



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971 AND  
1992**

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71FUND/AC.9/2

## REPORT OF THE DIRECTOR

<b>Summary:</b>	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 sessions of the governing bodies in October 2001 the 1992 Fund has been notified of one new oil pollution incident whereas there have been no new incidents involving the 1971 Fund. The 1971 Fund Convention ceased to be in force on 24 May 2002, and the process of the winding up of the 1971 Fund will commence. The intersessional Working Group, which was established to consider the need to improve the compensation regime under the 1992 Conventions, has continued its work.
<b>Action to be taken:</b>	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 and 1971 Fund since the October 2001 sessions of their respective governing bodies. It also deals with the finances of both Funds for the first eight months of 2002.
- 1.2     The 1992 Fund and the 1971 Fund (IOPC Funds) published a joint Annual Report in English, French and Spanish for the calendar year 2001. 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 2001 session the Secretariat has been notified of one new incident which may involve the 1992 Fund whereas no new incident involving the 1971 Fund has been reported. Several incidents involving the 1992 Fund and 1971 Fund which occurred earlier were also dealt with during that period.

## **2 Membership of the 1992 Fund and external relations**

### **2.1 1992 Fund Membership**

- 2.1.1 When the 1992 Fund Convention entered into force on 30 May 1996 there were just nine Member States. At the time of the 1992 Fund Assembly's October 2002 session the 1992 Fund Convention will be in force for 71 States. A further ten States have acceded to the 1992 Fund Convention. The status of the Convention is set out in document 92FUND/A.7/3.

- 2.1.2 Since the 1971 Fund Convention ceased to be in force on 24 May 2002 there are no longer any Member States of the 1971 Fund. Most of the 1971 Fund's former Member States have ratified the 1992 Fund Convention. It is hoped that the remaining 15 former Member States will soon do so. 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 1992 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 members of the Secretariat have visited seventeen 1992 Fund Member States and two 1971 Fund Member States since the governing bodies' sessions in October 2001.
- 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 members of the Secretariat have visited several 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. 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.
- 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).

### **2.3 Relationships with international organisations and interested parties**

- 2.3.1 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.
- 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 world-wide network of surveyors and experts, provides technical assistance relating to oil spills.

### **3 Winding up of the 1971 Fund**

- 3.1 The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date. 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.
- 3.2 Certain issues will have to be addressed during the winding-up period, namely the settlement of all remaining claims in respect of pending incidents, the recourse actions taken by the 1971 Fund in respect of certain incidents and the distribution to contributors of the surpluses on the General Fund, if any, and on certain Major Claims Funds. A course of action must also be decided in respect of the 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.
- 3.3 Further details in respect of these issues are given in document 71FUND/AC.9/14.

### **4 Administration of the 1992 Fund and 1971 Fund**

#### **4.1 Secretariat**

- 4.1.1 As instructed by the Assembly, the Director has continued to review the operation of the Secretariat. During 2001, a consultant was engaged to review the developments in the Secretariat's working methods. This review concentrated on the internal working of the Secretariat in order to establish what steps should be taken to increase efficiency, make the optimum use of available resources and ensure that staff find job satisfaction.
- 4.1.2 The consultant's recommendations have been considered over the past year and the Director reports on the progress made in document 92FUND/A.7/16 and 71FUND/AC.9/12.

#### **4.2 Accounts of the 1992 Fund and 1971 Fund**

- 4.2.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2001 was £2 213 147, compared with the budgetary appropriation of £2 776 970. Details of the accounts of the 1992 Fund and 1971 Fund for the financial year 2001 are given in the Financial Statements (documents 92FUND/A.7/7, Annex IV and 71FUND/AC.9/7, Annex IV).
- 4.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first eight months of 2002 amounts to approximately £1 467 000. The budget appropriation for the whole of 2002 for both Organisations is £2 816 663. It is expected that there will be a budgetary surplus at the end of the year.
- 4.2.3 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 Investment of funds**

- 4.3.1 During 2001 and 2002 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 London financial institutions. Apart from deposits placed overnight or for up to seven days fixed, the average rate of interest received on the investments in 2001 was over 5%.
- 4.3.2 The base rate in London stood at 4.75% on 1 October 2001, decreased to 4.5% on 8 October 2001 and has been at 4% since 8 November 2001.

