INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
25th session
Agenda item 5

92FUND/EXC.25/6
28 May 2004
Original: ENGLISH

RECORD OF DECISIONS OF THE TWENTY FIFTH SESSION OF THE EXECUTIVE COMMITTEE

(held on 24 and 28 May 2004)

Chairman: Mr J Rysanek (Canada)

Vice-Chairman: Mr V Schöfisch (Germany)

Opening of the session

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.25/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Australia	Greece	Netherlands
Cameroon	Grenada	Poland
Canada	India	Singapore
France	Japan	Sweden
Germany	Marshall Islands	United Arab Emirates

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Member States were represented as observers:

Algeria	Finland	Portugal
Antigua and Barbuda	Ghana	Republic of Korea
Argentina	Ireland	Russian Federation
Bahamas	Italy	Spain
Bahrain	Liberia	Tanzania
Belgium	Malta	Turkey
China (Hong Kong Special Administrative Region)	Mexico	United Kingdom
	Morocco	Uruguay
Colombia	Nigeria	Vanuatu
Congo	Norway	Venezuela
Cyprus	Panama	
Denmark	Philippines	

2.3 The following non-Member States were represented as observers:

Albania	Ecuador	Peru
Chile	Iran (Islamic Republic of)	Saudi Arabia

2.4 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

European Commission
International Maritime Organization (IMO)
International Oil Pollution Compensation Fund, 1971

International non-governmental organisations:

BIMCO
Comité Maritime International (CMI)
Federation of European Tank Storage Associations (FETSA)
Friends of the Earth International (FOEI)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Salvage Union (ISU)
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

3 Incidents involving the 1992 Fund

3.1 *Erika*

3.1.1 The Executive Committee took note of the developments in respect of the *Erika* incident set out in document 92FUND/EXC.25/2.

Claims situation

3.1.2 The Committee noted that as at 28 April 2004, 6 917 claims totalling FFr1 355 million or €207 million (£137 million) had been submitted to the Claims Handling Office in Lorient. It was noted that 6 536 claims totalling FFr1 218 million or €186 million (£123 million), representing 94.5% of the total number of claims, had been assessed at a total of FFr667 million or €102 million (£68 million). It was also noted that 803 claims, totalling FFr135 million or €21 million (£14 million), had been rejected.

3.1.3 It was noted that payments for compensation had been made in respect of 5 501 claims for a total of FFr598 million or €91 million (£64 million), out of which the shipowner's P&I insurer, Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual), had paid FFr84 million or €12.8 million (£9 million) and the 1992 Fund FFr513.5 million or €78 million (£55 million).

Maximum amount available for compensation

3.1.4 It was recalled that the maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention was 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), and that in respect of the *Erika* incident the conversion of that amount

into French Francs had given the amount of FFr1 211 966 811 corresponding to €184 763 149 (£130 million).

Legal proceeding in respect of claims against the 1992 Fund

3.1.5 The Executive Committee took note of the legal actions by 795 claimants referred to in section 8 of document 92FUND/EXC.25/2.

3.1.6 It was noted that by 28 April 2004 out-of-court settlements had been reached with 313 of these claimants and that actions by the remaining 482 claimants (including 212 salt producers) were pending. It was also noted that the total amount claimed in the pending actions, excluding the claims by the French State and TotalFinaElf, was FFr471 million or €72 million (£48 million).

Judgements by the Commercial Court in Lorient

3.1.7 The Committee took note of the judgements rendered in December 2003 by the Commercial Court in Lorient in respect of four claims in the tourism and fisheries sectors, which had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.

3.1.8 The Committee recalled that one of the claims related to loss of income allegedly suffered by a claimant whose property in the affected area was to be let to other businesses (and not directly to tourists) but which, according to the claimant, could not be let due to the negative effects of the *Erika* incident.

