



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
2nd session
Agenda item 4

92FUND/A.2/3
15 October 1997
Original: ENGLISH

REPORT OF THE DIRECTOR

1 Introduction

1.1 This Report contains a review of some of the main issues relating to the activities of the 1992 Fund since the 1st session of the Assembly. It also deals with the finances of the 1992 Fund for the first thirteen months of the Organisation's existence.

1.2 Following the entry into force on 30 May 1996 of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention, two intergovernmental Organisations have co-existed, one established under the 1971 Fund Convention (1971 Fund) and another set up under that Convention as modified by the 1992 Protocol thereto (1992 Fund). Since then, the 1971 Fund Secretariat has administered also the 1992 Fund. A review of the 1971 Fund's activities is presented separately to the 20th session of that Organisation's Assembly.

1.3 In April 1997 a joint Annual Report of the 1971 and 1992 Funds for the calendar year 1996 was published. This Report attracted great interest from all those dealing with the Funds as well as from persons and bodies interested in environmental matters in general.

1.4 Since the 1st session of the Assembly, there have been three incidents which will or may involve the 1992 Fund.

2 Membership of the 1992 Fund and external relations

2.1 1992 Fund Membership

2.1.1 The 1992 Fund Convention entered into force on 30 May 1996 for nine States. As at 10 October 1997, 15 States had become Members of the 1992 Fund. Eleven further States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 17 by the end of 1997, to 23 by 16 May 1998 (the date when the States which have ratified the 1992 Fund Protocol will cease to be Members also of the 1971 Fund) and to 26 by the time of the Assembly's 3rd session, in October 1998, as set out overleaf:

	State	Total Number
Present Member States:	Australia	
	Bahrain	
	Denmark	
	Finland	
	France	
	Germany	
	Greece	
	Japan	
	Liberia	
	Marshall Islands	
	Mexico	
	Norway	
	Oman	
	Sweden	
	United Kingdom ^{<1>}	
<i>Member States on 10.10.97:</i>		15
Date of entry into force of 1992 Fund Convention		
8.11.97	Monaco	16
15.11.97	Netherlands ^{<2>}	17
29.01.97	Tunisia	18
1.04.98	Bahamas	19
12.05.98	Cyprus	20
16.05.98	Ireland	}
16.05.98	Republic of Korea	
16.05.98	Spain	
<i>Member States on 16.05.98:</i>		23
24.06.98	Jamaica	24
7.07.98	Philippines	25
9.07.98	Uruguay	26

<1> The United Kingdom declared its accession to be effective in respect of the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Jersey, the Isle of Man, Falkland Islands*, Montserrat and South Georgia and the South Sandwich Islands.

<2> The Kingdom of the Netherlands declared its accession to be effective in respect of the Kingdom in Europe.

2.1.2 It is expected that a number of 1971 Fund Member States will soon ratify the 1992 Fund Convention in the near future, eg Belgium, Canada, Ghana, Iceland, Morocco, New Zealand, Nigeria, Poland and Sri Lanka. It is likely that a number of other States will also become Members of the 1992 Fund in the near future.

2.1.3 Three States (Jamaica, Philippines and Uruguay) which have recently deposited instruments of accession to the 1992 Fund Convention were not previously Parties to 1971 Fund Convention. It appears that many other States which were preparing legislation implementing the 1971 Fund Convention will instead adopt legislation to implement the 1992 Fund Convention and become Members of the 1992 Fund.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

2.1.4 Governments of Member States have extended strong support to both the 1971 Fund and the 1992 Fund as well as to their joint Secretariat. In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States each year. Since the 1st session of the Assembly, the Director and other officers have visited eight States which are Members of the 1992 Fund for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

2.2 Relations with non-Member States

2.2.1 The joint Secretariat has continued its efforts to increase the number of Member States. The Director and other Officers have participated in a number of seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operation of the IOPC Funds.

2.2.2 The Director and other members of the joint Secretariat have also had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Council and IMO Legal Committee.

