



INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by the Director

Summary:

The Bahamas registered tanker *Prestige*, laden with some 77 000 tonnes of heavy fuel oil, broke in two off the coast of Galicia (Spain) spilling an unknown but substantial quantity of its cargo. The bow and stern sections, which are lying in some 3 500 metres of water, are estimated to contain 13 300 tonnes and 900 tonnes of oil respectively.

A major offshore clean-up operation was carried out using vessels from Spain and nine other European countries. The oil from the *Prestige* affected the Atlantic coast from Vigo in Spain to Brest in France, as well as causing intermittent and light contamination on the French and English coasts of the English Channel as far as the Dover Strait. Approximately 1900 km of shoreline has been affected in Spain and France. Around 141 000 tonnes of oily waste have been collected in Spain and some 18 300 tonnes in France.

The Spanish authorities have decided to remove the oil remaining in the wreck at an estimated cost of €99.3 million (£70 million^{<1>}).

The shipowner's P & I insurer and the 1992 Fund have established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France). Claims totalling €583.5 million (£411 million) have been received by the office in Spain and claims totalling €7.4 million (£5.1 million) by the office in France.

The total amount of the claims arising from the *Prestige* incident will significantly exceed the total amount of compensation available, 135 million Special Drawing Rights corresponding to €171.5 million (£120 million). In October 2003 the Executive Committee decided that the 1992 Fund payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants, as assessed by the experts engaged by the Fund and the insurer.

In October 2003 the Spanish Government submitted a claim for €383.7 million (£263 million). The Director made an interim assessment of the claim, based on the information available, arriving at a figure of €107 million (£75 million),

<1> Conversion of currencies in this document has been made on the basis of exchange rates as at 31 December 2003 except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

and on this basis a payment was made of 15% of that amount, i.e. €16 050 000 (£11.1 million). He also made a general assessment of the total of the admissible damage in Spain arising from the *Prestige* incident resulting in a total figure of at least €303 million (£213 million). Having made the assessment, and as authorised by the Assembly, he made a further payment of €41 505 000 (£28.8 million) against a guarantee provided by a Spanish bank, bringing the total amount paid to the Spanish Government to €57 555 000 (£39.9 million).

Action to be taken: Decide the level of the 1992 Fund's payments and review the payments made to the Spanish Government.

1 The incident

- 1.1 In November 2002, the Bahamas registered tanker *Prestige* (42 820 GT) was passing the Spanish Atlantic coast on her way from Latvia to Singapore. The ship was said to be carrying 76 972 tonnes of heavy fuel oil.
- 1.2 During the afternoon of 13 November, while some 30 km off Cabo Fisterra (Galicia, Spain) in bad weather, the vessel began listing and leaking oil. The main engine stopped. It was estimated that the *Prestige* lost up to 1 000 tonnes of oil initially while drifting towards the Spanish coast. Attempts to connect a towline to the stricken vessel, which was by then dangerously close to Cabo Vilano, were finally successful.
- 1.3 In the early hours of 15 November, while the *Prestige* was being towed north-west to gain more distance from the Spanish coast, a section of shell plating in the vicinity of No. 3 starboard ballast tank was lost. During the afternoon, the captain reported a sudden increase in oil leakage, indicating the failure of internal bulkheads and rupture of cargo tanks. On 19 November the vessel broke in two and sank some 260 km west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released additional cargo estimated in the region of 25 000 tonnes. Over the following weeks oil continued to leak from the wreck at a slowly declining rate.
- 1.4 A French mini-submarine was used to seal and plug temporarily cracks and holes in the wreck to minimise the escape of oil. The operation appears to have been partially successful in that the amount of oil escaping decreased markedly, as confirmed by regular aerial and surface surveillance undertaken by the Spanish and Portuguese authorities.
- 1.5 Due to the highly persistent nature of the *Prestige's* cargo, released oil drifted for extended periods with winds and currents, travelling great distances. Several 'waves' of shoreline oiling heavily contaminated the west coast of Galicia (Spain), affecting its coastline between the National Park of Islas Cies near Vigo, in the south, and Ferrol, in the north, by early December. Remobilisation of stranded oil and 'fresh' strandings of increasingly fragmented and weathered oil continued, gradually moving into the Bay of Biscay and affecting the north coast of Spain (Galicia, Asturias, Cantabria, País Vasco), France (Aquitaine, Poitou Charentes, Pays de la Loire, Brittany, and a small part of Normandie and Picardie) and the United Kingdom (the Channel Islands, Isle of Wight and a small part of Kent). A map showing the affected areas is at Annex I.
- 1.6 The *Prestige* was entered with the London Steamship Owners Mutual Insurance Association (London Club).

2 Clean-up operations

Spain

- 2.1 A response to the pollution was immediately initiated in Galicia by the Spanish Maritime Safety Agency (Sociedad de Salvamento y Seguridad Marítima, SASEMAR).

