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INCIDENTS INVOLVING THE 1992 FUND

ERIKA INVESTIGATIONS INTO THE CAUSE OF THE INCIDENT

Note by the Director

Summary:

In December 1999, the Commercial Court in Dunkirk appointed a panel of maritime experts to investigate the cause of the incident. The experts submitted their report in November 2005. In this document the experts' findings are summarised and comparisons are drawn with the findings of the Malta Maritime Authority and the French Permanent Commission of Enquiry into Accidents at Sea. In order to prevent its claims from becoming time-barred the 1992 Fund brought a number of recourse actions. Criminal charges have been brought against a number of defendants. The question of whether the 1992 Fund should pursue these recourse actions against various third parties is considered. It is proposed that no such actions should be pursued until the criminal proceedings have been completed.

Action to be taken:

Consider the Director's proposal that the Executive Committee should postpone its decision as to whether the 1992 Fund should pursue recourse actions against various third parties.

1 Introduction

- 1.1 On 12 December 1999 the Maltese tanker *Erika* (19 666 GT) suffered structural failure and broke into two approximately 45 miles from the Brittany coast in the Bay of Biscay. The two sections subsequently sank in about 120 meters of water and a part of the ship's cargo of heavy fuel oil was spilled. It is estimated that some 19 800 tonnes of fuel oil were spilled.
- 1.2 The Malta Maritime Authority (MMA) issued an investigation report in September 2000. The French Permanent Commission of Enquiry into Accidents at Sea (La Commission Permanente d'enquête sur les événements de la mer, CPEM) published its investigation report on the incident in December 2000. These reports were summarised in a document presented to the Executive Committee in October 2001 (document 92FUND/EXC.14/5/Add.1; cf also Annual Report 2001, pages 118 and 119).

- 1.3 Criminal charges have been brought against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society Registro Italiano Navale (RINA) and one of RINA's managers, Total SA and some of its senior staff. The trial is scheduled to start on 12 February 2007.
- 1.4 In January 2000, at the request of Total International Limited (Total) which owned the cargo onboard the *Erika* and Total's insurers and other interested parties, the Commercial Court in Dunkirk established a panel of experts to investigate the circumstances and the cause of the incident and to re-construct the process of the break up of the internal structures of the *Erika*.
- 1.5 The panel consisted of four maritime experts. The panel was assisted by a specialist in naval architecture and classification society procedures and a specialist in metallurgy. A number of technicians at L'Institut de soudures (Institute of Welding) in Paris were consulted in relation to structural studies and calculations.
- 1.6 The panel submitted its report in November 2005.
- 1.7 This document summarises the report issued by the expert panel and where relevant comparisons are drawn with the findings of the MMA and the CPEM.
- 1.8 Schematic drawings of the *Erika* are at the Annex.

2 Details relating to the *Erika* and its management

- 2.1 The *Erika* was built as a single hull tanker at a Japanese shipyard in 1975, with a deadweight of 37 283 tonnes. The ship was constructed with 13 cargo tanks and 2 slop tanks. It was built without dedicated ballast tanks except for the fore peak and aft peak tanks, and certain cargo tanks were used to carry ballast during ballast voyages. In 1990, the number 2 wing tanks were converted to segregated ballast tanks and in 1998 the number 4 wing tanks were converted to segregated ballast tanks in compliance with Regulation 13 of MARPOL 1973/1978 – Annex 1.
- 2.2 Since delivery, the ship's name was changed eight times. It was entered successively with four classification societies, all members of the International Association of Classification Societies. The ship sailed during the period under three different flags and had several different owners and managers. In August 1998 the ship transferred class from Bureau Veritas to RINA.
- 2.3 At the time of the incident, the registered owner was Tevere Shipping Company Limited, Valetta (Malta). The owner of Tevere Shipping Company Limited (Tevere Shipping) was based in London and was responsible for finance, administration, legal, commercial and insurance (Hull & Machinery and P&I) issues.
- 2.4 From 1997 to the time of the incident, Panship Management and Services Limited (Panship) was the technical manager of the *Erika*. Panship had been incorporated in Ravenna (Italy) in 1997. The ship was manned by Indian officers and crew supplied by Herald Maritime Services of Mumbai under a contract with Panship, although the crew costs were directly borne by Tevere Shipping.
- 2.5 The *Erika* was time chartered from 17 September 1999 for four successive periods of six months by Selmont International Inc, a company registered in the Bahamas. The charter agreement was between Selmont International and Tevere Shipping. On 22 November 1999, the *Erika* was chartered for a single voyage by Selmont International to Total for the carriage of 30 000 tonnes of High Sulphur Fuel Oil from Dunkirk (France) to Livorno (Italy).

