



ADMISSIBILITY CRITERIA RELATING TO CLAIMS FOR COSTS OF PREVENTIVE MEASURES

ADMISSIBILITY CRITERIA OF CLAIMS FOR EXTRACTION OF OIL FROM SUNKEN WRECKS

Note by France and Spain

Summary: During its 32nd session, the Executive Committee of the 1992 Fund decided to treat the claim for the costs of extraction of oil from the wreck of the *Prestige* as inadmissible. The Committee also instructed the Director to carry out an examination of the criteria for admissibility of that type of operation. As a contribution to the review of the criteria for admissibility of claims for extraction of oil from sunken vessels, Spain and France provide various considerations which the Assembly of the 1992 Fund may take into account.

Action to be taken: The Assembly is requested to take note of the information presented.

1 **Background**

- 1.1 The admissibility of the claim for the cost of extraction of oil from the wreck of the *Prestige* gave rise to lively debates in the 31st and 32nd sessions of the Executive Committee of the 1992 Fund.
- 1.2 Interesting conclusions can be drawn from those debates which should contribute to the review of the criteria for admissibility of this type of claim in the future. Namely:
 - (i.) some delegations argued in favour of the admissibility of the claim since it was not possible to predict with certainty what might have happened if the oil had been left in the wreck;
 - (ii.) other delegations indicated that their governments would probably have acted in the same way as Spain, that is, removing the oil from a sunken wreck off their coast, which would suggest that the measures adopted to extract the oil were reasonable and thus the claim admissible;
 - (iii.) further delegations indicated that States are obliged to protect the environment in accordance with various United Nations Conventions and the Fund needed to review its criteria for admissibility in order to reflect such obligations, considering, therefore, that claims for that type of operation were admissible in principle;
 - (iv.) yet more delegations took the view that even if the total costs could not be deemed as reasonable, part of the costs could indeed be so, and thus parts of the claim could be admissible;
 - (v.) finally, and to give a definitive reply to the claim presented by Spain, taking especially into account that the decision did not have any financial implications given the limitations on the Fund to meet such a claim, the majority of the delegations which expressed their

opinion considered that, based on the existing criteria for admissibility, the costs of certain aspects of the preparatory work were admissible, but the costs of the extraction operations were not admissible.

- 1.3 In the face of such a diversity of views on such a fundamental question, the Executive Committee also instructed the Director and invited delegations to submit proposals to revise the criteria for admissibility of claims for extraction of oil from sunken wrecks within the framework of the 1992 Conventions.
- 1.4 For the purpose of reflection and developing this theme, France and Spain suggest a series of issues which could be addressed when considering whether such operations are reasonable and admissible.

2 Risks and the need for action in respect of a sunken wreck

- 2.1 For years, the lack of adequate technology prevented action in respect of sunken wrecks in depths of more than a few dozen metres, even when there was a potential threat to adjacent coastal eco-systems. Occasionally, and if they were located in the vicinity of inhabited areas, and always in shallow waters, specific but generally not systematic inspections could be carried out, to check the condition of the wreck. If occasionally coasts seemed to be affected by an oil pollution incident of uncertain origin, it could be considered as a potential source of the pollution.
- 2.2 At present, a passive attitude towards an environmental hazard is unthinkable, especially when it has been shown that it is technologically possible to eliminate it and at a reasonable cost. The recent experience of the *Prestige* showed that it is technically possible to extract flowing oil (albeit highly viscous), at a depth of 3,500 m. Only the lack of the necessary technology can justify postponing the operation until it reaches a sufficient level to provide a reasonable guarantee of the success of operations.

The associated risks

- 2.3 The stability of a sunken vessel cannot be guaranteed over time, especially in areas where the seabed is not flat. The stability may be altered by seismic movements which make the terrain unstable, mud slides or turbiditic channels, phenomena which can cause structural collapse. In addition, wrecks are inevitably destined to a process of continuous and progressive corruptions which will cause the appearance of cracks and a constant leakage of the contained oil, generating a permanent threat to coasts exposed to seasonal currents.
- 2.4 Before the appearance of cracks of various origins (instability or corrosion), the presence of a wreck containing oil will give rise to recurrent pollution processes over time, with continuous low level pollution, and the corresponding costs of arrangements for systematic collection, effects on coastal eco-systems and possible losses due to the impact on the tourist sector, fish-farming or fishing. Cleaning a large number of beaches of oil dispersed geographically and over time is neither easier nor less costly overall than cleaning up a massive localized pollution.

Need to take action

- 2.5 Monitoring the structural condition of the wreck over time cannot always be regarded as a reasonable solution, since it means postponing a decision, pending the necessary financing, on future action which would be taken in respect of a hull with a deteriorated structural capacity and increased risk. Prompt action will avoid future risks.
- 2.6 Leaving oil contained in a wreck is not an efficient solution to an environmental problem, since it merely seeks to postpone action temporarily. The fact is that many oils, especially heavy oils, do not change in a confined space, and retain the same capacity to flow and the same pollution risk because they are neither soluble nor biodegradable. Consequently, postponing the decision to extract the contained oil, the escape of which could cause major pollution, is a measure which temporarily postpones the problems, with growing risks as corrosion of the hull structure increases.

