



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ASSEMBLY  
2nd extraordinary session  
Agenda item 6

92FUND/A/ES.2/6  
17 April 1997  
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RECORD OF DECISIONS OF THE  
2ND EXTRAORDINARY SESSION  
OF THE ASSEMBLY

(held on 16 and 17 April 1997)

Chairman: Mr C Coppelani (France)  
First Vice-Chairman: Professor H Tanikawa (Japan)  
Second Vice-Chairman: Mr P Gómez-Flores (Mexico)

*Opening of the Session*

The 2nd extraordinary session of the Assembly was opened by the Chairman, Mr C Coppelani (France).

**1 Adoption of the Agenda**

The Assembly adopted the Agenda as contained in document 92FUND/A/ES.2/1.

**2 Examination of credentials**

2.1 The following Member States were present:

Australia	Germany	Mexico
Denmark	Greece	Norway
Finland	Japan	Sweden
France	Liberia	United Kingdom

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

2.2 The following non-Member States were represented as observers:

*States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:*

Bahamas	Republic of Korea	Tunisia
Netherlands	Spain	

*Other States which have signed the 1992 Fund Convention:*

Morocco	Poland
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*Other States which are Members of the 1971 Fund but not of the 1992 Fund:*

Algeria	Indonesia	Russian Federation
Belgium	Italy	Slovenia
Canada	Malaysia	Venezuela
Fiji	Nigeria	

*Other States with observer status:*

Argentina	Latvia	Saudi Arabia
Brazil	Panama	United States
Chile		

2.3 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

*Intergovernmental organisations:*

International Oil Pollution Compensation Fund 1971 (1971 Fund)  
 United Nations  
 International Maritime Organization (IMO)

*International non-governmental organisations:*

International Union for the Conservation of Nature and Natural Resources (IUCN)  
 Oil Companies International Marine Forum (OCIMF)

### **3 Incidents of interest to the 1992 Fund**

#### **3.1 Nakhodka incident**

3.1.1 The Assembly took note of the information contained in documents 71FUND/A/ES.2/2 and 71FUND/A/ES.2/2/Add.1 in respect of the *Nakhodka* incident, which had taken place in Japan on 2 January 1997.

##### *Applicability of the Conventions*

3.1.2 The Assembly noted that the 1992 Protocols had entered into force in respect of Japan on 30 May 1996, and that the 1992 Civil Liability Convention and the 1992 Fund Convention were therefore in principle applicable to this incident.

3.1.3 It was noted that the limitation amount applicable to the *Nakhodka* was estimated at 1 588 000 Special Drawing Rights (SDR) (£1.4 million) under the 1969 Civil Liability Convention and 6 425 940 SDR (£5.5 million) under the 1992 Civil Liability Convention.

3.1.4 The Assembly noted that the *Nakhodka* was registered in the Russian Federation, which had not ratified the 1992 Protocols but which was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention. The Assembly endorsed the Director's view that, as a result, the shipowner's right of limitation should be governed

by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation were Parties on the date of the incident. The Assembly confirmed that, in the event that the total amount of the accepted claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), compensation would be available as follows (document 92FUND/A/ES.2/2, paragraph 8.1.3):

	<u>SDR</u>
Shipowner under the 1969 Civil Liability Convention	1 588 000
1971 Fund	58 412 000
Shipowner under the 1992 Civil Liability Convention	0
1992 Fund, in excess of 60 million SDR	<u>75 000 000</u>
Total compensation available	135 000 000

#### *Settlement of claims*

3.1.5 The Assembly noted that the 1971 and 1992 Funds and the shipowner's P & I insurer (the United Kingdom Mutual Steamship Insurance Association (Bermuda) Ltd, the UK Club) had jointly established a Claims Handling Office in Kobe (Japan).

3.1.6 It was noted that a claim for ¥2 312 million (£11.7 million) had been received from the National Fishery Federation, representing nine fishery co-operative associations with some 68 000 members, relating to the fishermen's involvement in the clean-up operations until the end of February 1997. It was also noted that claims for clean-up costs had been submitted by nine contractors and five prefectures for ¥611 million (£3 million) and ¥2 000 million (£10 million), respectively.