- 2.2 Both the Spanish Government's Department of Coastal Protection (Dirección General de Costas) and the regional government of Galicia (Xunta de Galicia) became involved in shoreline protection and clean-up as well as managing coastal resources such as fisheries and national parks. At a later stage, the regional governments of Asturias, Cantabria and País Vasco also became involved in clean-up operations.
- 2.3 The competent authorities in France, the Netherlands and the United Kingdom as well as the European Commission were asked for assistance in the form of anti-pollution equipment and vessels. The first vessels arrived on 16 November and the fleet gradually increased to more than 15 ships from 10 countries. In addition, offshore tuna boats and trawlers, mussel farming vessels and small fishing boats were used to collect oil manually and mechanically along different parts of the Spanish and French coasts.
- 2.4 From the beginning of the incident, shoreline protection was attempted through booming. Coordinated initially by SASEMAR and carried out by contractors and fishing cooperatives, increasing quantities of booms were placed on stand-by and deployed in the many inlets (rias) along the Spanish coast.
- 2.5 Shoreline clean-up was initially limited to the stretches of sandy beaches and rocky foreshores. Military personnel, fishery associations and volunteers, supported by machinery to transport oily waste from the sites, undertook the predominantly manual work.
- 2.6 When small fragments of oil and tar balls repeatedly impacted large stretches of sandy shorelines along the northern coast of Spain, beach cleaning machines were used. In other places sand was sieved through screens to remove oil fragments. Natural cleaning through the scouring action of the sea during winter storms also took place and greatly improved the state of intertidal areas of the shoreline. In addition, secondary cleaning was undertaken by means of pressure washing in affected areas.
- 2.7 Some 44 000 tonnes of liquid waste (oil/water mixtures) were collected by vessels operating from Spain. The corresponding figures for solid waste was 97 000 tonnes.
- 2.8 Some minor clean-up operations continue.

France

- 2.9 The French authorities took over the co-ordination of the at sea recovery operations in early January 2003. A fleet of 16 vessels, including specialist recovery vessels from France, Germany, Netherlands, Norway and Spain was still operating in the Bay of Biscay on 27 January 2003, despite the limited quantities of oil available for recovery. By mid-April most of the specialised recovery vessels had been stood down although about 20 small fishing boats were engaged to recover floating oil close inshore and to collect oil stranded on sandbanks in the entrance to the Arcachon Basin (next to Bordeaux, France).
- 2.10 Most of the shorelines affected in France are composed of hard-packed sand, which were relatively easy to clean, both manually and mechanically. In May 2003 the fragmented oil, which up to then was limited to an area extending from the Spanish border to the Gironde Estuary, affected the west and north facing coastline of Finistere (Brittany).
- 2.11 About 1 300 tonnes of liquid waste were recovered by fishing vessels and specialised response vessels, whilst some 17 000 tonnes of solid waste were collected from French shorelines.
- 2.12 Some minor clean-up operations continue.

3 Impact of the spill

Spain

- 3.1 The coastline of Galicia, which is one of the richest fishing areas in Europe, was most adversely affected by the incident. The impact was lighter in Asturias, Cantabria and País Vasco. Fisheries exclusion zones were put in place shortly after the incident, banning virtually all fishing along about 90% of the coastline and in places extending 8-10 miles offshore. These bans caused widespread economic impact to thousands of people engaged in fishing and related activities. Some of the bans covered areas unaffected by oil from the *Prestige*.
- 3.2 Fishing bans were also imposed in Asturias, Cantabria and País Vasco, although some of them were on a limited scale and did not affect all species and all types of fishing. By April 2003 bans remained only in four northern areas of Galicia and by early October 2003 all the remaining bans had been lifted.
- 3.3 The fishing bans did not cover aquaculture although a number of important Galicia fish farms are located in areas that were heavily polluted. Most of these farms took measures to prevent oil entering the rearing tanks and continued to operate. However, despite these efforts stocks were destroyed at one of the smaller farms on the order of the health authorities.
- 3.4 The major aquaculture activity in Galicia is the rearing of mussels on rafts. Although no mussel rafts were directly affected by oil, a downturn in demand was reported.
- 3.5 Although the rearing of molluscs in private parks in intertidal areas was not subject to closures, some areas were physically oiled and owners reported that depuration plants were refusing to accept their products, effectively closing their markets. It is understood that the mussel industry may present a large claim relating to sales delays and market reassurance.
- 3.6 A small proportion of Galician depuration plants and aquariums, which rely on a regular supply of clean seawater, were closed either as a result of actual or perceived contamination of their intakes or due to limited supplies of marine products arising from the fishing bans. Stocks at some of these facilities were reported to have suffered mortality as a result of these difficulties.
- 3.7 The coasts of Galicia, Asturias, Cantabria and País Vasco are attractive tourist destinations for those seeking outdoor activities and high quality seafood. The affected region is particularly popular with the domestic market but does not have a high profile with overseas tourists compared with other parts of mainland Spain.
- 3.8 From a preliminary analysis of statistics provided by various tourism bodies within the affected area it is clear that tourism businesses suffered a decline in 2003. The difficulty faced is identifying the level of that decline that is due to the *Prestige* incident since a number of other factors need to be considered, such as a general decline in travel (particularly from some overseas markets) due to a fear of terrorism, the SARS scare, the slowdown of the European economy and the impact of the heat wave across Europe, which made some inland areas less attractive and increased visitor numbers to northern European destinations.

