



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS**

ASSEMBLY  
10th session  
Agenda item 4

92FUND/A.10/3  
29 September 2005  
Original: ENGLISH

ASSEMBLY  
1st extraordinary session  
Agenda item 3

SUPPFUND/A/ES.1/2

ADMINISTRATIVE COUNCIL  
17th session  
Agenda item 4

71FUND/AC.17/2

## REPORT OF THE DIRECTOR

**Summary:**

The number of 1992 Fund Member States has continued to increase. Since the sessions of the governing bodies in October 2004 the 1992 Fund has not become involved in any new oil pollution incidents. Progress has been made towards the winding up of the 1971 Fund.

The Supplementary Fund Protocol entered into force on 3 March 2005 and the administrative structures of the Supplementary Fund have been established.

The 1992 Fund Working Group, which was established to consider the need to improve the compensation regime under the 1992 Conventions, has presented its report to the Assembly. The opinions in the Working Group were divided into two large groups, one against any revision of the 1992 Conventions and the other considering that there were a significant number of issues that needed to be addressed.

The IOPC Funds have given higher priority to the preparations for the entry into force of the HNS Convention.

**Action to be taken:** Information to be noted.

### **1 Introduction**

This Report contains a review of some of the main issues relating to the activities of the 1992 Fund and 1971 Fund since the October 2004 sessions of their respective governing bodies and the activities of the Supplementary Fund since the entry into force of the Supplementary Fund Protocol on 3 March 2005. It also deals with the finances of the 1992 and 1971 Funds for the first eight months of 2005.

### **2 Establishment of the Supplementary Fund**

- 2.1 The Supplementary Fund was established on 3 March 2005 as a result of the entry into force of a Protocol to the 1992 Fund Convention, which had been adopted in May 2003 by a Diplomatic Conference held under the auspices of the International Maritime Organization (IMO). The Supplementary Fund provides additional compensation over and above that available under the

1992 Fund Convention for pollution damage in such States. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund is 750 million SDR (£600 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (£162 million).

- 2.2 The first session of the Supplementary Fund Assembly was held in March 2005.
- 2.3 At their March 2005 sessions the governing bodies of the three Funds considered a number of issues relating to the establishment of the Supplementary Fund. In view of the very close link between the three Funds, the governing bodies decided that the Supplementary Fund should be administered by the 1992 Fund Secretariat, which also administers the 1971 Fund, and that the Director of the 1992 and 1971 Funds should also be the Director of the Supplementary Fund.

### **3 Membership of the IOPC Funds and external relations**

#### **3.1 Membership**

- 3.1.1 When the 1992 Fund Convention entered into force on 30 May 1996 there were just nine Member States. By the end of the 1992 Fund Assembly's October 2005 session, the 1992 Fund Convention will be in force for 92 States. A further three States have acceded to the 1992 Fund Convention, bringing the number of Member States to 95 by June 2006. The status of the Convention is set out in document 92FUND/A.10/4 and SUPPFUND/A/ES.1/3.
- 3.1.2 As the 1971 Fund Convention ceased to be in force on 24 May 2002, there are no longer any 1971 Fund Member States. Most of the 1971 Fund's former Member States have ratified the 1992 Fund Convention. It is hoped that the remaining eight former Member States (Benin, Côte d'Ivoire, Gambia, Guyana, Indonesia, Kuwait, Mauritania and the Syrian Arab Republic) will soon do so.
- 3.1.3 It is likely that a number of other States will also become Members of the 1992 Fund in the near future. It is expected that Bulgaria, the Libyan Arab Jamahiriya and Luxembourg will soon ratify the 1992 Fund Convention.
- 3.1.4 As at 29 September 2005, the Supplementary Fund had eleven Member States (Denmark, Finland, France, Germany, Ireland, Japan, Netherlands, Norway, Portugal, Spain and Sweden). A number of other States have indicated that they expect to ratify the Supplementary Fund Protocol in the near future.

#### **3.2 Information on Fund activities and promotion of 1992 Fund membership**

- 3.2.1 The 1992 Fund and the 1971 Fund published a joint Annual Report in English, French and Spanish for the calendar year 2004. This Report continues to attract great interest from all those dealing with the Funds as well as from persons and bodies interested in environmental matters in general.
- 3.2.2 In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other members of the Secretariat have visited thirteen 1992 Fund Member States since the governing bodies' sessions in October 2004.
- 3.2.3 The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other members of the Secretariat have also visited nine non-Member States. They have participated in seminars, conferences and workshops in a number of countries and given lectures on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. As in previous years, the Funds have lectured to students at the World Maritime

University in Malmö (Sweden) and the IMO International Maritime Law Institute (IMLI) in Malta, providing the opportunity to disseminate information on the 1992 Conventions to students who eventually return to their administrations throughout the world. Lectures have also been given at Dalian Maritime University (Dalian, People's Republic of China) and the University of Southampton (United Kingdom).

