



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

FONDS INTERNATIONAUX
D'INDEMNISATION POUR
LES DOMMAGES DUS À LA
POLLUTION PAR LES
HYDROCARBURES

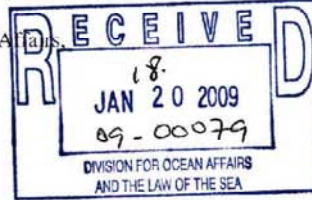
FONDOS INTERNACIONALES
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS

Our ref. POL/4/1-23/09jlm

9 January 2008

SENT BY E-MAIL TO MIKULKA@UN.ORG AND COPY TO DOALOS@UN.ORG

Ms Patricia O'Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel
United Nations
New York
NY 10017
United States of America



JAN 16 2009
02009-00109

Dear Ms O'Brien

General Assembly Resolution A.63/L.42 on Oceans and the law of the sea

I refer to your letter of 10 December 2008 in which you have requested the input of the International Oil Pollution Compensation Funds to the comprehensive report to be prepared by the Secretary-General on developments and issues relating to ocean affairs and the law of the sea.

The 1992 Fund operates within the framework of an international regime providing compensation for oil pollution damage caused by oil spills from tankers. The regime is created by two international treaties elaborated under the auspices of the International Maritime Organization (IMO), namely the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention). These treaties replace two previous treaties of 1969 and 1971 respectively. The Civil Liability Convention governs the liability of the shipowner, whereas the Fund Convention provides supplementary compensation when the amount paid by the shipowner or his insurer is insufficient to compensate all victims in full. The total amount of compensation available under the 1992 Conventions is 203 million Special Drawing Rights (US\$312 million.) Compensation is available to States, local authorities, private businesses and individuals such as fishermen. Since the original Fund was set up in 1978, compensation totalling US\$862 million has been paid in respect of some 137 incidents. The 1992 Fund is financed through a levy on oil received in Member States after sea transport and currently has 102 Member States with a further State for which the Fund Convention will be in force by the end of November 2009.

A Protocol to the 1992 Fund Convention which was adopted in May 2003 under the auspices of IMO entered into force on 3 March 2005. The Protocol, which had been prepared by the 1992 Fund, creates a Supplementary Compensation Fund that improves the international regime. The Supplementary Fund does not replace the 1992 Fund but makes available additional compensation to victims in the States which accede to the Protocol. It has available an amount of some US\$840 million, in addition to the amount of some US\$312 million which is available in the 1992 Fund. As a result, the total amount available for compensation for each incident in the States which are Members of the Supplementary Fund is approximately US\$1 152 million.

The Protocol has been ratified by Barbados, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden and the United Kingdom. The Protocol will be in force for two further States, Estonia and Poland, in January and March 2009 respectively.

Portland House Bressenden Place London SW1E 5PN United Kingdom
Telephone: +44-20-7592 7100 Telefax: +44-20-7592 7111
E-mail: info@iopcfund.org Web: <http://www.iopcfund.org>

In respect of draft resolution A/63/L.42, the IOPC Funds have two specific remarks to make:

- With regard to paragraph 12 (II - Capacity-building), the Funds organise seminars and workshops, in particular in developing countries, in order to help States to implement the above-mentioned treaty instruments;
- With regard to paragraph 95 (VIII – Maritime safety and security and flag State implementation), at its October 2007 sessions the 1992 Fund Assembly had discussed the possible inclusion of the 1992 Conventions in the IMO Voluntary Audit Scheme. This had resulted in the instruction to the Director to have informal discussions of an exploratory nature with the IMO Secretariat to consider whether such an audit scheme might be useful. These discussions had taken place in the autumn of 2008 and the Director shared the view of the IMO Secretariat that at present it would not be desirable to incorporate in the Audit Scheme instruments such as the 1992 Conventions which were of a legal nature and therefore required expertise and experience significantly different from that which was currently used to operate the Scheme. It also noted, however, that in the future, once the Audit Scheme had reached its final form and once it had been institutionalised and developed into a mandatory instrument, there were likely to be possibilities for incorporating the 1992 Conventions into the Scheme.

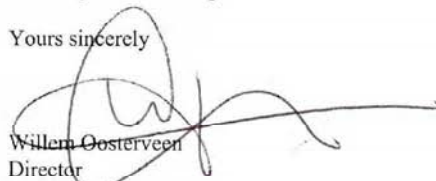
In addition to compensation for oil pollution damage caused by oil spills from tankers, in 1996 a Diplomatic Conference adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). The Conference invited the Assembly of the 1992 Fund to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. In 1996 the 1992 Fund Assembly instructed the Director to carry out the tasks requested by the HNS Diplomatic Conference.

The entry into force conditions of the HNS Convention adopted in 1996 require that at least 12 States ratify the Convention subject to two conditions, namely that four of those States must have not less than 2 million units of gross tonnage or that in the previous calendar year a total of at least 40 million tonnes of cargo consisting of HNS other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG) had been received in States which have ratified the Convention. By 31 December 2008 thirteen States had acceded to the HNS Convention but only two States had submitted information on the total quantities of contributing cargo received in respect of each account and sector to the Secretary-General of IMO.

At its October 2007 session, the 1992 Fund Assembly had expressed its strong support in principle for the HNS Convention, based on a system of shared liability, and indicated its wish that work towards resolving the problems which were presently hampering the entry into force of the Convention should continue. The Assembly therefore decided to establish a Working Group ("the HNS Focus Group) with the aim of facilitating the rapid entry into force of the HNS Convention. The HNS Focus Group met in March and June 2008 and examined the underlying causes of the issues which had been identified as inhibiting the entry into force of the Convention as well as issues of an administrative nature which would facilitate the operation of the Convention. It identified and developed legally-binding solutions to these issues in the form of a draft protocol to the Convention.

The draft Protocol was considered by the IMO Legal Committee during its 94th session in the week commencing 20 October 2008 and will be considered again during its Spring 2009 session. The Legal Committee's proposal regarding the HNS Protocol was approved by the IMO Council in November 2008 and it was agreed that a Diplomatic Conference would take place in London as soon as possible in 2010.

Yours sincerely



Willem Oosterveen
Director