



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
18th session
Agenda item 15

FUND/A.18/12/2
25 September 1995

Original: ENGLISH

ENTRY INTO FORCE OF THE 1992 PROTOCOLS AMENDING THE 1969 CIVIL LIABILITY CONVENTION AND THE 1971 FUND CONVENTION

PAYMENTS OF COMPENSATION DURING THE TRANSITIONAL PERIOD

Note by the Director

1 Introduction

During recent months, the Director has received enquiries from the Governments of a number of Fund Member States and non-Member States on the functioning of the compensation system of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Protocols thereto during the transitional period. For this reason, the Director has prepared the present document which gives an example of how, in his view, the amounts referred to in the above-mentioned instruments would be available to claimants in various situations.

2 The transitional period

2.1 Article 36 bis of the 1992 Fund Convention defines the transitional period as the period from the date of entry into force of the 1992 Protocol to the date on which the denunciations provided for in Article 31 of the Final Clauses of that Protocol take effect. The 1992 Protocol to the Fund Convention will enter into force on 30 May 1996. As indicated in document FUND/A.18/12/1, it is expected that the requirements for compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention will be fulfilled during the summer of 1996, and that the denunciations of those Conventions by the Parties to the 1992 Fund Protocol will take effect by the end of 1997. The transitional period is therefore expected to last from 30 May 1996 to approximately the end of 1997.

2.2 Special provisions relating to the transitional period are set out in Article XII bis of the 1992 Civil Liability Convention and Article 36 bis of the 1992 Fund Convention. These Articles read as follows:

Article XII bis of the 1992 Civil Liability Convention*Transitional provisions*

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
- (b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;
- (c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;
- (d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

Article 36 bis of the 1992 Fund Convention

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

- (a) In the application of paragraph 1(a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.
- (b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.
- (c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

- (d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

3 Categories of States

3.1 During the transitional period, a State may be Party to one or more Conventions. Eight different situations can be envisaged, as shown in the table overleaf; an 'X' indicates that an instrument of ratification has been deposited and the Convention is in force for the State in question.

Category of State	1969 Civil Liability Convention	1971 Fund Convention	1992 Civil Liability Convention	1992 Fund Convention
A	X			
B	X	X		
C			X	
D			X	X
E	X	X	X	X
F	X		X	
G	X		X	X
H	X	X	X	(Instrument deposited, but declaration made under Article 30.4 of Final Clauses of 1992 Fund Protocol)

3.2 As at 25 September 1995, there are States which will fall within categories A, B, E, F and H. So far, there are no States which will fall within categories C, D or G.

4 Compensation payable to claimants

4.1 The mechanism of compensation payments under the four Conventions during the transitional period will in some cases be quite complex. To assist in the understanding of how this system would work, calculations have been made of the amounts of compensation which would be available if a fictitious incident occurred causing pollution damage in each of the eight categories of States indicated in paragraph 3.1 above. For the sake of simplicity, it is assumed that the incident affects one State only and that the pollution damage falls both within the definition of that term as laid down in the 1969 Civil Liability Convention and within the corresponding definition in the 1992 Civil Liability Convention.

4.2 The details of the fictitious incident are as follows. Pollution damage, which falls within the scope of all four Conventions, is caused only in one State. The admissible pollution damage amounts to 100 million SDR. Except as stated otherwise, the ship involved in the incident is flying the flag of a State Party to both the 1969 Civil Liability Convention and the 1992 Civil Liability Convention. The limit of the shipowner's liability under the 1969 Civil Liability Convention, based on the tonnage of the ship, is 10 million SDR. The limit of the shipowner's liability under the 1992 Civil Liability Convention is 35 million SDR, including the 10 million SDR limit under the 1969 Civil Liability Convention.

4.3 The compensation available to claimants is set out in the Annex for each of the eight cases. The calculations of the amounts of compensation payable are explained below.