- 2.7 Recent escapes detected in vessels sunk during the Second World War, many of them located close to sensitive areas, have led to campaigns to recover the contained oil 50 years later, when corrosion of the hull was advancing (for example, *Jacob Luckenbach*, off San Francisco, USA).
- 2.8 Failure to take action in respect of a vessel which sank with potentially polluting material is not defensible in the context of sustainable environmental policies. The latest examples of the *Pallas* (Germany), *Alessandro Primo* (Italy), *Ivoli Sun*, *Erika* and *Tricolor* (France) and, especially, *Prestige* (Spain), and the recent agreement of the United Nations Economic Commission for Europe (UNECE), highlight the fact that the States affected consider that the need for action in respect of a wreck which poses environmental risks is beyond question. In any case, what could be open to discussion is the extent and the operational methods.
- 2.9 The adoption of criteria based solely on economic logic is not enough nowadays, especially if this is not a strict criterion in the face of the uncertainty as to how the wreck will behave: the only foreseeable factor is the cost of the pumping operation. As the ITOPF report of June 2005, "Prestige: removal of oil from the wreck" points out, "it is not possible to carry out a formal cost-benefit analysis" of the operation since the cost of any pollution damage over time cannot be precisely quantified.

3 The costs of the operation

- 3.1 Recent technological developments, especially those resulting from oil exploration and extraction off shore have increased the range of depths at which it is possible to work, with guarantees of success on sunken wrecks. Thus, technological process and the expectations it generates in tackling pollution damage cannot be ignored when taking a decision on the reasonableness of a preventive measure.
- 3.2 Moreover, as technology advances, the cost per unit recovered falls, allowing pumping at greater depths at reasonable unit prices.
- 3.3 Thus, as can be seen in Table 1, if we consider the cost of extraction per tonne of oil recovered in the two recent examples of claims to the IOPC Fund, the costs relating to the *Tanio* in France (1980) and the *Yuil n°1* in Korea (1995), despite being located in shallow waters, reached magnitudes (adjusted to current prices) comparable to those presented by the Spanish Government for the extraction of the oil in the tanks of the *Prestige* in 2004.

Vessel	Country	Quantity of oil (Tm)	Cost	Cost at 2004 prices	Cost per tonne extracted (current prices)
<i>Tanio</i> (1980)	France	10,000	£23,100,000.00	94,899,165.04 €	9,489.92 €
<i>Yuil n°1</i> (1995)	Korea	670	£3,200,000.00	5,288,937.27 €	7,893.94 €
<i>Prestige</i> (2004)	Spain	13,800	€108,087,064.80	108,087,064.80 €	7,832.40 €

- 3.4 Thus, given the current state of the technology, it is possible to recover oil from sunken vessels for reasonable amounts even at depths of 3,500 m.

4 Conclusions

- 4.1 In the light of the foregoing, we believe that the concept of reasonableness must be brought in line with the current state of scientific and technological progress and especially the growing sensitivity and concern with the state of the coast and the potential hazards which might threaten it. In particular, compensation for dealing with a wreck cannot be refused on the grounds that it is only a risk for the future.

- 4.2 In the presence of a sunken wreck with oil contained in its accessible tanks in significant quantities and in an area where it is technologically possible to extract it, its recovery has to be regarded as the first option in order to avoid future risks, since:
1. The process of corrosion of the structure is inevitable, and will eventually cause cracks or a general collapse which can lead to a catastrophic spillage with large-scale damage to the coast.
 2. Applying financial criteria of reasonableness is not defensible in reality in the face of the uncertainty of the behaviour of the structure over time and the threat to the environment, which prevents a strict analysis.
 3. Environmental risks to the coast must be minimized, especially in areas of high environmental and/or economic sensitivity.
 4. Monitoring the condition of the hull is a temporary measure which will lead in the long run to recovery action since the risks increase with time.
- 4.3 For this reason, we propose that the criteria for admissibility of claims for recovery of oil contained in a wreck should be broadened, and that the claimant State should justify operations on the basis of the following criteria.
1. Risks associated with the situation of the wreck: it will be necessary to take into account all the risks associated with the situation of the wreck, such as the instability of the sea bed (a factor which may give rise to structural collapse with the resulting general impact) and the proximity of areas vulnerable from different points of view (economic, environmental, etc.).
 2. Risks associated with the volume of oil contained in the wreck: the volume of oil contained measured with the maximum precision possible must be considerable and capable of producing general damage if the sunken structure collapses.
 3. Technical viability of the operation: the viability of the extraction must be assured because the wreck is within a range of depths where work is possible with sufficient guarantees of success.
 4. The cost of the operation must be reasonable taking into account the cost per unit of product recovered, which must be within the limits for past operations.
- 4.4 As regards the submission of such claims, States must present separately the costs of the studies carried out prior to the operation, the extraction operations and those incurred as a result of the adaptation of the technology to the extraction operations, and in each case the admissibility of the latter must be considered in the light of the particular circumstances and their proportionality.

5 Action to be taken by the Assembly

The Assembly is invited to take note of the information presented in this document.
