



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

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REPORT OF THE DIRECTOR

Summary:

The 1971 Fund Convention entered into force on 16 October 1978. The IOPC Funds have therefore been in operation for 25 years. This report gives a short historical overview of this period.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and, therefore, does not apply to incidents which occurred after that date. The process of the winding up of the 1971 Fund has commenced.

The number of 1992 Fund Member States has continued to increase. The failure of a number of 1992 Fund Member States and former 1971 Fund Member States to submit oil reports gives rise to concern. Since the sessions of the governing bodies in October 2002 the 1992 Fund has been notified of eight 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. A Protocol on the Establishment of the International Oil Pollution Compensation Supplementary Fund, prepared by the Working Group, was adopted by a Diplomatic Conference held under the auspices of the International Maritime Organization (IMO) in May 2003.

Action to be taken: Information to be noted.

1 Introduction

This report gives a short overview of the development of the international compensation regime over 25 years. It contains a review of some of the main issues relating to the activities of the 1992 Fund and 1971 Fund since the October 2002 sessions of their respective governing bodies. It deals with the finances of both Funds for the first eight months of 2003.

2 Historical overview

2.1 The 1971 Fund was set up when the 1971 Fund Convention entered into force on 16 October 1978. The 1992 Fund was established when the 1992 Fund Convention entered into force on 30 May 1996, with the intention that after a transitional period it would replace the

1971 Fund. The two Fund Conventions coexisted until 24 May 2002 when the 1971 Fund ceased to be in force. However the 1971 Fund will remain in existence until all claims have been settled and all other issues which have arisen from incidents occurring before that date have been resolved.

- 2.2 When the 1971 Fund was set up in 1978 it had 14 Member States. The membership grew steadily over the years to a maximum of 76. At its establishment in 1996, the 1992 Fund had nine Member States. As at 26 September 2003 86 States had ratified the 1992 Fund Convention.
- 2.3 The 1971 and 1992 Funds have been involved in some 125 incidents in over 20 States during these years. The Funds have made compensation payments of some £420 million. The biggest payments to claimants relate to the *Aegean Sea* (Spain), *Braer* and *Sea Empress* (United Kingdom), *Nadhodka* (Japan) and *Erika* (France) incidents.
- 2.4 The IOPC Funds have over the years acquired considerable experience in the handling of claims. The governing bodies have developed criteria for the admissibility of various types of compensation claims. These have been set out in a Claims Manual, the most recent version of which was published in November 2002.
- 2.5 When the 1971 Fund was set up the Member States decided that it should have a small Secretariat and engage experts on a consultancy basis as and when required. The Secretariat started with only four staff members and has grown over the years as a result of the increased membership and the increasing complexity of the issues dealt with. It has currently 27 staff members but it is still a fairly compact structure and relies heavily on external experts to deal with various aspects of a particular spill.

3 Annual Report

The 1992 Fund and the 1971 Fund (IOPC Funds) published a joint Annual Report in English, French and Spanish for the calendar year 2002. 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.

4 Membership of the 1992 Fund and external relations

4.1 1992 Fund Membership

- 4.1.1 At the time of the 1992 Fund Assembly's October 2003 session the 1992 Fund Convention will be in force for 82 States. A further four States have acceded to the Convention. The status of the Convention is set out in document 92FUND/A.8/3.
- 4.1.2 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. The majority of the 1971 Fund's former Member States have ratified the 1992 Fund Convention. It is hoped that the remaining 13 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.

4.2 Promotion of 1992 Fund membership and information on Fund activities

- 4.2.1 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 eleven 1992 Fund Member States since the governing bodies' sessions in October 2002. The Secretariat invited representatives of Member States in Africa and in the Caribbean to two informal meetings at the Funds' headquarters where a presentation on the activities of the IOPC Funds was given by the Director with a view to enhancing the co-operation between the IOPC Funds and Member States in these regions.

4.2.2 The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. As in previous years, the Fund has 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.

