



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971 AND  
1992

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71FUND/EXC.63/7

## INCIDENTS INVOLVING THE 1971/1992 FUNDS

### NAKHODKA

#### Note by the Director

**Summary:**

Claims have been received for a total of ¥35 871 million (£210 million). The IOPC Funds have paid ¥9 789 million (£49.5 million) in compensation. The Funds have commenced recourse actions against the shipowner, the shipowner's P & I insurer, the parent company of the shipowner and the Russian Maritime Register of Shipping. The claimants have taken legal actions against the shipowner, the insurer and the Funds. The shipowner and the insurer have also taken action against the Funds.

**Action to be taken:**

Decide the level of the 1971 Fund's payments, at present set at 60% of the loss or damage suffered by each claimant.

### 1 Introduction

- 1.1 On 2 January 1997 the Russian tanker *Nakhodka* (13 159 GRT), carrying 19 000 tonnes of medium fuel oil, broke up in two sections some 100 kilometres north-east of the Oki islands (Japan), resulting in a spill of some 6 200 tonnes of oil. The stern section sank soon after the incident, with an estimated 10 000 tonnes of cargo on board. The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast and grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.
- 1.2 The incident and the clean-up operations were described in some detail in document 71FUND/EXC.55/8.

## 2 Claims handling

The 1971 and 1992 Funds, the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established jointly a Claims Handling Office in Kobe. The office has at present a staff of eight surveyors, two accountants and ten support staff.

## 3 Claims for compensation

### 3.1 Summary of claims situation

- 3.1.1 As at 20 March 2000, 458 claims totalling ¥35 871 million (£210 million)<sup><1></sup> had been received. The claims situation is summarised in the table reproduced in the Annex.
- 3.1.2 In November 1999 the shipowner/UK Club made a payment of ¥65 889 134 (£387 000) to a contractor who had provided equipment for the clean-up operations. They had previously made payments to various other contractors, totalling US\$867 593 (£549 000).
- 3.1.3 The shipowner/UK Club have informed the Funds that they have paid US\$3.8 million (£2.4 million) to two salvors relating to the discharge of the oil from the bow section and the removal of the bow section. However, the Funds have not received any detailed information of the basis on which these payments were made.
- 3.1.4 The total payments made to claimants amounted to ¥10 354 million (£52 million) as at 20 March 2000, including the payments made by the shipowner/UK Club. Out of this amount, ¥2 314 million (£11.2 million) was paid after the Executive Committees' October 1999 sessions.
- 3.1.5 In paragraphs 3.2 - 3.4 information is given on those groups of claims where major developments have taken place since the Executive Committees' October 1999 sessions.

### 3.2 Clean-up operations

- 3.2.1 Claims from the Japan Marine Disaster Prevention Centre (JMDPC) and 54 sub-contractors engaged in clean-up operations under the JMDPC umbrella (items (a) and (b) in the annexed table) have been submitted for ¥8 316 million (£48.9 million), including costs for the disposal of oily wastes.
- 3.2.2 In December 1999 an agreement was reached with JMDPC in respect of the claims for costs incurred by 27 of the sub-contractors who had participated in clean-up operations carried out on and off shore or for disposal of oily waste.
- 3.2.3 As a result all but one clean-up related claim submitted by JMDPC have been settled at a total of ¥6 772 million (£39.8 million). The total amount paid by the IOPC Funds to JMDPC stands at ¥4 064 million (£20.5 million).
- 3.2.4 In September 1999 the IOPC Funds' and the UK Club's experts made a provisional assessment of a claim for ¥932 million (£5.5 million) relating to the cost of transferring oil from the *Nakhodka* to small vessels carried out by a sub-contractor under JMDPC. The claim was assessed at ¥827 million (£4.9 million). The 1971 Fund made a provisional payment of ¥400 million (£2.3 million) in October 1999.

