



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
26th session
Agenda item 3

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INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN SWEDEN

Note by the Director

Summary:

Several Swedish islands in the Baltic Sea were polluted in September 2000. Subsequent investigations by the Swedish authorities indicated that the oil could have been discharged from the tanker *Alambra* during a ballast voyage to Tallinn, Estonia. The owner of the *Alambra* and his insurer maintain that the oil did not originate from that ship.

The Swedish Government has taken legal action against the shipowner and the insurer claiming compensation for clean-up costs totalling SEK5.2 million (£405 000). The Government has also taken legal action against the 1992 Fund maintaining that the Fund would be liable to compensate the Swedish Government if neither the shipowner nor his insurer were held liable to pay compensation. The shipowner and his insurer have submitted scientific evidence, which in their view shows that the pollution could not have originated from the *Alambra*. The Swedish authorities have also submitted scientific evidence, which, in the Director's view, demonstrates that the *Alambra* was most likely the source of the pollution.

Action to be taken:

Give instructions in respect of the legal action against the 1992 Fund

1 The incident

- 1.1 Between 22 September and early October 2000 persistent oil landed on the shores of Fårö and Gotska Sandön, two islands to the north of Gotland in the Baltic Sea, and thereafter on several islands in the Stockholm archipelago. The Swedish Coastguard, the Swedish Rescue Service Agency and local authorities undertook clean-up operations, which resulted in the collection of some 20 m³ of oil from the sea and from shore.
- 1.2 Investigations by the Swedish authorities indicated that the oil could have been discharged within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn (Estonia). According to the Coastguard, analyses of oil samples from the polluted islands match those of samples taken from the *Alambra*.
- 1.3 The *Alambra* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club). The shipowner and the London Club maintained that the oil did not originate from the *Alambra*.

- 1.4 The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£27.6 million).

2 Claims for compensation

- 2.1 The Coastguard incurred costs in respect of clean-up operations totalling SEK1.1 million (£83 000). The Rescue Service Agency, together with local authorities, incurred clean-up costs totalling SEK4.1 million (£310 000). The aggregate amount of the claims would therefore fall well below the limitation amount applicable to the *Alambra*.
- 2.2 The Swedish authorities informed the Director that they intended to submit their claims for compensation to the owner. The authorities further indicated that in the event that they were to be unsuccessful in receiving compensation from the shipowner, they would consider claiming against the 1992 Fund. However, in order to be able to obtain compensation from the 1992 Fund in these circumstances, the authorities would have to prove that the damage resulted from an incident involving a ship as defined in the 1992 Civil Liability Convention.
- 2.3 The Swedish authorities have made available to the 1992 Fund the results of an analysis carried out by the Swedish Forensic Laboratory of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands. The Director examined the results of the analyses and concurred with the conclusion of the authorities that the pollution samples match closely those taken from the *Alambra*.

3 Imposition of fine on the shipowner

- 3.1 The Swedish Coastguard imposed a water pollution fine of SEK439 000 (£34 000) on the owner of the *Alambra* under the 1980 Act on Measures Against Pollution from Ships.
- 3.2 The shipowner appealed against this decision to the Stockholm District Court. The owner requested that the District Court should annul the Coastguard's decision on the grounds that the Swedish authorities did not have jurisdiction to impose a water fine in this case, since the alleged discharge was made by a foreign vessel and took place in the Swedish Exclusive Economic Zone (EEZ) and the fine was imposed after the *Alambra* had left that zone. The owner requested subsidiarily that the case should be dismissed since there had been no discharge of oil from the *Alambra*.
- 3.3 In a decision rendered on 31 July 2002 the District Court considered the first ground invoked by the shipowner, namely that the case should be dismissed on the grounds that the Swedish authorities did not have jurisdiction to impose a water fine in respect of the discharge in question. The District Court rejected the shipowner's request for dismissal on this ground.
- 3.4 In September 2002 the Stockholm Court of Appeal upheld the District Court's decision. The shipowner lodged an appeal against this decision and in May 2003 the Supreme Court granted the shipowner the right to bring the matter before it.
- 3.5 The Supreme Court has ruled that the Swedish Coast Guard has jurisdiction to impose a water pollution fine on a foreign flag vessel causing pollution in the Swedish EEZ, and that this would be the case even if the vessel in question had not been boarded or detained in the Swedish EEZ or Swedish territorial waters. The Supreme Court further ruled that the exercise of such jurisdiction was not in conflict with Sweden's international obligations.

4 Legal actions against the shipowner/Club and the Fund

- 4.1 On 19 September 2003 the Swedish Government took legal action in the Stockholm District Court against the shipowner and the London Club maintaining that the oil in question originated from the *Alambra* and claiming compensation of SEK5 260 364 (£405 000) for clean-up costs. The Government also took legal action against the 1992 Fund as a protective measure to prevent its

claim against the Fund becoming time barred. The Government invoked the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the London Club were to be held liable to pay compensation.

- 4.2 The 1992 Fund submitted its response to the Court in October 2003 requesting that the action against the Fund should be suspended until the final judgement had been rendered in respect of the action against the shipowner and his insurer. The Fund informed the Court that it shared the Swedish Government's view that the oil pollution originated from the *Alambra*.
- 4.3 The District Court decided that the action against the Fund should be suspended until the action against the shipowner/London Club had been heard.
- 4.4 The shipowner and the London Club have submitted pleadings in which they reject the Government's claim, maintaining that no evidence has been provided showing that the oil that polluted the islands originated from the *Alambra*. They submitted evidence from experts from Heriot Watt University and AEA Technology in the United Kingdom who had carried out a comparative analysis of the oil samples taken from the Swedish coast and from the *Alambra*. The experts expressed the view that the conclusion by the Swedish Forensic Laboratory that the samples taken from the vessel corresponded to those taken from the Swedish Court was erroneous. The experts argued that the pollution and ship samples showed differences in the relative distribution of a group of polynuclear aromatic hydrocarbons (PAHs) and that the ship samples contained a group of PAHs characteristic of fuel oil, which was not found in the pollution samples. The experts concluded that the pollution samples had the characteristics of crude oil whereas the ship samples were more typical of a mixture of crude oil and fuel oil.
- 4.5 The Swedish authorities have argued that the pollution samples and the ship samples are very similar as regards the distribution of PAHs and that the absence of the PAH characteristic of fuel oil in the pollution samples could be explained by weathering of the oil after it had been discharged. The authorities have further pointed out that if the pollution samples had been crude oil and the ship samples had been a mixture of both crude oil and fuel oil, there would have been many more, and marked, differences between the oils than those demonstrated by the analysis.
- 4.6 The Director has examined the evidence presented by the shipowner/London Club and the Swedish authorities. He considers that the differences in the hydrocarbon profiles of the pollution and ship samples were very slight and were probably due to methodological and instrumental fluctuations rather than being indicative of differences in the samples. The Director also considers that the hydrocarbon profiles of both the pollution and ship samples strongly suggest that they are crude oil rather than fuel oil. His overall conclusion is that there are no grounds to disagree with the findings of the Swedish authorities that the pollution samples originated from the *Alambra*.

5 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions in respect of this incident as it may deem appropriate.
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