France

- 3.9 Fisheries impact in France has been fairly limited. On 5 January 2003 the French authorities imposed a ban on the sale of shellfish, primarily oysters, from the Arcachon Basin due to the presence of oil in the entrance to the Basin. However, on the basis of analyses of samples of seawater, fish and shellfish, which confirmed that the levels of petroleum hydrocarbons were within acceptable limits, the ban was lifted on 15 January 2003.
- 3.10 It is anticipated that the greatest potential impact in France will be on the tourism sector, since the southern Atlantic coast is noted for its sandy beaches. It supports hotels and other serviced accommodation, second homes, self-catering accommodation and campsites.

- 3.11 The factors mentioned above in respect of the Spanish tourism sector are relevant also in assessing the level of claims in that sector which can be anticipated in France. An analysis of national figures against those for the affected area should assist in isolating the effects of the incident itself.

Portugal

- 3.12 No oil is reported to have gone ashore in Portugal. There have also been no indications of significant impact on Portuguese fisheries, tourism and other economic resources.

United Kingdom

- 3.13 The United Kingdom Maritime & Coastguard Agency (MCA) has reported that oil has stranded on the Channel Islands, the south shores of the Isle of Wight and at Ramsgate in Kent. Samples analysed on behalf of the MCA match with samples collected in France and tested by the French national laboratory. Since fingerprints of the samples collected in the United Kingdom are nearly identical to *Prestige* oil, the MCA is fairly certain that the stranded oil originated from the *Prestige*.

4 Removal of the oil from the wreck

- 4.1 An International Technical Committee was set up by the Spanish Government under the coordination of the Spanish oil company Repsol YPF to consider possible methods of removing the oil from the wreck.
- 4.2 In December 2003, following trials in the Mediterranean and subsequently on the wreck site, the Spanish Government decided that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks. These aluminium containers will, when filled, be raised to within some 40 metres of the sea surface. From there the oil will be heated and pumped to a surface vessel. Any oil remaining in the wreck after the removal operation will be subjected to bio-remediation. The Spanish Government has estimated that the cost of the work will be €99.3 million (£70 million), including the costs incurred to date of some €32.3 million (£23 million).

5 Claims Handling Offices

In anticipation of a large number of claims, and after consultation with the Spanish and French Authorities, the London Club and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France).

6 Claims for compensation

Spain

- 6.1 As at 23 January 2004 the Claims Handling Office in La Coruña had received 488 claims totalling €583.5 million (£411 million). These include a claim for €131.6 million (£93 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and two claims from the Spanish Government, the first for €383.7 million (£270 million) submitted in October 2003 and the second for €44.6 million (£31 million) submitted in January 2004. The claims by the Spanish Government relate to costs incurred until the end of September 2003 in respect of at sea and on shore clean-up operations, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns.
- 6.2 The tables below provide a breakdown of the different categories of claim received by the Claims Handling Office in La Coruña.

General claims

Category	No. of claims	Amount claimed
Property damage	214	€2 378 211
Clean-up	17	€4 183 027
Mariculture	11	€6 972 932
Fishing and shellfish gathering	131	€133 797 004
Tourism	6	€592 184
Fish processors/sellers	69	€5 941 502
Miscellaneous	38	€1 341 673
Total	486	€155 206 533 (£109.3 million)

Spanish Government's claims

Category	Amount
Clean-up	€343 982 567
Fisheries	€78 890 057
Tourism	€5 422 017
Total (2 claims)	€428 294 641 (£302 million)

All claims

Category	Amount claimed
Property damage	€2 378 211
Clean-up	€348 165 594
Mariculture	€6 972 932
Fishing and shellfish gathering	€212 687 061
Tourism	€6 014 201
Fish processors/sellers	€5 941 502
Miscellaneous	€1 341 673
Total (488 claims)	€583 501 174 (£411 million)

- 6.3 The first claim received from the Spanish Government has been assessed by the Director at €107 million (£75 million). As regards payments to the Spanish Government, reference is made to section 13.
- 6.4 One hundred and seventy other claims, totalling €8 423 343 (£5.9 million), have been assessed at €1 372 385 (£966 000). Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Interim payments totalling €1 457 (£1 030) have been made at 15% of the assessed amounts in respect of nine of the assessed claims. Of the 161 assessed claims that have not been paid, 72 have been rejected, the majority because the claimant has not demonstrated that a loss had been suffered, 52 claims await a response from the claimant to the offer of payment, one claim has been withdrawn and 36 claims are being examined by the London Club and Fund.

France

- 6.5 By 23 January 2004, 170 claims totalling €7.4million (£5.2 million) had been received by the Claims Handling Office in Bordeaux. The table below provides a breakdown of the different categories of claims received.

Category	No. of claims	Amount claimed
Property damage	6	€30 234
Clean-up	14	€3 732 514
Mariculture	94	€540 575
Shellfish gathering	3	€116 810
Fishing boats	22	€286 962
Tourism	26	€2 569 313
Fish processors / vendors	2	€65 359
Miscellaneous	3	€78 455
Total	170	€7 420 222 (£5.1 million)

- 6.6 Twenty-four claims for €528 515 (£372 000) have been assessed at €360 824 (£254 000). The remaining 146 claims are being assessed by the experts appointed by the London Club and 1992 Fund. Five claims have been rejected. One payment of €10 470 (£7 370) has been made at 15% of the assessed amount. The Club and Fund are examining the remaining assessed claims.

Portugal

- 6.7 Claims are expected in respect of clean-up and preventive measures in Portugal. The Portuguese authorities have so far not submitted any claim but have indicated that the clean-up costs amount to some €2.6 million (£1.8 million).