2.2.3 The Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the 1992 Conventions.

2.3 Relationship with international organisations and interested circles

2.3.1 The IOPC Funds benefit from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

2.3.2 The IOPC Funds have particularly close links with the IMO, and co-operation agreements have been concluded between each Fund and IMO. The Director would like to express his profound gratitude to the Secretary-General of IMO and his staff for the assistance they have given the IOPC Funds during the last twelve months.

2.3.3 In the majority of incidents involving the Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the 'P & I Clubs'. The technical assistance required by the IOPC Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

2.3.4 The voluntary industry compensation schemes, TOVALOP and CRISTAL, ceased to apply to incidents occurring after 20 February 1997. The Boards of ITOPF (which administers TOVALOP) and Cristal Ltd (which administers CRISTAL) believed that the relevance of the interim TOVALOP and CRISTAL agreements had eroded over the years, as more States had become Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention. Their decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of these two Conventions and of the 1992 Protocols thereto, which offer significant advantages over the voluntary agreements for those claiming compensation for oil pollution damage. The Boards considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet ratified these Protocols.

3 Administration of the 1992 Fund

3.1 Secretariat

3.1.1 The 1971 Fund and 1992 Fund have a joint Secretariat. Until 15 May 1998, the 1971 Fund Secretariat will administer also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat will be created, and it will thereafter administer both the 1971 Fund and the 1992 Fund. The staff of the 1971 Fund Secretariat will be transferred to the 1992 Fund Secretariat. The joint Secretariat of the IOPC Funds is at present composed of the Director and 17 other staff members.

3.1.2 The IOPC Funds use external consultants to provide legal or technical advice. In one case involving the 1992 Fund as well as the 1971 Fund (the *Nakhodka* incident), the Funds and the P & I insurer involved have together set up a local claims office, which has facilitated an efficient handling of the great numbers of claims submitted.

3.2 Accounts of the 1992 Fund

3.2.1 The expenditure for the administration of the 1992 Fund during its seven months of existence in 1996 was £242 123, compared with the budgetary appropriation of £338 508. Details of the accounts of the 1992 Fund for the financial period 30 May to 31 December 1996 are given in the Financial Statements (document 92FUND/A.2/6, Annex III).

3.2.2 The joint expenditure for the administration of the 1971 and 1992 Funds during the first six months of 1997 amounts to approximately £653 000. The budget appropriation for the whole of 1997 for both Organisations is £1 821 720. It is expected that there will be a budgetary surplus at the end of the year.

3.2.3 Excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the joint Secretariat's administration of the 1992 Fund.

3.3 Investment of funds

3.3.1 During 1996 the 1992 Fund operated on the basis of funds made available by the 1971 Fund, to be repaid on 1 February 1997 when the 1992 Fund had received contributions. The 1992 Fund therefore had no funds to invest during 1996.

3.3.2 Since late January 1997, when the first contributions were received, funds were placed on term deposits with leading London banks and building societies.

3.3.3 On 1 February 1997, the base rate in London stood at 6%. It was raised to 6¼% on 6 May 1997, to 6½% on 6 June 1997, to 6¾% on 10 July 1997 and to 7% on 7 August 1997. It is estimated that the average rate of interest on the 1992 Fund's investments placed in 1997 will be approximately 6.7%.

3.3.4 Interest earned by the 1992 Fund during the first six months of 1997 amounted to some £100 000, with another £300 000 due during the remaining six months of the year.

3.3.5 As at 30 September 1997, the 1992 Fund's investments totalled some £13 million.

3.3.6 Details of the investments from 29 January to 30 June 1997 are given in document 92FUND/A.2/4.

3.3.7 At its 1st extraordinary session, the Assembly established an 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.2/5.

4 Contributions

4.1 The 1992 Fund Convention introduced a system for capping contributions for a certain period. If the total contributions in respect of a levy to the General Fund or a Major Claims Fund for all contributors in any one Member State of the 1992 Fund exceed 27.5% of the total amount of that particular levy, then the levies for contributors in that State are reduced pro rata so that they together equal 27.5% of the total levy to that fund. The total amount deducted from contributors in the capped State is borne by all other contributors to the fund in question.