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<1> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 1 March 2000, ie £1=¥170.36, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

- 3.2.5 Six electricity companies submitted claims for the cost of the deployment of booms and for clean-up totalling ¥2 629 million (£15.4 million) (item (f) in the annexed table). The Funds' experts made a provisional assessment of these claims at ¥1 930 million (£11.2 million). In December 1999 the 1971 and 1992 Funds made payments of ¥1 046 million (£5.3 million) based on this provisional assessment. In November 1999 another electricity company submitted a claim for the same kind of activities at ¥98 million (£580 000). This claim is being assessed.
- 3.2.6 A claim for ¥6.9 million (£41 000) was submitted by the Fukui Prefectural Road Public Corporation in respect of the cost of the clean-up of contaminated roads, fences and tetrapods forming part of the roads under its administration. This claim was settled at ¥4.8 million (£28 000) in March 2000, and the 1992 Fund made a payment of ¥2.9 million (£17 000) to this claimant.
- 3.2.7 The Niigata Prefecture and 117 municipalities under the jurisdiction of the prefecture submitted a claim totalling ¥680 904 665 (£4.0 million). The Fukui Prefecture and twelve municipalities under the jurisdiction of the prefecture submitted a claim totalling ¥3 750 904 470 (£22.1 million). These claims, which relate to *inter alia* the cost of collection of oil on the shore and disposal of the oil, are being examined.

### 3.3 Fishermen's claims for loss of income

Claims for loss of income suffered by fishermen have been presented for ¥5 242 million (£30.8 million) (item (j) in the annexed table). So far five claims for ¥3 569 million (£21 million) have been settled at ¥1 167 million (£6.9 million), and ¥700 million (£3.8 million) has been paid to this group of claimants. Another four claims in this category are being assessed.

### 3.4 Tourism

- 3.4.1 Claims have been received from 347 operators in the tourism sector (item (n) in the annexed table). These claims total ¥3 036 million (£17.8 million).
- 3.4.2 So far, the IOPC Funds' and the UK Club's experts have presented reports on the assessment of 245 claims in this category. One hundred and eighty-seven claims have been settled at a total of ¥716 million (£4.2 million), and ¥430 million (£2.3 million) has been paid to claimants. Forty-two claims totalling ¥103 million (£610 000) have been rejected on the grounds that the claimant had not shown that he had suffered any loss as a result of the incident or because there was not a reasonable degree of proximity between the alleged loss and the contamination.
- 3.4.3 It is expected that the experts will complete their assessments of all the claims in the tourism sector by summer 2000.

## 4 Legal actions taken against the shipowner/UK Club and the IOPC Funds

### 4.1 Prefectures, tourism claimants and others

On 1 November 1999 nine prefectures, 318 claimants in the tourism sector, one fish farm, six oil dispersant manufacturers, one shipowner's contractor, one Prefectural Fishery Co-operative Association and two other claimants took actions at the Fukui District Court against the shipowner, the UK Club and the IOPC Funds for ¥7 724 439 603 (£45.3 million).

### 4.2 Fishermen

On 1 November 1999 fishermen belonging to eight Federations of Prefectural Fisheries Co-operative Associations took actions at the Fukui District Court against the shipowner, the UK Club and the Funds for ¥1 861 409 667 (£11 million).

4.3 Electricity companies

On 15 December 1999 seven electricity companies took actions at the Fukui District Court against the shipowner, the UK Club and the Funds for ¥1 681 054 932 (£9.9 million).

4.4 Government Agencies and JMDPC

On 17 December 1999, the Japanese Ministry of Justice, acting on behalf of four Governmental Ministries and Agencies (Ministry of Construction, Ministry of Transport, Self Defence Forces and the Maritime Safety Agency) and JMDPC, took legal actions at the Tokyo District Court against the shipowner and the UK Club for ¥1 519 466 786 (£8.9 million) and ¥7 522 400 238 (£44.2 million). These amounts relate to the costs incurred by these bodies in respect of clean-up operations. The claim by JMDPC covers also the costs relating to the construction and removal of a causeway, which had been constructed in order to make it possible to remove oil contained in the grounded bow section.

4.5 Shipowner and UK Club

On 24 December 1999 the shipowner and the UK Club took legal action at the Fukui District Court against the 1971 and 1992 Funds for ¥537 375 403 (£3.2 million) in respect of the payments which they had made to certain contractors.