United Kingdom

- 6.8 Depending on whether much more oil comes ashore in the United Kingdom, the United Kingdom Government and local authorities might submit a claim for costs resulting from any clean-up of United Kingdom shores.

7 Payments and other financial assistance by the Spanish Authorities

- 7.1 The Spanish Government and regional authorities made payments of some €40 (£28) per day to all those directly affected by the fishing bans. These include shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. Some of these payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and it is expected that further subrogated claims will be presented in the near future.
- 7.2 The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of tax relief and waivers of social security payments.
- 7.3 The Spanish Government has made available to victims of the pollution credit facilities totalling €100 million (£70 million). As the damage covered by these loans will eventually form the basis of claims against the Fund either directly or in subrogation, the Fund, at the Spanish Government's request, agreed to assist in carrying out such evaluations.
- 7.4 As at 23 January 2004, the Claims Handling Office in La Coruña had received requests to assess the losses suffered by 41 loan applicants totalling €250 351 (£178 000). Thirty-six applications have been assessed on the basis of the documentation provided at a total of €82 937 (£59 000), three applications have been returned at the request of the Spanish Government and two cannot be assessed due to lack of information.
- 7.5 In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €160 million (£112 million) to compensate in full the victims of the pollution. Under this Decree the Spanish Government will acquire by subrogation the rights

of those victims who decide to claim under this legislation. To receive compensation the claimants had to submit their claims by 31 December 2003 and must renounce the right to claim compensation in any other way in relation to the *Prestige* incident and transfer their rights of compensation to the Spanish Government. The Decree provides that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions. The procedure for the assessment of the claims submitted under this Royal Decree has not yet been decided.

8 Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£16 million). In 28 May 2003 the shipowner deposited €22 777 986 with the Criminal Court in Corcubi3n (Spain) for the purpose of constituting the limitation fund.

9 Investigations into the cause of the incident

- 9.1 The Court in Corcubi3n (Spain) is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of one civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain.
- 9.2 The Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, is gathering the necessary information to be able to issue a report on the *Prestige* accident. Given the scale of the incident, it will take some time for the investigation to be completed.
- 9.3 As regards France, an examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.
- 9.4 The 1992 Fund is following these investigations through its Spanish and French lawyers.

10 Court actions

Spain

- 10.1 One thousand eight hundred and forty-eight claimants who allegedly suffered losses as a result of the incident have joined the legal proceedings before the Court in Corcubi3n (Spain). No details of the losses have been provided to the Court. Some of these claimants have submitted claims to the Claims Handling Office in La Coru3a.

France

- 10.2 At the request of a number of communes, the Administrative Court in Bordeaux has appointed experts to establish the extent of the pollution at various locations in the affected area. The court experts have held a number of meetings.
- 10.3 In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Court of Commerce in Marennes requesting provisional payments of amounts totalling approximately €400 000 (£282 040). A hearing is scheduled for March 2004.

United States

- 10.4 The Spanish State has taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident estimated to exceed US\$700 million (£390 million). The Spanish State has maintained *inter alia* that ABS had been

negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

- 10.5 ABS has denied the allegation made by the Spanish State and has in its turn taken action against the State, arguing that if the State suffered damage this was caused in whole or in part by its own negligence. ABS has made a counterclaim and has requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.
- 10.6 Regional authorities of the País Vasco have taken legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US\$50 million (£28 million). The authorities have argued *inter alia* that ABS was in breach of its duty to inspect the *Prestige* adequately and had classified the vessel as seaworthy when it was not.

11 Maximum amount available under the 1992 Fund Convention

- 11.1 The maximum amount of compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million Special Drawing Rights (SDR) per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount should be converted into the national currency, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 11.2 Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result 135 million SDR corresponds to €171 520 703 (£121 million).

12 Level of payments

Consideration by the Executive Committee in February 2003

- 12.1 The Executive Committee considered the level of payments in respect of the *Prestige* incident in February 2003.
- 12.2 Unlike in previous cases, the insurer of the *Prestige*, the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club), decided not to make payments up to the shipowner's limitation amount. The representative of the London Club informed the Committee that its legal advisers in Spain had indicated that if the Club were to make payments to claimants in line with past practice, it was highly likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund, with the result that the Club could end up paying twice the limitation amount. Despite lengthy discussions between the Club's legal advisers and lawyers representing the Spanish State, the Club was not convinced that a double payment situation could be avoided, which left the Club no alternative but to deposit the limitation fund with a competent court in Spain or France, recognising that this could result in the money becoming unavailable for the payment of claims for several years.
- 12.3 A number of delegations accepted that the 1992 Fund could not dictate to the London Club that it should make compensation payments without the Club receiving a guarantee that it would not be required to pay double the limitation amount. In those delegations' view, it would therefore be necessary for the Fund to make payments from the outset since the concerns of the victims of pollution damage were paramount. It was noted that if the 1992 Fund were to depart from its previous policy of not paying claims before the insurer had paid up to the limitation amount, the Fund could only pay up to 135 million SDR minus the shipowner's limitation amount under the 1992 Civil Liability Convention.