- 3.2.4 The Secretariat has developed a training package on the submission of claims for compensation. Workshops using this package have been held in Malaysia and Singapore and further workshops will be held in Israel, Namibia and Nigeria.
- 3.2.5 The Director and other staff members have met with government representatives of a number of States during IMO meetings.
- 3.2.6 The Director is a member of the organising committee for Interspill 2006, an international conference and exhibition for professionals concerned with marine and inland spills and their impact on the environment. The Conference will be held in London from 21 to 23 March 2006. The Director will be one of several IOPC Funds staff giving presentations or chairing sessions at the conference. The IOPC Funds will also run a short course on Claims and Compensation as part of the conference's educational programme and will have a stand at the exhibition.

### 3.3 Relationships with international organisations and interested parties

- 3.3.1 The IOPC Funds co-operate closely with many intergovernmental and international non-governmental organisations, as well as with private organisations involved in the maritime transport of oil. The Funds have particularly close links with IMO, with which a co-operation agreement exists.
- 3.3.2 In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed by the Funds and the shipowner's liability insurer, working closely together. The International Tanker Owners Pollution Federation Limited (ITOPF), supported by a worldwide network of surveyors and experts, provides technical assistance relating to oil spills.

## **4 Finances of the 1992 Fund, the 1971 Fund and the Supplementary Fund**

### 4.1 Expenditures of the Funds

- 4.1.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2004 was £2 624 613, compared with the budgetary appropriation of £3 292 250. Details of the accounts of the 1992 Fund and 1971 Fund for the financial year 2004 are given in the Financial Statements (documents 92FUND/A.10/10, Annex IV and 71FUND/AC.17/5, Annex IV).
- 4.1.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first eight months of 2005 amounts to approximately £1.7 million. The budget appropriation for the whole of 2005 for both Organisations is £3 372 600. It is expected that there will be a budgetary surplus at the end of the year.
- 4.1.3 At its March 2005 session, the Supplementary Fund Assembly decided that the first financial period of the Supplementary Fund should be 3 March – 31 December 2005 and adopted a budget with a total expenditure (including the management fee payable to the 1992 Fund) of £225 000 for that period (document SUPPFUND/A.1/39, paragraph 34). The 2005 budget included appropriations for administrative costs relating only to the Supplementary Fund and reimbursement with interest of payments made by the 1992 Fund on behalf of the Supplementary Fund prior to its establishment (document SUPPFUND/A.1/39, Annex III).

4.2 Cooperation with the External Auditor

Excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Funds and the operation of the joint Secretariat.

4.3 Audit Body

The governing bodies of the 1992 and 1971 Funds established a joint Audit Body in October 2002. At their March 2005 sessions, the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund decided that the Audit Body should be a joint Body for all three Funds. The Audit Body has met three times since October 2004, ie on 26 November 2004 and on 8 April and 17 June 2005. The report of the Audit Body is contained in document 92FUND/A.10/11, SUPPFUND/A.1/6 and 71FUND/AC.17/6.

4.4 Investment Advisory Body

The 1992 Fund, the 1971 Fund and the Supplementary Fund have a joint Investment Advisory Body, composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters. The report of the Investment Advisory Body is contained in document 92FUND/A.10/9, 71FUND/AC.17/4 and SUPPFUND/A/ES.1/5.

4.5 Investment of funds

4.5.1 During 2004 and 2005 funds which were not required for the short-term operation of the 1992 and 1971 Funds were placed on term deposits with a number of leading financial institutions. The average rate of interest received on the investments maturing in 2004 was in the region of 4.2%.

4.5.2 Since the October 2004 sessions of the governing bodies, the London clearing bank base rate was reduced from 4.75% to 4.50% on 4 August 2005.

4.5.3 During the first eight months of 2005 interest earned by the 1992 Fund on investment maturities amounted to approximately £3.2 million and by the 1971 Fund to approximately £530 000.

4.5.4 As at 29 September 2005 the 1992 Fund's investments totalled some £152 million and the 1971 Fund's investments some £11 million.