3 Certification and statutory documentation

- 3.1 The *Erika* had valid trading certificates issued by RINA on behalf of the Flag State. The ship had received its Safety Management Certificate^{<1>} on 3 June 1998. Panship had received its ISM document of compliance^{<2>} (DOC) from RINA on 5 May 1998. The experts' report stated that RINA had threatened to withdraw the document of compliance of Panship in August 1999 due to defects found on another ship within its management. Both the MMA report and the CPEM report contain references to the issue regarding the compliance of Panship with the ISM Code (document 92/FUND/EXC.14/5/Add.1, paragraphs 3.4 and 3.5). All three reports confirm that RINA had subsequently recommended to the Maltese authorities that the DOC should be withdrawn in January 2000 after the *Erika* incident.
- 3.2 The experts' report did not deal with port state inspections, but does refer to various vetting inspections^{<3>} carried out on the *Erika* prior to the incident. The experts stated that in practice the vetting inspectors considered the internal structures of the inspected ship by referring to the classification society's documents that are kept onboard. The experts were of the opinion that this document based approach was the consequence of the vetting inspectors dealing with the internal structures of the ship having neither the possibility nor the physical means that were available to the shipowner and the classification society.
- 3.3 As regards the *Erika*, the experts stated that Total's vetting personnel inspected the ship on 21 November 1998. The report further stated that vetting inspections had also been carried out on the *Erika* on behalf of TEXACO, BP and EXXON on 24 November 1999 and on behalf of REPSOL on 3 December 1999. The experts also maintained that, based on the reports of the above mentioned inspections, the cargo and/or ballast tanks of the ship had not been inspected by these vetting inspectors. The *Erika* had been approved for use by Total for a period of 12 months from 21 November 1998 on the basis of the report issued by Total's vetting inspector. The experts stated in their report that the Total vetting inspection had led to the production of a 'booklet' specific to the *Erika*, which the experts had been unable to obtain despite repeated requests to Total.
- 3.4 The experts were able to examine the vetting reports issued by the various inspectors who had conducted the vetting examination of the *Erika* on 24 November 1999. Based on the contents of these reports, the experts concluded that following its survey in November 1999, RINA had breached classification society rules by not recording a particular recommendation by its surveyor in relation to structural thickness measurements in the on-board classification documents. The experts stated that this omission had prevented the vetting inspectors from identifying this recommendation in their inspection report. The experts concluded that the actual state of the *Erika's* internal structures had not been detected by any of the vetting inspectors after the summer of 1998, nor on the occasion of the subsequent Port State Controls. Neither the CPEM report nor the MMA report identified this breach by RINA in their respective reports.
- 3.5 The experts examined the ship's classification records only in respect of the internal structures of the *Erika*. The experts concluded that there were inconsistencies between the information contained in the records and the actual condition of the ship. In support of this conclusion, the experts referred to a record provided by RINA of a structural evaluation conducted in a cargo tank using rafts while

<1> Certificate issued for the ship under the International Safety Management Code (ISM Code) confirming the ship's compliance with the Code.

<2> A document issued in respect of a shipowner, charterer etc under the ISM Code which confirms the compliance of the owner, charterer etc with the requirements of the Code (see section 1.1.5 of the Code).

