

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 9	IOPC/OCT10/9/3/1	
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	1992 Fund Assembly	92A15	•
	1992 Fund Executive Committee	92EC49	
	Supplementary Fund Assembly	SA6	
1971 Fund Administrative Council	71AC25		

ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

1992 FUND

Note by the Director

Summary:	As indicated in document IOPC/OCT10/9/3, the need for 2010 contributions to Major Claims Funds in respect of the 1992 Fund is examined. The Director proposes: <ul style="list-style-type: none"> (a) <i>Erika</i> Major Claims Fund: no levy; (b) <i>Prestige</i> Major Claims Fund: deferred levy of £3.5 million; (c) <i>Volgoneft 139</i> Major Claims Fund: possible deferred levy of £40 million; and (d) <i>Hebei Spirit</i> Major Claims Fund: levy of £50 million due by 1 March 2011 and a deferred levy of £20 million.
Action to be taken:	<u>1992 Fund Assembly:</u> Decide on the 1992 Fund levies of 2010 contributions to Major Claims Funds.

1 Introduction

- 1.1 Article 12.1 of the 1992 Fund Convention provides that the Assembly shall determine the amount of contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the 1992 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.
- 1.2 The 1992 Fund's expenditure consists of:
- (a) costs and expenses of the administration of the 1992 Fund, and any deficit from preceding years;
 - (b) payments of claims and claims-related expenditure up to 4 million SDR^{<1>} per incident (minor claims); and
 - (c) payments of claims and claims-related expenditure to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 4 million SDR (major claims).

^{<1>} The SDR (Special Drawing Rights) which is the unit of account used in the Conventions referred to in paragraph 1.2 is valued on the basis of a basket of key international currencies and serves as the unit of account of the International Monetary Fund (IMF) and a number of other intergovernmental organisations.

- 1.3 Expenses mentioned in sub paragraphs (a) and (b) of paragraph 1.2 above have to be met from the General Fund (Financial Regulation 7.1 (c)) and expenses with respect to major claims as defined in sub paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2 (d)).
- 1.4 The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1992 Fund Convention has been incorporated in the draft budget and is dealt with in a separate document (document IOPC/OCT10/9/2/1). This document deals only with the assessment of contributions to Major Claims Funds.
- 1.5 As for the individual incidents, reference is made to the information contained in the 2009 Financial Statements (document IOPC/OCT10/5/6/1, Annex V, Schedule II) and to the various documents relating to incidents submitted for consideration by the 1992 Fund Executive Committee at its 49th session (see document IOPC/OCT10/3/1).
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1992 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1992 Fund in respect of the claims.
- 1.7 It should also be noted that, unless stated otherwise, information on the payments of compensation and claims-related expenditure reflects the situation as at **30 June 2010** and represents payments actually made and is therefore on a cash basis.
- 1.8 The Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below in light of any developments.

2 Erika Major Claims Fund

2.1 Summary information

Background information in respect of the *Erika* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Erika</i> France 12/12/99	
	Euro ^{<2>}	Pound sterling
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR = FFr1 211 966 881 – CLC limit FFr84 247 733 = FFr1 127 719 148 = €171 919 676)	171 919 676	
Compensation paid up to 31/12/09	116 873 834	77 021 437
Compensation paid 01/01/10 – 30/06/10	3 105	2 192
Balance of compensation available	55 042 737	
Possible total compensation payable by 1992 Fund 01/07/10 – 01/03/12	55 042 737	45 068 993 ^{<3>}
Claims-related expenses paid by 1992 Fund up to 31/12/09		21 597 834
Claims-related expenses paid by 1992 Fund 01/01/10 - 30/6/10		271 647
Possible claims-related expenses payable by 1992 Fund 01/07/10 –01/03/12		1 500 000
Maximum payable from General Fund (4 million SDR)		3 380 680
Total previously levied to Major Claims Fund		118 000 000
Estimated balance on <i>Erika</i> Major Claims Fund as at 30 June 2010		49 350 000

2.2 Analysis

- 2.2.1 The total payments by the 1992 Fund in respect of the *Erika* incident reached the maximum amount payable from the General Fund, ie 4 million SDR (£3 380 680) during 2001.