4.5.5 Details of the investments placed during the period 1 July 2004 to 30 June 2005 are given in documents 92FUND/A.10/8 and 71FUND/AC.17/3.

**5 Contributions**

5.1 1992 Fund

5.1.1 The 1992 Fund Assembly decided in October 2004 to levy contributions of £5.4 million to the General Fund and of £33 million to the *Prestige* Major Claims Fund, with the entire levies due for payment by 1 March 2005. It was also decided that a surplus of £600 000 on the *Nakhodka* Major Claims Fund should be reimbursed to contributors on 1 March 2005.

5.1.2 A report on the payment of contributions to the 1992 Fund is given in document 92FUND/A.10/13

5.2 1971 Fund

- 5.2.1 Since the 1971 Fund Convention has ceased to be in force it is not possible to levy further contributions to the General Fund.
- 5.2.2 The Administrative Council decided in October 2004 that a surplus of £9.65 million on four Major Claims Funds should be reimbursed to contributors to those Major Claims Funds on 1 March 2005 and that the remaining balances should be transferred to the General Fund.
- 5.2.3 A report on the payment of contributions to the 1971 Fund is given in document 71FUND/AC.17/8.

5.3 Supplementary Fund

The Supplementary Fund Assembly decided at its first session, held in March 2005, that contributions to the Supplementary Fund should be levied every year and that they should be levied at the same time as contributions are levied to the 1992 Fund and/or to the 1971 Fund. Accordingly, the first levy of contributions to the Supplementary Fund will be considered by the Assembly at its October 2005 session (cf documents SUPPFUND/A/ES.1/18 and SUPPFUND/A/ES.1/19).

**6 Submission of oil reports**

- 6.1 The non-submission of reports on contributing oil receipts (oil reports) has been a recurring problem for both the 1971 Fund and the 1992 Fund. When the Supplementary Fund Protocol was drafted, it was therefore decided to insert provisions under which compensation would be denied temporarily or permanently in respect of States that failed to fulfil their obligation to submit oil reports. At its first session, held in March 2005, the Supplementary Fund Assembly considered the procedures to be followed in order to establish whether a Supplementary Fund Member State affected by an incident had complied with its obligations in this regard. It was considered that it would be for the Assembly to decide whether or not a State had fulfilled its obligations.
- 6.1.1 The Director regrets to report that the failure of a number of 1992 Fund Member States and a number of former 1971 Fund Member States to submit reports on contributing oil receipts continues to give rise to considerable concern. By 29 September 2005, reports of oil received in 2004 and/or previous years were outstanding for twenty-four 1992 Fund Member States and eleven former 1971 Fund Member States. A number of these States have reports outstanding for several years. This issue is examined further in document 92FUND/A.10/14, 71FUND/AC.17/9 and SUPPFUND/A/ES.1/8.
- 6.1.2 All Supplementary Fund Member States have submitted their oil reports.

**7 Incidents involving the 1992 Fund**

- 7.1 Since its establishment in May 1996 the 1992 Fund has been involved in 28 oil pollution incidents and has paid compensation totalling some £160 million.
- 7.2 Since the 1992 Fund Assembly's session in October 2004, the 1992 Fund has not been notified of any new oil pollution incidents which will involve the Fund.
- 7.3 Further information on incidents which occurred previously is contained in the documents submitted to the 30th session of the Executive Committee.

**8 Incidents involving the 1971 Fund**

- 8.1 Since its establishment in October 1978, the 1971 Fund has been involved in 107 oil pollution incidents and has paid compensation totalling some £330 million. As the 1971 Fund Convention ceased to be in force on 24 May 2002, it does not apply to incidents occurring after that date.
- 8.2 As at 29 September 2005, there are outstanding third party claims in respect of three incidents. Recourse actions taken by the 1971 Fund in respect of three incidents are pending.
- 8.3 The various documents submitted to the Administrative Council under agenda item 14 give details of all the incidents dealt with by the 1971 Fund during the last twelve months.

**9 Winding up of the 1971 Fund**

- 9.1 Before the 1971 Fund can be wound up, all pending claims will have to be settled and paid and any remaining assets will have to be distributed in an equitable manner between contributors. A course of action must be decided upon in respect of contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on contributing oil receipts (cf document 71FUND/AC.17/9).
- 9.2 Since the October 2004 session of the Administrative Council, progress has been made towards the winding up of the 1971 Fund. Further details in respect of the issues involved are given in document 71FUND/AC.17/13.