3.1.7 The Assembly noted that the 1971 Fund Executive Committee, at its 52nd session, had authorised the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

3.1.8 The Assembly authorised the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Assembly.

#### *Level of payments*

3.1.9 It was noted that the 1971 Fund Executive Committee had decided to authorise the Director to make payments on behalf of the 1971 Fund in respect of claims arising from the *Nakhodka* incident. It was further noted that, in view of the uncertainty as to the level of the total amount of the claims, the 1971 Fund Executive Committee had decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made (document 71FUND/EXC.52/11, paragraph 3.7.7).

3.1.10 It was noted that it had been decided at the 1971 Fund Executive Committee's 53rd session that this percentage should be maintained, in the light of the remaining uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident (document 71FUND/EXC.53/12, paragraph 3.6.5).

3.1.11 It was noted that, at the 1971 Fund Executive Committee's 52nd session, it had been emphasised by a number of delegations that the 1971 Fund and the 1992 Fund should endeavour to ensure consistency in respect of not only the admissibility of claims but also the handling of a case involving both Organisations. The Assembly agreed with this position.

3.1.12 It was further noted that, at the 1971 Fund's Executive Committee's 52nd session, many delegations, including seven delegations of States which were also Members of the 1992 Fund, had expressed the view that the level of payments should be the same for the 1971 Fund as for the 1992 Fund.

3.1.13 In reply to a question, the Director stated that in his view the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation.

3.1.14 The Assembly took the view that – like the 1971 Fund – the 1992 Fund should exercise caution in the payment of claims, if there was a risk that the total amount of the claims arising out of the particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants had to be given equal treatment. It also considered that it was necessary to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

3.1.15 Since both the 1971 and 1992 Fund Conventions applied in the *Nakhodka* case, the Assembly considered that the level of the 1992 Fund's payments should be determined by taking into account the amounts available under both Fund Conventions. It was considered that, in order to avoid an over-payment situation for either the 1971 Fund or the 1992 Fund (or for both), a co-ordinated approach should be taken in respect of the payments by the two Organisations.

3.1.16 The Assembly decided to authorise the Director to make payments on behalf of the 1992 Fund in respect of claims arising from the *Nakhodka* incident. However, in view of the uncertainty as to the level of the total amount of the claims, the Assembly decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made.

3.1.17 The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Assembly's next session.

#### *Investigation into the cause of the incident*

3.1.18 The Director informed the Assembly that the 1992 Fund was following the investigation into the cause of the incident which was being carried out by the Japanese and Russian authorities.

### 3.2 Incident in Germany

The Director informed the Assembly that there had been no developments since the Assembly's 1st extraordinary session in respect of an incident which had occurred in Germany in June 1996 (cf documents 92FUND/A/ES.1/12 and 92FUND/A/ES.1/22, paragraph 13).

### 3.3 Osung N°3 incident

The Director drew the Assembly's attention to the fact that, if the total amount of the established claims in respect of the *Osung N°3* incident (Republic of Korea, 3 April 1997) were to exceed 60 million SDR, then compensation under the 1992 Fund Convention would be available to victims in Japan.

## 4 Assessment of contributions

4.1 The Director introduced documents 92FUND/A/ES.2/3, 92FUND/A/ES.2/3/Add.1 and 92FUND/A/ES.2/3/Add.2.

4.2 The Assembly recalled that, at its 1st extraordinary session, it had decided to levy contributions to the General Fund for a total of £7 million (being the level at which the Assembly had decided to set the working

capital of the 1992 Fund). It was also recalled that the Assembly had decided that £4 million should be due for payment by 1 February 1997, and that the balance of the levy would be deferred. The Assembly also recalled that the Director had been authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1997 (document 92FUND/A/ES.1/22, paragraph 19).

4.3 It was noted that payment of compensation by the 1992 Fund for the first 4 million SDR (£3 382 620) in respect of the *Nakhodka* incident had to be paid from the General Fund. The Assembly recalled that only £4 million of the £7 million General Fund levy decided by the Assembly had so far been invoiced. It was noted that, in order to avoid depleting the working capital entirely, the Director considered it essential to invoice all of the deferred levy of £3 million for payment during the second half of 1997, in accordance with the authority given by the Assembly.