^{<2>} 1 Euro = 6.55957 French Francs.

^{<3>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie 1 Euro = £0.8188.

- 2.2.2 A total of £118 million has been levied as contributions to the *Erika* Major Claims Fund. There was a surplus of £49.4 million on the Major Claims Fund as at 31 December 2009 (document IOPC/OCT10/5/6/1, Annex V, Statement II.2). The balance on the *Erika* Major Claims Fund is estimated at some £49.3 million as at 30 June 2010. There are no outstanding contributions.
- 2.2.3 The established claims will exceed the maximum amount available under the 1992 Conventions.
- 2.2.4 As at 30 June 2010 an amount of some £77 million had been paid in compensation.
- 2.2.5 The Director takes the view that, if the compensation payments were to reach the maximum amount payable under the 1992 Fund Convention, then some £46.5 million in compensation and claims-related expenses may be payable by the 1992 Fund in respect of this incident for the 20-month period 1 July 2010 – 1 March 2012 (the date when any 2011 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2010 of €£0.8188.
- 2.2.6 As set out in the Annex, it appears that the amount available in the *Erika* Major Claims Fund will be sufficient for payments to be made in respect of the *Erika* incident up to 1 March 2012. In addition the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 July 2010 – 1 March 2012.
- 2.2.7 In addition, some 42% (€23 million) of the amount of compensation yet to be paid (€55 million) is already held in Euros. In the Director's view, the balance on this Major Claims Fund and the interest to be earned on the balance would be sufficient to cover the anticipated payments and any weakening of the Pound sterling against the Euro up to 1 March 2012. For these reasons the Director proposes not to levy contributions to the *Erika* Major Claims Fund.
- 2.2.8 Should the amount to be paid during the period 1 July 2010 – 1 March 2012 exceed the Director's estimate of £46.5 million due to much larger currency fluctuations or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1 (c) (iv), to be repaid with interest.

3 Prestige Major Claims Fund

3.1 Summary information

Background information in respect of the *Prestige* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Prestige</i> Spain 13/11/02	
	Euro	Pound sterling
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR = €171 520 703 – CLC limit €22 777 986)	148 742 717	
Compensation paid by 1992 Fund up to 31/12/09	120 324 324	82 812 138
Compensation paid by 1992 Fund 01/01/10 to 30/06/10	86 453	58 304
Balance of compensation available	28 331 940	
Possible total compensation payable by 1992 Fund 01/07/10 – 01/03/12	28 331 940	23 198 192 ^{<4>}
Claims-related expenses paid by 1992 Fund up to 31/12/09		15 936 395
Claims-related expenses paid by 1992 Fund 01/01/10 - 30/06/10		969 982
Possible claims-related expenses payable by 1992 Fund 01/07/10 – 01/03/12		3 300 000
Maximum payable from General Fund (4 million SDR)		3 369 200
Total previously levied to Major Claims Fund		108 000 000
Estimated balance on <i>Prestige</i> Major Claims Fund as at 30 June 2010		21 000 000

^{<4>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie 1 Euro=£0.8188.

3.2 Analysis

- 3.2.1 The total amount payable in respect of the *Prestige* incident reached the maximum amount payable from the General Fund (£3 369 200) during 2003.
- 3.2.2 A total of £108 million has been levied as contributions to the *Prestige* Major Claims Fund. The balance on the *Prestige* Major Claims Fund is estimated at some £21.0 million as at 30 June 2010.
- 3.2.3 It is not possible at this stage to determine the total amount of the established claims. However, it is certain that it will exceed by far the amount available under the 1992 Conventions.
- 3.2.4 As at 30 June 2010 an amount of some £82.8 million had been paid in compensation.
- 3.2.5 The Director takes the view that some £26.5 million, being compensation and claims-related expenses, may be payable by the 1992 Fund in respect of this incident for the 20-month period 1 July 2010 – 1 March 2010 (the date when any 2011 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2010 of €£0.8188.
- 3.2.6 As set out in the Annex, it appears that the amount available in the *Prestige* Major Claims Fund may not be totally sufficient for payments to be made in respect of the *Prestige* incident up to 1 March 2012. However, the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 July 2010 – 1 March 2012. If the interest earned (estimated at £150 000) were taken into account, the amount available would cover only a small part of the deficit of £5.5 million.
- 3.2.7 Some 60% (€17 million) of the amount of compensation yet to be paid (€28.3 million) is already held in Euros.
- 3.2.8 In the Director's view, the balance on this Major Claims Fund and the interest to be earned on the balance may not be sufficient to cover the estimated deficit net of interest earned. The Director believes it would be prudent to maintain the possibility to levy contributions of £5 million to the *Prestige* Major Claims Fund and therefore proposes a deferred levy of £5 million.
- 3.2.9 Should the amount to be paid during the period 1 July 2010 – 1 March 2012 exceed the Director's estimate of £26.5 million due to the weakening of Pound sterling or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

