



INTERNATIONAL  
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COMPENSATION  
FUND 1992

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Agenda item 4

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## REPORT OF THE DIRECTOR

**Summary:**

The number of 1992 Fund Member States has continued to increase. The failure of a number of Member States to submit oil reports gives rise to concern. Since the Assembly's session in October 2000 the 1992 Fund has been notified of two new oil pollution incidents. The intersessional Working Group, which was established to consider the need to improve the compensation regime under the 1992 Conventions, has continued its work. The Assembly will be invited to consider a draft Protocol establishing an optional supplementary compensation fund.

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

### **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 October 2000 session of the Assembly. It also deals with the finances of the 1992 Fund for the first eight months of 2001.
- 1.2 The 1992 Fund and the 1971 Fund published a joint Annual Report in English, French and Spanish for the calendar year 2000. 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.
- 1.3 Since the Assembly's October 2000 session the Secretariat has been notified of two new incidents which may involve the 1992 Fund. In addition, several incidents involving the 1992 Fund which occurred earlier have been dealt with during that period.

## 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 and is now in force for 61 States. A further seven States have acceded to the 1992 Fund Protocol. The status of the Convention is set out below:

<i>61 States for which the 1992 Fund Protocol is in force (and therefore Members of the 1992 Fund)</i>		
Algeria	Greece	Oman
Antigua and Barbuda	Grenada	Panama
Australia	Iceland	Philippines
Bahamas	India	Poland
Bahrain	Ireland	Republic of Korea
Barbados	Italy	Russian Federation
Belgium	Jamaica	Seychelles
Belize	Japan	Singapore
Canada	Kenya	Slovenia
China (Hong Kong Special Administrative Region)	Latvia	Spain
Comoros	Liberia	Sri Lanka
Croatia	Lithuania	Sweden
Cyprus	Malta	Tonga
Denmark	Marshall Islands	Trinidad and Tobago
Dominican Republic	Mauritius	Tunisia
Fiji	Mexico	United Arab Emirates
Finland	Monaco	United Kingdom
France	Morocco	Uruguay
Georgia	Netherlands	Vanuatu
Germany	New Zealand	Venezuela
	Norway	
<i>7 States which have deposited instruments of accession, but for which the 1992 Fund Protocol does not enter into force until date indicated</i>		
Argentina		13 October 2001
Djibouti		8 January 2002
Papua New Guinea		23 January 2002
Sierra Leone		4 June 2002
Cambodia		8 June 2002
Turkey		17 August 2002
Dominica		31 August 2002

- 2.1.2 It is expected that when the 1971 Fund Convention ceases to be in force on 24 May 2002, most of the 1971 Fund's former Member States will have ratified the 1992 Fund Convention. It is likely that a number of other States will also become Members of the 1992 Fund in the near future.

### 2.2 Promotion of Fund membership and information on Fund activities

- 2.2.1 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 Officers have visited ten 1992 Fund Member States since the Assembly's session in October 2000.

- 2.2.2 The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other Officers have visited three non-Member States. The Director and other Officers 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. The Director has valued the opportunity to lecture to students of the World Maritime University in Malmö (Sweden), where information on the 1992 Fund and its activities will be spread throughout the world when the students return to their national maritime administrations. Lectures have also been given at the IMO International Maritime Law Institute (IMLI) in Malta and at the IMO International Maritime Academy in Trieste (Italy).

2.2.3 The Director and other staff members have met with government representatives of a number of States during meetings at the International Maritime Organization (IMO).

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

### 2.3 Relationship with international organisations and interested parties

2.3.1 The 1992 Fund co-operates closely with many intergovernmental and international non-governmental organisations, as well as with private organisations involved in the maritime transport of oil. The 1992 Fund has particularly close links with the IMO, with which a co-operation agreement exists.

2.3.2 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. The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF).

## 3 Administration of the 1992 Fund

### 3.1 Secretariat

3.1.1 As instructed by the Assembly, the Director has continued to review the operation of the Secretariat. In the Director's view a continuous review of the working methods has become increasingly important as a result of the growth of the IOPC Funds in terms of the number of Member States and the increased complexity of the issues dealt with by the Funds. There is also a need for increased transparency in respect of the Funds' operations.

3.1.2 The Assembly will be invited to consider a note by the Director (document 92FUND/A.6/15) in which he gives details of the steps taken to improve the efficiency of the Secretariat, to make optimum use of the Secretariat resources and to ensure the best possible service to Member States, victims of oil pollution, contributors and society at large. In that document the Director also sets out his intentions as to the further developments of the operation of the Secretariat.

### 3.2 Accounts of the 1992 Fund

3.2.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2000 was £2 424 039, compared with the budgetary appropriation of £3 225 040. Details of the accounts of the 1992 Fund for the financial year 2000 are given in the Financial Statements (document 92FUND/A.6/9, Annex IV).

3.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first eight months of 2001 amounts to approximately £1 391 000. The budget appropriation for the whole of 2001 for both Organisations is £2 776 970. 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 administration of the 1992 Fund and the operation of the joint Secretariat.

### 3.3 Investment of funds

- 3.3.1 During 2000 and 2001 funds which were not required for the short-term operation of the 1992 Fund were placed on term deposits with a number of leading London banks and building societies. Apart from deposits placed overnight or for up to seven days fixed, the average rate of interest received on the investments in 2000 was over 6%.
- 3.3.2 The base rate in London, which stood at 6% at the time of the 5th session of the Assembly, decreased to 5.75% on 8 February 2001, to 5.5% on 5 April 2001, to 5.25% on 10 May 2001 and to 5% on 2 August 2001. Since 18 September 2001 the rate has been 4.75%.
- 3.3.3 Interest earned by the 1992 Fund during the first eight months of 2001 amounted to some £3.3 million.
- 3.3.4 As at 25 September 2001 the 1992 Fund's investments totalled some £104 million.
- 3.3.5 Details of the investments from 1 July 2000 to 30 June 2001 are given in document 92FUND/A.6/7.
- 3.3.6 The 1992 Fund has 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.6/8.