4.2 The capping of contributions to the 1992 Fund will cease to apply in respect of decisions to levy contributions taken by the 1992 Fund Assembly after the reports on contributing oil submitted by Member States indicate that the total quantity received in all Member States exceeds 750 million tonnes. The capping procedure was applied to the 1996 annual contributions levied by the Assembly in October 1996 and April 1997. It will also apply to annual contributions to be levied by the Assembly in October 1997.

4.3 At its 1st session the Assembly introduced a system of deferred invoicing. 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 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year, if necessary.

4.4 At its 1st extraordinary session, held in October 1996, the Assembly decided to levy 1996 contributions to the General Fund for a total of £7 million, of which £4 million was to be paid by 1 February 1997. It was decided that the balance of this levy should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1997. No levy was made to any Major Claims Fund.

4.5 At its 2nd extraordinary session, held in April 1997, the Assembly decided to levy an additional £7 million to the *Nakhodka* Major Claims Fund as 1996 annual contributions for payment by 1 September 1997.

4.6 The total contributions payable to the General Fund (both in the first and deferred levies) and to the *Nakhodka* Major Claims Fund in respect of contributors in Japan would have exceeded 27.5% of the respective total levy. It was therefore necessary to apply the capping procedure described in paragraph 4.1 above.

4.7 In accordance with the authority given to him by the Assembly at its 1st extraordinary session, the Director decided to invoice a further £3 million to the General Fund for payment by 1 September 1997.

4.8 The Assembly's decisions, as well as the Director's action taken in accordance with the authority given to him by the Assembly, are summarised in the table below.

Fund	Total 1996 levy authorised by Assembly £	Amount levied for payment by 1 February 1997 £	Maximum deferred levy £	Amount levied for payment by 1 September 1997 £	Total amount actually levied £
General	7 000 000	4 000 000	3 000 000	3 000 000	7 000 000
<i>Nakhodka</i>	7 000 000			7 000 000	7 000 000
Total levy	14 000 000	4 000 000	3 000 000	10 000 000	14 000 000

4.9 A report on the payment of 1996 annual contributions as at 10 October 1997 is given in document 92FUND/A.2/9.

4.10 The Director is pleased to report that the submission of the reports on contributing oil receipts by 1992 Member States is quite satisfactory. On 31 March 1997, the date by which Member States should submit their reports of oil received in 1996 in accordance with the 1992 Fund's Internal Regulations, reports had been received from 4 of the 14 States which were Members of the 1992 Fund at that time. By 10 October 1997, all but one of the present 15 Member States had submitted their reports.

5 Incidents involving the 1992 Fund

5.1 Since its establishment in May 1996, the 1992 Fund has, up to 10 October 1997, been involved in three oil pollution incidents.

5.2 On 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. On the basis of chemical analysis, the German authorities maintain that the oil came from the *Kuzbass*, which had discharged its cargo in the port of Wilhelmshaven on 11 June 1996. The German authorities have approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They have stated that, failing this, the authorities will take legal action against him. If the German authorities were to pursue a claim against the 1992 Fund, the question would arise of whether they have proved that the damage resulted from an incident involving one or more ships. This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of 'ship' contained in the 1992 Civil Liability Convention.

