



INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN ARGENTINA

Note by the Director

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| Objective of document: | To inform the Executive Committee of the developments regarding the incident that took place in Argentina in December 2007 which may involve the 1992 Fund. |
| Summary of the incident so far: | <p>A significant quantity of oil impacted the shoreline in Caleta Córdoba, Chubut province, Argentina, on 26 December 2007.</p> <p>A total of 5.7 kilometres of coast is reported to have been affected. Clean-up operations on the shoreline were undertaken by local contractors under the supervision of the provincial government.</p> <p>Claims are expected for clean-up costs, losses in the fisheries and tourism sectors and for environmental damage.</p> <p>An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia (Argentina). The <i>Presidente Illia</i>, that had been loading oil at a loading buoy off Caleta Córdoba, was detained and an inspection of the ship by the maritime authorities (Prefectura Naval) revealed a fault in its ballast system. An inspection in the port of discharge also revealed that there were residues of crude oil in three ballast tanks.</p> <p>The owner of the <i>Presidente Illia</i> and its insurer contest liability and argue that the oil which impacted the coast must have come from another source.</p> |
| Recent developments: | <p>The Criminal Court in Comodoro Rivadavia has reached a preliminary decision that the spill originated from the <i>Presidente Illia</i>. The shipowner has appealed against this decision.</p> <p>The limit of liability of the owner of the <i>Presidente Illia</i> under the 1992 Civil Liability Convention is estimated to be 24 067 845 SDR (£20.8 million) ^{<1>} and it seems likely that the total admissible damage caused by the spill will be within the shipowner's limit.</p> <p>The shipowner and its insurer maintain that the <i>Presidente Illia</i> did not cause</p> |

^{<1>} The conversion of currencies has been made on the basis of the exchange rate as at 12 September 2008 (1 SDR = £ 0.8657, 1 US\$ = £0.5600, 1 AR\$ = £0.1818).

the spill that impacted the coast. If they were successful in their appeal against the Court's decision, but it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

A claim for compensation has been submitted by Chubut Province against the master and the owner of the *Presidente Illia*. The claim, which has not been quantified, is for compensation for the damage caused by the incident including damage to the environment. The shipowner has submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

Action to be taken:

Information to be noted.

1 Summary of incident

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| Ship | The Criminal Court in Comodoro Rivadavia has reached a preliminary decision that the spill originated from the <i>Presidente Umberto Arturo Illia (Presidente Illia)</i> |
| Date of incident | 25/26.12.2007 |
| Place of incident | Argentina |
| Cause of incident | Technical failure during deballasting |
| Quantity of oil spilled | Between 50 to 200 tonnes of crude oil |
| Area affected | Caleta Córdoba, Chubut Province (Argentina) |
| Flag State of ship | Argentina |
| Gross tonnage (GT) | 35 995 GT |
| P&I insurer | West of England Ship Owners Mutual Insurance Association (Luxemburg) (West of England Club) |
| CLC Limit | 24 067 845 SDR (£20.8 million) |
| STOPIA/TOPIA applicable | No |
| CLC and FC Limit | 203 million SDR (£175.7 million) |
| Claims for compensation so far | One claim for compensation, which has not been quantified, for damage caused by the incident including damage to the environment was submitted to the Court in Comodoro Rivadavia |
| Note | The owner of the <i>Presidente Illia</i> and its insurer deny liability for the spill and the shipowner has requested the Court to bring the 1992 Fund into the proceedings. If they were successful in their appeal against the Court's decision, and it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset. |

2 Impact of the spill

- 2.1 Following reports of oil at sea on 26 December 2007 the Argentinean authorities (Defensa Civil and Prefectura Naval) undertook overflights of the coastal area off Caleta Córdoba, Chubut Province, (see maps in Annexes I and II) and reported a slick covering about 14 km² and estimated to contain about 50-200 tonnes of crude oil.
- 2.2 Later the same day, a significant quantity of oil stranded over a total of about 5.7 kilometres of the shoreline of Caleta Córdoba, of which about 1.5 kilometres was heavily oiled.
- 2.3 Some animal welfare and environmental associations, together with some 250 volunteers, undertook bird rescue and rehabilitation. A bird recovery centre was set up in an abandoned poultry farm. Some 400 birds are reported to have died as a result of the spill.
- 2.4 The local fishing activities were disrupted, although it is understood that the operator of the loading buoy arranged the transport of the subsistence fishermen to alternative sites further along the coastline to continue their fishing operations. It is expected that there will be economic losses in the fisheries sector.
- 2.5 The area affected by the spill is used for recreational purposes and therefore it is expected that there will also be losses in the tourism sector.
- 2.6 A crisis Committee was established shortly after the incident, comprising local, provincial and federal authorities, fishermen, affected persons, and the operator of the loading buoy. The Crisis Committee recommended that a risk assessment be conducted to establish the social and

environmental consequences of the incident and to make recommendations on any remediation measures needed.

3 Clean-up operations

- 3.1 Clean-up operations on the shoreline were undertaken from 27 December 2007 to 22 February 2008 by local contractors under the supervision of the local government.
- 3.2 Clean up was concentrated on the 1.5 kilometres of coastline most heavily oiled and involved the removal of some beach substrate. Local environmental scientists advised against this measure and less intrusive methods of clean up were used thereafter.
- 3.3 Approximately 160 m³ of oily water and 900 m³ of oily debris were collected during the clean-up operations.