3.1.9 It was recalled that in its judgement the Commercial Court had stated that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. The Committee recalled that the Court had held that, under French law, a claim for compensation was admissible if there was a sufficient link of causation between the event and the damage, and it was shown that the damage would not have occurred if the event had not taken place. It was recalled that in the Court's view, the *Erika* incident was the sole cause of the pollution and its economic consequences. It was also recalled that the Court had stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund. It was further recalled that the Court had ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for loss of rental income at €10 671 (£7 500).

3.1.10 The Committee recalled that the three other judgements related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. It was recalled that these claims had been rejected by the 1992 Fund on the grounds that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the *Erika* oil spill. The Committee recalled that after having made the same statement in respect of the criteria to be applied and stating that it was not bound by the Fund's criteria, the Court had appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution.

3.1.11 The Executive Committee recalled that at its 24th session held in February 2004 it had decided that the 1992 Fund should pursue appeals against the four judgements, considering the importance of the issue for the proper functioning of the compensation regime based on the 1992 Conventions (document 92FUND/EXC.24.8, paragraph 3.1.27). It was noted that a hearing had taken place before the Court of Appeal of Rennes on 20 April 2004 in respect of the claim referred to in paragraph 3.1.8.

3.1.12 The Committee noted that the Court of Appeal had rendered its decision on 25 May 2004 in which the claim referred to in paragraph 3.1.8 was rejected. It was noted that, although the Court did not apply the 1992 Fund's criteria which were considered not binding on national courts, the Court held that the claimant had not shown that there was a sufficient link of

causation between the event in question and the damage, nor had the claimant proven that any damage existed.

Judgement by the Civil Court in Nantes

3.1.13 The Committee recalled that in January 2004 the Civil Court (Tribunal de Grande Instance) in Nantes had rendered a judgement in respect of claims by the owners of two hotels in Nantes for pure economic loss and that these claims had been rejected by the 1992 Fund since, in the Fund's view, they did not fulfill the criteria for admissibility laid down by the Fund's governing bodies in that there was not a reasonable degree of proximity between the alleged losses and the pollution. It was recalled that the Court had rejected the claims in the light of the Fund's criteria, which, in the Court's view, were dictated by common sense, on the grounds that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident. It was noted that the claimants had not appealed against the judgement.

Judgement by the Commercial Court in Rennes

3.1.14 The Committee noted that in April 2004 the Commercial Court in Rennes had rendered a judgement in respect of a claim for €86 350 (£57 000) by a company in Rennes which carried out activities both as a tour operator selling hiking tours in Brittany, Ireland and the Channel Islands and as a traditional travel agency. It was noted that the company had claimed compensation for losses allegedly suffered during 2000 as a result of reduction of sales due to the *Erika* incident.

3.1.15 The Committee noted that this claim had been rejected by the 1992 Fund on the grounds that it did not fulfil the Fund's criteria for admissibility. It was noted that as regards sales through other tour operators ('second degree tourism claims'), it had been considered by the Fund that there was not a reasonable degree of proximity between the contamination and the alleged losses and that no loss had been proven as regards sales direct to tourists.

3.1.16 The Committee also noted that the Court had rejected the claim for the following reasons:

> Under the French Constitution, international treaties ratified by France take precedence over French laws. Contrary to what the claimant had argued, he could not therefore base his claim on certain provisions of the Civil Code since under the 1992 Civil Liability Convention claims could not be brought against the shipowner and his insurer otherwise than in accordance with the Convention. The criteria for admissibility were established by the Fund in order to achieve uniformity so as to ensure equal treatment of victims. For a claim to be admissible, there must under the Fund Convention be a sufficient link of causation between the contamination and the damage suffered by the claimant. This link of causation was determined by economic factors, such as the claimant's degree of dependence in relation to the incident, geographical proximity, diversity of the claimant's activities and historical economic results. It had not been established that there was a sufficient degree of proximity between the contamination and the damage allegedly suffered. The claimant's activities were not carried out only in the area affected by the *Erika*, but also in other parts of France and abroad. The claimant was not greatly dependent on the affected area. A major part of the tours organised (between 76% and 92% for the years 1997-2000) were sold through tour operators. These sales must be considered as 'second degree' under the 1992 Fund Convention and were therefore not admissible. The sales of tours directly to tourists, which were the only sales to be taken into account for compensation purposes, represented for the years 1997-

2000 between 6% and 20% of the turnover and these sales did not relate only to tours in the affected area. There was no evidence that these sales were affected by the incident.

