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INCIDENTS INVOLVING THE IOPC FUND

AEGEAN SEA

Note by the Director

1 The Incident

1.1 Early in the morning of 3 December 1992, during a period of severe weather, the Greek OBO carrier AEGEAN SEA (57 801 GRT) ran aground while approaching La Coruña harbour in north-western Spain. All 32 crew members were rescued by helicopter after the grounding. The vessel was carrying approximately 80 000 tonnes of crude oil. The vessel broke in two and burnt fiercely for about 24 hours, whereafter the forward section sank some 50 metres from the coast. The stern section smouldered for several days but remained largely intact. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil were found in the aft section. This oil was removed by salvors working from the shore. It has been confirmed that no oil remains in the sunken forward section. Whilst the quantity of oil spilled is unknown, it appears that most of the cargo was either consumed by the fire on board the vessel or dispersed naturally in the sea.

1.2 Experts from the International Tanker Owners Pollution Federation Limited (ITOPF) were engaged by the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (the UK Club), and by the IOPC Fund, and they arrived in La Coruña in the afternoon of the day of the incident.

1.3 Due to the severe weather, little could be done to recover oil at sea but attempts were made to protect sensitive areas using booms deployed from ships and from the shore. However, as a result of the light nature of the oil cargo (Brent Blend Crude) and the vigorous wave action typical of the exposed coast, there was considerable natural dispersion of the oil slicks. The coast is predominantly rocky and heavily indented, with some very large estuaries. Several stretches of shoreline east and north-east of La Coruña were contaminated and Ria de Ferrol was heavily polluted.

1.4 In areas where access from the shore was possible, efforts were made to remove floating oil, using locally-available vacuum trucks, skimmers and pumps. A total quantity of about 5 000m³ of

oil/water mixture was collected and delivered to local oil reception facilities for processing. In general, the equipment available to the Spanish authorities was sufficient, but some additional specialised pumps and portable storage tanks were brought to La Coruña from France and the United Kingdom by the P & I insurer, after consultation with the IOPC Fund.

1.5 The cleaning of polluted beaches commenced in late December 1992. An estimated quantity of 1 200m³ of oiled sand and contaminated debris was removed. This material has been delivered to a contractor for final disposal.

1.6 In addition to the exposed beaches, the more sheltered Ria de Ferrol, which contains mudflats and saltmarshes, was also polluted. Given the sensitivity of the environment to physical damage, particular care had to be taken to select appropriate clean-up techniques. Work in the estuary, which was completed in July 1993, involved the manual removal of oily beach material and debris, and the washing of rocks and manmade surfaces. A total quantity of approximately 1 500 tonnes of material has been transported to a disposal contractor for treatment.

1.7 A comprehensive fishing ban was imposed from the outset in the affected area comprising near-shore waters and the shoreline between Sisargas Islands and Cabo Ortegal. The gathering of clams, cockles, sea urchins and goose barnacles, which are the species of greatest commercial importance, was prohibited. There is extensive raft cultivation of mussels in Ria de Betanzos, and although physical contamination of the rafts by oil was slight, tainting of mussels occurred. There are also other mariculture facilities in the area, namely turbot and salmon farms, and clam and mussel purification plants. The farms have been slightly affected by tainting, and the purification plants have been closed for several months. An expert from a French research organisation, the Centre de Documentation de Recherche et d'Experimentations sur les Pollutions Accidentelles des Eaux (CEDRE), is assisting ITOFF in its assessment of the impact on fisheries and aquaculture.

2 Claims Handling

2.1 The procedure for the handling of claims was discussed at an early stage between the Spanish authorities, the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, "the UK Club") and the IOPC Fund. On 25 January 1993, an Agreement was concluded between the Spanish Government, the Government of the Region of Galicia, the shipowner, the UK Club and the IOPC Fund, setting out the procedure for co-operation in the handling of claims.

2.2 The Spanish authorities have set up a public office in La Coruña which gives information to potential claimants concerning the procedure for presenting claims and hands out claims forms provided by the UK Club and the IOPC Fund to claimants.

2.3 After consultation with the Spanish Government and the Government of the Region of Galicia, the shipowner, the UK Club and the IOPC Fund have established a joint office in La Coruña which receives and handles claims for compensation. This office works closely with the Spanish authorities and the claimants in order to facilitate the handling of the claims.

3 Claims for Compensation

3.1 General Situation

3.1.1 As at 24 September 1993, 805 claims have been received by the Joint Claims Office totalling Pts 5 701 238 580 (£29.4 million). 366 claims have been approved for a total amount of Pts 62 657 474 (£322 200). Out of the approved claims, 291 have been paid for a total amount of Pts 24 699 260 (£127 000), whereas the cheques for the remaining approved claims are available at the Joint Claims Office for collection by the claimants. All payments have been made by the UK Club.

