



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

EXECUTIVE COMMITTEE
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Agenda item 3

92FUND/EXC.9/4
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71FUND/A.23/14/7

INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

Note by the Director

Summary:	Claims have been received for a total of ¥35 128 million (£233 million). The IOPC Funds have paid ¥13 245 million (£69 million) in compensation. It is expected that most of the remaining claims will have been assessed by the end of 2000 and that the assessment of all remaining claims will have been completed by mid-2001.
Action to be taken:	Decide the level of the 1971 Fund's payments, at present set at 70% of the loss or damage suffered by each claimant.

1 Claims for compensation

1.1 Summary of claims situation

- 1.1.1 As at 16 October 2000, 458 claims totalling ¥35 128 million (£233 million)^{<1>} had been received.
- 1.1.2 The total payments made to claimants amounted to ¥13 804 million (£72.2 million) as at 16 October 2000, including the payments made by the shipowner/UK Club totalling ¥65 889 134

<1>

In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 15 September 2000, ie £1=¥150.75, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

(£400 000) plus US\$4.6 million (£3 million). Out of this amount, ¥139 million (£0.9 million) was paid by the 1992 Fund after its Executive Committee's 8th session in July 2000.

1.1.3 The claims situation as at 16 October 2000 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	4 214 456	1 470 525
Tourism	2 481 768	1 130 709
Others	15 139	11 428
Total	23 579 733 (£156 million)	16 829 286 (£112 million)

Claims pending in court			
Category of claims	Number of pending claims	Claimed amount (¥1 000)	Provisional payments (¥1 000)
JMDPC (pending parts)	5 ^{<1>}	3 208 823	0
Government agencies	11	1 519 466	0
Prefectures and municipalities	4	2 549 628	600 794
Fishery	1	771 856	100 000
Tourism	59 ^{<2>}	474 457	0
Shipowner/UK Club	1	381 052	0
Others	7	2 733 252	1 043 000
Total	88	11 638 534 (£77 million)	1 743 794 (£10 million)

Notes: <1> Includes three claims relating to causeway construction and removal.
 <2> Includes claimed amounts for 30 claims totalling ¥110 244 000 assessed as nil.

1.1.4 In sections 1.2 and 1.3 information is given on those groups of claims where major developments have taken place since the 1992 Fund's Executive Committee's 8th session^{<2>}.

1.2 Recent settlements

1.2.1 The Shimane Prefecture submitted a claim totalling ¥16.3 million (£108 000) which related *inter alia* to the cost of collection of oil on shore and disposal of collected oil. This claim was settled at ¥12 million (£78 000) in October 2000. The 1992 Fund paid ¥5 million (£25 000), corresponding to 70% of the settlement amount minus previous provisional payments.

1.2.2 The Tottori Prefecture and the Akita Prefecture submitted claims for ¥46.2 million (£306 000) and ¥9.3 million (£62 000), respectively, for costs similar to those referred to in paragraph 1.2.1.

^{<2>} As regards the major developments during the period April to July 2000 reference is made to document 92FUND/EXC.8/3.

These claims were settled in October 2000 at ¥38.6 million (£257 000) and ¥5.9 million (£39 000), respectively. The 1992 Fund paid ¥18 million (£109 000) and ¥4 million (£25 000), respectively, corresponding to 70% of the settlement amounts minus previous provisional payments.

- 1.2.3 Fishermen belonging to the Hyogo Fishery Co-operative Association submitted a claim for loss of income for ¥536 million (£3.6 million). This claim was settled at ¥202 million (£1.3 million) in August 2000. The 1992 Fund paid ¥41 million (£250 000), corresponding to 70% of the settlement amount minus a previous provisional payment.
- 1.2.4 Sakata Kyodo Power Company submitted a claim totalling ¥7.0 million (£46 000) for the cost of the deployment of oil fences and purchase of clean-up equipment. This claim was settled at ¥5.4 million (£36 000) in July 2000. The 1992 Fund paid ¥790 000 (£5 000), corresponding to 70% of the settlement amount minus previous provisional payments.
- 1.3 Ongoing assessments
 - 1.3.1 Japanese Government Agencies have submitted eleven claims totalling ¥1 519 million (£10.0 million). In February 2000 the Funds offered to make provisional payments of ¥448 million (£3.0 million). So far no reply has been received on the offer.
 - 1.3.2 Most of the claims from JMDPC and 54 sub-contractors engaged in clean-up operations under the JMDPC umbrella have been settled. A claim relating to the cost of interest paid by JMDPC on loans from the Japanese Government is under examination.
 - 1.3.3 Claims by JMDPC relating to the construction and removal of a causeway and the removal of oil from the bow section of the *Nakhodka* using the causeway are being examined.
 - 1.3.4 A claim submitted by the Toyama Prefecture for ¥120 million (£800 000) has been assessed. The Claims Handling Office is waiting for a reply from the claimant on its queries. It is expected that the assessment will be completed in the next few months.
 - 1.3.5 The assessments of claims submitted by the Ishikawa, Kyoto and Hyogo Prefectures, totalling some ¥2 429 million (£16.1 million), cannot be completed until the claimants have provided additional background data. It is expected that these assessments will be completed in the first half of 2001.
 - 1.3.6 Claims from six electricity companies totalling ¥2 720 million (£18 million) are under examination.
 - 1.3.7 Eight of the nine claims relating to fishermen's loss of income have been settled. The remaining claim is that by fishermen belonging to the Kyoto Fishery Co-operative Association for ¥772 million (£5.1 million). The 1992 Fund made a provisional payment of ¥100 million (£660 000) to these fishermen. Final assessment of this claim is being carried out, and it is expected that this assessment will be completed shortly.
 - 1.3.8 Claims have been received from 347 operators in the tourism sector. So far, the IOPC Funds' and the UK Club's experts have presented reports on the assessment of 341 claims in this category. Two hundred and fifty-nine claims have been settled at a total of ¥1 131 million (£7.5 million). A total of ¥596 million (£3.4 million) has been paid to claimants, and a further ¥198 million (£1.3 million) will be paid within a few days. Twenty-nine claims have become time-barred. Thirty claims have been assessed as nil.

