



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971 AND  
1992

EXECUTIVE COMMITTEE  
13th session  
Agenda item 3

92FUND/EXC.13/2  
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ASSEMBLY  
8th extraordinary session  
Agenda item 5

71FUND/A/ES.8/6

## INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

### Note by the Director

**Summary:**

Some further claims have been settled after the meetings in March 2001. Claims relating to the construction and removal of the causeway and some other claims are under examination.

**Action to be taken:**

Information to be noted.

### 1 Level of payments

- 1.1 As a result of developments and as authorised by the governing bodies the Director decided in January 2001 to increase the level of payments from 70% to 80% of the amount of the damage actually suffered by the individual claimants. The Director's decision was reported to the governing bodies at their sessions in January 2001 (documents 92FUND/EXC.11/6, paragraph 4.1.5 and 71FUND/AC.3/ES.6/7, paragraph 3.3.5).
- 1.2 As a result of the Director's decision to increase the level of payments, the 1992 Fund made additional payments totalling ¥1 970 million (£12 million) in February and March 2001.

### 2 Claims for compensation

#### 2.1 General situation

- 2.1.1 As at 1 June 2001, 458 claims totalling ¥35 138 million (£206 million<sup><1></sup>) had been received.

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<1> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 29 May 2001, ie £1=¥170.271, except in respect of amounts paid where conversion has been made at the rate of the date of payment.

- 2.1.2 The total payments made to claimants amounted to ¥16 495 million (£88 million) as at 1 June 2001, including the payments made by the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club) totalling ¥65 889 134 (£400 000) plus US\$4.6 million (£3 million).
- 2.1.3 Claims submitted by two electricity power plants, ie Tokyo Electricity Power Company and Japan Atomic Power Company, totalling ¥608 million (£3.6 million), have been settled at ¥485 million (£2.8 million) and 80% of the settlement amounts minus provisional payments were paid in March 2001.
- 2.1.4 Ten claims in the tourism sector which had been assessed at nil by the experts engaged by the Funds and the UK Club were recently withdrawn from the court proceedings. Five tourism claims totalling ¥8.6 million (£51 000) which were also assessed as nil by the experts are still pending in court. It is expected that these claimants will withdraw their claims in the near future.
- 2.1.5 The claims situation as at 1 June 2001 is shown in the tables set out below.

Settled claims		
Category of claims	Claimed amount (¥1 000)	Settled amount (¥1 000)
Japan Maritime Disaster Prevention Centre (JMDPC)	12 016 344	10 299 544
Prefectures and municipalities	4 592 938	3 666 910
Shipowner's contractors	259 088	250 170
Fishery	5 013 257	1 769 172
Tourism	2 840 858	1 344 157
Others	720 975	583 596
Total	25 443 460 (£149 million)	17 913 549 (£105 million)

Claims pending in court			
Category of claims	Number of pending claims	Claimed amount (¥1 000)	Provisional payments (¥1 000)
JMDPC (pending parts)	5 <sup>&lt;1&gt;</sup>	3 208 823	0
Government agencies	11	1 519 466	0
Prefectures and municipalities	4	2 549 628	687 568
Tourism	5 <sup>&lt;2&gt;</sup>	8 642	0
Shipowner/UK Club	1	381 052	0
Others	5	2 027 416	1 077 312
Total	31	9 695 027 (£57 million)	1 764 880 (£10 million)

- Notes:   <1>   Includes four claims relating to causeway construction and removal.  
           <2>   These five claims were assessed as nil by the IOPC Funds.

## 2.2 Pending claims

- 2.2.1 Ishikawa Prefecture and Toyama Prefecture submitted claims for ¥1 581 million (£9.3 million) and ¥120 million (£710 000), respectively. These claims related to the cost of collection of oil on the shore and disposal of the oil. The assessment of these claims will be completed shortly.

- 2.2.2 Claims for clean-up costs were submitted by Kyoto and Hyogo Prefectures for a total of ¥848 million (£5 million). The Claims Handling Office in Kobe is examining these claims. It is expected that the assessment will be completed during the summer 2001.
- 2.2.3 The assessment of a claim for ¥98 million (£580 000) by the Japan Nuclear Cycle Development Institute has been completed, and it is expected that the claim will be settled shortly.
- 2.2.4 Hokuriku Electricity Power Company and Tohoku Electricity Power Company submitted claims for clean-up costs for ¥401 million (£2.4 million) and ¥97 million (£570 000), respectively. The Claims Handling Office in Kobe is examining these claims. It is expected that the assessment will be completed by July 2001.
- 2.2.5 In respect of six claims for a total of ¥181 million (£1.1 million) submitted by Ministries and government agencies, namely three district port construction bureaux and three regional construction bureaux, the Funds have offered payments of 80% of the assessed amounts. However, the claimants have not yet accepted the assessments.
- 2.2.6 Concerning five claims for a total of ¥1 339 million (£7.9 million) submitted by Ministries and government agencies, namely two regional headquarters of the Maritime Safety Agency and three divisions of Self Defence Forces, it is expected that the Claims Handling Office in Kobe will complete the assessments within a few months.