- 12.4 The Executive Committee considered that it was not possible at that stage to make any meaningful assessment of the magnitude of the total amount of the established claims arising from the *Prestige* incident. The Committee decided that, in view of this uncertainty, the Director's authority to make payments should, for the time being, be limited to provisional payments under the 1992 Fund's Internal Regulations (document 92FUND/EXC.22/8, paragraph 3.4.61).

Consideration by the Executive Committee in May 2003

- 12.5 The Executive Committee again considered the level of payments at its May 2003 session. The Spanish and French delegations estimated that the total losses in their countries were €662-677 million and €104-193 million respectively, ie a total of €766-870 million (£539-612 million). These delegations emphasised that these figures were preliminary assessments and that there were great uncertainties particularly as regards potential losses in the tourism sector.
- 12.6 The estimation by the Spanish authorities did not include any allowance for tourism losses. The Spanish delegation's estimate of the costs of operations relating to the wreck was made before a decision on the method to be used had been taken. In view of these uncertainties, the Director considered that it would be prudent to include an additional amount of €100 million (£70 million) to give a sufficient safety margin, giving a total figure for the incident of around €1 000 million (£704 million). The Director expressed the view that if the Committee were to decide on a level of payments, it should be set at 15% of the loss or damage actually suffered by the respective claimants. Most delegations supported the Director's proposal for a level of payments at 15%. In supporting the proposal, some delegations acknowledged that 15% represented a very low level of payments, but that it could nevertheless help to alleviate financial hardship, particularly in the case of small businesses.
- 12.7 The Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them (document 92FUND/EXC.22/8, paragraph 15.11).

Consideration by the Executive Committee in October 2003

- 12.8 In October 2003 the Spanish delegation estimated the total costs of the incident as regards Spain at €795 million (£560 million). The French delegation gave a preliminary estimate in respect of the damage in France of €104-193 million (£73-136 million). The costs in respect of Portugal were estimated by the Portuguese authorities at €2.6 million (£1.8 million)
- 12.9 Based on the figures given by the Spanish, French and Portuguese Governments, the Director estimated the total costs of the incident at some €990 million (£697 million). However, he still had concerns regarding the Spanish Government's figures in respect of the costs of operations relating to the wreck, bearing in mind that no decision had been made on the method to be used. The Director felt that it would be prudent to include an additional amount of €100 million (£70 million) to give a sufficient safety margin, giving a total figure of €1 100 million (£775 million). The Committee decided that, in view of the remaining uncertainties as to the level of admissible claims, the level of payments should be maintained at 15% of the loss or damage suffered by the respective claimants (document 92FUND/EXC.22/14, paragraph 3.7.24).
- 12.10 The Director expects to obtain updated figures from the Spanish, French and Portuguese Governments in respect of the total costs of the incident in the near future. This information, as well as the Director's proposal as to the level of payments, will be given in an addendum to this document.

13 Payments to the Spanish Government

- 13.1 At the Executive Committee's October 2003 session the Spanish delegation proposed that the 1992 Fund should, subject to certain safeguards, make advance payments on account to the Spanish Government and the Governments of other affected States which wish to receive such advance payments. It was proposed that the payments should be made based on an estimate of the damages by the Director; should it transpire from the final settlement that a particular State had been advanced more than it was entitled to, the State should return the corresponding overpayment. A State receiving advances should provide the necessary guarantees in that respect and the Fund should retain a sufficient percentage to enable it to make payments to those affected parties who made direct claims to it. The Spanish delegation stated that measures had been adopted by the Spanish Government which would enable all claimants to receive 100% of their proven losses as assessed by the 1992 Fund in accordance with the Fund's criteria.
- 13.2 During the discussion in the Executive Committee a number of delegations supported the Spanish delegation's proposal, which in their view provided an innovative solution to one of the major problems faced by the Fund, namely the rapid payment of compensation to victims. Other delegations stated that the proposal needed very careful consideration, since it represented a considerable departure from the Fund's policy which could have profound implications for the future of the Fund. Some delegations expressed a preference for the well tried and tested method followed in some previous major incidents in the United Kingdom, the Republic of Korea and France whereby the Governments of those countries had agreed to stand last in the queue with respect to their own claims thereby enabling the Funds to make substantial payments to other claimants. A number of other delegations expressed serious reservations, since it involved making payments to the Spanish Government in excess of the agreed level of 15%, which deviated from the requirement that all claimants should be treated equally. Those delegations also expressed concerns about the Fund appearing to act as a bank, since it was never intended to operate in that way.
- 13.3 In view of the importance of the issue and the ramifications involved, the Executive Committee decided to refer the matter to the Assembly.
- 13.4 The Assembly noted that the Director would make an interim assessment of any claim submitted by the Government of Spain and that he would make a payment of 15% of the assessed amount, as authorised by the Executive Committee (document 92FUND/A.8/30, paragraph 20.28).
- 13.5 Taking into account the exceptional circumstances of the *Prestige* incident, the Assembly decided as follows (document 92FUND/A.8/30, paragraph 20.29):
- (a) The Assembly authorised the Director, subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000) and also subject to the Government of Spain providing a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.
 - (b) The Assembly decided that such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000). Further, it was decided that the terms and conditions of the guarantee should be to the satisfaction of the Director.
 - (c) The Assembly instructed the Director to provide full information on assessments and payments under paragraph (a) and to provide explanations when required by any Member State.

