



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
8th session
Agenda item 2

71FUND/AC.8/4
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INCIDENTS INVOLVING THE 1971 FUND

ALAMBRA

Note by the Director

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| Summary: | The Maltese tanker <i>Alambra</i> spilled oil in the Port of Muuga, Tallinn (Estonia). Claims totalling £3.5 million in respect of the costs of clean-up operations, economic losses and environmental damage have been presented to the shipowner. A number of claimants have commenced legal actions against the shipowner and his insurer, two of whom have notified the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. The question has arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention have been correctly implemented into Estonian law. |
| Action to be taken: | To consider the 1971 Fund's position on the question of the applicability of the Conventions under Estonian law. |

1 The incident

- 1.1 On 17 September 2000 the tanker *Alambra* (75 366 GRT), registered in Malta, was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia), when an alleged 250 tonnes of cargo escaped from a crack in the vessel's bottom plating.
- 1.2 The vessel remained alongside the berth until 28 September 2000 in order to minimise the spread of the oil whilst clean-up operations were undertaken.
- 1.3 The *Alambra* was subsequently detained by the Estonian authorities pending a decision by the Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel left Estonia for scrapping.
- 1.4 The *Alambra* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

2 Limitation of liability

- 2.1 Estonia is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 2.2 The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£6.6 million).

3 Claims for compensation

- 3.1 Claims for clean-up costs were submitted to the shipowner and the London Club by the Tallinn Port Authority for EEK 6.5 million (£250 000) and by the Estonian State for EEK 4 million (£156 000).
- 3.2 A claim for EEK 45.1 million (£1.8 million) is being pursued against the shipowner by the Estonian State. This amount, which has the character of a fine or charge, appears to have been calculated on the basis of the estimated quantity of oil spilled and cannot therefore be considered a claim for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 3.3 A claim for US\$100 000 (£69 000) is being pursued with the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.
- 3.4 The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident and a company contracted by the owner of the berth to carry out oil loading activities have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.1 million) and EEK 9.7 million (£379 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were undertaken.

4 Legal actions

- 4.1 In November 2001 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil loading operations took legal actions against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention.
- 4.2 Having been notified of the actions in February 2002, the 1971 Fund instructed lawyers in Estonia to represent the Fund in the proceedings.
- 4.3 In the context of these legal actions, the question has arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention have been correctly implemented into Estonian national law.
- 4.4 On 1 December 1992 Estonia deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the Secretary-General of the International Maritime Organization (IMO). As a result, the Conventions entered into force for Estonia on 1 March 1993.
- 4.5 The lawyers acting for the shipowner and the London Club, as well as the lawyers acting for the 1971 Fund, have however drawn attention to the fact that, under the Estonian Constitution, ratification of the Conventions should not have taken place before the Estonian Parliament had given its approval and adopted the necessary amendments to the national legislation. The Conventions were not submitted to Parliament and the necessary amendments to national law were not made. The Conventions have not been published in the Official Gazette. For these reasons the 1969 Civil Liability Convention did not, in the view of these lawyers, form part of national law and could not be applied by the Estonian courts.

- 4.6 The shipowner and the London Club have raised this issue in their pleadings in the court, as did the 1971 Fund in its submission to the court in order to protect its position, pending the Administrative Council's consideration of this matter.
- 4.7 The Director discussed the situation with the Estonian Ministries concerned on the occasion of a visit to Estonia in April 2002.
- 4.8 The Director makes the following analysis of the situation.
- 4.9 It appears that the procedure for ratification of international treaties laid down in the Estonian Constitution, which entered into force on 3 July 1992, has not been observed. It is possible, therefore, that the 1969 and 1971 Conventions would be considered by the Estonian courts as not forming part of Estonian law. It cannot be ruled out, however, that the courts might find that the Conventions are nevertheless applicable.
- 4.10 Since the purpose of the 1971 Fund is to compensate victims of oil pollution damage, the Fund should, in the Director's view, normally not take a formalistic approach in dealing with claims for compensation. For this reason he considers that, if the claims in the *Alambra* case were settled out of court, the issue of the non-applicability of the Conventions should not be raised by the Fund. However, in this case this issue has been raised by the shipowner and the London Club in the legal proceedings. If the courts were to hold that the claims against the shipowner and the Club cannot be pursued under the Conventions but only under other provisions in Estonian national law, the question arises as to the basis of the 1971 Fund's obligation to pay compensation.
- 4.11 The Director is pursuing discussions with the London Club for the purpose of reaching out-of-court settlements in respect of at least those claims which, in his view, fall within the scope of application of the Conventions.

5 Action to be taken by the Administrative Council

The Administrative Council is invited:

- (a) to take note of the information contained in this document; and
- (b) to consider the position to be taken by the 1971 Fund as regards the applicability of the 1969 Civil Liability Convention and the 1971 Fund Convention in Estonian domestic law.
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