**5 Level of payments**

- 5.1 In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee of the 1971 Fund and the Assembly of the 1992 Fund decided in April 1997 that the payments to be made by the two Organisations 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. The Executive Committees of the two organisations confirmed, most recently at their October 1999 sessions, that the level of payments should be maintained at 60%.
- 5.2 Under Article VIII.1 of the Civil Liability Conventions and Article 6 of the Fund Conventions rights of compensation against the shipowner, the UK Club and the IOPC Funds are extinguished unless legal action is brought before the competent Japanese court within three years of the incident or, as regards the IOPC Funds, the Funds are notified within that period of an action against the shipowner/UK Club.
- 5.3 In October 1999 the Funds' Japanese lawyer sent letters to the claimants drawing their attention to the time bar issue.
- 5.4 Claims against the IOPC Funds became time-barred on or shortly after 2 January 2000. By that date claims totalling some ¥20 846 million (£122 million) had been brought before the competent courts. The amounts claimed in the legal actions represent the balance of outstanding claims after deduction of the amounts paid by the Funds and the shipowner/UK Club up to 2 January 2000 totalling ¥9 655 532 396 (£48.3 million).
- 5.5 The IOPC Funds' Japanese lawyer has advised the Director that under Japanese law a claimant may not increase the amount claimed. He has also advised that claimants may, however, add amounts for legal costs and expert fees incurred after the expiry of the period. It is possible therefore that some claimants may later claim additional amounts for such costs and fees.
- 5.6 At its 2nd session the Assembly of the 1992 Fund decided that the conversion of the total amount available under the 1971 and 1992 Fund Conventions, ie 135 million SDR, into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the 1992 Fund Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the

session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible, which for the *Nakhodka* incident was 17 April 1997. Using the rate of exchange on that date, 135 million SDR equals ¥23 164 515 000 (£136 million).

- 5.7 In the light of the information set out in paragraphs 5.4 and 5.5 the total exposure of the Funds can be estimated at some ¥30 500 million (£179 million). Payments at 70% of the amount would give ¥21 351 million (£125 million).
- 5.8 In the light of the foregoing the Director considers that an increase of the IOPC Funds' payments from 60% to 70% would give the IOPC Funds a sufficient margin against overpayment. The Director proposes therefore that the Executive Committees should decide to increase the level of the IOPC Funds' payments to 70% of the amount of the damage actually suffered by the respective claimants.

## **6 Recourse actions taken by the IOPC Funds**

- 6.1 At their October 1999 sessions the Executive Committees of the 1971 Fund and the 1992 Fund considered the investigations into the cause of the incident and possible recourse actions. The discussions, which were held in private, are summarised in documents 71FUND/EXC.62/14, paragraphs 3.7.7 – 3.7.22 and 92 FUND/EXC.4/11, paragraphs 4.3.7 – 4.3.19.
- 6.2 The Executive Committees decided that if the shipowner, Prisco Traffic Limited, initiated limitation proceedings, the 1971 and the 1992 Funds should oppose his right to limit his liability (documents 71FUND/EXC.62/14, paragraph 3.7.11 and 92FUND/EXC.4/11, paragraph 4.3.11).
- 6.3 The Committees also decided that the Funds should take recourse action against Prisco Traffic Ltd, its parent company Primorsk Shipping Corporation ('Primorsk'), the UK Club and the Russian Maritime Register of Shipping (documents 71FUND/EXC.62/14, paragraphs 3.7.12, 3.7.15 and 3.7.16, and 92FUND/EXC.4/11, paragraphs 4.3.12, 4.3.15 and 4.3.16).
- 6.4 On 1 November 1999 the 1971 Fund brought actions at Fukui District Court against Prisco Traffic Ltd, Primorsk, the UK Club and the Russian Maritime Register of Shipping for ¥7 973 814 513, the amount that the 1971 Fund had paid to claimants up to that date.
- 6.5 On 10 December 1999 the 1971 and 1992 Funds brought actions against the same four defendants for ¥1 594 161 883, the amount paid by the 1971 and 1992 Funds since the first action was filed.
- 6.6 On 22 December 1999 the 1971 and the 1992 Funds brought actions against the same four defendants for ¥13 400 000 000, the maximum amount payable by the Funds under the 1971 and 1992 Fund Conventions less the amounts covered by the first and the second groups of actions and the shipowner's limitation amount.
- 6.7 At the October 1999 sessions the Executive Committees noted that significant repairs had been carried out on the *Nakhodka* in 1993 at a shipyard in Singapore. The Committees decided that the question of whether or not the 1971 and 1992 Funds should take legal action against the shipyard should be left to the discretion of the Director, in the light of what was in the best interest of the Organisations (documents 71FUND/EXC.62/14, paragraph 3.7.17 and 92FUND/EXC.4/11, paragraph 4.3.17).
- 6.8 The Funds' experts visited the shipyard in Singapore in January 2000.
- 6.9 In the light of the advice received from the Funds' lawyers and experts, the Director decided not to take legal action against the shipyard.