Pollution damage in State A

4.4 If pollution damage is caused in a State which is Party only to the 1969 Civil Liability Convention, compensation would be available to claimants up to the limit of the shipowner's liability under that Convention. In the example given, this limit would be 10 million SDR. Neither the 1971 Fund nor the 1992 Fund would have any obligation to pay compensation.

Pollution damage in State B

4.5 If pollution damage is caused in a State which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to either of the 1992 Protocols, compensation would be available to claimants in that State from the shipowner up to the limit of his liability under the 1969 Civil Liability Convention. In the example given, this limit would be 10 million SDR.

4.6 Compensation would then be payable by the 1971 Fund for amounts in excess of 10 million SDR, up to the maximum of 60 million SDR, ie for a total of 50 million SDR. The total amount of compensation received by claimants would be 60 million SDR.

Pollution damage in State C

4.7 If pollution damage is caused in a State which is Party only to the 1992 Civil Liability Convention, compensation to claimants would be available from the shipowner up to the limit of his liability under that Convention. In the example given, this limit would be 35 million SDR. Neither the 1971 Fund nor the 1992 Fund would have any obligation to pay compensation.

Pollution damage in State D

4.8 If pollution damage is caused in a State which is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention but not to the 1969 Civil Liability Convention and the 1971 Fund Convention (either because the State has denounced the original Conventions, or because it has never been Party to those Conventions), compensation would be available to claimants firstly from the shipowner up to the limit of his liability under the 1992 Civil Liability Convention. In the example given, this limit would be 35 million SDR.

4.9 Claimants would then be entitled to compensation from the 1992 Fund for that part of the damage in excess of the compensation which is "deemed" to have been paid under the 1969 Civil Liability Convention and the 1971 Fund Convention or which has actually been paid under the 1992 Civil Liability Convention. For the purpose of calculating compensation due under the 1992 Fund Convention in respect of damage caused in State D, compensation amounting to 60 million SDR is deemed to have been received by claimants (10 million SDR from the shipowner under the 1969 Civil Liability Convention and 50 million SDR from the 1971 Fund). This sum of 60 million SDR is added to the 35 million SDR actually paid by the shipowner under the 1992 Civil Liability Convention minus the 10 million SDR already taken into account as deemed to have been paid under the 1969 Civil Liability Convention, making a total of 85 million SDR for the purpose of calculating compensation due under the 1992 Fund Convention. Compensation would be payable by the 1992 Fund for amounts in excess of 85 million SDR up to the aggregate amount of the damage (100 million SDR in the example given), ie for a total of 15 million SDR. The total amount of compensation received by claimants would therefore be 50 million SDR.

Pollution damage in State E

4.10 If pollution damage is caused in a State which is Party to the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention, compensation

would be available firstly from the shipowner up to the limit of his liability under the 1969 Civil Liability Convention. In the example given, this limit would be 10 million SDR.

4.11 Secondly, compensation would be payable by the 1971 Fund for amounts in excess of 10 million SDR, up to the maximum of 60 million SDR, ie for a total of 50 million SDR.

4.12 Thirdly, compensation would be available from the shipowner up to the limit of his liability under the 1992 Civil Liability Convention. Since, however, the shipowner has already paid 10 million SDR under the 1969 Civil Liability Convention in the example given, the amount payable by the shipowner under the 1992 Civil Liability Convention would be 25 million SDR (ie 35 million less 10 million).

4.13 Claimants would finally be entitled to compensation from the 1992 Fund for that part of the damage in excess of the compensation which has been paid under the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention. Compensation would be payable by the 1992 Fund for amounts in excess of 85 million SDR (10 million SDR from the shipowner under the 1969 Civil Liability Convention plus 50 million SDR from the 1971 Fund plus 25 million from the shipowner under the 1992 Civil Liability Convention), up to the aggregate amount of the damage (100 million SDR in the example given), ie for a total of 15 million SDR. The total amount of compensation received by claimants would therefore be 100 million SDR, ie they would receive full compensation.