- 4.3.3 During the first eight months of 2002 interest earned by the 1992 Fund amounted to some £2.6 million and by the 1971 Fund to some £2.2 million.
- 4.3.4 As at 25 September 2002 the 1992 Fund's investments totalled some £104 million and the 1971 Fund's investments some £80 million.
- 4.3.5 Details of the investments from 1 July 2001 to 30 June 2002 are given in documents 92FUND/A.7/5 and 71FUND/AC.9/3.
- 4.3.6 The 1992 Fund and 1971 Fund each have 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 Bodies is contained in document 92FUND/A.7/6 and 71FUND/AC.9/4.

#### 4.4 Audit Body

At their October 2001 sessions the governing bodies decided to set up a joint Audit Body for the 1992 Fund and 1971 Fund in order to ensure maximum transparency in the IOPC Funds' operations (document 92FUND/A.6/28, paragraph 12.5). The governing bodies will be invited to appoint members to the Audit Body (document 92FUND/A.7/10).

### 5 Contributions

#### 5.1 1992 Fund

- 5.1.1 The 1992 Fund Assembly decided in October 2001 to levy £5 million to the General Fund to be paid by 1 March 2002. It was also decided to make levies of £11 million to the *Nakhodka* Major Claims Fund and £46 million to the *Erika* Major Claims Fund. It was further decided that the entire levy to the former and £25 million of the levy to the latter Major Claims Fund should be paid by 1 March 2002 with the remainder of the levy to the *Erika* Major Claims Fund (£21 million) to 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 2002, as required. In the light of developments, the Director decided in June 2002 not to make any deferred levy.
- 5.1.2 The Assembly's decisions in October 2001 and the Director's subsequent decision are summarised in the following table.

Fund	Total 2001 levy authorised by Assembly	Amount levied for payment by 1 March 2002	Maximum deferred levy	Amount levied for payment by 1 September 2002	Total amount actually levied	Levy per tonne
	£	£	£	£	£	£
General Fund	5 000 000	5 000 000	0	0	5 000 000	0.0039182
<i>Nakhodka</i>	11 000 000	11 000 000	0	0	11 000 000	0.0165271
<i>Erika</i>	46 000 000	25 000 000	21 000 000	0	25 000 000	0.0223985
Total levy	62 000 000	41 000 000	21 000 000	0	41 000 000	0.0428438

- 5.1.3 A report on the payment of 2001 contributions is given in document 92FUND/A.7/11.
- 5.1.4 The Director regrets to report that the failure of a number of 1992 Fund Member States to submit reports on contributing oil receipts gives rise to concern. By 19 September 2002, of the present 68 Member States, 20 had not submitted their reports for 2001 which were due by 30 April 2002.

Some States have reports outstanding for several years. This issue is examined further in document 92FUND/A.7/12.

## 5.2 1971 Fund

5.2.1 At its session in October 2001 the 1971 Fund Administrative Council decided to levy contributions to the General Fund for £3.2 million and to the *Nissos Amorgos* Major Claims Fund for £21 million. It was decided that both levies should be deferred. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levies for payment during the second half of 2002. In the light of developments, the Director decided in June 2002 not to make any deferred levies.

5.2.2 The Administrative Council's decisions and the Director's subsequent decision are summarised in the table below.

Fund	Total 2001 levy authorised by Administrative Council £	Amount levied for payment by 1 March 2002 £	Maximum deferred levy £	Amount levied for payment by 1 September 2002 £	Total amount actually levied £	Levy per tonne £
General Fund	3 200 000	0	3 200 000	0	0	0
<i>Nissos Amorgos</i>	21 000 000	0	21 000 000	0	0	0
Total levy	24 200 000	0	24 200 000	0	0	0

5.2.3 A report on the payment of annual contributions is given in document 71FUND/AC.9/9.

5.2.4 The Director regrets to report that the failure of a number of former 1971 Fund Member States to submit reports on contributing oil receipts continues to give rise to considerable concern. By 19 September 2002, reports of oil received in 2001 were outstanding for 16 States. A number of former Member States have reports outstanding for several years. This issue is examined further in document 71FUND/AC.9/10.