For these reasons, and examined on the basis of the 1992 Convention and only on the basis of that Convention, the claim was rejected.

3.1.17 One delegation expressed its satisfaction with the judgements by the Civil Court in Nantes and the Commercial Court in Rennes, in particular their reference to the Fund's admissibility criteria. That delegation stated that whilst it was for courts to interpret the Conventions and decide on the application of the Fund's criteria, it was important that the courts should follow the Conventions, which had precedence over national laws.

Attack on the Claims Handling Office in Lorient

3.1.18 The Committee recalled that in December 2001, a person who had previously caused damage to the Claims Handling Office established by the 1992 Fund and Steamship Mutual in Lorient and to the office of some of their experts in Brest, had driven a tractor with a front-end loader into the Claims Handling Office building in Lorient, demolishing a number of windows and destroying the door. It was recalled that the two police officers present outside the office had been unable to prevent the attack, but had arrested the attacker.

3.1.19 The Committee recalled that the 1992 Fund and Steamship Mutual had pressed charges against the attacker with the local police. It was recalled that the public prosecutor had brought charges of causing serious damage to property belonging to another by breaking and entering ('dégradation ou détérioration grave du bien d'autrui avec entrée par effraction') against the attacker in the Criminal Court in Lorient. It was recalled that the public prosecutor had requested that the attacker should be given a prison sentence of 18 months, of which six months should be served in prison and the remaining on probation. It was also recalled that the 1992 Fund and Steamship Mutual had presented a compensation claim in respect of the damage caused to the office.

3.1.20 The Committee recalled that the Criminal Court had rendered its judgement in December 2002. It was recalled that the Court had qualified the attacker's act as 'simple damage to property' ('simple déterioration du bien d'autrui') and had held that since the act formed part of the activities of a trade union ('action syndicale'), it fell within the scope of a law on amnesty adopted by Parliament on 3 August 2002. It was also recalled that the Court had rejected the 1992 Fund's compensation claim, stating that the Fund had not had title to take action in respect of the damage caused to the office.

3.1.21 The Committee recalled that the prosecutor had appealed against the judgement and that the 1992 Fund and the Steamship Mutual had joined in the appeal.

3.1.22 The Committee noted that in March 2004 the Court of Appeal in Rennes had rendered a decision confirming the judgement by the first instance Court that the attacker's act fell within the scope of the law on amnesty but had ordered him to pay compensation of €69 000 (£46 000) to the 1992 Fund and Steamship Mutual for the damage caused to the office.

3.1.23 The Committee noted that the attacker had appealed against this judgement before the Court of Cassation.

Claim in respect of reduction in airport taxes

3.1.24 One delegation asked whether the Director had been able to investigate further the claim by the Morbihan Chamber of Commerce in respect of the airport of Lorient Lann Bihoué, which had been considered by the Executive Committee at its 24th session in February 2004 (document

92FUND/EXC.24/8, paragraphs 3.1.33 – 3.1.40). The Director stated that no further information had come to light in support of the claim and he therefore had not considered it worthwhile to refer the claim to the Committee again for further consideration. He added that in view of the Committee's decision not to approve the claim on the basis of the information provided at the February 2004 session it would be for the Court to decide on its admissibility.

3.2 *Prestige*

3.2.1 The Executive Committee took note of the information contained in document 92FUND/EXC.25/3 presented by the Director and document 92FUND/EXC.25/3/1 submitted by the Spanish delegation regarding the *Prestige* incident.