<3> These are inspections carried out on tankers on behalf of oil companies prior to these tankers being chartered to ensure that they conform to the requirements laid down by the oil company concerned. Such inspections are used as a risk assessment tool for the oil companies especially in relation to ship safety and management.

filling the tank with water.^{<4>} The experts stated that this alleged operation took place when the ship was reportedly undergoing repairs in a floating dock. The experts also referred to an endorsement in the classification document issued in November 1999 dealing with thickness measurements in number 2 ballast tanks, which was not brought to the attention of the master nor recorded in the classification documents retained on the ship (cf. paragraph 4.5 below).

4 Condition of the ship prior to the incident.

Basis of the experts' report

4.1 The experts' report provides a detailed and comprehensive analysis of the structural condition of the *Erika* immediately before the incident. The experts based their analysis on *inter alia* the following evidence material:

- Documents received from RINA, including the report on thickness measurements carried out on the *Erika* in Naples (Italy) in July 1998 and in Bijela (Montenegro) in August 1998 by inspectors approved by RINA.
- Documentary evidence submitted by the ship's crew and information obtained during the interview with the master and documentation supplied by Panship, including details of repairs carried out on the *Erika* in Bijela in the summer of 1998.
- Analysis during the diving survey of the wreck conducted by Total in February 2000 in preparation for the recovery of the cargo and bunkers remaining in the wreck.
- Metallurgical and thickness analyses of 52 discs cut from various points within the hull of the wreck and thickness measurements conducted on various structures of the wreck by a Remotely Operated Vehicle (ROV) during the operation carried out in September 2000 to remove the cargo and bunkers remaining in the wreck.
- Analysis of a fragment of the wreck retrieved by a fishing vessel in 2001.
- Retrieval in September 2002 and subsequent analysis of various fragments including the parts of the ship's deck plating within the vicinity of the wreck.
- Structural calculations using computer modelling.

Condition of the vessel whilst classed by Bureau Veritas

4.2 In the summer of 1993, on the occasion of the ship's special survey, the classification of the ship transferred from the American Bureau of Shipping to Bureau Veritas. In their report the experts stated that the *Erika* had been classed by Bureau Veritas from the summer of 1993 to the summer of 1998. Based on the documentary evidence made available to the experts, they concluded that there were issues (see paragraph 4.4 below) related to thickness measurements and steel replacements carried out during this period. However, the reluctance of Bureau Veritas to allow the experts to interview its staff prevented them from reaching any detailed conclusions in relation to the internal structures of the ship whilst it was classed by Bureau Veritas.

^{<4>}

This is a process during which a tank is slowly filled with water while the surveyor attempts to make a close-up inspection of the various internal structures of the tank using a raft. As the water level rises in the tank, the surveyor is able to inspect the internal structures in the higher parts of the tank to conduct this inspection. However, for practical reasons, this operation can only be conducted whilst the ship is afloat.