4.14 It should be noted, however, that if the damage in State E occurred as a result of an incident involving a ship which was flying the flag of a State Party to the 1969 Civil Liability Convention but not Party to the 1992 Civil Liability Convention, the shipowner would be entitled to limit his liability under the 1969 Civil Liability Convention and would therefore pay only the compensation due under that Convention, ie 10 million SDR (cf paragraph 4.10 above). The shipowner would not be obliged to pay compensation under the 1992 Civil Liability Convention, since the flag State would have no treaty relations with State E under the 1992 Civil Liability Convention to which the flag State was not a Party. As a result, the balance of the compensation due from the 1992 Fund would be increased. Compensation would then be payable by the 1992 Fund for amounts in excess of 60 million SDR (10 million SDR from the shipowner under the 1969 Civil Liability Convention plus 50 million SDR from the 1971 Fund), up to the total amount of the damage (100 million SDR in the example given), ie for a total of 40 million SDR. The total amount of compensation received by claimants would still be 100 million SDR, but the 1992 Fund would bear a greater burden of the compensation than if the flag State had been Party also to the 1992 Civil Liability Convention.

Pollution damage in State F

4.15 If pollution damage is caused in a State which is Party to the 1969 Civil Liability Convention and the 1992 Civil Liability Convention only, compensation would be available firstly from the shipowner up to the limit of his liability under the 1969 Civil Liability Convention. In the example given, this limit would be 10 million SDR.

4.16 Compensation would then be available to claimants from the shipowner up to the limit of his liability under the 1992 Civil Liability Convention. Since, however, the shipowner has already paid 10 million SDR under the 1969 Civil Liability Convention in the example given, the amount payable by the shipowner under the 1992 Civil Liability Convention would be 25 million SDR (ie 35 million less 10 million). The total amount of compensation received by claimants would be 35 million SDR.

4.17 It should be noted, however, that if the damage in State F occurred as a result of an incident involving a ship which was flying the flag of a State Party to the 1969 Civil Liability Convention but not Party to the 1992 Civil Liability Convention, the shipowner would be entitled to limit his liability under the 1969 Civil Liability Convention and would therefore pay only the compensation due under that Convention, ie 10 million SDR (cf paragraph 4.15 above). The shipowner would not be obliged to pay compensation under the 1992 Civil Liability Convention, since the flag State would have no treaty

relations with State F under the 1992 Civil Liability Convention to which the flag State was not a Party. The total amount of compensation received by claimants would be only 10 million SDR.

Pollution damage in State G

4.18 If pollution damage is caused in a State which is Party to the 1969 Civil Liability Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention, compensation would be available firstly from the shipowner up to the limit of his liability under the 1969 Civil Liability Convention. In the example given, this limit would be 10 million SDR.

4.19 Secondly, compensation would be available to claimants from the shipowner up to the limit of his liability under the 1992 Civil Liability Convention. Since, however, the shipowner has already paid 10 million SDR under the 1969 Civil Liability Convention in the example given, the amount payable by the shipowner under the 1992 Civil Liability Convention would be 25 million SDR (ie 35 million less 10 million).

4.20 Thirdly, claimants would be entitled to compensation from the 1992 Fund for that part of the damage in excess of the compensation which has been paid under the 1969 Civil Liability Convention and the 1992 Civil Liability Convention or which is "deemed" to have been paid under the 1971 Fund Convention. Compensation would be payable by the 1992 Fund for amounts in excess of 85 million SDR (10 million SDR from the shipowner under the 1969 Civil Liability Convention plus 25 million from the shipowner under the 1992 Civil Liability Convention plus 50 million SDR deemed to have been paid from the 1971 Fund), up to the aggregate amount of the damage (100 million SDR in the example given), ie for a total of 15 million SDR. The total amount of compensation received by claimants would therefore be 50 million SDR.

