



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
18th session
Agenda item 3

92FUND/EXC.18/2
4 October 2002
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

Note by the Director

Summary:	A résumé of all incidents and all documents submitted under this agenda item is set out.
Action to be taken:	Information to be noted.

1 **Introduction**

- 1.1 Resolution N°5 of the 1992 Fund, which establishes the Executive Committee, provides that the Committee shall take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation.
- 1.2 There have been no new incidents that have given or may give rise to claims against the 1992 Fund since the 17th session of the Executive Committee held in July 2002. There are 12 incidents that took place before the 17th session, which are reported to the Executive Committee.

2 **Presentation of documentation**

- 2.1 The documentation presented to the 18th session of the Executive Committee has been structured in the following way:
 - (a) incidents which the Executive Committee is invited to consider on the basis of a separate document for each incident; and
 - (b) incidents which have been grouped together for practical reasons.
- 2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made – unless otherwise indicated – on the basis of the rates of exchange at the time that the respective documents were written. However, for amounts representing actual payments by the 1992 Fund, the conversion has been made at the rate of exchange on the day of payment.

3 Summary of incidents

The situation in respect of the incidents involving the 1992 Fund can be summarised as follows:

3.1 Document 92FUND/EXC.18/3

- *Incident in Germany* (1996): The German authorities brought legal actions against the owner of a ship, the *Kuzbass*, suspected of having caused pollution of the German coastline. The German authorities claimed compensation of £845 000 for the costs of clean-up operations at sea and on shore. The shipowner and his insurer have maintained that the polluting oil did not originate from the *Kuzbass*. The 1992 Fund has intervened in the proceedings in order to protect its interests and has maintained that the *Kuzbass* was the most likely source of the pollution.

The German authorities have taken legal action against the 1992 Fund to prevent their claim from becoming time-barred. The Fund's lawyers have applied to the Court to stay the proceedings in respect of this action, pending the outcome of the action by the German authorities against the shipowner and the shipowner's insurer.

- **No action requested.**

3.2 Document 92FUND/EXC.18/4 (71FUND/AC.9/13/5), 92FUND/EXC.18/4/Add.1 (71FUND/AC.9/13/5/Add.1), 92FUND/EXC.18/4/1 (71FUND/AC.9/13/5/1) and 92FUND/EXC.18/4/2 (71FUND/AC.9/5/2)

- *Nakhodka* (Japan 1997): All claims for compensation have been settled for a total of £139 million.

The IOPC Funds and others took recourse actions against the owner of the *Nakhodka*, his insurer, the parent company of the shipowner and the Russian Register of Shipping. In April/May 2002 the Funds' governing bodies approved a proposal for a global settlement of all outstanding issues whereby all the compensation payments would be shared between the shipowner's insurer and the IOPC Funds on a 42:58 basis. The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims and the shipowner's insurer would pay the 20% balance. This will result in the IOPC Funds recovering approximately £27.8 million and making a saving of around £13.3 million as a result of not having to increase their payments over 80% of the settlement amounts. The Director is of the view that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits.

The joint costs incurred by the IOPC Funds and the shipowner's insurer relating to the operation of the Claims Handling Office in Kobe and to the claims handling process in general will also be apportioned between the UK Club and the IOPC Funds on a 42:58 basis. The IOPC Funds and the shipowner/UK Club will each bear their own legal costs.

In the Director's view, all costs to be borne by the Funds should be apportioned on the same basis as that adopted by the governing bodies for the distribution between the two Funds of the financial benefits of the global settlement.

Action requested:

- to decide on the distribution between the 1971 Fund and the 1992 Fund of the financial benefits of the global settlement; and
- to decide on the distribution between the Funds of costs incurred as a result of the incident.

3.2 Documents 92FUND/EXC.18/5, 92FUND/EXC.18/5/Add.1 and 92FUND/EXC.18/5Add.2

- *Erika* (France 1999): As at 15 September 2002, 6 248 claims totalling £102 million had been received at the Claims Handling Office in Lorient, of which 5 714 claims (91%) had been assessed. Payments totalling £27 million had been made in respect of 4 912 claims. Further claims have been lodged against the shipowner's limitation fund and in various court proceedings.