4.4 The Assembly considered the Director's proposal that £21 million should be available from the *Nakhodka* Major Claims Fund in the early autumn of 1997 for the payment of claims. Many delegations, although aware of the need for the 1992 Fund to have sufficient liquid assets to pay claims for compensation promptly, recognised that there was considerable uncertainty as to when the 1992 Fund would be required to make payments to victims of the *Nakhodka* incident. It was also stated that the 1992 Fund should avoid building up sizeable assets which were not required for the payment of claims in the short term. It was stressed, nevertheless, that the interest of claimants being paid promptly should override that of contributors wishing to postpone the payment of contributions.

4.5 The Assembly decided to levy contributions to the *Nakhodka* Major Claims Fund in the amount of £7 million.

4.6 It was noted that the deferred levy to the General Fund and the levy to the *Nakhodka* Major Claims Fund would be subject to the capping provisions of Article 36ter of the 1992 Fund Convention.

4.7 The Assembly decided that the deferred levy to the General Fund and the levy to the *Nakhodka* Major Claims Fund should be due by 1 September 1997.

4.8 With regard to the reports on contributing oil received in 1996, it was noted that only nine of the 14 Member States had so far submitted their reports. Since these reports formed the basis of the levy to the *Nakhodka* Major Claims Fund, Governments were encouraged to submit outstanding reports as soon as possible, so that invoices could be issued reflecting the Assembly's decision to levy contributions to this Major Claims Fund.

## 5 Any other business

### 5.1 Compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention

5.1.1 The Assembly noted that, in accordance with Article 31 of the 1992 Fund Protocol, all States which had deposited instruments of ratification, acceptance, approval or accession to that Protocol (whether or not the Protocol had entered into force) were required to deposit instruments of denunciation of the 1969 Civil Liability Convention and of the 1971 Fund Convention by 15 May 1997. It was noted that, as at 15 April 1997, only nine of the 22 States which had acceded to the 1971 Fund Protocol had deposited such instruments of denunciation.

5.1.2 It was noted that an instrument of denunciation by a State had to be signed by a person who had the power also to bind that State in accordance with international law and depositary practice within the United Nations system.

5.1.3 It was emphasised that States which did not deposit instruments of denunciation of the 1969 and 1971 Conventions by 15 May 1997, would be deemed to have denounced the 1992 Protocols, with effect twelve months after that date. It was noted that, as a result, such a State would, from 16 May 1998, be Party to the 1969 Civil

Liability Convention and 1971 Fund Convention only, and that the procedure of acceding to the Protocols would have to be undertaken for a second time.

## 5.2 Amendments to the Financial Regulations

It was noted that some banks had maintained that there were certain ambiguities in Financial Regulations 9.2 and 10.5. In order to remove any ambiguity, the Assembly decided to amend those Regulations to read as follows:

### *Regulation 9.2:*

The Director may authorise one or more officers to act as signatories on behalf of the 1992 Fund in giving payment instructions, and the 1992 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1992 Fund as follows:

- (a) if signed by only one authorised officer, for any sum up to £5 000 or, in the case of the Director, for any sum up to £15 000;
- (b) if signed jointly by any two authorised officers, for any sum up to £30 000;
- (c) if signed by the Director and another authorised officer, for any sum in excess of £30 000;
- (d) for the payment of salaries to members of the Fund's Secretariat, if signed jointly by any two authorised officers, for any sum up to £60 000.

### *Regulation 10.5:*

Instructions relating to the 1992 Fund's investments, as well as instructions relating to the transfer of funds from one financial institution to another for the credit of the 1992 Fund's deposit accounts, shall be given by the Director. The Director may authorise another officer or officers to act on his behalf. Instructions shall be given

- (a) in writing, signed jointly by two authorised officers, or
- (b) orally by one authorised officer followed by written confirmation signed jointly by two authorised officers.

## 5.3 Status of Hong Kong

The United Kingdom delegation stated that, from 30 June 1997, Hong Kong would no longer be a dependent territory of the United Kingdom.

## 6 Adoption of the Record of Decisions of the 2nd extraordinary session

The draft Record of Decisions, as contained in document 92FUND/A/ES.2/WP.1, was adopted, subject to some amendments.

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