**10 Review of the international compensation regime**

- 10.1 In April 2000, the 1992 Fund Assembly established an intersessional Working Group to discuss the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 10.2 The initial task of the Working Group was the elaboration of the draft Supplementary Fund Protocol with the aim of establishing an optional third tier of compensation by means of a Supplementary Fund to provide compensation over and above the compensation available under the 1992 Fund Convention for pollution damage in States which became Parties to the Protocol. As mentioned above, the Protocol entered into force on 3 March 2005.
- 10.3 The Working Group has continued to work under the mandate which was decided by the Assembly at its October 2001 session, ie to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including certain issues which had already been identified by the Working Group but not yet resolved.
- 10.4 In October 2004, the 1992 Fund Assembly considered the Working Group's report and it was clear that opinions were divided into two large groups: one which was against any revision of the 1992 Conventions and the continuation of the Working Group, the other considering that there were a number of outstanding issues that needed to be addressed, which could result in the revision of the Conventions. The Assembly decided that the Working Group should meet in early 2005 and make final recommendations to the Assembly for consideration at its October 2005 session on whether or not the Conventions should be revised, and if so, which items required revision.
- 10.5 At its meeting in March 2005, the Working Group focused its discussions on the equitable sharing of the financial burden between shipowners and cargo interests and on whether there was a need for a revision of the 1992 Conventions. The Working Group was again evenly split as to whether the Conventions should be revised. The Working Group also considered which issues to

recommend to the Assembly for inclusion if a limited revision of the 1992 Conventions were to be decided upon, and it was recommended that a number of issues should be retained whilst others should be dropped.

- 10.6 The Assembly will consider the Working Group's report in October 2005 and decide whether or not the Conventions should be revised and, if so, which issues should be included in any such revision (cf document 92FUND/A.10/7).

## **11 Preparations for the setting up of the HNS Fund**

- 11.1 The 1992 Fund Assembly has instructed the Director to carry out the administrative tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund) to be established under the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention), as requested by the Diplomatic Conference which adopted the Convention.
- 11.2 At the March 2005 session of the 1992 Fund Assembly, a number of delegates stated that it was important for the IOPC Funds' Secretariat to take a higher profile in respect of the HNS Convention.
- 11.3 In June 2005 the IOPC Funds held a workshop aimed at facilitating States' preparations for ratification and implementation of the HNS Convention and at addressing the need for the uniform interpretation and application of the Convention. Presenters included a number of external experts on the HNS Convention as well as members of the IOPC Funds' Secretariat. Approximately 150 participants attended the workshop, including representatives of States and industry. The Director intends to organise a second workshop during 2006.
- 11.4 The Secretariat has developed a system to assist in identifying and reporting contributing cargo under the HNS Convention which has now been distributed in the form of a CD-ROM. A website specifically for the HNS Convention Contributing Cargo Calculator is currently being developed, which will not require the installation of any software.
- 11.5 The IOPC Funds are also developing a dedicated website for the HNS Convention.

## **12 Looking ahead**

- 12.1 The coming year will be a very important one for the IOPC Funds as the next Director, who will be elected in October 2005, will take up his duties on 1 November 2006. The present Director will make every effort to ensure a smooth transition to his successor and will continue to be available up to 31 December 2006.
- 12.2 Although the international compensation regime has worked well in most cases, it is important that the regime continues to adapt to meet the needs of society. Whilst the entry into force of the Supplementary Fund Protocol earlier this year has already brought about a great improvement in the regime, the position taken by the 1992 Fund Assembly regarding the report of the Working Group will be of great importance for the future operation of the regime.
- 12.3 There have been no new incidents involving the 1992 Fund, or indeed the Supplementary Fund, so far during 2005 and, given the impact that major incidents have on people's livelihoods and on the environment, it is to be hoped that there will be no major incidents in the coming year. However, significant work will be required in order to make progress with, and hopefully resolve, a number of outstanding incidents.
- 12.4 It is expected that the memberships of the 1992 Fund and the Supplementary Fund will continue to increase steadily during the coming year whilst, as regards the 1971 Fund, the Secretariat will

continue to work towards a smooth and timely winding up. At the same time, the Secretariat will give higher priority to the preparations for the entry into force of the HNS Convention and the setting up of the HNS Fund, as requested by a number of Member States.

**13 Action to be taken by the governing bodies**

The governing bodies are invited to take note of the information contained in this document.

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