Removal of oil from the wreck

3.2.2 The Committee noted that a contract to remove the remaining oil from the *Prestige* had been signed between the Spanish Government and Repsol YPF and that the work was due to take place during the period May - October 2004.

Claims situation in Spain

3.2.3 The Executive Committee noted that as at 26 April 2004 the Claims Handling Office in La Coruña had received 516 claims totalling €670.8 million (£445 million), including three claims from the Spanish Government, the first for €383.7 million (£255 million) submitted in October 2003, the second for €44.6 million (£30 million) submitted in January 2004 and the third for €85.5 million (£57 million) submitted in April 2004. It was recalled that the claims by the Spanish Government related to costs incurred until the end of December 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.

3.2.4 The Committee recalled that the first claim received from the Spanish Government had been assessed by the Director on an interim basis at €107 million (£75 million) and that a payment of €16 050 000 (£11.1 million), corresponding to 15% of the assessed amount, had been made. It was also recalled that the Director had made a general assessment of the total of the admissible damage in Spain at €303 million (£213 million) and that, as authorised by the Assembly, he had made a further payment of €41 505 000 (£28.8 million) against a bank guarantee provided by a Spanish bank, bringing the total amount paid by the 1992 Fund to the Spanish Government to €57 555 000 (£39.9 million). It was noted that the second and third claims totalling €130.1 million (£87 million) submitted by the Spanish Government were being examined by the experts engaged by the 1992 Fund and the shipowner's P&I Insurer, the London Steamship Owners Mutual Insurance Association (London Club). It was also noted that 264 other claims totalling €14.3 million (£9.5 million) had been assessed at €1.2 million (£780 700). It was further noted that 77 claims had been rejected, the majority because the claimant had not demonstrated that a loss had been suffered, 19 claims were being examined by the London Club and the Fund and the remaining claims were awaiting responses from the claimants or were being reexamined following claimants' disagreements with the assessed amount.

Claims situation in France

3.2.5 The Committee noted that by 26 April 2004, 225 claims totalling €13.8 million (£9.2 million) had been received by the Claims Handling Office in Bordeaux, which included 94 claims totalling €550 000 (£365 000) by oyster farmers based in the Arcachon basin for losses allegedly suffered as a result of market resistance due to the pollution. It was noted that 14 of these claims totalling €77 000 (£51 000) had been assessed at €61 000 (£40 504). It was also noted that 76 other claims for €3 million (£2 million) had been assessed at €1.5 million

(£971 000) and that the remaining 55 claims were being assessed by the experts appointed by the London Club and 1992 Fund.

3.2.6 The Committee noted that in May 2004 the French Government had submitted claims totalling €67.5 million (£45 million) in relation to the costs incurred for clean-up and preventive measures. It was noted that the experts appointed by the 1992 Fund and the London Club were assessing these claims.

. *Claims situation in Portugal*

3.2.7 The Committee noted that the Portuguese Government had submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures in Portugal and that this claim was being assessed by the Fund's and Club's experts.

Payments and financial assistance by the Spanish Authorities

3.2.8 The Committee recalled that the Spanish Government and regional authorities had made payments of some €40 (£26.6) per day to all those directly affected by the fishing bans, including 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. It was recalled that some of these payments had been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and that it was expected that further subrogated claims would be presented. It was further recalled that the Spanish Government had 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.

3.2.9 The Committee recalled that the Spanish Government had made available to victims of the pollution credit facilities totalling €100 million (£66 million). It was also recalled that as the damage covered by these loans would eventually form the basis of claims against the Fund either directly or in subrogation, the Fund, at the Spanish Government's request, had agreed to assist in carrying out such evaluations.