3.1.2 At its 35th session, the Executive Committee considered a number of claims arising out of the AEGEAN SEA incident. Some important decisions were taken at that session, whereas the Committee postponed its decision on certain claims (document FUND/EXC.35/10, paragraphs 3.3.3 – 3.3.25). The present document deals with these pending claims and with some important questions which have arisen since the 35th session. It also sets out the situation in respect of types of claims concerning which the Committee has already taken decisions.

3.2 Clean-up Operations and Preventive Measures

3.2.1 The Spanish Government, the Government of the Region of Galicia and some local authorities incurred costs for clean-up operations and preventive measures. The Government of the Region of Galicia has presented a claim which totals Pts 141 543 709 (£728 000). Four local authorities have presented claims totalling Pts 740 247 062 (£3.8 million). Preliminary discussions concerning these claims have been held with the respective authorities.

3.2.2 Both clean-up operations at sea and shoreline clean-up were carried out to some extent by contractors engaged by the authorities. It has been agreed that these contractors may submit claims in respect of these operations directly to the shipowner and the IOPC Fund. Claims have been received from 29 contractors, totalling Pts 1 099 313 818 (£5.7 million).

3.2.3 At its 35th session, the Executive Committee authorised the Director to make final settlements of all claims relating to clean-up operations and preventive measures carried out by the Spanish Government, the Region of Galicia, the City of La Coruña and private contractors (document FUND/EXC.35/10, paragraph 3.3.3). The claims are being examined by the IOPC Fund's experts, who have identified the need for further documentation. So far, no settlements have been made.

3.3 Damage to Property

3.3.1 As a result of the incident, a number of houses were contaminated by oil smoke. Yachts, fishing boats, fishing nets and lobster pots were also polluted.

3.3.2 At its 35th session, the Executive Committee authorised the Director to make final settlements of all claims in respect of costs incurred for cleaning contaminated houses and boats, as well as to make final settlements of all claims relating to other damage to property (document FUND/EXC.35/10, paragraph 3.3.4)

3.3.3 So far, 87 claims in respect of costs incurred for cleaning contaminated houses have been approved by the Director, pursuant to Internal Regulation 8.4.1, for a total amount of Pts 21 261 500 (£109 350).

3.3.4 A number of claims have been received in respect of contamination of yachts, motor launches and other boats. So far, 229 such claims have been approved by the Director for a total amount of Pts 5 002 200 (£25 700).

3.3.5 Ten claims totalling Pts 6 960 306 (£35 800) have also been submitted in respect of contamination of fishing nets and loss of lobster pots. The examination of these claims has not been completed, since the supporting documentation is insufficient.

3.4 Boat Fishermen and Shellfish Gatherers

3.4.1 The Fisheries Council of the Region of Galicia imposed restrictions on fishing in certain areas affected by the oil from the AEGEAN SEA. As the conditions have improved, these restrictions have been removed, and fishing in the area is back to normal. The fishing restrictions have affected over 3 000 fishermen, including shellfish harvesters.

3.4.2 Only individuals who have obtained licences may carry out fishing and shellfish gathering in the area. The licences are granted by the Government of the Region of Galicia to the fishermen's unions, the "Cofradías", which then grant licences to individual fishermen. The fishermen and shellfish gatherers in the area belong to 13 Cofradías.

3.4.3 Representatives of the Cofradías have indicated that they intend to submit claims for compensation in the region of Pts 1 843 million (£9.5 million) in respect of fishermen and Pts 2 805 million (£14.4 million) in respect of the shellfish harvesters. One Cofradía has now submitted two formal claims, one relating to fishermen for Pts 166 392 000 (£855 700) and another relating to 303 shellfish harvesters for Pts 2 326 030 000 (£12 million).

3.4.4 At its 35th session, the Executive Committee authorised the Director to make final settlements of all claims for compensation submitted by fishermen and shellfish gatherers relating to loss of income as a result of the contamination caused by the AEGEAN SEA incident, provided that this authorization did not extend to losses which might be suffered in the future (document FUND/EXC.35/10, paragraph 3.3.5).

3.4.5 The IOPC Fund's experts are discussing with the lawyer representing these claimants the method to be used for assessing the losses actually suffered. It has been agreed that negotiations should be carried out with the Cofradías rather than with the individual fishermen or shellfish collectors, in order to facilitate prompt settlements. Little documentation in support of claims have been submitted so far. The claimants have been invited to present additional supporting documentation.

