



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

EXECUTIVE COMMITTEE
18th session
Agenda item 3

92FUND/EXC.18/4/1
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ADMINISTRATIVE COUNCIL
9th session
Agenda item 15

71FUND/AC.9/13/5/1

INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

Submitted by the Japanese delegation

Summary:	Japan points out that any amount recovered relating to an incident occurring during the transitional period should be reimbursed to the 1992 Fund first in accordance with the provisions of the 1992 Fund Convention
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Action to be taken:	Paragraph 5
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- 1 As Japan expressed its view at the last Executive Committee, Japan believes that this matter should be solved in line with the 1992 Fund Convention. The purpose of this document is to organize our point of view.
- 2 The Article 36 *bis* of the 1992 Fund Convention stipulates the case and extent of payment by the 1992 Fund during the transitional period. The *Nakhodka* case occurred in January 1997 during the said transitional period (1996-1998). Therefore, the payment by 1992 Fund should be in accordance with the Article.
- 3 The Article 36 *bis* (b) provides that,

'the (1992) Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention,'
- 4 According to the provision of the Article, the case and extent that 1992 Fund can pay compensation for the *Nakhodka* case is limited only if, and to the extent that 'such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention'. While we recognize that the 1992 Fund had decided to pay compensation for the relief of victims provisionally on the premise of recourse in accordance with the 1992 Liability Convention, the 1992 Fund has no legitimate legal basis to pay compensation to be covered by the 1971 Fund.

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Consequently, we should organize the way of distribution of the amount recovered from the shipowner and the UKPI Club in a way the 1992 Fund is allowed to pay. Namely, such amount should be reimbursed to the 1992 Fund first. The amount which can be reimbursed to the 1971 Fund should be limited to the residual amount after the reimbursement to the 1992 Fund.

- 5** The Committee is invited to consider the above and take action as appropriate.