- (d) The Assembly also decided that the Executive Committee should review, at its next session, the payments made. It was also decided that if the Committee reduced the payment amount, the difference should be repaid.
 - (e) It was further decided that if any other State having suffered losses relating to the *Prestige* incident were to seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.
- 13.6 With the assistance of a number of experts, the Director made an interim assessment of the Spanish Government's claim. On the basis of the documentation provided, he arrived at a preliminary assessment of €107 million (£75 million) and on that basis the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment.
- 13.7 In addition, the Director, with the assistance of a number of experts, also carried out a general assessment of the total of the admissible damage in Spain, which concluded that the admissible damage would be at least €303 million (£213.4 million). On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.8 million), corresponding to the difference between 15% of €383.7 million or €57 555 000 and 15% of the preliminarily assessed amount of the Government's claim, €16 050 000. That payment was made against a bank guarantee covering the above mentioned difference (i.e. €41 505 000) by Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount or amounts decided by the Executive Committee or the Assembly up to €41 505 000. Under the terms of the guarantee, the bank will, up to the amount of the guarantee, pay to the Fund the amount or amounts requested by the Director without him having to show the Fund's right to repayment.
- 13.8 The payment to the Spanish State totalling €57 555 000 (£39 914 906) was made on 17 December 2003.
- 13.9 The Director is of the view that the assessments made with respect to both the Spanish Government's claim and the total of the admissible losses in Spain provide very conservative estimates. The original claim by the Spanish Government examined by the Fund's experts, for example, covers only the period to 31 July 2003. In addition, many of the items included in that claim have not been addressed as a result of lack of information. A similar situation applies in respect of the expenditure incurred by the regional governments of the affected areas. Fisheries losses have been assessed on the basis of general statistical data and not on actual data relating to specific claimants. It is likely therefore that the estimates will rise substantially as more information and documentation become available.
- 13.10 The approach taken in these assessments and details of the assessments are set out in Annex II to this document.

14 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to decide on the level of compensation payments;
- (c) to review the payments made to the Spanish Government; and
- (d) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.

ANNEX I



Coast lines of Spain, France and the United Kingdom affected to various degrees by the Prestige incident

ANNEX II

A summary of the provisional assessment of the Spanish Government's claim and general assessment of the total of the admissible damage in Spain

1 Provisional assessment of the Spanish Government's claim

- 1.1 On 2 October 2003 the Spanish Government had submitted a claim for €383.7 million (£272 million) relating to costs incurred up to the end of July 2003 in respect of at sea and on shore clean-up operations, aid payments to fishermen and shellfish harvesters affected by fishing bans, tax relief for businesses affected by the oil spill, administration costs and costs relating to publicity campaigns.
- 1.2 Although the Spanish Government had submitted a considerable amount of documentation in support of some elements of its claim, there was no or insufficient information concerning many of the items. In order to enable the 1992 Fund to make compensation available, the Director instructed the experts appointed by the 1992 Fund^{<1>} to carry out an interim (provisional) assessment of the claim. This assessment, which was completed on 12 December 2003, was based on the documents available to the experts, on their own knowledge of the clean-up work carried out and on information obtained during discussions with representatives of the Spanish Government. The experts presented an extensive and comprehensive report of 54 pages with annexes of several hundred pages.
- 1.3 The Spanish Government claim was submitted in twelve sections, one for each of twelve affected ministries. The assessment was therefore made on a ministry-by-ministry basis.
- 1.4 The Director, the Deputy Director/Technical Advisor and the Head of the Claims Department reviewed the assessment carried out by the experts and agreed in general with the approach taken. They noted that, in many parts, the assessment was based on incomplete information, which had resulted in a very low or zero interim assessment.
- 1.5 The experts' assessment included €11.5 million (£9.9 million) relating to tax and social security reliefs, concessions and payments. The experts had expressed the view that these reliefs, concessions and payments could in principle be regarded as a form of aid paid by the Spanish State and could therefore be considered as admissible for compensation. The experts pointed out however that, although it could be assumed that tax and social security reliefs, concessions and payments had been made to individuals and businesses in the fisheries sector, no information had been provided on the identity of the recipients, of their activities or of any losses they might have suffered as a result of the pollution.
- 1.6 In view of the hesitation expressed on several occasions by the Executive Committee regarding the admissibility of losses suffered as a result of a reduction in tax revenues and in view of the absence of information concerning the recipients of these reliefs, concessions and payments, the Director decided, for the purposes of the interim assessment of the Spanish Government's claim, to exclude tax and social security reliefs, concessions and payments from his assessment of the damage pending further careful examination of the legal aspects of the claim and submission of additional information. For this reason he also excluded from the interim assessment any amount

<1> Carlos G Cuesta y Asociados S.L., assisted by ITOPF

for personnel costs for processing tax and social security concessions and payments and costs of advertising those measures.

- 1.7 The Director concluded that the experts' assessment of a few items was unduly conservative and should be increased. The effect of these adjustments was to increase the interim assessment by €1.4 million (£1.0 million).
- 1.8 Having reviewed the report presented by the experts, the Director concluded that the interim assessment of the loss should be €107 348 218 as shown in the table below and that, for the purposes of an interim payment, this amount should be rounded to €107 000 000 (£75 million).