Repairs in Bijela during the summer of 1998

- 4.3 In their report the panel of experts stated that the procedure for the transfer of classification from Bureau Veritas to RINA had been started by Panship in June 1998. This transfer had been planned to coincide with the five yearly special survey that had been carried out on the *Erika* in Bijela (Montenegro) during the summer of 1998. In conjunction with this survey, thickness measurements of the internal structures of the *Erika* were carried out by an expert approved by RINA to conduct these measurements.
- 4.4 The experts' report identified numerous inconsistencies in relation to this thickness measurement report. The experts stated that the report showed many anomalies, some of which were incomprehensible and some that were inconceivable for a ship of the age of the *Erika*. They indicated that the calculated corrosion rates based on the measurements of the various internal structures lacked technical justifications. The experts concluded that the thickness measurement report did not at all reflect the actual condition of the *Erika* and that it had the appearance of a bogus document.
- 4.5 In the CPEM report it was stated that the quantity of steel replaced during the repairs in Bijela would have been only 100 tonnes. In the MMA report it was indicated that a total of 275 square meters of main deck steel plating was renewed. The MMA report further mentioned that deck plating was renewed in way of number 2 starboard ballast tank with 12 mm steel, and not 16 mm as shown on the approved plans. According to the MMA report, the RINA surveyor confirmed that all tanks were hydrostatically tested on completion of the repairs. The MMA report suggested that other non-destructive testing techniques such as radiographic or ultrasonic should have been used for selected welds.^{<5>} In the CPEM report it was noted that some panels of deck plating with original scantlings^{<6>} of 16 mm were replaced by new plating which was only 14 mm or in some cases 12 mm thick. In the CPEM report it was also noted that there were differences between the work indicated on the plans drawn up by RINA and the work indicated on the drawings and on the shipyard's invoice. CPEM considered that this was not in accordance with the code of normal practices in ship repairing.
- 4.6 The experts calculated that, based on RINA's classification rules and on the condition of the *Erika* during the summer of 1998, a total of 209 tonnes of steel should have been replaced on the ship during the repairs in Bijela. However, the experts noted that in the event only 34.5 tonnes of steel had been replaced and that this reduction in steel replacements saved the owner an estimated US\$340 000 (£180 000) in repair costs. They also concluded that the measurements shown in the thickness measurement report referred to in paragraph 4.3 permitted the reduction of the steel replacement and thus the reduction of the cost of the repairs to the internal structures of the *Erika*.

Annual survey (August/November 1999)

- 4.7 In the MMA report it was mentioned that in November 1999 a survey had been conducted by RINA in Augusta (Italy) to complete the first annual hull survey (after the special survey in 1998) and that all ballast tanks had been examined internally. It is mentioned in that report that the RINA surveyor had reported that all ballast tanks had had hard coating, which he had indicated was in poor condition, that No. 4 port and starboard ballast tanks and the aft peak had been reported to be in a satisfactory condition and that there had been general corrosion of the forepeak and thinning of the

<5> Welding is the process of connecting two separate pieces of steel, iron or other metal with a gas flame or an electric arc, so that they become one piece. The weld is the material at the point of fusion between the two pieces.

<6> Dimensions of ship's principal structural members, eg. frames and beams. A beam is a transverse horizontal structural member that supports the deck plating.

deck longitudinal^{<7>} in No.2 port and starboard ballast tanks. It is mentioned in the MMA's report that RINA had recommended that further inspections and thickness measurements followed by the necessary repairs should be carried out no later than January 2000.

- 4.8 The experts stated that the RINA's surveyor who had conducted this annual examination had recorded corrosion affecting various internal structures of the *Erika* and in particular had recommended that thickness measurements be carried out on the internal structures in number 2 ballast tanks by the end of January 2000.
- 4.9 The experts also stated that the master of the *Erika* had not been aware of this recommendation and that a copy of the surveyor's report had not been sent to the ship. Further, the experts' indicated that although an endorsement had been made on the ship's classification certificate allowing the ship to operate until 31 January 2000, the technical deficiencies noted during the survey had not been mentioned in the endorsement.