3.4.6 The Cofradías have indicated their intention to claim compensation in the region of Pts 209 million (£1.1 million), relating to extra costs incurred by them, the extra work of their staff in December 1992 and January 1993 and lost fees from their members. The amount claimed for lost fees has been calculated on the basis of the value of sales allegedly lost by their members. The IOPC Fund's experts consider that there may be an element of duplication between lost membership fees and the claims for lost income referred to in paragraphs 3.4.3 and 3.4.4. above.

3.4.7 Ninety-eight claims in the amount of Pts 79 743 137 (£410 100) have been submitted by individual fishermen and shellfish gatherers. These claims are being examined by the IOPC Fund's experts.

3.4.8 It should be noted that many of these claimants seem to carry out their activities without holding a valid license for this purpose. The Executive Committee may want to consider whether the IOPC Fund should, as a matter of principle, accept claims from unlicensed fishermen.

3.4.9 It should be emphasised that all claimants will have to quantify the loss sustained. It has been alleged that fishermen and shellfish collectors may suffer losses in coming years as a result of the incident. It is obvious that it may be difficult to assess the quantum of such losses.

3.4.10 The Region of Galicia has presented three claims, totalling Pts 438 383 000 (£2.3 million), in respect of economic assistance given to fishermen and shellfish harvesters.

3.5 On-Land Fish Farms and Purification Plants

3.5.1 In the area affected by the AEGEAN SEA incident there are three on-land fish farms cultivating salmon and turbot. In addition, four purification plants used to deplete shellfish such as mussels, cockles, clams and oysters were affected. The activities of these farms and purification plants are subject to control by the Government of the Region of Galicia.

3.5.2 The farms and plants are supplied with seawater pumped through sub-surface water intakes. The contamination of the water led to an interruption of the activities of these on-land fish farms and purification plants, resulting in economic loss. One purification plant remains closed, whereas on-land fish farms and the other purification plants were reopened in the period 12 February - 20 August 1993.

3.5.3 At its 35th session, the Executive Committee took the view that the losses suffered by the operators of these on-land fish farms and purification plants should be considered as "damage caused by contamination" and that claims in respect of economic loss suffered by these operators were therefore in principle admissible for compensation under the Civil Liability Convention and the Fund Convention. The Committee authorised the Director to make final settlements of all claims of this kind (document FUND/EXC.35/10, paragraph 3.3.6). So far, no claims for compensation have been received in respect of these installations.

3.6 Near-Shore Aquaculture

3.6.1 In the area affected by the spill, there is an important aquaculture industry concentrated in the Sada-Lorbé area, cultivating mussels, salmon, oysters and scallops. The cultivation of mussels is the most important activity, representing more than 80% of the total harvest value in the area. It is understood that a number of persons have suffered economic loss as a result of the effects of the AEGEAN SEA incident on their aquaculture activities.

3.6.2 The mussels are cultivated on ropes of a length of some 10-15 metres hanging from floating rafts. There are about 111 licensed rafts in the affected area, and each of them supports some 500 ropes. The mussels cultivated on each raft vary in size, since there are several seeding periods in a year and up to four different size categories can be recognised at any one time. Harvesting takes place almost continuously. Oysters and scallops are also cultivated on rafts, while salmon is farmed in cages.

3.6.3 It appears that there are also 18 unlicensed mussel rafts in the area. If the operators of these rafts were to submit claims, the same problem would arise as in respect of the unlicensed fishermen referred to in paragraph 3.4.8 above.

3.6.4 In a Resolution issued on 12 April 1993 by the Fisheries Council of the Region of Galicia, it is stated that all cultivated produce within the Sada-Lorbé area should be destroyed.

3.6.5 The experts engaged by the IOPC Fund, the shipowner and the UK Club held discussions at an early stage with the competent authorities concerning the situation in respect of the aquaculture products in the affected area. The experts did not consider that it was justified to carry out a total destruction of these products. However, it was accepted by the IOPC Fund's experts on 16 April 1993 that, with the optimum time for the first of the 1993 mussel seeding drawing near, it was necessary to take steps to limit the consequences of the incident for future production. On the strength of the test results available at that time, which showed that the mussels were still tainted, the experts acknowledged the justification for a sufficient quantity of the largest commercially harvestable size mussels being destroyed to make space for the first of the 1993 mussel seed intake due by May/June 1993. Such a partial destruction was, however, not carried out. On the other hand, the experts considered it premature to destroy smaller mussels covered by the above-mentioned Resolution, or to destroy salmon, oysters and scallops, in view of the possibility of taint being removed by a process of natural depuration.