Ministry	Claimed	Director's interim assessment
Environment	€143 122 453.09	€50 126 553
Public Works	€86 207 578.00	€26 492 776
Defence	€47 057 129,52	€16 558 071
Work and Social Security	€34 229 776.11	€0
Agriculture, Fisheries and Food	€32 314 361.43	€11 755 091
Finance	€22 489 841.65	€0
Science and Technology	€8 761 939.35	€1 048 574
Public Administration	€4 858 405.04	€1 250,000
Economy	€3 951 865,25	€0
Justice	€595 690.30	€0
Health and Consumption	€126 205.85	€117 154
External Affairs	€17 690.48	€0
TOTAL	€383 732 936.07	€107 348 218

- 1.9 This assessment can be expressed in terms of the categories of damage as follows:

Category	Claimed	Director's interim assessment
Clean-up at sea	€86 334 130.33	€26 492 774
Clean-up on shore	€197 113 693.86	€68 648 799
Sealing leaks on wreck	€854 359.72	€284 787
Removal of oil remaining in the wreck	€364 054.37	€74 054
Fisheries sector	€95 198 991.04	€11 847 804
Tourism sector	€3 867 706.75	€0
TOTAL	€383 732 963.07	€107 348 218

- 1.10 It should be emphasised that the Director's interim assessment was without prejudice to the 1992 Fund's final position as to the admissibility of a particular item or a specific amount. It is likely that, as a result of more information becoming available, the assessment will be increased by the inclusion of items that so far have been assessed at zero or by an increase in the assessed amounts.

2 General assessment of the total of the admissible damage suffered in Spain

- 2.1 The Director also carried out a general assessment of the total of the admissible damage in Spain arising from the *Prestige* incident. This assessment was made on the

basis of interim assessments made by the experts appointed by the 1992 Fund^{<2>}. The Director, having reviewed the reports issued by the experts, was of the view that the general assessment of the admissible damage suffered in Spain should be €303 000 000 (£213 million). The breakdown of this figure is given in the table below. As comprehensive claims have not been received from the fisheries, tourism and other business sectors, or for the cost of removal of oil from the wreck or disposal of oily residues collected in Galicia, the table does not show claimed amounts.

Group	Director's assessment
Spanish Government	€95 593 129
Regional governments in Spain	€17 515 117
Fisheries sector	€61 482 524
Tourism sector	€38 050 000
Other businesses	€3 000 000
Removal of oil remaining in the wreck	€70 975 000
Disposal of oily residues in Galicia	€16 341 821
TOTAL	€302 957 591

2.2 This assessment can be expressed in terms of the categories of damage as follows:

Category	Director's assessment
Clean-up at sea	€33 492 945
Clean-up on shore	€69 914 311
Fisheries sector ^{<3>}	€61 575 237
Tourism	€38 050 000
Other businesses	€3 000 000
Sealing leaks on wreck	€284 786
Removal of oil remaining in the wreck ^{<3>}	€71 049 054
Disposal of residues in Spain	€25 591 258
TOTAL	€302 957 591

2.3 The claim by the Spanish Government was for the period up to 31 July 2003. The costs reported to have been incurred by the regional governments were for periods up to the end of October 2003 for Galicia, Cantabria and the Pais Vasco and to the end of April 2003 for Asturias. It was recognised that claims for periods beyond these dates would be submitted in due course.

2.4 In the absence of comprehensive claims from the fisheries and tourism sectors, the damage suffered in those categories was assessed for the full period for which it was considered losses were likely to have been incurred.

<2> Carlos G Cuesta y Asociados, S.L. and ITOPF (clean-up), L&R Consulting Solutions Ltd. (tourism), Patrick Franklin and Alicia Sanmamed (fisheries) and BMT Surveys Ltd. (oil removal from the wreck).

<3> The assessed amounts for the fisheries sector and for removal of oil remaining in the wreck shown in this table include expenditure in those categories covered by the Spanish Government's claim and the expenditure of the regional governments. For this reason the assessed amounts for the fisheries sector and for removal of oil remaining in the wreck differ in the tables under paragraphs 2.1 and 2.2.

- 2.5 The Director's comments on the amounts assessed for each of the group are set out below.

Spanish Government

- 2.6 The assessment of the Spanish Government's claim is dealt with in paragraphs 1.1-1.10 above.
- 2.7 In the Director's general assessment of the total admissible damage suffered in Spain, losses suffered by the fisheries sector have been allocated to that sector. Aid payments to the fisheries sector by the Spanish Government and the regional governments in Spain, €162.6 million (£115 million) in total, can be regarded as compensation to the fisheries sector and were therefore, for the purposes of the general assessment of the total admissible damage suffered in Spain, excluded from the assessment of the claim by the Spanish Government and from the expenses incurred by the regional governments, so that the same losses were not counted twice.

Regional governments in Spain

- 2.8 The regional governments of Galicia, Asturias, Cantabria and the Pais Vasco have reportedly incurred expenditure of €270 301 233 (£190 million) in connection with the oil pollution. Of this amount, €183.8 million (£129 million) relates to on shore clean-up (€52.6 million) and to aid given to fishermen and shellfish harvesters (€131.2 million).
- 2.9 The experts appointed by the Fund have based their assessment of the cost of on shore clean-up on their observations of those operations. For the purpose of the general assessment, all on shore clean-up costs were therefore assessed together and were included under the heading of the Spanish Government's claim. Similarly, all losses suffered by the fisheries sector were taken into account in the assessment for that sector (see paragraph 2.12). The costs associated with on shore clean-up and fisheries sector losses were therefore excluded from the assessment of the costs incurred by the regional governments for the purposes of the Director's general assessment of the admissible damage in Spain.
- 2.10 The table below summarises the assessed amounts in respect of the expenditure by regional governments, excluding on shore clean-up expenditure and aid payments.