Departure from Dunkirk

- 4.10 On 8 December 1999 the *Erika* loaded a cargo of 30 884 tonnes of fuel oil in Dunkirk destined for Livorno (Italy). The experts stated that neither the loading sequence nor the final loaded condition of the ship gave cause for criticism. The experts noted, however, that the ship had not had sufficient bunkers on board to reach Gibraltar (being a frequently used bunkering port along this route) safely and that the ship would have had to take on bunkers en-route before reaching Gibraltar in order to ensure the safety of the ship and cargo.
- 4.11 The experts stated that the *Erika's* hydrodynamic stress level on departure from Dunkirk had been within acceptable limits. In the MMA report it was indicated that the ship had departed with a shearing force^{<8>} of 46% of the maximum allowable and bending moments^{<9>} of 54% of the maximum allowable and that it had departed on an even keel at a draft of 10.55 metres. In the CPEM report it was stated that the shearing forces and the bending moments had been within allowable limits and that the shearing stress had been 40% of the maximum allowable and the bending moments had been 75% of the maximum allowable
- 4.12 Based on their detailed analysis, the experts concluded that the internal structures in number 2 ballast tanks had been corroded well beyond the levels of corrosion acceptable under classification society rules. They also confirmed that the level of corrosion was inconsistent with the thickness measurements report. Further, based on the measurements taken of the wreck fragments, the experts identified the conditions of the internal structures in number 2 ballast tanks as follows:
- 28% to 40% corrosion of the deck plating
 - 55% to 60% corrosion of the steel girders^{<10>} that had not been replaced during the repairs in Bijela in September 1998

<7> Longitudinals are structural members of a ship placed lengthwise.

<8> Shearing force may be defined as the algebraic sum of the loads to the left or right of a point of a beam (such that the addition of this force restores vertical equilibrium). It is a force that attempts to create a vertical tear on a steel beam.

<9> Bending moments may be defined as the sum of all external forces acting on a beam. It is a force that attempts to bend a beam through its centre point.

<10> Steel girders are long strong steel beams used for supporting frames where considerable strength is required. They run generally breadthwise under a deck to support the deck beams and the main deck plating.

- 39% to 56% for corrosion of the transverse stringers^{<11>}
- 43% to 71% corrosion of the upper levels of the transverse^{<12>} and longitudinal stiffeners^{<13>}.

4.13 The experts were of the opinion that the identified levels of corrosion existed before the classification survey during the summer of 1998 and could not have developed between then and December 1999 when the incident took place. The experts also confirmed that this level of corrosion could not have occurred during the time after the incident when the sample pieces were lying submerged before being recovered in September 2002.

5 The panel of experts' analysis

5.1 The panel experts drew attention to the fact that they had been unable to interview the representatives of RINA's head office, Bureau Veritas and the individual who conducted the thickness measurements of the *Erika* during the repairs in Bijela. They also stated that except from an interview conducted by the experts with the master on 29 December 1999, they had not been able to interview him or other key crew members in India.

5.2 The experts expressed the opinion that the *Erika's* internal structures had been in conformity with the 1973 rules of Nippon Kaiji Kyokai, the classification society that had monitored the ship while being built. Based on documentation provided by RINA, they confirmed that the ship's internal structures had been in conformity with RINA's classification rules as applicable in 1998. However, the experts concluded that based on the measurements and calculations conducted on the wreck and on steel fragments retrieved from the wreck, the thickness of the steel structures of the *Erika* when RINA took over the ship had been below the permissible limits.

5.3 The experts also concluded that the original cause of the break up was not the buckling^{<14>} of the main deck although there was a high level of corrosion on the deck plating. The process of breaking up of the *Erika* was summarised by the experts as follows:

- The internal structures supporting the shell plating adjacent to number 2 starboard ballast tank and the longitudinal bulkhead^{<15>} between number 3 centre cargo tank and number 2 starboard ballast tank that were badly corroded developed cracks. The cracks on the shell plating were below the water line and allowed seawater to gain ingress into the number 2 starboard ballast tank. This flooding was coupled with the flow of cargo from number 3 centre tank into number 2 starboard ballast tank.
- The flooding led to the deterioration of the internal structures in number 2 starboard ballast tank including the detachment of a section of the shell plating adjacent to the ballast tank. This allowed an increase in the rate of flooding of the tank which contributed to the excessive hydrodynamic stresses on the remaining internal structures in the ballast tank.
- These excessive stresses, in addition to the bending moments created by the swell, caused the *Erika* to fold outwards resulting in the buckling of the deck plating in this area and the breaking of the ship's bottom. This caused the bow and stern sections to separate.

<11> Transverse stringers are heavy supporting beams placed breadthwise that provide strength and bridge longitudinal frames.