In view of the uncertainty as to the starting point of the time bar period of three years from the date that the damage suffered by the respective claimants occurred, the Director has suggested that claimants should assume that the time bar period commences on the date of the incident (12 December 1999) to avoid any risk of the claims becoming time-barred. It is expected that a number of claims will be submitted to the Claims Handling Office or filed in Court during the period 15 September – 12 December 2002. In the light of the remaining uncertainty in this regard, he proposes that the level of the 1992 Fund's payments should be maintained at 80% of the loss or damage suffered by the respective claimants as assessed by the 1992 Fund's experts

Investigations into the cause of the incident have not yet been completed and it is therefore not possible at this stage for the 1992 Fund to take a final position as to whether the Fund should take recourse actions and, if so, against which parties. However, the Director considers that the 1992 Fund should take such actions as are necessary to prevent its rights becoming time-barred. In any event, in light of the findings of the investigations carried out by the Malta Maritime Authority and the French Permanent Commission of Enquiry into Accidents at Sea, the 1992 Fund should, in the Director's view, challenge the shipowner's right to limit his liability.

Action requested:

- To decide on the level of the 1992 Fund's payments.
- To consider whether the 1992 Fund should challenge the shipowner's right to limit his liability.
- To consider whether to authorise the Director to commence recourse actions against various parties.

3.4 Document 92FUND/EXC.18/6 (71FUND/AC.9/13/9)

- *Al Jaziah 1* (United Arab Emirates, 2000): The governing bodies of the 1992 and 1971 Funds decided that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. Claims totalling £893 000 in respect of clean-up operations have been provisionally assessed at £400 000. Claims in respect of preventive measures have been settled at £385 000.

Evidence disclosed in criminal proceedings against the master and crew of the *Al Jaziah 1* indicated that the vessel was not seaworthy and that this led to the vessel sinking. In the Director's view there are reasonably good prospects of the IOPC Funds obtaining a favourable judgement against the shipowner in a recourse action. However, the Director has been advised that it is uncertain whether the defendant will have sufficient assets to enable the Fund to recover any substantial amounts. The Director is therefore of the opinion that the IOPC Funds should not take recourse action against the shipowner.

Action requested:

- To decide whether the IOPC Funds should pursue recourse action against the registered owner of the *Al Jaziah 1* and the owner of that entity at the time of the incident.

3.5 Document 92FUND/EXC.18/7

- *Slops* (Greece 2000): At its July 2000 session the Executive Committee decided that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident.

Two companies which carried out clean-up operations have taken legal action against the 1992 Fund, arguing that shipowner was incapable of satisfying their claims for compensation, that they had taken all reasonable steps against him, and that they were therefore entitled to compensation from the Fund. The companies further argued that although the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention, it was constructed to carry oil by sea, that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Pireus Ship's Registry. At its July 2002 session the Executive Committee decided that the companies had not provided any information which would modify its position that the *Slops* should not be considered a 'ship' and instructed the Director to oppose the action. A court hearing will be held on 8 October 2002.

No action requested.

3.6 Document 92FUND/EXC.18/8

- *Incident in Sweden* (Sweden 2000): Several Swedish islands in the Baltic Sea were polluted in September 2000. The Swedish authorities indicated that the oil could have been discharged from the tanker *Alambra* during a ballast voyage to Tallinn, Estonia, and that subsequent analyses of oil samples taken from the polluted islands and from the *Alambra* confirmed this. The owner of the *Alambra* and his insurer maintain that the oil did not originate from that ship.

The Swedish authorities have indicated that they intend to try and recover their clean-up costs from the owner of the *Alambra*, but if they were to be unsuccessful in this regard, they may claim against the 1992 Fund.

No action requested.

3.7 Document 92FUND/EXC.18/9 (71FUND/AC.9/13/11)

- *Natuna Sea* (Indonesia 2000): The oil spilled from the *Natuna Sea* affected Singapore, Malaysia and Indonesia. Claims for pollution damage in Malaysia (Party to the 1969 Civil Liability Convention and the 1971 Fund Convention) have been settled within the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention and the 1971 Fund will not be called upon to make any payments in respect of this incident. Claims for pollution damage in Singapore (Party to the 1992 Civil Liability Convention and the 1992 Fund Convention) and Indonesia (Party to the 1992 Civil Liability Convention) total £29 million, which exceeds the limit (£19 million) applicable to the vessel under the 1992 Civil Liability Convention. The 1992 Fund may therefore be required to make payments for pollution damage in Singapore.