3.2.10 It was further recalled that in June 2003 the Spanish Government had adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €160 million (£106 million) to compensate in full the victims of the pollution and that under this Decree the Spanish Government would acquire by subrogation the rights of those victims who decided to claim under this legislation. It was recalled that to receive compensation the claimants had to submit their claims by 31 December 2003, 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. It was noted that the Decree provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

3.2.11 The Committee noted that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who had wished to use the payment mechanism set out in the Royal Decree. It was noted, as set out in document 92FUND/EXC.25/3/1 submitted by the Spanish delegation, that of those claims some 23 205 related to groups of workers in the fisheries sector which had been assessed by means of a system using a scale.

3.2.12 The Committee recalled that some 5 000 claims of other groups would be subject to individual assessments according to the 1992 Fund's criteria. The Committee noted that the Government had informed the 1992 Fund that out of the 5 000 claims of other groups of claimants, some 4 000 claims had been presented by persons and companies involved in mussel production and some 1 000 claims from other sectors.

3.2.13 It was noted that the Spanish regulations provided for compensation to public administrations as a result of which a total of 67 towns had requested compensation totalling €37.6 million (£25 million) and that the four affected autonomous regions had estimated their damages at €150 million (£100 million). It was also noted that the claimed amounts were awaiting approval by the State before payments were made to these public authorities.

3.2.14 The Spanish delegation informed the Committee that the money received by the Spanish Government from the 1992 Fund (€57.5 million) had been used to pay compensation to claimants and that this had justified the decision by the Assembly to advance funds on the basis of an interim assessment of the Spanish Government's first claim and a general assessment of the total admissible losses in Spain.

3.2.15 One delegation made the point that in view of the unusual basis on which the Assembly's decision that the Fund should make advance payment to the Spanish State had been taken, considerable work was required to ensure that the final assessments of the claims were in compliance with the Fund's normal procedures. That delegation drew attention to the claims by the Spanish Government in respect of tax relief for businesses affected by the spill and administrative costs and stated that the Funds' governing bodies had in previous cases considered such claims inadmissible.

3.2.16 The Director stated that claims in respect of tax relief and various forms of aid had been excluded from the interim and general assessments and that should such claims be pursued by the Spanish authorities, as with all issues of principle, it would be for the Executive Committee to consider their admissibility.

Investigations into the cause of the incident

3.2.17 The Committee recalled that the Court in Corcubión (Spain) was carrying out an investigation into the cause of the incident in the context of criminal proceedings. It was noted that the Court was investigating the role of the master of the *Prestige*, one civil servant who had been involved in the decision not to allow the ship into a port of refuge in Spain and a manager of the ship's management company. It was also noted that the Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, was gathering the necessary information to be able to issue a report on the *Prestige* accident but that given the scale of the incident, it would take some time for the investigation to be completed.

3.2.18 As regards France, the Committee recalled that an examining magistrate in Brest was carrying out a criminal investigation into the cause of the incident.

Court actions in Spain

3.2.19 The Committee noted that 1 868 claimants who allegedly had suffered losses as a result of the incident had joined the legal proceedings before the Court in Corcubión (Spain), that no details of the losses had been provided to the Court and that some of these claimants had submitted claims to the Claims Handling Office in La Coruña. The Committee also noted that it was expected that some of these claimants who had settled with the Spanish Government under the Royal Decree referred to in paragraph 3.2.10 would withdraw their claims from the court proceedings.

Court actions in France

3.2.20 The Committee recalled that, at the request of a number of communes, the Administrative Court in Bordeaux had appointed experts to establish the extent of the pollution at various locations in the affected area and that the court experts had held a number of meetings. It was noted that in July 2003 five oyster farmers had 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).

Court actions in United States

3.2.21 The Committee recalled that the Spanish State had 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). It was recalled that the Spanish State had 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 that it had been negligent in granting classification. It was also recalled that ABS had denied the allegation made by the Spanish State and that it had in its turn taken action against the State, arguing that if the State had suffered damage this had been caused in whole or in part by its own negligence. It was further recalled that ABS had made a counterclaim requesting 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.