4.2.3 The Director and other staff members have met with government representatives of a number of States during meetings at the IMO.

4.3 Relationships with international organisations and interested parties

4.3.1 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.

4.3.2 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.

5 Administration of the 1992 Fund and 1971 Fund

5.1 Secretariat

As instructed by the governing bodies, the Director has continued to review the operation of the Secretariat. The Director reports in document 92FUND/A.8/15 and 71FUND/AC.12/11 on the steps taken to increase efficiency, to make the optimum use of available resources and to ensure that staff obtain job satisfaction.

5.2 Accounts of the 1992 Fund and 1971 Fund

5.2.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2002 was £2 383 851, compared with the budgetary appropriation of £2 816 663. Details of the accounts of the 1992 Fund and 1971 Fund for the financial year 2002 are given in the Financial Statements (documents 92FUND/A.8/8, Annex IV and 71FUND/AC.12/5, Annex IV).

5.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first eight months of 2003 amounts to approximately £1 552 000. The budget appropriation for the whole of 2003 for both Organisations is £3 012 857. It is expected that there will be a budgetary surplus at the end of the year.

5.2.3 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.

5.3 Investment of funds

5.3.1 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.8/7 and 71FUND/AC.12/4.

5.3.2 During 2002 and 2003 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.

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- 5.3.3 During the first six months of 2003 interest earned by the 1992 Fund amounted to some £1.6 million and by the 1971 Fund to some £1.1 million.
- 5.3.4 As at 30 June 2003 the 1992 Fund's investments totalled some £135 million and the 1971 Fund's investments some £60 million.
- 5.3.5 Details of the investments from 1 July 2002 to 30 June 2003 are given in documents 92FUND/A.8/6 and 71FUND/AC.12/3.

5.4 Audit Body

- 5.4.1 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). At their April/May 2002 sessions, the governing bodies decided the composition and mandate of the Audit Body (document 92FUND/A/ES.6/10, paragraph 4 and 71FUND/AC.7/A/ES.9/14, paragraph 5), and at a joint session held in October 2002, the Assembly and the Administrative Council elected seven members of the Audit Body for a period of three years (document 92FUND/A.7/29, paragraph 12 and 71FUND/AC.9/20, paragraph 8).
- 5.4.2 Since its establishment in October 2002, the Audit Body has met three times, viz 31 October 2002, 7 March 2003 and 10 June 2003. The report of the Audit Body is contained in document 92FUND/A.8/8/1 and 71FUND/AC.12/5/1.

6 Contributions

6.1 1992 Fund

- 6.1.1 The 1992 Fund Assembly decided in October 2002 to levy £3 million to the General Fund and £28 million to the *Erika* Major Claims Fund, to be paid by 1 March 2003.
- 6.1.2 The Assembly's decisions in October 2002 are summarised in the following table.

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2003		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2001	1 270	3 000 000	3 000 000	0.0023622	0	0
<i>Erika</i>	1998	1 116	28 000 000	28 000 000	0.0250896	0	0
Total			31 000 000	31 000 000		0	

- 6.1.3 A report on the payment of 2002 contributions is given in document 92FUND/A.8/11.

6.2 1971 Fund

- 6.2.1 At its session in October 2002 the 1971 Fund Administrative Council decided not to levy contributions to the General Fund. The Council decided to raise 2002 contributions to the *Nissos Amorgos* Major Claims Fund for £21 million and that the entire levy to that Major Claims Fund should be deferred. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2003. In the light of developments, the Director decided in June 2003 not to make any deferred levy.
- 6.2.2 The Administrative Council's decisions and the Director's subsequent decision are summarised in the table below.

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Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2003		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2001		0	0	0	0	0
<i>Nissos Amorgos</i>	1996	1 229	21 000 000	0	0	21 000 000	0.0170871
Total			21 000 000	0	0	21 000 000	0.0170871

6.2.3 A report on the payment of annual contributions is given in document 71FUND/AC.12/8.

6.3 Non-submission of oil reports

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 26 September 2003, reports of oil received in 2002 and/or previous years were outstanding for 28 1992 Fund Member States and 15 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.8/12 and 71FUND/AC.12/9.

