



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992**

**ASSEMBLY**  
2nd extraordinary session  
Agenda item 4

92FUND/A/ES.2/3  
27 February 1997  
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## **ASSESSMENT OF CONTRIBUTIONS**

**Note by the Director**

### **1 Consideration by the Assembly at its 1st extraordinary session**

1.1 The assessment of 1996 contributions was considered by the 1992 Fund Assembly at its 1st extraordinary session in October 1996 (document 92FUND/A/ES.1/18). The Assembly decided to levy contributions to the General Fund for a total of £7 million (being the level at which the Assembly had decided to set the working capital of the 1992 Fund). It was decided that £4 million should be due for payment by 1 February 1997, and that the balance of the 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 (document 92FUND/A/ES.1/22, paragraph 19).

1.2 Invoices in respect of the 1996 contributions were issued by the Secretariat in November 1996 for a total of £3 999 972, for payment by 1 February 1997. As at 18 February 1997, 96.18% of this amount had been received.

### **2 The *Nakhodka* incident**

2.1 The *Nakhodka* incident occurred off Japan on 2 January 1997 (ie after the 1st extraordinary session of the Assembly in October 1996). It is clear that the total amount of the claims arising out of the *Nakhodka* incident will exceed the amount available under the 1971 Fund Convention, and that the 1992 Fund will therefore be involved in the payment of compensation.

2.2 The *Nakhodka* was registered in the Russian Federation, which has not ratified the 1992 Protocols but which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention. The shipowner's right of limitation is therefore governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation are Parties. As a result, compensation in excess of the amount available under the 1971 Fund

Convention, ie 60 million Special Drawing Rights (SDR) (£51 million), will be paid entirely by the 1992 Fund, up to the maximum amount available under the 1992 Fund Convention of 135 million SDR (£114 million).

### **3 Consideration by the 1971 Fund Executive Committee in February 1997**

The Executive Committee of the 1971 Fund considered the *Nakhodka* incident at its 52nd session, held in February 1997.

#### **3.1 Level of payments**

3.1.1 As regards the question of whether the Director should be authorised to make payments, the 1971 Fund Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (£51 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR (£114 million) (document 71FUND/EXC.52/11, paragraph 3.7.10).

3.1.2 In view of the uncertainty as to the level of the total amount of the claims, the 1971 Fund Executive Committee decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made. It was also decided that this percentage should be reviewed at the Executive Committee's 53rd session, to be held in April 1997, in the light of further information as to the likely level of the claims and taking into account the position to be taken by the 1992 Fund Assembly (document 71FUND/EXC.52/11, paragraph 3.7.14).

3.1.3 It should be noted that the 1992 Fund Assembly will be invited to consider, under agenda item 3, the level of payments to be made by the 1992 Fund (document 92FUND/A/ES.2/2).

#### **3.2 Source of funds for the prompt payment of claims**

As regards the need for the 1971 Fund to ensure that sufficient funds were available to enable that Organisation to make payments promptly for claims arising from the *Nakhodka* incident, the Executive Committee recognised that it was not authorised to take decisions on the levy of contributions or other budgetary matters and that such decisions could be taken only by the 1971 Fund Assembly. The Committee considered that it would be inappropriate to await a decision by the 1971 Fund Assembly in October 1997 to levy contributions to a *Nakhodka* Major Claims Fund, since there would not be sufficient funds available for the payment of claims arising from the *Nakhodka* incident until February 1998. It was recognised that it would be necessary at some stage to levy contributions to a *Nakhodka* Major Claims Fund, and it was considered that this should be done at the first opportunity. The Executive Committee therefore requested the Director to convene an extraordinary session of the 1971 Fund Assembly. It should be noted that this extraordinary session of the 1971 Fund Assembly will be held from 15 to 18 April 1997.