## 4 Contributions

- 4.1 The Assembly decided in October 2000 to levy £7.5 million to the General Fund to be paid by 1 March 2001. It was also decided to make levies of £35 million to the *Nakhodka* Major Claims Fund and £50 million to the *Erika* Major Claims Fund, £17 million and £25 million respectively to be paid by 1 March 2001 with the remainder deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2001, as required. In the light of developments, the Director decided in July 2001 not to make any deferred levy.
- 4.2 The Assembly's decisions in October 2000 and the Director's subsequent decisions are summarised in the following table.

Fund	Total 2000 levy authorised by Assembly	Amount levied for payment by 1 March 2001	Maximum deferred levy	Amount levied for payment by 1 September 2001	Total amount actually levied	Levy per tonne
	£	£	£	£	£	£
General Fund	7 500 000	7 500 000	0	0	7 500 000	0.0066366
<i>Nakhodka</i>	35 000 000	17 000 000	18 000 000	0	17 000 000	0.0255419
<i>Erika</i>	50 000 000	25 000 000	25 000 000	0	25 000 000	0.0223985
Total levy	92 500 000	49 500 000	43 000 000	0	49 500 000	0.0545770

- 4.3 A report on the payment of 2000 contributions will be given in document 92FUND/A.6/12.
- 4.4 The Director regrets to report that the failure of a number of Member States to submit reports on contributing oil receipts gives rise to concern. By 25 September 2001, of the present 61 Member States, 14 had not submitted their reports. Some States have reports outstanding for several years. This issue is examined further in document 92FUND/A.6/13.

## **5 Incidents involving the 1992 Fund**

- 5.1 Since its establishment in May 1996 the 1992 Fund has, up to 25 September 2001, been involved in 18 oil pollution incidents.
- 5.2 Since the Assembly's session in October 2000, the Secretariat has been notified of two incidents which may give rise to claims against the 1992 Fund: the *Baltic Carrier* (Denmark) and the *Zeinab* (United Arab Emirates).
- 5.3 The *Baltic Carrier* was involved in a collision in the Baltic Sea off the coast of Germany resulting in an escape of some 2500 tonnes of heavy fuel oil. The oil affected several of the Danish islands. The *Zeinab*, carrying about 1 500 tonnes of fuel oil, sank off Dubai (United Arab Emirates) resulting in the loss of some 400 tonnes of fuel oil and the subsequent pollution of the coastal areas.
- 5.4 Further information on the above incidents and those which occurred previously is contained in the documents submitted to the 14th session of the Executive Committee.

## **6 Future role of the 1992 Fund in the operation of the 1971 Fund**

- 6.1 The 1992 Fund and the 1971 Fund have a joint Secretariat headed by the same Director.
- 6.2 Under Article 43.1 of the original version of the 1971 Fund Convention the Convention would remain in force until the number of States Parties fell below three. In September 2000, a Protocol was adopted to amend Article 43.1 to the effect that the Convention would cease to be in force when the number of Member States fell below 25. This Protocol entered into force on 27 June 2001. The 1971 Fund Convention will cease to be in force on 24 May 2002 when the condition set out above will be fulfilled, and will not apply to incidents occurring after that date.
- 6.3 In October 2000 the 1971 Fund purchased insurance to cover its liabilities in respect of incidents occurring during the period up to 31 December 2001 (subject to a deductible of £220 000 per incident). The Director has used an option to extend this insurance cover to incidents occurring up to 31 October 2002.
- 6.4 It will be recalled that at the October 1998 session of the 1992 Fund Assembly, delegations of former 1971 Fund Member States expressed concern in respect of the 1992 Fund's continued involvement in the operation of the 1971 Fund. However, at the October 2000 session these delegations stated that, due to the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover, their concerns had been allayed. The Assembly decided therefore in October 2000 to maintain the arrangement under which the 1992 Fund shared a Secretariat and Director with the 1971 Fund.

## **7 Possible revision of the 1992 Conventions**

- 7.1 In April 2000, the 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. The Working Group met in July 2000, March 2001 and June 2001.
- 7.2 At its June 2001 meeting the Working Group distinguished between three groups of issues:
- (a) issues in respect of which there was an urgent need for improvement of the compensation regime which could not be achieved within the present text of the 1992 Conventions;
  - (b) issues in respect of which solutions could be found in the short term within the scope of the present Conventions, eg by Assembly Resolutions or changes of Fund policy;
  - (c) issues which needed further consideration in the longer term.

- 7.3 The Working Group's report and a draft Protocol establishing an optional supplementary compensation fund will be considered by the Assembly (documents 92FUND/A.6/4 and 92FUND/A.6/4/1).

**8 Looking ahead**

- 8.1 The past 12 months have again seen continued growth in 1992 Fund membership: since October 2000, six States have acceded to the 1992 Fund Convention. Since the 1971 Fund Convention will soon cease to be in force, it is expected that a number of the 1971 Fund's Member States will join the 1992 Fund, and it is anticipated that several other States will also become Members in the near future.
- 8.2 A priority for the 1992 Fund will be to consolidate and develop the international compensation system. The outcome of the deliberations of the intersessional Working Group will be of great importance in this regard.
- 8.3 The review of the working methods of the Secretariat will continue so as to enable the Secretariat to make optimum use of the resources available.
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