7 Incidents involving the 1992 Fund

7.1 Since its establishment in May 1996 the 1992 Fund has, up to 26 September 2003, been involved in 26 oil pollution incidents.

7.2 Since the Assembly's session in October 2002, the 1992 Fund has been notified of one incident which has given rise to claims against the 1992 Fund, namely the *Prestige* (Spain), and seven incidents which may result in such claims, namely the *Spabunker IV* (Spain), *Alliance Spirit* (Algeria), *Buyang*, *Hana*, *Duck Yang* and *Kyung Won* (Republic of Korea) and *Victoriya* (Russian Federation). Several incidents involving the 1992 Fund which occurred in previous years have been dealt with since the October 2002 sessions.

7.3 In November 2002 the Bahamas registered tanker *Prestige*, laden with 77 000 tonnes of heavy fuel oil, broke in two off the coast of Galicia (Spain) spilling an unknown but substantial quantity of its cargo. A major offshore clean-up operation was carried out using vessels from Spain and nine other European countries. The oil from the *Prestige* affected the Atlantic coast from Vigo in Spain to Brest in France as well as intermittent and light contamination on the French and English coasts of the English Channel as far as the Dover Strait. On-shore clean-up operations have been carried out along about 2 000 km of shoreline. Around 130 000 tonnes of liquid and solid oily waste have been collected in Spain and some 19 500 tonnes in France. The bow and stern sections of the *Prestige*, which are lying in some 3 500 metres of water, contain significant quantities of oil. The Spanish authorities are considering various options for removing the oil from the wreck.

7.4 As a result of a typhoon in September 2003, two Korean vessels, the tanker *Duck Yang* and the barge *Kyung Won*, became casualties that resulted in oil pollution which will give rise to substantial claims for compensation.

7.5 Further information on these eight incidents is contained in the documents submitted to the 22nd 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. 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 There are, as at 26 September 2003, outstanding third party claims in respect of six incidents. It is likely, however, that several of these incidents will not result in any payments by the 1971 Fund. Some recourse actions taken by the 1971 Fund are pending.
- 8.3 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.

9 Winding up of the 1971 Fund

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 also be decided 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. Further details in respect of these issues are given in document 71FUND/AC.12/15.

10 Review of the international compensation regime

- 10.1 At its session in October 2000, the Legal Committee of the International Maritime Organization (IMO) considered a proposal by a number of States to increase the limits of liability and compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention by using the special procedure laid down in the Conventions, the 'tacit amendment procedure'. The Committee adopted two Resolutions increasing the limits contained in the Conventions by some 50.37%. The amendments will enter into force on 1 November 2003.
- 10.2 The increased limits of the shipowner's liability will be as follows:
- (a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 SDR (£3.8 million);
 - (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (£3.8 million) plus 631 SDR (£533) for each additional unit of tonnage; and
 - (c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (£76 million).
- 10.3 The amendment to the 1992 Fund Convention will bring the total amount available under the 1992 Conventions to 203 million SDR (£176 million).
- 10.4 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, April/May 2002 and February 2003.
- 10.5 At its October 2001 session the 1992 Fund Assembly approved a draft Protocol prepared by the Working Group 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 become Parties to the Protocol. The text of the draft Protocol was approved by the IMO Legal Committee at its April 2002 session. A Protocol establishing such a Supplementary Fund was adopted by a Diplomatic Conference held under the auspices of IMO from 12 to 16 May 2003.
- 10.6 The Supplementary Fund will have available an amount of 547 million SDR (£475 million), in addition to the amount of 203 million SDR (£176 million) which will be available in the present 1992 Fund after the increase which takes effect on 1 November 2003. As a result, the total amount available for compensation for each incident in the States which are Members of the Supplementary Fund will be 750 million SDR (£651 million). The Protocol will enter into force

three months after it has been ratified by at least eight States and the aggregate quantity of contributing oil received in these States after sea transport is at least 450 million tonnes.