4 1992 Civil Liability and Fund Conventions

- 4.1.1 Argentina is party to the 1992 Civil Liability (1992 CLC) and Fund Conventions. The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 067 845 SDR (£20.8 million).
- 4.2 The *Presidente Illia* was insured for pollution liabilities with the West of England Ship Owners Mutual Insurance Association (Luxemburg) (West of England Club).

5 Investigations into the cause of the incident

- 5.1 Soon after the spill the Prefectura Naval (maritime authorities) started an investigation into the incident. The maritime authorities inspected the *Presidente Illia* both in Caleta Córdoba and, in the port of discharge, Campana. These inspections have revealed a fault in the ballast system and that there were residues of crude oil in three ballast tanks.
- 5.2 A number of other vessels in the area were inspected by the maritime authorities but all were allowed to continue on their passage.

6 Legal proceedings

- 6.1 The 1992 Fund has appointed an Argentinean lawyer to follow the legal proceedings initiated in Argentina as a result of this incident.
- 6.2 An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia. Following a court order, the *Presidente Illia* was detained in Campana in January 2008. The ship remains under detention. An inspection of the ship revealed a leak in the ballast line passing through N°1 Centre cargo tank. In a second inspection residues of crude oil were found in three ballast tanks. The Court investigated in particular the role of the shipowner's representative (superintendente), the master and several other officers of the *Presidente Illia*, the operator of the loading buoy and the inspector of the cargo.
- 6.3 In March 2008 the Criminal Court rendered a preliminary decision that names the shipowner's representative (superintendente), the master and several other officers of the *Presidente Illia*, as parties responsible for the incident.
- 6.4 The Court considered that whilst the *Presidente Illia* was loading Escalante crude oil on 25 and 26 December 2007 at a loading buoy off Caleta Córdoba, an unknown quantity of the oil that was being loaded had entered the ballast system due to a fault in the ballast line, and had subsequently been spilled emulsified with water during the deballasting process.

- 6.5 The conclusions of the Court are supported by chemical analyses which show that remains of hydrocarbons were found in the ballast pipes as well as in the pump of segregated ballast from the *Presidente Illia*, and that these remains matched the Escalante type oil loaded at the loading buoy, and were also substantially similar to the samples taken on the shore in Caleta Córdoba. When the authorities carried out their inspection and took samples upon the vessel's arrival at the port of discharge, they observed the dripping of hydrocarbon coming from the ballast-discharging pipe. Moreover, according to the entries made in the relevant reports by the cargo inspector upon loading as well as upon discharge, there were substantial differences in the volume of the cargo onboard.
- 6.6 The accused parties have appealed.
- 6.7 The shipowner and the insurer maintain that the *Presidente Illia* was unlikely to have caused the damage. They argue that any spill caused by the *Presidente Illia* was very minor and highly unlikely to have reached the coast and that the oil that reached the coast must therefore have come from another source. The shipowner and the insurer also argue that anonymous oil spills are frequent in Caleta Córdoba and question the validity of the analysis carried out by the laboratory appointed by the Court.

7 Claims for compensation in Court

- 7.1 Shortly after the spill the province of Chubut submitted a request for security for US\$50 million (£28 million) to the Criminal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.
- 7.2 The province of Chubut has also submitted a claim in the Court of Comodoro Rivadavia for compensation for the damage caused by the incident, including damage to the environment. The claim has not been quantified. The shipowner has submitted points of defence denying its liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

8 Expected claims

- 8.1 The costs of the clean-up operations are estimated at US\$ 1 250 000 (£700 000). The costs of the birds rescue and recovery operation are estimated at US\$1 300 000 (£728 000).
- 8.2 Several mollusc gatherers and artisanal fishermen have received subsidies from a Council during a period of about three or four months, when all fishing activities were prohibited.
- 8.3 Thirty-two inhabitants of the area have been admitted as complainants. It is expected that they will also claim damages at a later stage.
- 8.4 An artisanal fisherman has also indicated that he will claim for economic losses during the fishing ban.
- 8.5 The affected area is used for local tourism and sport fishing, and there are small restaurants. Thus, further claims for losses can be expected.

9 Director's considerations

- 9.1 The Secretariat was informed about this incident in May 2008 and has since been following the investigations into the cause of the incident carried out by the Criminal Court of Comodoro Rivadavia. The Secretariat has learnt that the preliminary decision by that Court point to the *Presidente Illia* as the origin of the pollution.
- 9.2 The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 067 845 SDR (£20.8 million) and although the admissible quantum of the damages as a result of the incident is still uncertain, according to the initial estimates it is likely that the total amount of the

damage will be within the shipowner's limit, in which case the 1992 Fund would not be called upon to pay compensation.

- 9.3 The shipowner and its insurer, however, maintain that the *Presidente Illia* did not cause the spill that impacted the coast and has appealed against the Court's decision. If they were successful in their appeal, but it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.
- 9.4 The Secretariat, through the 1992 Fund's Argentinean lawyer, is following the developments with regard to this incident and will report to the Executive Committee at its next session.

10 Action to be taken by the Executive Committee

The 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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ANNEX I



ANNEX II

Coastal area off Caleta Córdoba, Chubut Province, Argentina