### **4 Financial Regulations**

Financial Regulation 7.1(c)(i) provides that the General Fund shall be used for payment of claims up to 4 million SDR per incident (minor claims) (cf Article 12.2(a) of the 1992 Fund Convention). Financial Regulation 7.2 provides that a separate Major Claims Fund shall be established for each incident to the extent that the aggregate amount of the payment of claims exceeds 4 million SDR (major claims).

## **5 Requirement to levy contributions**

5.1 It is expected that a number of claims arising out of the *Nakhodka* incident will be presented within the next few weeks. Some claimants will face considerable financial hardship if they are not paid within a short period of time. The clean-up operations in Japan are mainly carried out by small or medium sized businesses, and for such businesses cash flow is an important element. The Director believes that for this reason payments should be made promptly to these businesses. Several thousand fishermen have had to abandon their fishing activities and have instead participated in the clean-up operations. It is important that payments to these fishermen are also made promptly.

5.2 Compensation to be paid by the 1992 Fund for the first 4 million SDR (£3 382 620) in respect of the *Nakhodka* incident has to be paid from the General Fund (cf paragraph 4 above). Only £4 million of the £7 million General Fund levy decided by the Assembly has so far been invoiced. In order to avoid depleting the working capital entirely, the Director considers it essential, in accordance with the authority given by the Assembly, to invoice all of the deferred levy of £3 million for payment during the second half of 1997.

5.3 As for payments of compensation by the 1992 Fund to the extent that they exceed £3 382 620, the question arises of when contributions should be levied to a *Nakhodka* Major Claims Fund, and for what amount.

5.4 Claims arising from the *Nakhodka* incident will first be paid by the 1971 Fund, and the 1992 Fund will not be called upon to make payments until the total amount available under the 1969 Civil Liability Convention and 1971 Fund Convention has been used. It is difficult to predict at this stage when this will occur. In previous incidents in Japan claims have been submitted within a relatively short period of time and settlements have been made speedily. In the past, these claims have generally been well documented and have not given rise to questions of principle. For this reason, the Director is of the opinion that the 1992 Fund may have to make significant payments to claimants in the *Nakhodka* case during 1997.

5.5 As mentioned above, the 1971 Fund Executive Committee decided to limit payments, for the time being, to 60% of the damage suffered by each claimant. The question arises, therefore, whether the 1971 Fund should for the time being pay only up to an aggregate amount of 60% of 60 million SDR (£51 million), or whether the 1971 Fund should pay 60% of the damage suffered by each claimant, up to a total amount of 60 million SDR. The Director takes the view that the latter approach should be followed. The proposal for the amount to be levied made in paragraph 5.7 below is based on this approach.

5.6 If the 1992 Fund Assembly were to follow the past practice of the 1971 Fund, contributions to a *Nakhodka* Major Claims Fund would not be levied until October 1997, and contributions would not be received until 1 February 1998. The Director considers that the 1992 Fund should ensure that it has sufficient funds available to make significant payments in excess of £3 382 620 before that date.

5.7 The Director proposes a levy of 1996 contributions to the *Nakhodka* Major Claims Fund for payment on the date of payment of the deferred levy to the General Fund referred to in paragraph 5.2 above. It is suggested that a levy in the region of £15-25 million would be appropriate. The Director will, in an addendum to this document, make a firm proposal for the amount to be levied.

5.8 Until sufficient contributions to the *Nakhodka* Major Claims Fund have been received, any payments in excess of £3 382 620 would have to be made from money borrowed from the General Fund. Such a loan would be repaid with interest to the General Fund (cf Financial Regulations 7.1(c)(iv) and 7.2(b)(iii)).

## **6 Action to be taken by the Assembly**

The Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention,

- (a) to take note of the information contained in this document;

- (b) to note the Director's intention to invoice all of the deferred levy of £3 million to the General Fund, for payment during the second half of 1997 (paragraph 5.2 above); and
  - (c) to decide on an additional assessment of 1996 contributions in respect of the *Nakhodka* Major Claims Fund for payment during the second half of 1997 (paragraphs 5.4-5.8 above and document 92FUND/A/ES.2/3/Add.1).
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