- 10.7 A Resolution adopted by the conference on the Establishment of the International Oil Pollution Compensation Supplementary Fund requests the 1992 Fund Assembly to instruct the Director to carry out certain tasks necessary for the setting up of the Supplementary Fund.
- 10.8 Further details in respect of the Supplementary Fund and the preparations for the entry into force are given in documents 92FUND/A.8/4 and 92FUND/A.8/4/1, respectively.
- 10.9 The Intersessional Working Group continues to work under the following mandate decided by the Assembly at its October 2001 session:
 - (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 certain issues 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.
- 10.10 At its April/May 2002 meeting the Working Group focused its discussions on questions relating to environmental damage and issues relating to shipowners' liability. At its October 2002 session the Assembly considered the Working Group's report (document 92FUND/A.7/29). The Assembly approved a revised text of the section of the 1992 Fund's Claims Manual regarding environmental damage, and a revised version of the Claims Manual was published in November 2002.
- 10.11 At its February 2003 meeting the Working Group focused its discussions on shipowners' liability and related issues. It also discussed the uniform application of the Conventions. At its first session held in May 2003 the 1992 Fund Administrative Council considered the Working Group's report (document 92FUND/AC.1/A/ES.7/7). The Council approved a Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8) prepared by the Working Group.
- 10.12 During 2003 the Working Group has also considered other issues such as the refinement of the contribution system, problems caused by States not submitting oil reports, the definition of 'ship', alternative dispute settlement procedures and the admissibility of claims for fixed costs. The discussions on these issues will continue during 2004.

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 (HNS Convention), as requested by the Diplomatic Conference which adopted the Convention.
- 11.2 The IOPC Funds' Secretariat has developed a prototype of a system to assist in identifying and reporting contributing cargo under the HNS Convention. The system has been demonstrated to delegates and a number of interested parties on several occasions and the functioning system is now in the final stages of development.
- 11.3 The IOPC Funds took part in a meeting of a Correspondence Group on the HNS Convention set up by the IMO Legal Committee held in Ottawa in June 2003 where questions regarding the implementation of the Convention were discussed (cf document 92FUND/A.8/26).

- 11.4 At its first session, held in May 2003, the 1992 Fund Administrative Council (acting on behalf of the Assembly) considered the Director's analysis of certain issues which would have to be considered in the context of the preparations for the entry into force of the HNS Convention. The Council instructed the Director to study these issues and make proposals to the Assembly at a future session.

12 Concluding remarks

- 12.1 The past 12 months have again seen continued growth in 1992 Fund membership: since October 2002, four 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. Progress is being made towards the winding up of the 1971 Fund.
- 12.2 The growth in membership over 25 years is an indication that the Governments have considered that the international compensation regime has in general worked well. In this regard it should be noted that the regime based on the 1992 Conventions has served as a model for the creation of a liability and compensation regime in other fields, such as the carriage of hazardous and noxious substances by sea.
- 12.3 However, some recent major incidents have resulted in the compensation regime being subject to criticism for not providing adequate protection to victims of oil pollution. The Member States have already taken steps to improve the compensation regime, namely by an increase in the limitation amounts by 50.37% with effect from 1 November 2003, the adoption of the Supplementary Fund Protocol and the development of the Fund policy in respect of environmental damage. The review of the adequacy of the international compensation regime carried out by the intersessional Working Group continues.
- 12.4 It is clear that further challenges lie ahead. On the occasion of the 25th anniversary of the setting up of the 1971 Fund it is important not only to look back on what has been accomplished but also to look ahead. It will be an important task to take the necessary steps to ensure that the regime continues to meet the needs and aspirations of the international community in the 21st century.
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