pay administrative expenses and compensation claims up to 4 million SDR and 1 million SDR respectively per incident and Major Claims Funds to pay compensation claims above that amount. The Supplementary Fund has a General Fund to pay administrative expenses and will have Claims Funds to pay compensation claims if and when required.

The 1992 Fund Assembly decided to levy contributions to the General Fund of the 1992 Fund for a total of £10 million, with the entire levy due for payment by 1 March 2009. The Assembly further decided to levy £50 million with respect to the *Volgoneft 139* incident, the entire levy to be deferred (see paragraph in respect of this incident below). The 1971 Fund Administrative Council and the Supplementary Fund Assembly decided not to levy contributions to the 1971 Fund or the Supplementary Fund respectively.

Budget for 2009

A joint administrative budget for the 1992 Fund, the Supplementary Fund and the 1971 Fund of £3 723 625 was adopted for 2009.

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

The 1992 Fund Assembly noted that the Working Group had completed its mandate. The Chairperson of the Working Group, Mrs Birgit Sjølling Olsen, noted that, although the Working Group had not made any

recommendations to the Assembly, in her view, the measure of success of the Working Group should not be the number of proposals put forward but other aspects, such as the degree to which its work had enhanced awareness and understanding of the issues involved, and the willingness to participate in, discuss and encourage initiatives to promote quality shipping. She acknowledged that various issues under the umbrella of quality shipping remained unresolved and stated that, despite the termination of the Working Group, it was hoped that Member States and members of the industry would continue to work towards their resolution.

HNS Convention

The 1992 Fund Assembly noted that the Protocol to the HNS Convention, which had been developed by the HNS Focus Group, had been submitted to the Secretary-General of the International Maritime Organisation 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. It also noted that the IMO Secretariat had submitted the draft Protocol and related information for consideration by the Legal Committee during its 94th session to be held during the week commencing 20 October 2008 (document LEG 94/4).

The Assembly also noted that the Correspondence Group, coordinated by the delegation of Malaysia, had developed a compromise proposal in respect of contributions to the LNG Account for consideration during the 94th session of the Legal Committee.

Incidents

Slops (Greece, 2000)

The 1992 Fund Executive Committee supported the Director's interpretation of the 1992 Fund's policy regarding recourse action and decided not to bring a recourse action against the Greek State for the amounts paid to claimants. The Executive Committee also instructed the Director to further examine the 1992 Fund's policy regarding the definition of 'ship' and to present a document for consideration by the Assembly at its October 2009 session.

Volgoneft 139 (Russian Federation and Ukraine, November 2007)

The Executive Committee noted that the Russian Central and Regional Governments had presented claims totalling RUB 8 446.2 million (£185.7 million) and that a claim for compensation had also been received from a Russian clean-up contractor for the amount of RUB 73.5 million (£1.6 million). The Committee further noted that the total amount claimed already exceeded the total amount available for compensation under the 1992 Civil Liability and Fund Conventions of 203 million SDR (£176.7 million) and that in the event that, at some point in the future, the Executive Committee were to authorise the Director to make payment of claims, it would also have to determine an appropriate level of payment.

The Committee also noted that a claim for RUB 4 million (£88 000) had been presented to the Arbitration Court in Saint Petersburg and Leningrad Region by the Kerch Merchant Port in Ukraine but that as the 1992 CLC would not enter into force in Ukraine until November 2008, claimants in Ukraine were not entitled to receive compensation from the limitation fund established by the shipowner in the Arbitration Court in Saint Petersburg and Leningrad Region.

The Executive Committee still considered that the information submitted by the Russian authorities was inadequate and that the Committee could not authorise payment of claims until it was satisfied with the information provided. Factual differences between the position of the Secretariat and that of the Russian delegation regarding the weather conditions at the time of the incident and the restrictions for navigation in the Kerch Strait at the time of the incident were pointed out. The Russian authorities and the Secretariat were requested to work together to resolve the points of difference.

Hebei Spirit (Republic of Korea, December 2007)

The Executive Committee noted that as at 13 October 2008, 1 087 claims totalling KRW 246 billion (£115 million) had been submitted and that more claims were expected.

The Committee noted that on the basis of a second Cooperation Agreement between the shipowner, his insurer

(Skuld Club) and the Ministry of Land, Transport and Maritime Affairs (MLTM), the Club had undertaken to pay claimants 100% of their claims as assessed by the Fund and Club up to the Club's limit and that, in return, the Korean Government had undertaken to compensate in full all claims as assessed by the Fund and Club as well as all the amounts awarded by the Korean Courts in excess of the Fund's limit to ensure that all claimants would eventually receive full compensation. It was also noted that the second Cooperation Agreement also provided that if the Limitation Court requested the Club to deposit the limitation amount, the Korean Government would be responsible for depositing the amount already paid out by the Club to the claimants, and the Club would deposit the balance between the payments already made and the limitation amount.

It was noted that the Club had begun making payments in accordance with the second Cooperation Agreement and that so far KRW 13 400 million (£5.57 million) had been paid in compensation in respect of 51 claims.

The Executive Committee recalled that in June 2008, in view of the uncertainty as to the total amount of the potential claims, it had decided to limit the level of payments to 35% of the established claims. The Committee noted that the most recent estimate by the 1992 Fund's experts of the total amount of the losses caused by the spill was between KRW 566.3 billion and KRW 601.3 billion (£272-289 million) and that on the basis of this information the Director had proposed to maintain the level of the Fund's payments at 35%, to be reviewed at the next session of the Executive Committee.

The Executive Committee decided to maintain the level of the 1992 Fund's payments at 35% of the amounts assessed by the Club and the Fund, to be reviewed at its next session.

Incident in Argentina (Argentina, December 2007)

The Executive Committee recalled that a significant quantity of oil had impacted the shoreline in Caleta Córdova, Chubut Province, Argentina, on 26 December 2007 and that a total of 5.7 kilometres of coast had been affected. The Committee also recalled that an investigation into the cause of the incident had been initiated by the Criminal Court of Comodoro Rivadavia (Argentina) and that the *Presidente Umberto Arturo Illia (Presidente Illia)*, that had been loading oil at a loading buoy off Caleta Córdova, had been detained and that an inspection of the ship by the maritime authorities (Prefectura Naval) had revealed a fault in its ballast system.

The Committee noted that claims were expected for clean-up costs, losses in the fisheries and tourism sectors and for environmental damage.

It also noted that the limit of liability of the owner of the *Presidente Illia* under the 1992 CLC was estimated to be 24 067 845 SDR (£20.8 million) and that it seemed likely that the total admissible damage caused by the spill would be within the shipowner's limit.

It further noted however that the shipowner and its insurer had maintained that the *Presidente Illia* did not cause the spill that impacted the coast and that if they were successful in their defence, and if it was established that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

Future meetings

The following meetings have been scheduled for 2009. Additional meetings may be necessary, depending on developments in respect of existing incidents and the occurrence of new ones.

Week of 23 March	1992 Fund Executive Committee
Week of 15 June	1992 Fund Assembly (if required) 1992 Fund Executive Committee 1971 Fund Administrative Council (if required)

Week of 12 October

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