



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
4th session  
Agenda item 4

92FUND/EXC.4/2  
11 October 1999  
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## INCIDENTS INVOLVING THE 1992 FUND

Note by the Director

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

### 1 Introduction

1.1 The 1992 Fund Resolution N°5, 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 Ten incidents have occurred that have given or may give rise to claims against the 1992 Fund, namely an incident which occurred in Germany, the *Nakhodka* incident, the *Osung N°3* incident, an incident which occurred in the United Kingdom, the *Santa Anna* incident and the *Milad 1* incident, three incidents in the Philippines (the *Sea Brothers*, the *DB 22* and the *Mary Anne*), and an incident which occurred in Australia, the *Laura d'Amato*.

### 2 Presentation of documentation

The documentation presented to the 4th session of the 1992 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 the Executive Committee is invited to consider in a group, since the incidents occurred in the same Member State.

### 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.4/3

- Incident in Germany (1996): On 20 June 1996 crude oil was found to have polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. Clean-up operations were undertaken by the German authorities. Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. The German authorities have informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

In July 1998, the German authorities brought legal actions in the Court of first instance in Flensburg against the owner of the *Kuzbass* and his insurer. The 1992 Fund was notified of the legal actions. On 24 August 1999 the 1992 Fund intervened in the proceedings in order to protect its interests.

#### **No action requested**

#### 3.2 Document 92FUND/EXC.4/4 (cf document 71FUND/EXC.62/8)

- *Nakhodka* (Japan 1997): The *Nakhodka* broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. Claims totalling £204 million have been received by the Claims Handling Office in Kobe. The total payments made by the 1971 Fund to claimants amount to £38.3 million. The shipowner/UK Club has made payments totalling £560 000. Further claims are expected. Payments are currently restricted to 60% of the damage suffered by each claimant.

#### **Action requested:**

- Decision in respect of the level of the 1992 Fund's payment of claims

#### 3.3 Document 92FUND/EXC.4/4/1 (cf document 71FUND/EXC.62/8/1)

- *Nakhodka* (Japan 1997): The IOPC Funds' experts have examined the reports of the investigations into the cause of the incident carried out by the Japanese and Russian authorities. They have also considered other information available, *inter alia* documents provided by the shipowner. The experts' conclusion is that the *Nakhodka* was not seaworthy at the start of the voyage and that the shipowner was or should have been aware of the unseaworthiness. In the light of the opinions expressed by the experts the Director has examined whether the IOPC Funds should take recourse action against the shipowner and other third parties to recover the amount paid by the Funds in compensation.

#### **Action requested:**

- Decide whether the IOPC Funds should oppose the shipowner's right to limit his liability.
- Decide whether the IOPC Funds should pursue recourse action against:
  - (i) the registered owner;
  - (ii) the parent company of the owner;
  - (iii) the shipowner's P & I insurer; and
  - (iv) the Russian Maritime Register of Shipping.

3.4 Document 92FUND/EXC.4/5 (cf document 71FUND/EXC.62/6)

- *Osung N°3* (Republic of Korea, 1997): The *Osung N°3* was carrying 1 700 tonnes of oil when it ran aground and sank, spilling an unknown quantity of the oil. The incident caused pollution damage in the Republic of Korea and Japan. Operations to remove the oil from the wreck have been completed. The 1992 Fund's involvement in the *Osung N°3* incident is due to the fact that the oil from the ship not only affected the Republic of Korea but also Japan. The Assembly of the 1992 Fund decided at its 2nd session that, in respect of claims relating to damage in Japan, the 1992 Fund should pay the balance of the established claims over and above the payments made by the 1971 Fund which were then limited to 25% of the damage actually suffered by each claimant. The Director decided in November 1998 to increase the 1971 Fund's payments from 25% to 100% of each established claim arising out of the *Osung N°3* incident. As a consequence of this decision, the 1971 Fund reimbursed the 1992 Fund in respect of the amounts it had paid to cover the balance of the Japanese claims. The 1992 Fund will therefore ultimately not be liable in respect of this incident.

**No action requested**

3.5 Document 92FUND/EXC.4/6

- Incident in the United Kingdom (1997): In September 1997 bunker fuel oil landed on the east coast of England. Clean-up operations onshore were carried out by the local authority. The origin of the oil is not known. The local authority had submitted a claim for compensation to the 1992 Fund for the cost of the clean-up operations, provisionally indicated at approximately £10 000. The local authority has informed the 1992 Fund that this claim will not be pursued.

**No action requested**

3.6 Document 92FUND/EXC.4/7

- *Santa Anna* (United Kingdom, 1998): The unladen Panamanian tanker *Santa Anna* (17 134 GRT) grounded on rocks on the south-west coast of England. No oil was spilled as a result of the grounding and the refloating operation. The United Kingdom Government has submitted a claim to the shipowner for the cost of mobilising resources in response to a possible escape of persistent bunker oil.

Several legal questions have arisen, in particular whether the *Santa Anna* was a ship for the purpose of the 1992 Conventions. An Intersessional Working Group has studied the interpretation of the definition of 'ship' in the Conventions.

**Action requested:**

- If the Assembly has taken a decision at its 4th session on the Working Group's recommendations, to decide whether the *Santa Anna* falls within the definition of 'ship'.

3.7 Document 92FUND/EXC.4/8

- *Milad 1* (Bahrain 1998): The coastal tanker *Milad 1*, which had a crack in the hull, was lightered off Bahrain without any spill of oil. The 1992 Fund has paid a claim for compensation for BD21 168 (£33 000) for the cost providing a salvage tug and repair team to attend the *Milad 1*. The Director was instructed to investigate the possibilities of the 1992 Fund taking successful recourse action against the shipowner. The Director has made efforts to locate the *Milad 1* and contact her owner.

**Action requested:**

- Decide whether the 1992 Fund should continue to pursue the shipowner.

3.8 Document 92FUND/EXC.4/9

*Sea Brothers 1* (Philippines 1999): The bunkering tanker *Sea Brothers* sank in Manila harbour, spilling approximately 280 tonnes of bunker fuel. Claims for pollution damage do not exceed the shipowner's limit under the 1992 Civil Liability Convention.

**No action requested**

*DB 22* (Philippines 1999): The barge *DB 22* spilled an estimated 16 tonnes of fuel oil during cargo loading operations after being struck by another vessel. Claims for pollution damage do not exceed the shipowner's limit under the 1992 Civil Liability Convention.

**No action requested**

*Mary Anne* (Philippines 1999): The sea-going barge *Mary Anne* sank in the entrance to Manila Bay spilling an unknown quantity of intermediate fuel oil. Claims for pollution damage are unlikely to exceed the shipowner's limit under the 1992 Civil Liability Convention. However, the shipowner's P & I insurer has indicated that there may have been a breach of the insurance policy in respect of the vessel and that the insurer may not therefore cover the incident.

**No action requested**

3.9 Document 92FUND/EXC.4/10

*Laura d'Amato* (Australia): The Italian tanker *Laura d'Amato* was discharging its cargo of crude oil at an oil terminal on the northern shore of Sydney Harbour, when approximately 250 tonnes of oil escaped into the sea through an open sea valve. The spill took place close to the central business district of Sydney, and the area includes the Harbour Bridge and the Opera House.

The shipowner's P & I insurer estimates that claims for clean-up costs and associated claims in respect of oiled vessels and for loss of income incurred by public venues will be in the region of US\$2.8 million (£1.8 million). The limitation amount applicable to the *Laura d'Amato* is 24 million SDR (£29 million). It is highly unlikely, therefore, that the 1992 Fund will be called upon to pay any compensation as a result of this incident.

**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.

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