<12> Steel plating placed at right angles to the forward and aft centreline. These plates are arranged at regular intervals between compartments.

<13> Steel plating placed parallel to the forward and aft centreline at regular intervals between compartments.

<14> A process by which steel plating is bent in or out, making it out of line.

<15> Bulkheads are transverse or longitudinal vertical partitions separating the tanks.

- 5.4 CPEM expressed the view (document 92FUND/EXC.14/5/Add.1, paragraph 6.5) that the damage suffered by the longitudinal bulkhead between number 2 starboard ballast tank and number 3 centre cargo tank had led to a weakening of one or more transverse webs^{<16>} in number 2 starboard ballast tank due to the fact that the plating attached to the vertical stiffeners^{<17>} had no longer been intact. According to CPEM all of the web frames had been affected by this weakening and the side shell (in the vicinity of number 2 starboard ballast tank) had cracked at right angles to the weakened web frame, a scenario that was compatible with the observations made on board. It is mentioned in the report that the transverse webs had gradually lost their rigidity and had begun to buckle causing the side plating to become more flexible in the transverse direction. It is also mentioned that the internal structures of number 2 starboard ballast tank had progressively fallen apart, that the tank had become increasingly more open to the sea and that subsequently the side shell plating had broken away from the rest of the internal structure in at least two pieces. It was mentioned that as soon as number 2 starboard tank had been fully open to the sea, the loss of buoyancy had led to a substantial increase in the longitudinal bending moment. According to the CPEM report the appearance of the plating attached to both parts of the wreck suggested that the bottom of the vessel had broken due to tensile stresses.
- 5.5 In the MMA report it was concluded (document 92FUND/EXC.14/5/Add.1, paragraph 6.3) that on the balance of probabilities the initial flooding of the number 2 starboard ballast tank had been due to the failure of the ship's side shell plating above the mean waterline in the forward part of the tank. It is further concluded in that report that in order to match the observations made by the crew, the longitudinal bulkhead between number 2 starboard ballast tank and number 3 centre cargo tank should have remained in place during the early stages of the incident. It was also concluded by MMA that the transfer of contents between the two tanks had taken place either through a small aperture below the oil surface in number 3 centre cargo tank or via a larger aperture at some position near the top of the tank
- 5.6 On the basis of their calculations and analysis the court experts expressed the view that the break-up scenario described in the MMA report was unlikely.
- 5.7 The experts expressed the view that the master and the crew had dealt with this situation in a professional manner and that even if the master had been able to comprehend fully the situation that had been developing, it would not have had any impact on the unfolding of the events which had led to the loss of the ship. They also noted that during the course of the incident, the master had complied with the shipboard oil pollution emergency plan except in two respects, namely failure to inform the French authorities that oil was being spilt from the *Erika* and failure to make contact with the technical adviser of RINA.
- 5.8 As regards Total, the experts were of the view that neither at the time of chartering nor during the vetting inspection would it have been possible for Total to detect the state of corrosion of the internal structures of the *Erika*.
- 5.9 The experts also stated that Panship as the technical manager of the *Erika*, which had determined and supervised the repairs carried out during the summer of 1998, would have been aware of the deterioration of the internal structures identified in their report. RINA, as the classification society, would have also been aware of the deterioration as it had been responsible for checking the work that had been carried out in accordance with its classification rules. The experts also suggested that RINA had not followed the normal procedures for the issue of classification certificates in respect of the annual survey in August/November 1999 (cf. paragraph 4.8 above).

<16> This is the wider plate-like section of a beam or frame.

<17> Vertical stiffeners are structural members in the form of angle bars, T-bars, channels, etc. that are used to reinforce shell plating and bulkheads to make them rigid.

- 5.10 The experts also concluded that the parties that had responded to the casualty had not been in a position to influence the fate of the *Erika*. The experts were of the opinion that based on the condition of the internal structures of the ship when it had departed from Dunkirk, the *Erika* had been destined to break up considering the heavy weather at the time.