5.3 On 2 January 1997 the Russian tanker *Nakhodka* broke up in heavy seas some 100 kilometres north-east of the Oki Islands in the Sea of Japan. The tanker broke into two sections, spilling some 6 200 tonnes of medium fuel oil. The stern section sank and lies at a depth of 2 500 metres with an estimated 10 000 tonnes of cargo on board. The upturned bow section, possibly containing 2 800 tonnes of cargo, drifted towards the coast, grounded on rocks close to the shore and released a substantial quantity of oil, causing heavy contamination of the adjacent shoreline. Several hundred tonnes of oil emulsion came ashore over a 1 000 kilometre stretch of coast. Major clean-up operations were completed by May 1997, but final clean-up is continuing in some areas. The pollution had considerable impact on the fishing and tourism industries of the affected area. A claims handling office in Japan was established jointly by the 1971 and 1992 Funds and the P & I Club involved. This office has so far received claims for £162 million. The total amount of the claims arising out of the *Nakhodka* incident thus exceeds the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £50 million). Since the 1992 Fund Convention applies in the *Nakhodka* case, the total amount of compensation available to claimants in Japan is 135 million SDR (approximately £112 million).

5.4 The *Osung N°3* ran aground on the island of Tunggado in the Pusan area (Republic of Korea), on 3 April 1997 and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. The clean-up at sea was terminated on 13 April 1997. Although the shore of small islands close to the grounding location were oiled, there were no reports of the mainland coast having been polluted. Oil which, on the basis of chemical analysis, the 1971 Fund's experts consider to have originated from the *Osung N°3*, reached the sea adjacent to Tsushima Island in Japan on 7 April 1997. Claims for clean-up costs and fishery damage in the Republic of Korea and Japan are being examined. Operations to remove the oil from the sunken tanker, as well as the wreck itself, are being considered by the Korean authorities. If the total amount of the claims arising out of the *Osung N°3* incident exceeds the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, additional compensation under the 1992 Fund Convention will be available to claimants in Japan, since at the time of the incident Japan was a Member of the 1992 Fund while the Republic of Korea was not.

5.5 Further information on these incidents is contained in document 92FUND/A.2/15.

6 Intersessional Working Group on alternative dispute settlement procedures

6.1 At its 1st extraordinary session, the Assembly set up a Working Group to study the possibilities of introducing alternative settlement procedures in the compensation system established by the 1992 Civil Liability Convention and the 1992 Fund Convention for cases in which it had not been possible to reach out of court settlements.

6.2 The Working Group met on 16 and 17 April 1997 under the chairmanship of Mr Alfred Popp (Canada). The Working Group's report is submitted to the Assembly for consideration (document 92FUND/A.2/18).

7 International Convention on liability and compensation for damage in connection with the carriage of hazardous substances by sea

7.1 On 3 May 1996 an International Conference convened under the auspices of IMO adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). Under the Convention, there will be established a system of compensation similar to that created by the Civil Liability Convention and the Fund Convention. The financial burden will be shared between the shipping industry and the cargo interests. The primary liability will rest on the shipowner, and additional compensation will be available from the International Hazardous and Noxious Substances Fund (HNS Fund), financed by the cargo interests. The functioning of the HNS Fund under the HNS Convention will follow very closely the operation of the 1992 Fund under the 1992 Fund Convention.

7.2 In a Resolution adopted by the Conference, the Assembly of the 1992 Fund was invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund in accordance with the HNS Convention, on condition that this did not unduly prejudice the interests of the Member States of the 1992 Fund.

7.3 At its 1st session, the Assembly instructed the Director to carry out the tasks requested by the HNS Conference.

7.4 So far, the Director has limited the 1992 Fund's involvement in the preparations for the entry into force of the HNS Convention to following developments in States considering ratifying the Convention.

8 Looking ahead

8.1 The number of States which have ratified the 1992 Fund Convention has nearly trebled in the 17 months since the Convention came into force in May 1996. It is expected that the growth in 1992 Fund membership will continue in the coming years, while there will be a steady reduction in the number of 1971 Fund Member States.

8.2 Since June 1996 the 1992 Fund has been administered by the Secretariat of the 1971 Fund. From 16 May 1998, however, the 1992 Fund will establish its own Secretariat which will administer also the 1971 Fund.

8.3 It is an essential task for the 1992 Fund Secretariat to consolidate and develop the international compensation system. The joint Secretariat of the 1971 and 1992 Funds will endeavour to work to this end, in the interests of both Organisations and their respective Member States.