No action requested.

3.8 Document 92FUND/EXC.18/10

- *Baltic Carrier* (Germany 2001): The tanker *Baltic Carrier* collided with the bulk carrier *Tern* in the Baltic Sea off the coast of Germany resulting in an escape of some 2 500 tonnes of heavy fuel oil. The oil affected several of the Danish islands. Claims for pollution damage have been settled for a total of £4.7 million. Claims totalling £3.6 million are being assessed. Further claims are expected, including a claim in respect of the pollution of a causeway. It is not yet known whether the total amount of established claims will exceed the limitation amount applicable to the *Baltic Carrier* under the 1992 Civil Liability Convention.

Following the collision, the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern's* forepeak tank. During the latter vessel's stay in Rostock a small oil spill occurred. The *Tern* subsequently proceeded to Ventspils (Latvia) to discharge its cargo, where further spillage of *Baltic Carrier* oil occurred. The *Tern's* insurer, which incidentally is the same P&I Club as for the *Baltic Carrier*, has settled claims for pollution damage in Ventspils. The insurer has not indicated whether it intends to maintain that the claims in Ventspils fall within the scope of application of the 1992 Civil Liability Convention as regards the *Baltic Carrier* incident.

No action requested.

3.9 92FUND/EXC.18/11 (71FUND/AC./13/12)

- *Zeinab* (United Arab Emirates, 2001): The governing bodies decided that both the 1971 and the 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. This incident is, as regards the 1971 Fund, covered by insurance, subject to a deductible of £220 325. Claims in respect of costs of clean-up and preventive measures have been settled for £592 000 by both Funds and further claims totalling £700 000 are being assessed. The total amount paid in compensation by the 1971 Fund exceeds the deductible.

Further claims in respect of clean-up operations are expected.

No action requested.

3.10 92FUND/EXC.18/12

- *Mary Anne* (Philippines, 1999): The shipowner's insurer has incurred expenditure of approximately £1.6 million in respect of the oil removal contract and the clean-up operations. It is unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention. However, the shipowner's insurer informed the 1992 Fund that the shipowner was in breach of the insurance policy in respect of the vessel on the grounds that the vessel was operated recklessly and that the crew was grossly incompetent. Proceedings have been commenced in the Makarti City Court against the 1992 Fund by the shipowner's insurer and two other parties, one of who is a chemical supplier who had provided dispersant to the shipowner for use in the clean-up operations.
- **No action requested.**
- *Dolly* (Caribbean, 1999): The *Dolly* was carrying a cargo of 200 tonnes of bitumen when it sank in 20 metres depth. The French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by bitumen. One proposal was made to right the wreck and refloat it with its cargo on board, following which the bitumen would then be removed and the wreck scuttled in deep water. The French authorities have recently informed the Fund that in view of the anticipated costs of undertaking the operations, tenders were being sought through the Official Journal of the European Communities.

No action requested.

- *Neptank VII* (Singapore, 2002): On 12 June 2002 the bunker tanker *Neptank VII*, carrying a cargo of some 3 100 tonnes of heavy fuel oil and 200 tonnes of marine diesel oil, collided with the general cargo ship *Hermion* in the Singapore Strait, within the port of Singapore. It is estimated that about 300 tonnes of heavy fuel oil were spilled. The shipowner and the Maritime and Port Authority of Singapore mobilised anti-pollution craft to combat the spill. No oiling of shorelines occurred in Singapore. A small stretch of shoreline in Johore, Malaysia was contaminated with oil.

Malaysia is a Party to the 1969 Civil Liability Convention, and although it was previously a Party to the 1971 Fund Convention, that Convention does not apply to this incident since it occurred after the 1971 Fund Convention ceased to be in force on 24 May 2002. Claims have been submitted to the shipowner and his insurer in respect of costs for clean-up undertaken in Singapore, but these costs are well below the limitation amount applicable to the ship under the 1992 Civil Liability Convention. It is therefore very unlikely that the 1992 Fund will be called upon to make compensation payments.

No action requested.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.