3.6.6 The Resolution was put into effect on 9 August 1993. Mussels and later also some salmon, oysters and scallops were lifted from the rafts and cages, carried ashore by boat and transported by road to a dumping site at an inland quarry. The destruction was completed by 24 September, with the exception of reference areas which were deliberately set aside at the request of the UK Club and the IOPC Fund for the purpose of monitoring depuration, growth and maturation.

3.6.7 At its 35th session, the Committee took the position that claims for economic loss suffered by persons carrying out aquaculture in the area affected by the AEGEAN SEA incident cultivating mussels, salmon, oysters and scallops were in principle admissible (document FUND/EXC.35/10, paragraph 3.3.7).

3.6.8 The Director informed the Committee at its 35th session that, in his discussions with the Galician authorities, he had made it clear that the IOPC Fund would pay compensation for destroyed

produce only if and to the extent that the decision to carry out such destruction was justified on the basis of scientific and other evidence available. The Spanish delegation stated that the decision to destroy the produce referred to in paragraph 3.6.4 was based not only on the fact that both the large and small mussels were contaminated but also on the facts that mussels were falling off the ropes on which they were cultivated and that it would in any event be difficult to market the produce.

3.6.9 The Executive Committee considered, at its 35th session, the general question as to the position to be taken by the IOPC Fund in respect of claims for compensation based on the destruction of fish or other marine products in accordance with orders issued by public authorities or in respect of claims relating to economic loss suffered as a result of Government decisions, such as the imposing of fishing bans or exclusion zones. The Committee took the view that in such cases the IOPC Fund would be liable to pay compensation only if and to the extent that the destruction of the produce was reasonable on the basis of scientific and other evidence available, taking into account, inter alia, whether or not the produce in question was contaminated, whether it was likely that the contamination would disappear before the normal harvest time, whether the retention of the produce in the water would prevent further production and whether it was likely that the produce would be marketable at the time of normal harvesting.

3.6.10 The Executive Committee authorised the Director to make final settlements of claims for compensation for economic loss suffered by persons conducting aquaculture in the area affected by the AEGEAN SEA incident if and to the extent that he was convinced that the destruction of the produce was reasonable on the basis of the criteria laid down in paragraph 3.6.9 above.

3.6.11 The Executive Committee invited the competent authorities in the Region of Galicia and the persons who intended to submit claims of the kind dealt with in paragraph 3.6.10 above to give the experts engaged by the shipowner, the UK Club and the IOPC Fund access to the aquaculture sites and to enable these experts to take any samples of the stock which they might find necessary, in order to facilitate the assessment of the claims for compensation. The Director was instructed to endeavour to keep alive a representative portion of the mussels and other species to be destroyed for the purpose of monitoring the evolution of tainting in order to enable the IOPC Fund to assess the extent of the contamination of the produce in the future.

3.6.12 After the 35th session of the Executive Committee, the need for scientific evidence to support the decision to destroy the aquaculture products was discussed between representatives of the Fisheries Council of Galicia and the Director at a meeting held in London in July 1993, and the Director and the IOPC Fund's experts also dealt with this matter in a number of written messages to the Council. On 6 August 1993, one of the IOPC Fund's experts was given the possibility of participating in a diving survey conducted in the affected area. In the view of this expert, a visual examination indicated that the mussels were in good condition, despite many months of neglect, and that they were firmly attached to their cultivation ropes. He has reported that when the mussels were opened and tasted, no oily taint was detected in raw mussel tissue. The expert found little evidence of mussels on the sea bed as reported in previous diving surveys conducted by the Fisheries Council biologists. In contrast, the salmon cages and the salmon contained therein were found to be in poor condition, but in the expert's view it was impossible to determine to what extent this was caused by oil pollution or by other factors.

3.6.13 The IOPC Fund's experts have attempted to monitor the destruction of the mussels commencing on 9 August 1993 and to seek justification for the decision to destroy the mussels. The additional tests carried out on 29 July 1993 on mussels are in their view inconclusive. In addition, these tests were not carried out as blind tests contrary to what was requested by the experts. No data has been made available on the status of the salmon. Some of the mussel cultivation ropes which have been left were tagged by the IOPC Fund experts, with the agreement of the Fisheries Council, so that the progress of the natural depuration of the mussels may be monitored.

3.6.14 The IOPC Fund, the shipowner and the UK Club have commissioned a Spanish consultancy group to investigate, through market analysis and interviews, whether seafood products once tainted by oil, but subsequently naturally purified, would be acceptable to wholesalers, purification plants,

processors and consumers. The consultants stated that the mussels in question are normally marketed in Galicia. The consultants concluded that no significant resistance would exist among domestic buyers if such products were put on the market, although the export market was likely to be sensitive.