### **3 Claims relating to construction and removal of a causeway**

- 3.1 It will be recalled that the upturned bow section of the *Nakhodka*, which may have contained 2 800 tonnes of cargo, grounded on the rocks some 200 metres from the shore. A Japanese salvage company was contracted by the shipowner to remove the oil remaining in the bow section, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over the operation, using the services of two salvage companies. Some 2 830 m<sup>3</sup> of oil/water mixture was removed through these operations
- 3.2 Due to concerns that the on-water operations might fail as a result of the adverse conditions, the Japanese authorities ordered the construction of a temporary causeway to the grounded bow section. The causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil.
- 3.3 The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. Despite the prevailing conditions, the on-water operations were successful and only the last 380m<sup>3</sup> of oil/water mixture was removed via the causeway. The causeway was then dismantled and the construction material removed from the site.
- 3.4 JMDPC submitted claims totalling ¥3 249 million (£19 million) for the costs of the causeway. The majority of the costs related to the construction and removal of the causeway itself. These claims are under examination against the criteria for admissibility laid down by the Assemblies, ie that the operation to construct the causeway was reasonable from an objective technical point of view.

### **4 Legal actions**

- 4.1 At their October 1999 sessions the Executive Committees of the 1971 and 1992 Funds considered the results of the Director's investigations into the cause of the incident. The Committees shared the Director's opinion that the *Nakhodka* was unseaworthy at the time of the incident and that the defects which caused the ship to be unseaworthy were causative of the incident. The Committees also agreed with the Director that the shipowner was or at least should have been aware of the defects that caused the ship to be unseaworthy, that the incident was therefore caused by the fault

or privity of the shipowner and that consequently, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability.

- 4.2 The Executive Committees decided that if the shipowner, Prisco Traffic Limited ("Prisco"), initiated limitation proceedings, the 1971 and the 1992 Funds should oppose his right to limit his liability.
- 4.3 The Committees also decided that the Funds should take recourse action against Prisco and its parent company, Primorsk Shipping Corporation ('Primorsk'). Both companies shared the same office until 1996. Prisco appeared as a subsidiary of Primorsk in Lloyds Confidential Index until late in 1996 and as a separate entry after the incident in 1997. Both companies had the same hull insurer and the same P & I Clubs, and Primorsk appeared to have a considerable involvement with Prisco in matters of shipping. The Committees noted that the proximity of the two companies and the links between them suggested that the parent company exercised a considerable degree of control over Prisco and the fleet and that such control brought with it responsibility for the seaworthiness and safe operation of the fleet.
- 4.4 Pursuant to the Executive Committees' decisions, the IOPC Funds brought legal actions in the Fukui District Court against Prisco, Primorsk, the UK Club and the Russian Maritime Register of Shipping, to recover any amounts paid by the Fund in compensation.
- 4.5 The shipowner and the UK Club brought legal actions in the Tokyo District Court against the 1971 and 1992 Funds for ¥537 million (£3.2 million) in respect of their subrogated rights relating to the payments made by them.
- 4.6 The shipowner and the UK Club were from the outset represented by the same lawyer in Japan who signed all settlement agreements with claimants on behalf of both the shipowner and the UK Club. He was also representing both the shipowner and the UK Club in their actions against the 1971 and 1992 Funds.
- 4.7 The legal actions taken by the IOPC Funds against the UK Club were served on the Club at its Tokyo office and on the Club's Japanese lawyer.
- 4.8 The lawyer referred to in paragraph 4.7 above has informed the Fukui District Court that he was not authorised to receive service of writs on behalf of the shipowner. The Director was informed that service of the shipowner in Nakhodka in the Russian Federation could take some 18 months. Similar problems relating to the service of writs were expected to arise in respect of Primorsk in Nakhodka and the Russian Maritime Register of Shipping in St Petersburg.
- 4.9 The powers of attorney issued by the shipowner and the UK Club in respect of the action against the IOPC Funds included authority for their Japanese lawyer to receive service of counter claims. The IOPC Funds therefore submitted a counter claim in the Fukui District Court against the shipowner and the UK Club in respect of the Funds' payments to three prefectures totalling ¥2 913 million (£17 million). The counter claim was served on the shipowner's and UK Club's lawyer on 5 February 2001. The purpose of the Funds' bringing the counter claim was to speed up the proceedings against the shipowner and the UK Club.
- 4.10 The actions against Primorsk and the Russian Maritime Register of Shipping are not affected by the counter claim, nor are the parts of the actions against the shipowner and the UK Club not covered by the counter claim.
- 4.11 The IOPC Funds also submitted defence pleadings against the actions taken by the shipowner and the UK Club against the Funds. The Funds have argued that these actions should be rejected on the grounds that the shipowner should not be entitled to limit his liability as the incident resulted from his personal fault or privity and that in any event the shipowner had not commenced limitation proceedings.

- 4.12 The shipowner and Primorsk have recently appointed their own lawyers to represent them in legal actions brought against them by the IOPC Funds. The writs were recently served on their respective lawyers.
- 4.13 The writs against Prisco, Primorsk and the Russian Maritime Register were recently served through diplomatic channels in the Russian Federation and the first hearing will be held on 13 June 2001.

**5 Action to be taken by the governing bodies**

The governing bodies are invited:

- (a) to take note of the information contained in this document; and
  - (b) to give the Director such instructions in respect of this incident as they may deem appropriate.
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