## **6 Incidents involving the 1992 Fund**

6.1 Since its establishment in May 1996 the 1992 Fund has, up to 25 September 2002, been involved in 16 oil pollution incidents.

6.2 Since the Assembly's session in October 2001, the Secretariat has been notified of one incident which may give rise to claims against the 1992 Fund, namely the *Neptank VII*.

6.3 In June 2002 the bunker tanker *Neptank VII*, carrying some 3 100 tonnes of heavy fuel oil and 200 tonnes of diesel oil, was in collision with the general cargo vessel *Hermion* in the Singapore Strait, resulting in an escape of about 300 tonnes of heavy fuel oil. Clean-up operations at sea were organised by the shipowner and the Maritime and Port Authority of Singapore. No oil is reported to have gone ashore.

6.4 Further information on the above incident and those which occurred previously is contained in the documents submitted to the 18th session of the Executive Committee.

**7 Incidents involving the 1971 Fund**

- 7.1 Since its establishment in October 1978 the 1971 Fund has, up to 25 September 2002, been involved in 107 oil pollution incidents. No incidents which may give rise to claims against the 1971 Fund have occurred since the October 2001 session of the Administrative Council.
- 7.2 There are, as at 25 September 2002, outstanding third party claims in respect of 16 incidents. It is likely, however, that several of these incidents will not result in any payments by the 1971 Fund.
- 7.3 The various documents submitted to the Administrative Council under agenda item 15 give details of all the incidents dealt with by the 1971 Fund during the last twelve months.

**8 Revision of the 1992 Conventions**

- 8.1 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. The Working Group met in July 2000, March and June 2001 and April/May 2002.
- 8.2 At its October 2001 session the 1992 Fund Assembly approved a draft Protocol which would establish a Supplementary Fund to provide additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that became parties to the Protocol. The text of the draft Protocol was approved by the IMO Legal Committee at its April 2002 session and will be considered by a Diplomatic Conference to be held under the auspices of IMO in May 2003.
- 8.3 At the Assembly's October 2001 session, the Working Group was given the following revised mandate:
- (a) 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 issues mentioned in paragraph 27.3 of document 92FUND/A.6/4, which had already been identified by the Working Group, but not yet resolved; and
  - (b) to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it may deem appropriate.
- 8.4 At its April/May 2002 meeting the Working Group focused its discussions on questions relating to environmental damage and issues relating to shipowners' liability.
- 8.5 The Working Group's report will be considered by the Assembly (document 92FUND/A.7/4).

**9 Preparations for the setting up of the HNS Fund**

- 9.1 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 (HNS Convention).
- 9.2 The IOPC Funds' Secretariat has developed a prototype of a system to assist in identifying and reporting contributing cargo under the HNS Convention and has begun development of the final system (cf document 92FUND/A.7/25).

**10     Looking ahead**

- 10.1     The past 12 months have again seen continued growth in 1992 Fund membership: since October 2001, 10 States have acceded to the 1992 Fund Convention. Since the 1971 Fund Convention ceased to be in force on 24 May 2002, some of the 1971 Fund's former Member States have joined the 1992 Fund, and it is anticipated that several other States will also become Members in the near future.
  - 10.2     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. As mentioned above, a Diplomatic Conference will be held in May 2003 to consider a draft Protocol establishing a Supplementary Compensation Fund. If this Protocol were to be adopted and entered into force, the amount of compensation available to victims of oil pollution damage in those States which became parties to the Protocol would increase significantly.
  - 10.3     The Secretariat will make strenuous efforts to ensure that the 1971 Fund will be wound up as promptly and as smoothly as possible.
  - 10.4     The review of the working methods of the Secretariat will continue so as to enable the Secretariat to increase efficiency and make optimum use of the resources available.
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