Regional government	Director's assessment
Galicia	€3 403 671
Asturias	€1 143 786
Cantabria	€5 136 932
País Vasco	€7 830 728
TOTAL	€17 515 117

- 2.11 Except for Galicia, the cost of disposing of the oily residues collected during clean-up operations was included in the reported costs incurred by, and was assessed under the heading of, the regional governments. The cost of disposing of the oily residues collected in Galicia is dealt with in paragraphs 2.18 to 2.21 below.

Fisheries sector

- 2.12 The majority of claims pertaining to the fisheries sector are being negotiated directly between the Spanish Government and those who have suffered loss and damage. As a result, very little information was available to the experts appointed by the 1992 Fund. The experts therefore assessed the losses in this sector on the basis of published historical data relating to the fish landings in North West Spain, taking into account the duration of the fishing bans that were imposed as a result of the spill. The following table summarises the results of that assessment.

Fisheries sub-sector	Director's assessment
Fishing	€39 277 492
Aquaculture	€11 580 076
Processing	€9 607 804
Upstream activities	€1 017 151
TOTAL	€61 482 524

Tourism sector

- 2.13 Few claims had been received from the tourism sector. The experts appointed by the Fund therefore carried out a general assessment of the likely losses in Spain on the basis of published statistics and estimated that the impact of the *Prestige* incident would be between €31.7 million and €44.4 million. For the purpose of this general assessment, the losses were assessed at the average of these two amounts, namely €38.05 million.

Item	Director's Assessment
Lower estimate of loss	€31 700 000
Upper estimate of loss	€44 400 000
Estimate for purpose of general assessment of damage in Spain	€38 050 000

Other businesses

- 2.14 There was little information available regarding losses suffered by businesses and individuals not included in the other sectors. In the Director's view, however, it was considered not unreasonable on the basis of experience in other incidents to expect at least 1000 claims from other businesses and that the average loss could be in the order of €3 000 per claimant. The losses of this group were therefore assessed at €3 million (£2.1 million).

Removal of oil remaining in the wreck

- 2.15 During the course of 2003 Repsol YPF, at the request of the Central Administration of the Spanish State, carried out trials and investigations to determine whether the cargo remaining in the wreck could be removed. Several methods were considered, the favoured option being the use of 'shuttle bags' positioned over holes cut in the tanks of the wreck. Once full, the bags would be allowed to float to the surface where they would be recovered and taken ashore. Trials on a prototype shuttle bag were carried out during the autumn of 2003, initially in the Mediterranean and subsequently at the wreck site where approximately 100 tonnes of oil was recovered.

- 2.16 In order to allow the removal of the cargo remaining in the wreck to proceed, shuttle containers constructed from aluminium will be developed. These aluminium containers will be raised to within some forty metres of the sea surface. There the oil will be heated and pumped to a surface vessel. The Spanish Government decided on 12 December 2003 that the project should go ahead at an estimated cost of €98.3 million (£69 million), including costs already incurred of some €31.5 million (£22 million).
- 2.17 The experts appointed by the 1992 Fund evaluated provisionally, on the basis of the limited information available, the costs of the development of the system at €20 975 000 and the minimum cost of carrying out the removal of the oil at €50 000 000, giving a total estimated cost of €70 975 000 (£50 million), as set out in the table below.

Item	Director's assessment
Development costs to October 2003	€10 907 000
Further development costs	€10 068 000
Discharge operations	€50 000 000
TOTAL	€70 975 000

Disposal of oily residues from Galicia

- 2.18 Some 76 967 tons of 'solid' oily residues had been collected in Galicia during the clean-up operations up until 12 December 2003. This comprised mainly oily sand collected from the beaches together with a certain amount of oil mixed with plastics and other debris collected at sea. This material was stored pending final disposal.
- 2.19 It was decided by the Spanish Government and the regional government of Galicia, having studied and received quotations for various options, that the solid oily waste collected in Galicia should be rendered chemically inert and thereafter buried in a suitable landfill site. The Fund's experts visited the plant at which the material was to be treated and the offices of the Department of the Environment of the regional government of Galicia for discussions on the disposal. The experts expressed the opinion that the method proposed for dealing with the solid waste was appropriate and provisionally estimated the cost of disposal at €200/tonne. The total cost of disposal was therefore estimated at €15 393 420 (76 967 mt x €200/mt).
- 2.20 In addition to the solid waste, some 18 968 tonnes of liquid residues were collected at sea and discharged to the Repsol refinery in La Coruña. This has been reprocessed. The Fund's experts provisionally estimated the net cost of reprocessing at €50/tonne. The estimated cost of dealing with the liquid residues in Galicia was therefore €948 401.
- 2.21 The total cost of disposal if the oily residues collected in Galicia was, therefore, €16 341 821 (£11.5 million), as shown in the table below.

Item	Director's Assessment
Solid waste disposal	€15 393 420
Liquid waste disposal	€948 401
TOTAL	€16 341 821