**7 Reactions by the shipowner and the Russian Maritime Register of Shipping**

- 7.1 In a letter to the Director dated 12 November 1999 the shipowner, Prisco Traffic Ltd, expressed the view that there were a number of mistakes and misunderstandings in the documents submitted by the Director to the Committees at their October 1999 sessions (documents 71FUND/EXC.62/8/1 and 92FUND/EXC.4/4/1) which made the documents highly misleading. It was stated in the letter that the cargo had been loaded within the loading criteria, that the *Nakhodka* could hardly be described as dilapidated having undergone extensive repairs and being fully in class at the time of the incident, that there could not have been any privity on the part of the shipowner, that the 1992 Civil Liability Convention was applicable to the *Nakhodka* incident, that Prisco Traffic Ltd was not part of any group and that the Funds should have considered recourse action against the salvors.
- 7.2 In his reply the Director stated that in the view of the Funds' experts the *Nakhodka* had been loaded in an unconventional manner, that there was a fundamental disagreement between the shipowner and the Funds in respect of the condition of the ship and on the issue of fault or privity, and that the Funds took the firm view that the 1992 Civil Liability Convention did not apply in this case.
- 7.3 In a letter to the Director dated 18 November 1999 the Russian Maritime Register of Shipping expressed its regret that the Executive Committees had concluded that the Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative of the incident. The Register proposed that a meeting should be held between the IOPC Funds' experts and those of the Register, so as to give the Register the possibility to defend its position.
- 7.4 The Funds' experts visited the Register in January 2000, expecting to obtain further documentation. The Register, however, maintained its position that it was not liable and the Funds' experts were not given access to the classification records and not provided with other documents which the Funds had understood would be made available at the meeting.

**8 Investigations made by the Funds' experts**

The IOPC Funds' experts have continued their investigations into the cause of the incident in co-operation with the Japanese authorities.

**9 Action to be taken by the Executive Committees**

The Executive Committees are invited:

- (a) to take note of the information contained in this document;
- (b) to decide the level of the IOPC Funds' payments; and
- (c) to give the Director such instructions in respect of this incident as it may deem appropriate.

**ANNEX**

**Claims situation as at 20 March 2000**

Category of claims		Claims submitted			Claims paid		
		Number	Amount		Number	Amount	
			US\$ <sup>&lt;1&gt;</sup>	Yen (million)		US\$ <sup>&lt;1&gt;</sup>	Yen (million)
Clean-up costs	(a) JMDPC	- Operations carried out by JMDPC	1		268	1	138
	(b)	- Contractors under JMDPC	54		8 047	55	3 926
	(c)	- Fishery Co-operative Associations	1		2 746	1	1 605
	(d)	Japanese Government Agencies	11		1 519	0	0
	(e)	Prefectures and municipalities	10		7 143	9	1 443
	(f)	Electricity companies	7		2 727	6	1 046
	(g)	Other entities	7		192	5	153
	(h)	EARL		1	542 593	58	58
	(i)	Russian authorities		2	3 284 322	351	325 000
		Sub-total		94		23 051	79
Loss of income: fishery <sup>&lt;2&gt;</sup>	(j)		9		5 359	5	711
Causeway construction and removal	(k)	JMDPC	1		2 397	0	0
Removal of oil from ship and removal of bow section	(l)	JMDPC and five contractors	4		1 615	1	400
			2	3 781 559	405	2	3 781 559
Aquarium	(m)		1		7	1	4
Tourism	(n)		347		3 036	187	430
<b>TOTAL</b>			458		35 871	275	10 354
					£210 million		£52 million

<1> Amounts in US\$ converted into Yen on the basis of the rate of exchange at 1 March 2000

<2> Includes provisional payments

<3> Payments made by the shipowner/UK Club

<4> Includes a payment made by the shipowner/UK Club

<5> This category includes the claim for the cost of a publicity campaign by National Federation of Fishery Co-operative Associations

<6> These payments have not been approved by the Funds