3.2.22 The Committee noted that regional authorities of the País Vasco had 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), arguing *inter alia* that ABS had breached its duty to inspect the *Prestige* adequately and that it had classified the vessel as seaworthy when it was not. It was also noted that this legal action had been transferred to the Federal Court of first instance in New York dealing with the claim by the Spanish State referred to above.

Maximum amount available for compensation

3.2.23 The Committee recalled that the limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention was approximately 18.9 million SDR or €22 777 986 (£16 million) and that on 28 May 2003 the shipowner had deposited €22 777 986 with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund.

3.2.24 It was recalled that the maximum amount of compensation available under the 1992 Conventions in respect of this incident, 135 million SDR, corresponded to €171 520 703 (£121 million), including the amount actually paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention).

Level of payments

3.2.25 The Executive Committee noted that the Spanish Government had in document 92FUND/EXC.25/3/1 estimated the total damage in Spain to be €834.8 million (£554 million). It was recalled that the overall losses in France had been estimated by the French Government to be in the range of €145.2 to 202.3 million (£96 – 134 million), although the maximum losses were expected to be around €176 million (£124 million). It was also recalled that the Portuguese delegation had stated that the total amount of the damage in Portugal was some €3.3 million (£2.2 million).

3.2.26 In view of the figures provided by the Governments of the three States concerned and the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the current level of payments at 15% of the loss or damage suffered by the respective claimants.

Compensation in respect of the master of the Prestige

3.2.27 One observer delegation asked whether, in the event that the master of the *Prestige* were to be exonerated from any criminal liability, he would be entitled to claim compensation under the Conventions.

3.2.28 The Director stated that any person suffering pollution damage was entitled to claim compensation under the Conventions but that in his view a claim of this type would not fall within the scope of the Conventions and that the issue of criminal liability of the master was a matter of Spanish law.

3.2.29 The Spanish delegation stated that there were specific legal and constitutional procedures in Spain allowing individuals exonerated from criminal charges to claim compensation, but that these issues did not fall within the ambit of the 1992 Civil Liability and Fund Conventions.

3.3 *Incident in the Kingdom of Bahrain*

3.3.1 The Executive Committee took note of the information contained in document 92FUND/EXC.25/4.

3.3.2 The Committee noted that on 15 March 2003 the Air Wing of the Bahrain Ministry of Interior had reported an oil slick 20 miles off the north coast of Bahrain. It was noted that a few days later some 18 kilometres of shoreline had been polluted with an estimated 100 tonnes of oil and that some oil had reportedly affected the coastline of the Kingdom of Saudi Arabia in the vicinity of the causeway linking Bahrain with the mainland.

3.3.3 It was noted that the Bahrain Coast Guard had undertaken clean-up operations at sea between 15 and 24 March 2003 and that a number of government agencies together with the Bahrain Petroleum Company (BAPCO) had undertaken shoreline clean-up operations between 19 March and 18 April 2003.

3.3.4 The Committee noted that the Bahrain authorities had collected pollution samples on 20 and 24 March 2003 and had sent them to the laboratories of BAPCO in Bahrain and Saudi Aramco in Saudi Arabia for chemical analysis. It was noted that the Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain had also obtained pollution samples and had sent them to the 1992 Fund for analysis.

3.3.5 It was noted that the BAPCO analyses were inconclusive, although it was reported that the sulphur content of the oil closely matched Iraq (Basrah) crude. The Committee noted that the Saudi Aramco laboratory had concluded that the oil was Iraq crude.

3.3.6 It was noted that the Director had submitted samples sent to the 1992 Fund to ERT (Scotland) Ltd, a laboratory specialising in the analysis and fingerprinting of petroleum oil and that that laboratory had concluded, in the absence of any reference oils for comparison, based on its experience, that the oil could have originated from Saudi Arabia, Kuwait or southern Iraq.