6 Recourse actions taken by the 1992 Fund

- 6.1 Although it was recognised that it was not possible for the 1992 Fund to take a final position as to whether the Fund should pursue recourse actions to recover the amounts paid by it in compensation and, if so, against which parties, until the investigations into the cause of the incident had been completed, the Executive Committee considered in October 2002 whether the Fund should take such actions as were necessary to prevent its rights becoming time-barred (document 92FUND/EXC.18/14, paragraphs 3.4.23 and 3.4.24).

- 6.2 The Committee recalled that the IOPC Funds' policy in respect of recourse actions as laid down by the governing bodies could be summarised as follows:

The policy of the Funds is to take recourse action whenever appropriate. The Funds should in each case consider whether it would be possible to recover any amounts paid by them to victims from the shipowner or from other parties on the basis of the applicable national law. If matters of principle are involved, the question of costs should not be the decisive factor for the Funds when considering whether to take legal action. The Funds' decision as to whether or not to take such action should be made on a case-by-case basis, in the light of the prospect of success within the legal system in question.

- 6.3 The Committee decided to authorise the Director to challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention and to take recourse actions, as a protective measure before the expiry of the three-year time-bar period, against the following parties:

Tevere Shipping Co Ltd (the registered owner of the *Erika*)
Steamship Mutual (liability insurer of the *Erika*)
Panship Management and Services Srl (manager of the *Erika*)
Selmont International Inc (time charterer of the *Erika*)
TotalFinaElf SA (holding company)
Total Raffinage Distribution SA (shipper)
Total International Ltd (seller of cargo)
Total Transport Corporation (voyage charterer of the *Erika*)
RINA Spa/Registro Italiano Navale (classification society)

On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande Instance) in Lorient against the parties listed above.

- 6.4 After the Committee's October 2002 session the Director was made aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. He decided that the 1992 Fund should take recourse action, as a protective measure, against Bureau Veritas, and this action was also brought in the Civil Court in Lorient on 11 December 2002.
- 6.5 As mentioned in paragraph 1.3 above, criminal charges were brought against, *inter alia*, the deputy manager of CROSS and three officers of the French Navy. If they were to be found guilty there might be grounds for the 1992 Fund to take recourse action against the French State, but it is not possible for the 1992 Fund to decide whether there are grounds for such an action until the trial in the criminal proceedings has taken place.

6.6 Under French law the general time-bar period in commercial matters is – subject to many exceptions – ten years. In matters involving the liability of public bodies, in order to prevent a claim for compensation becoming time-barred, the French Administration should be notified of such a claim by 31 December of the fourth year after the event that gave rise to a claim, ie in the case of the *Erika* incident by 31 December 2003. The 1992 Fund made such a notification in December 2003 and the French State accepted that this notification had the effect of interrupting the time bar.

7 Director's considerations

7.1 On the basis of the three reports and in particular the report of the panel of experts established by the Commercial Court in Dunkirk, it appears that the 1992 Fund would have grounds for pursuing the recourse actions commenced by it in 2002 against some of the parties referred to in paragraphs 6.3 and 6.4, whereas there appears to be no such grounds for pursuing recourse action against others.

7.2 However, during the criminal proceedings referred to in paragraph 1.5 above new evidence may come to light which could be important for the Fund in its decision relating to recourse actions. For this reason the Director proposes that the Executive Committee should defer its decision as to whether to pursue recourse actions against all or some of the parties referred to in paragraphs 6.3, 6.4 and 6.5.

8 Action to be taken by the Executive Committee:

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
- (b) to consider the Director's proposal that the Committee should postpone its decision as to whether recourse action should be pursued against the parties referred to in paragraphs 6.3, 6.4 and 6.5 until the criminal proceedings have been completed; and
- (c) to give the Director such other instructions as regards the issues dealt with in this document as it may deem appropriate.

* * *

ANNEX