4.21 It should be noted, however, that if the damage in State G occurred as a result of an incident involving a ship which was flying the flag of a State Party to the 1969 Civil Liability Convention but not Party to the 1992 Civil Liability Convention, the shipowner would be entitled to limit his liability under the 1969 Civil Liability Convention and would therefore pay only the compensation due under that Convention, ie 10 million SDR (cf paragraph 4.18 above). The shipowner would not be obliged to pay compensation under the 1992 Civil Liability Convention, since the flag State would have no treaty relations with State G under the 1992 Civil Liability Convention to which the flag State was not a Party. As a result, the balance of the compensation due from the 1992 Fund would be increased. Compensation would be then payable by the 1992 Fund for amounts in excess of 60 million SDR (10 million SDR from the shipowner under the 1969 Civil Liability Convention plus 50 million SDR deemed to have been paid from the 1971 Fund), up to the aggregate amount of the damage (100 million SDR in the example given), ie for a total of 40 million SDR. The total amount of compensation received by claimants would still be 50 million SDR, but the 1992 Fund would bear a greater burden of the compensation.

Pollution damage in State H

4.22 If pollution damage is caused in a State which is Party to the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention, and which has deposited an instrument of ratification of the 1992 Fund Convention but with a declaration under Article 30.4 of the Final Clauses of the 1992 Fund Protocol (so that the 1992 Fund Convention will not come into force for that State until the end of the transitional period), compensation would be available firstly from the shipowner up to the limit of his liability under the 1969 Civil Liability Convention. In the example given, this limit would be 10 million SDR.

4.23 Secondly, compensation would be payable by the 1971 Fund for amounts in excess of 10 million SDR, up to the maximum of 60 million SDR, ie for a total of 50 million SDR.

4.24 Thirdly, compensation would be available to claimants from the shipowner up to the limit of his liability under the 1992 Civil Liability Convention. Since, however, the shipowner has already paid 10 million SDR under the 1969 Civil Liability Convention in the example given, the amount payable by the shipowner under the 1992 Civil Liability Convention would be 25 million SDR (ie 35 million less 10 million). The total amount of compensation received by claimants would therefore be 85 million SDR.

4.25 It should be noted, however, that if the damage in State H occurred as a result of an incident involving a ship which was flying the flag of a State Party to the 1969 Civil Liability Convention but not Party to the 1992 Civil Liability Convention, the shipowner would be entitled to limit his liability under the 1969 Civil Liability Convention and would therefore pay only the compensation due under that Convention, ie 10 million SDR (cf paragraph 4.22 above). The shipowner would not be obliged to pay compensation under the 1992 Civil Liability Convention, since the flag State would have no treaty relations with State H under the 1992 Civil Liability Convention to which the flag State was not a Party. The total amount of compensation received by claimants would be only 60 million SDR.

5 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.

* * *

ANNEX

**COMPENSATION PAYMENTS FOR A FICTITIOUS INCIDENT WHICH
CAUSES POLLUTION DAMAGE IN ANY ONE OF EIGHT STATES
DURING THE TRANSITIONAL PERIOD**

(Amounts in millions of SDR)

Total amount of pollution damage in each case is 100 million SDR

Source of Compensation	State A <i>Party to 1969 CLC</i>	State B <i>Party to 1969 CLC and 1971 FC</i>	State C <i>Party to 1992 CLC</i>	State D <i>Party to 1992 CLC and 1992 FC</i>	State E <i>Party to 1969 CLC, 1971 FC, 1992 CLC and 1992 FC</i>	State F <i>Party to 1969 CLC and 1992 CLC</i>	State G <i>Party to 1969 CLC, 1992 CLC and 1992 FC</i>	State H <i>Party to 1969 CLC, 1971 FC, 1992 CLC and 1992 FC with declaration</i>
Shipowner under 1969 CLC	10	10			10	10	10	10
1971 Fund		60-10 = 50			60-10 = 50			60-10 = 50
Shipowner under 1992 CLC			35	35	35-10 = 25	35-10 = 25	35-10 = 25	35-10 = 25
1992 Fund				100 - [10 + 50 + (35- 10)] = 15	100 - (10 + 50 + 25) = 15		100 - (10 + 50 + 25) = 15	
Total	10	60	35	50	100	35	50	85