4 Volgoneft 139 Major Claims Fund

4.1 Summary information

Background information in respect of the *Volgoneft 139* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Volgoneft 139</i> Russian Federation and Ukraine 11/11/07	
	Pound sterling	Pound sterling
Maximum amount of compensation payable by 1992 Fund (ie 203 million SDR = £200.4 million– CLC limit 4.51 million SDR = £4.4 million) ^{<5>}	196 000 000	
Compensation paid up to 31/12/09	0	0
Compensation paid 01/01/10 – 30/06/10	0	0
Balance of compensation available	196 000 000	
Possible total compensation payable by 1992 Fund 01/07/10 – 01/03/12	196 000 000	196 000000
Claims-related expenses paid by 1992 Fund up to 31/12/09		337 758
Claims-related expenses paid by 1992 Fund 01/01/10 - 30/06/10		40 445
Possible claims-related expenses payable by 1992 Fund 01/07/10 – 01/03/12		1 000 000
Maximum payable from General Fund (4 million SDR)		3 059 508
Total previously levied to Major Claims Fund		0
Estimated balance on <i>Volgoneft 139</i> Major Claims Fund as at 30 June 2010		0

4.2 Analysis

- 4.2.1 At its last session, held in October 2009, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly decided that funding of this incident would continue to be subject to the 1992 Fund Executive Committee deciding to authorise the Director to make payments of compensation for this incident. At the 48th session of the 1992 Fund Executive Committee held in June 2010 the Director had not yet been authorised to make compensation payments in respect of this incident (cf document IOPC/JUN10/6/1, paragraph 3.4.27).
- 4.2.2 Claims-related expenses are currently being paid from the General Fund. If the 1992 Fund Executive Committee were to decide to authorise the Director to make payments of compensation, it is expected that the total amount payable from the General Fund, in respect of the *Volgoneft 139* incident, of £3 059 508 will be reached in 2011.
- 4.2.3 Although it is not possible at this stage to determine the total amount of established claims, the total amount claimed so far exceeds the amount available under the 1992 Conventions. It is important to note, however, that a major part of the total amount claimed relates to a claim for environmental damage which appears to be based on an abstract quantification calculated in accordance with a theoretical model, which is not admissible under the Fund's criteria.
- 4.2.4 Since the Director has not yet been authorised to make payments for claims assessed and settled in accordance with the Fund's criteria for admissibility, there is, as yet, no need for a levy for the *Volgoneft 139* incident. Any levy to be decided at this session of the 1992 Fund Assembly, however, should cover the period up to 1 March 2012, the date by which a levy, to be decided at the next regular session of the Assembly in October 2011, will be payable.

^{<5>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie £1 =1.0128 SDR.

- 4.2.5 The Director assumes that it is likely that a decision authorising him to make payments of compensation will be taken at some point before that date. In such case, there is a significant possibility that the Fund will not be able to respond to the *Volgoneft 139* incident in accordance with its function under the 1992 Fund Convention, unless considerable funds can be made available by loans from other Major Claims Funds. Taking loans from other Major Claims Funds is, however, an option which, in the Director's view, should not be relied upon too easily, in particular when it is clear that a significant levy will have to be made in the near future in any event.
- 4.2.6 Therefore, in spite of the continuing uncertainty as to the amount and timing of the expenditure, the Director is of the view that, as in October 2009, it would be prudent for the 1992 Fund Assembly, at this stage, to consider at least a deferred levy for the *Volgoneft 139* incident, to ensure that the 1992 Fund will be able to respond adequately, should a decision to authorise the Director to make payments in respect of this incident be made before 1 March 2012. The amount of such levy should, however, be determined, not taking into account the claim for environmental damage, which seems to be based on an abstract quantification calculated in accordance with a theoretical model.
- 4.2.7 In view of the above the Director proposes a deferred levy of £40 million. However should the 1992 Fund Executive Committee, at its October 2010 session, authorise the Director to make compensation payments for this incident, the Director will amend his proposal.