3.3.7 It was noted that in February 2004 MEMAC had provided the 1992 Fund with a sample of Iraq (Basrah) crude oil from an export tank of the Al-Baker oil terminal in Iraq and that this sample had subsequently been analysed by ERT (Scotland) Ltd, which had found that the 'fingerprints' of the pollution samples gave a very good match with the sample of Iraq (Basrah crude). It was also noted that the laboratory had concluded that the oil residues collected from the north coast of Bahrain on 20 and 24 March 2003 were consistent with what would be expected for Basrah crude which had been exposed to natural weathering processes for a period of several days.

3.3.8 The Committee noted that MEMAC had obtained satellite imagery (visible waveband) from the United States National Oceanic and Atmospheric Agency. The Committee also noted that the

imagery of 14 March 2003 had shown the oil to the north of Bahrain covering an area of some 50 square miles indicating that the oil had been spilled some days prior to 14 March. It was noted that the area had been covered in cloud between 6 and 13 March 2003 and so no satellite imagery had been available for that period and that although 5 March had been cloud free, there was no evidence of any oil on the water at that time. The Committee noted that MEMAC had concluded that the oil must have been released after 5 March and a few days before 14 March 2003.

3.3.9 The Committee noted that MEMAC had run its oil slick trajectory model in reverse from the reported position of the oil on 15 March using local wind and current data and that this had given a good correlation with the observed position of the oil from the satellite image on 14 March. The Committee also noted that further hind casting of the slick trajectory had indicated that the oil had most probably been spilled on or around 8 March 2003 in the vicinity of the anchorage of the Al Ju'aymah oil terminal off the coast of Saudi Arabia.

3.3.10 The Committee noted that despite intensive enquiries, MEMAC had been unable to identify any particular vessel as the source of the oil. It was also noted that the operators of the Al Ju'aymah oil terminal had stated that no tanker had visited the terminal with a part load of Iraq oil under the United Nations 'Oil for Food' programme during the relevant period.

3.3.11 It was noted that MEMAC had conducted further trajectory analyses for potential fixed sources of oil to the north of Bahrain to establish whether oil spills emanating from any of these sources could have impacted the coast of Bahrain under the prevailing wind and current conditions. The Committee noted that potential sources had been identified as the Al Ju'aymah and Ras Tannurah oil terminals in Saudi Arabia, the Saudi-Bahrain oil pipeline, the Abu Saafah offshore oilfield and pipeline, the Zuluf, Houyt and Marjan offshore oil fields and the Al-Baker oil terminal in Iraq. The Committee also noted that the trajectory analyses had indicated that oil spilled from the two oil terminals in Saudi Arabia or the Zuluf, Houyt and Marjan offshore oil fields would have only impacted that country's coastline and that oil from the Saudi-Bahrain pipeline would have only impacted the west coast of Bahrain. The Committee further noted that the predicted trajectories had shown that oil spilled from the Abu Saafah oil field would not have reached Bahrain, although oil released from the pipeline could have impacted its coast. The Committee noted, however, that the satellite image obtained for 14 March 2003 had showed the oil to the north of the pipeline, and that since the winds had been constantly blowing from the north during the period of concern, MEMAC had concluded that the pipeline could not have been the source. The Committee noted that the trajectory analyses had also indicated that oil released from the Al-Baker terminal would have stranded on the coast of Kuwait.

3.3.12 The Committee recalled that at its October 2002 session the Executive Committee had endorsed the interpretation of the 1992 Fund Convention by the Director that the Convention applied to spills of persistent oil even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 Fund Convention (document 92FUND/EXC.18/14, paragraph 3.12.13).