2 Legal actions

- 2.1 As reported in document 92 FUND/EXC.7/2, the IOPC Funds have brought legal actions in the Fukui District Court against the shipowner, Prisco Traffic Ltd, its parent company Primorsk

Shipping Corporation (Primorsk), the shipowner's P & I insurer (the UK Club) and the Russian Maritime Register of Shipping.

- 2.2 The Japanese Ministry of Justice acting on behalf of four Governmental Ministries and Agencies and JMDPC took actions in the Tokyo District Court against the shipowner and the UK Club.
- 2.3 The shipowner and the UK Club took legal action in the Fukui District Court against the 1971 and 1992 Funds in respect of payments they had made to contractors.
- 2.4 The shipowner and the UK Club have from the outset been 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 is also representing both the shipowner and the UK Club in their actions against the 1971 and 1992 Funds.
- 2.5 The legal actions have been served on the UK Club at its Tokyo office.
- 2.6 The lawyer referred to in paragraph 2.4 above has informed the Fukui District Court that he is not authorised to receive service of writs on behalf of the shipowner. The Director has been informed that service of the shipowner in Nakhodka in the Russian Federation may take some 18 months.
- 2.7 Similar problems relating to the service of writs will arise in respect of Primorsk in Nakhodka and the Russian Maritime Register of Shipping in St Petersburg.
- 2.8 The Fukui District Court has fixed the first hearing to be held on 19 September 2001.

3 Level of payments

- 3.1 In view of the uncertainty as to the level of the total amount of the claims arising out of the *Nakhodka* incident, the Executive Committee of the 1971 Fund and the Assembly of the 1992 Fund decided in April 1997 that the payments to be made by the two Organisations 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/UK Club at the time when the payment was made.
- 3.2 Under Article VIII.1 of the Civil Liability Conventions and Article 6 of the Fund Conventions rights of compensation against the shipowner, the UK Club and the IOPC Funds are extinguished unless legal action is brought before the competent Japanese court within three years of the incident or, as regards the IOPC Funds, the Funds are notified within that period of an action against the shipowner/UK Club.
- 3.3 In October 1999 the Funds' Japanese lawyer sent letters to the claimants drawing their attention to the time bar issue.
- 3.4 Claims against the IOPC Funds became time-barred on or shortly after 2 January 2000. By that date claims totalling some ¥20 846 million (£138 million) had been brought before the competent courts. The amounts claimed in the legal actions represent the balance of outstanding claims after deduction of the amounts paid by the Funds and the shipowner/UK Club up to 2 January 2000 totalling ¥9 784 million (£49 million).
- 3.5 The IOPC Funds' Japanese lawyer has advised the Director that under Japanese law a claimant may not increase the amount claimed. He has also advised that claimants may, however, add amounts for legal costs and experts' fees incurred after the expiry of the period. It is possible therefore that some claimants may later claim additional amounts for such costs and fees.
- 3.6 At its 2nd session the Assembly of the 1992 Fund decided that the conversion of the total amount available under the 1971 and 1992 Fund Conventions, ie 135 million SDR, into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the

1992 Fund Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible, which for the *Nakhodka* incident was 17 April 1997. Using the rate of exchange on that date, 135 million SDR equals ¥23 164 515 000 (£154 million).

- 3.7 The Director informed the governing bodies of the IOPC Funds at their April 2000 sessions that he estimated the total exposure of the Funds at some ¥30 500 million (£202 million). The governing bodies decided to increase the level of the IOPC Funds' payments from 60% to 70% of the amount of the damage actually suffered by the respective claimants. The governing bodies also decided that the level of payments should be reviewed again at the sessions in October 2000 (documents 92FUND/EXC.7/5, paragraph 3.1.12 and 71FUND/AC.1/EXC.63/11, paragraph 3.6.12).
- 3.8 As a result of the developments since the April 2000 sessions of the governing bodies the total exposure of the Funds can be estimated at some ¥28 468 million (£189 million). Payments at 80% of that amount would give ¥22 774 million (£151 million), which is slightly below the total amount payable under the Conventions, ¥23 164 515 000.
- 3.9 It is expected that the claim from the fishermen belonging to the Kyoto Fishery Co-operative Association referred to in paragraph 1.3.7 will have been settled by the end of December 2000. It is also expected that most of the pending claims in the tourism sector will have been settled by then. Some claims from Prefectures and electricity companies will also be settled soon. The Director considers that these settlements would result in a significant further reduction of the Funds' exposure.
- 3.10 In the light of the foregoing the Director believes that an increase of the IOPC Funds' payments from 70% to 80% would be appropriate when further claims have been settled or withdrawn so as to reduce the total exposure of the Funds below ¥27 800 million (£184 million). Payments of 80% of this amount would give ¥22 240 million (£148 million), which would give the IOPC Funds a certain margin against overpayment. The Director proposes therefore that the governing bodies should authorise him to increase the level of payments to 80% when the total exposure has fallen below ¥27 800 million.

4 Investigations made by the Funds' experts

The IOPC Funds' experts have continued their investigation into the cause of the incident in co-operation with the Japanese authorities.

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;
 - (b) to decide the level of the IOPC Funds' payments; and
 - (c) to give the Director such instructions in respect of this incident as it may deem appropriate.
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