5 Hebei Spirit Major Claims Fund

5.1 Summary information

Background information in respect of the *Hebei Spirit* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Hebei Spirit</i> Taeon, Republic of Korea 07/12/07	
	Korean Won	Pound sterling
Maximum amount of compensation payable by 1992 Fund (ie 203 million SDR = KRW 321 618 990 000 – CLC limit 89.77 million SDR = KRW 142 225 304 100) ^{<6>}	179 393 685 900	
Compensation paid up to 31/12/09	0	0
Compensation paid 01/01/10-30/06/10	0	0
Balance of compensation available	179 393 685 900	
Possible total compensation payable by 1992 Fund 01/07/10 – 01/03/12	179 393 685 900	98 126 927 ^{<7>}
Claims-related expenses paid by 1992 Fund up to 31/12/09		8 143 516
Claims-related expenses paid by 1992 Fund 01/01/10 - 30/06/10		3 779 734
Possible claims-related expenses payable by 1992 Fund 01/07/10-01/03/12		15 000 000
Maximum payable from General Fund (4 million SDR)		3 110 128
Total previously levied to Major Claims Fund		50 000 000
Estimated balance on <i>Hebei Spirit</i> Major Claims Fund as at 30 June 2010		42 300 000

^{<6>} Amount payable under CLC not set by Limitation Court. Rate used is date when the 1992 Fund Executive Committee authorised payment, ie 13 March 2008.

^{<7>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie £1= KRW 1 828.

5.2 Analysis

- 5.2.1 The total amount payable from the General Fund in respect of the *Hebei Spirit* incident of £3 110 128 was reached in 2008.
- 5.2.2 It is not possible at this stage to determine the total amount of the established claims. However, it is certain that it will exceed by far the amount available under the 1992 Conventions.
- 5.2.3 The Director takes the view that up to some £113 million, being compensation and claims-related expenses, may be payable by the 1992 Fund from the *Hebei Spirit* Major Claims Fund for the period up to 1 March 2012 (the date when any 2011 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2010 of £/KRW 1828.18.
- 5.2.4 As set out in the Annex, an additional amount of £70.7 million will be required in respect of the *Hebei Spirit* Major Claims Fund. However, the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 July 2010 – 1 March 2012 estimated at £300 000. The Director takes the view that an additional amount of some £70 million would be required to be levied.
- 5.2.5 An amount of some Korean Won (KRW) 29 billion (16%) of the amount of compensation to be paid has already been hedged.
- 5.2.6 Should the amount to be paid during the period 1 July 2010 – 1 March 2012 exceed the Director's estimate of £113 million due to currency fluctuations or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

6 Director's proposals

6.1 Proposed levies

- 6.1.1 On the basis of the considerations set out in paragraphs 2.2.1 – 2.2.8 above, the Director proposes that contributions should not be levied to the *Erika* Major Claims Fund and that any deficit should be covered by loans from the General Fund.
- 6.1.2 The Director proposes levies of £5 million to the *Prestige* Major Claims Fund (cf paragraphs 3.2.1 – 3.2.9), £40 million to the *Volgoneft 139* Major Claims Fund (cf paragraphs 4.2.1 – 4.2.7) and a levy of £70 million to the *Hebei Spirit* Major Claims Fund (cf paragraphs 5.2.1 – 5.2.6).

6.2 Timing of levies

- 6.2.1 Internal Regulation 3.6 provides that unless the 1992 Fund Assembly decides otherwise, payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions.
- 6.2.2 At its 1st session, the 1992 Fund Assembly decided to introduce a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary (document 92FUND/A.1/34, paragraph 16).
- 6.2.3 The Director proposes that £50 million should be due for payment to the *Hebei Spirit* Major Claims Fund by 1 March 2011. He further proposes that the entire levy of £5 million to the *Prestige* Major Claims Fund, £40 million to the *Volgoneft 139* Major Claims Fund and balance of £20 million to the *Hebei Spirit* Major Claims Fund should be deferred and that he be authorised to decide whether to invoice all or part of those deferred levies in 2011 for payment in the same year.