3.3.13 The Committee noted that on the basis of the chemical analyses undertaken by ERT (Scotland) Ltd of the pollution samples collected from the coast of Bahrain and the reference sample obtained from the export terminal at Al-Baker, Iraq, the Director was of the view that it was highly likely that the polluting oil was Iraq (Basrah) crude oil. The Committee also noted that on the basis of the satellite imagery and the trajectory analyses carried out by MEMAC, the Director considered it unlikely that the source of the pollution was an offshore oil field, sub sea pipeline or oil terminal and that although the Al-Baker oil terminal was a potential source of pollution by Iraq (Basrah) crude oil, the trajectory analyses had indicated that oil released from the terminal would have impacted the coast of Kuwait. It was noted that the distance between the Al-Baker terminal and the north coast of Bahrain was some 500 km, and that if the prevailing winds had prevented the oil going ashore on the coast of Kuwait, trajectory analyses

had indicated that the oil would have taken some 13 days to reach the north coast of Bahrain. It was noted, however, that the chemical analyses of the pollution samples had indicated that the oil was relatively un-weathered, such that it could not have been exposed to the elements for such a long period of time.

3.3.14 The Committee noted that in light of the above evidence the Director was satisfied that the source of the pollution was a ship carrying oil in bulk as cargo engaged either in the transport of Iraq crude oil under the United Nations 'Oil for Food' programme or illegal oil smuggling operations. The Committee also noted that the Director therefore considered that claims for pollution damage arising from this incident were covered by the 1992 Conventions, and that in the absence of the identity of a specific vessel as the source, the 1992 Fund was liable to pay compensation.

3.3.15 A large number of delegations that intervened expressed the view that the evidence pointed overwhelmingly to the source of the pollution having been a 'ship' as defined in the 1992 Conventions and expressed their appreciation for the systematic way in which the authorities in Bahrain had carried out their investigations.

3.3.16 The Executive Committee decided that the claims arising from the incident were covered by the 1992 Fund Convention and that the claims by the Bahrain authorities were admissible in principle.

Claims for compensation

3.3.17 The Executive Committee noted that in April 2004 the 1992 Fund had received claims totalling US$586 000 (£325 000) from a number of government agencies and BAPCO in respect of clean-up costs that they had incurred as a result of the incident. It was also noted that claims totalling US$704 000 (£390 000) had been submitted by the Directorate of Marine Resources on behalf of 259 fishermen in respect of property damage and loss of income from fishing. It was further noted that the Fund had not yet arranged for these claims to be assessed pending the Committee's decision as regards the liability of the 1992 Fund in respect of this incident.

4 Any other business

Identification of individual claimants

4.1 The Committee recalled that at its February 2004 session one delegation had asked why the names of the claimants had not been given in a document relating to the *Erika* incident and what the Fund's policy was regarding the naming of claimants. It was recalled that the Director had been instructed to present a document on this issue (document 92FUND/EXC.24/8, paragraph 3.1.32).

4.2 The Executive Committee took note of the information contained in document 92FUND/EXC.25/5 submitted by the Director.

4.3 It was noted that when Governments or other public authorities presented claims, the claimant was normally identified in the documents presented to the Executive Committee. It was also noted that the Director considered it necessary, in certain cases, to identify other claimants in order to enable the Committee to make a meaningful assessment of the admissibility of the claims. It was further noted that in some cases the general public knew the identity of the claimant in any event, and that the claimant would then probably have no objection to his identity being revealed in Fund documents. It was noted, however, that the Director believed in general that most claimants, in particular individuals and small businesses, would prefer their identities not to be revealed in Fund documents, which were circulated widely and were available to the general public on the IOPC Funds' Document Server.

4.4 The Committee decided that the Funds should continue to follow past practice and that a flexible approach on this issue was required in the light of the circumstances of each claimant.

HNS Convention

4.5 The Chairman referred to a meeting on the HNS Convention that had taken place in Barcelona (Spain) during the week of 17 May 2004. He expressed his appreciation to OCIMF which had arranged the meeting in cooperation with other organisations, which had been intended primarily for the chemical and oil industries that would be contributors to the HNS Fund. The Chairman also thanked Mr John Wren (United Kingdom) who had chaired the meeting and the Director and the IOPC Fund Secretariat for their valuable participation in the meeting.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.25/WP.1, was adopted, subject to certain amendments.