7 Action to be taken1992 Fund Assembly

The 1992 Fund Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention:

- (a) to take note of the information contained in this document;
- (b) to consider the Director's proposal that there should be no levy of 2010 contributions in respect of the *Erika* Major Claims Fund (paragraphs 2.2.1 – 2.2.8 and 6.1.1);
- (c) to consider the Director's proposal to decide on a deferred levy of £5 million in 2010 contributions to the *Prestige* Major Claims Fund (paragraphs 3.2.1 – 3.2.9, 6.1.2 and 6.2.3);
- (d) to consider the Director's proposal to decide on a deferred levy of £40 million in 2010 contributions in respect of the *Volgoneft 139* Major Claims Fund (paragraphs 4.2.1 – 4.2.7, 6.1.2 and 6.2.3); and
- (e) to consider the Director's proposal to decide on 2010 contributions of £50 million due for payment by 1 March 2011 and a deferred levy of £20 million to the *Hebei Spirit* Major Claims Fund (paragraphs 5.2.1 – 5.2.6, 6.1.2 and 6.2.3).

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ANNEX

Major Claims Fund expenditure

(Figures in Pounds Sterling)

Incident	Date of Incident	Previous levies				Maximum Paid by the General Fund: 4 million SDR	Payments by 31/12/09		MCF Balance 31/12/09	2010 Expenditure to 30/06/10		2010 Income	Estimated Balance 30/06/10	Contributions due in 2010	Possible Total Expenditure 01/07/10 - 01/03/12	Projected Surplus /(Deficit) (excluding interest income from 01/07/10) 01/03/12
		Contribution Year	Assembly Session	Date Due	Amount		(including General Fund)			Compensation paid to 30/06/10	Claims-related expenses paid to 30/06/10	to 30/6/10				
							Compensation paid by 31/12/09	Claims-related expenses paid by 31/12/09								
<i>Erika</i>	12/12/99	2000	4th ext	01/09/00	40 000 000	3 380 680	(77 021 437)	(21 597 834)	49 440 643	(2 192)	(271 647)	179 200	49 347 000	0	(46 500 000)	2 847 000
		2000	5th	01/03/01	25 000 000											
		2001	6th	01/03/02	25 000 000											
		2002	7th	01/03/03	28 000 000											
					118 000 000											
		<i>Authorised but not levied</i>		01/09/01	25 000 000											
		<i>Authorised but not levied</i>		01/09/02	21 000 000											
<i>Prestige</i>	13/11/02	2003	8th	01/03/04	75 000 000	3 369 200	(82 812 138)	(15 936 395)	22 037 581	(58 304)	(969 982)	83 326	21 000 000	0	(26 500 000)	(5 500 000)
		2004	9th	01/03/05	33 000 000											
					108 000 000											
		<i>Authorised but not levied</i>		01/09/04	35 000 000											
		<i>Authorised but not levied</i>		01/09/06	3 500 000											
<i>Volgoneft 139 *</i>	11/11/07					3 059 508	0	0	0	0	0	0	0	0	(197 000 000)	(197 000 000)
		<i>Authorised but not levied</i>		01/09/09	50 000 000											
		<i>Authorised but not levied</i>		01/09/10	40 000 000											
<i>Hebei Spirit</i>	07/12/07	2007	13th ext	01/11/08	50 000 000	3 110 128	0	(8 143 516)	45 965 355	0	(3 779 734)	196 800	42 300 000	0	(113 000 000)	(70 700 000)
		<i>Authorised but not levied</i>		01/09/09	33 500 000											
		<i>Authorised but not levied</i>		01/09/10	52 000 000											
								117 443 579				112 647 000	0	(383 000 000)	(270 353 000)	

* Subject to a decision of the Executive Committee authorising the Director to make payments (paragraph 4.2).

Figures in brackets show outflow.