3.6.15 The IOPC Fund's experts still maintain that, on the basis of the evidence available, there is not sufficient justification for the destruction of the produce in the affected area.

3.6.16 The aquaculture operators have informally indicated that their losses have been evaluated in August 1993 by the Fisheries Council at Pts 3 150 029 250 (£16.2 million), comprising losses in relation to sales of mussels, oysters, scallops and salmon for December 1992 to the end of 1995. So far no supporting documents have been presented. A preliminary examination by the IOPC Fund's experts indicate that there is no reason to assume any future losses. Nevertheless, the stock assessment carried out by the Fisheries Council in December 1992 and revised in August 1993 represents in the view of these experts a good reference document for damage assessment.

3.6.17 One mussel farmer has recently presented a claim for Pts 494 517 681 (£2.5 million) for loss of earnings. This claim is being examined.

3.7 Other Claims Considered by the Executive Committee at its 35th Session

Shops, Café, Bar

3.7.1 At its 35th session, the Executive Committee considered claims submitted by:

- (a) the owner of a fish shop in La Coruña relating to loss of profit resulting from an alleged reduction in the sale of fish and shellfish for the period December 1992 - February 1993;
- (b) the operator of a shop in La Coruña selling windsurfing equipment and fishing gear for loss of profit allegedly suffered as a result of the AEGEAN SEA incident during the period December 1992 - February 1993;
- (c) the operator of a beach shop, café and bar at a beach lightly polluted by the oil from the AEGEAN SEA for loss of profit due to a reduction in sales during the period December 1992 - March 1993.

3.7.2 In view of the Executive Committee's decision at its 34th session that claims relating to pure economic loss suffered by owners of certain shops and restaurants as a result of the HAVEN incident should be considered as admissible in principle, the Committee decided that the claims referred to in paragraph 3.7.1 above for losses allegedly suffered as a result of the AEGEAN SEA incident should in principle qualify for compensation to the extent that it was established that the losses were caused by the incident. The Committee authorised the Director to make final settlements of these claims.

3.7.3 These claims are being examined for the purpose of establishing the quantum of the alleged losses.

Self-Employed Fish Porters and Net Makers

3.7.4 The following claims were also examined by the Executive Committee at its 35th session:

- (a) claims by self-employed fish porters who normally carry boxes of fish ashore in a port in the area affected by the AEGEAN SEA incident for loss of income due to the fact that the quantity of fish landed in the port was reduced as a result of the incident;
- (b) claims for loss of income by self-employed net makers who carry out net repairs for fishermen who were prevented from fishing as a result of the fishing ban.

3.7.5 The Executive Committee took the view that the losses allegedly suffered by the two groups of self-employed claimants referred to in paragraph 3.7.4 above should be considered as damage caused by contamination, since the activities of the fish porters and the repairs carried out by the net makers were an integral part of the fishing activities in the polluted area. For this reason, the Committee decided that these claims should be accepted in principle and authorised the Director to make final settlements of these claims.

3.7.6 These claims are being examined for the purpose of establishing the quantum of the alleged losses.

Losses Suffered by Employees Made Redundant

3.7.7 At its 35th session, the Executive Committee considered a number of claims presented by persons who had been made redundant, some of them employed at purification plants and who were laid off because the fishing ban brought their respective employer's operations to a virtual halt, others employed at offshore mussel farms which were closed as a result of the incident, and one person working as a filleter of fish who was laid off allegedly due to a reduction in work at his employer's factory as a result of the incident.

3.7.8 The Executive Committee considered that the losses suffered by the employees were a more indirect result of the contamination than losses suffered by companies or self-employed persons, since the losses of the employees were the result of their employers being affected by the consequences of the spill and therefore having to reduce their workforce. Reference was also made to the fact that, although the Executive Committee at its 34th session had accepted claims for losses suffered by fish processing plants, the employees were one step further away from the contamination. For these reasons, the Committee took the view that the losses suffered by these employees could not be considered as damage caused by contamination and therefore did not fall within the definition of "pollution damage". The Committee decided therefore that the claims for losses suffered by these employees should be rejected. The claimants have been informed of the Committee's decision.

3.7.9 Some claimants have expressed their disappointment at the decision of the Executive Committee. The Director submits this matter to the Executive Committee for consideration.

3.8 Claims Pending from the Executive Committee's 35th Session

Car Repair Firm

3.8.1 The operator of a car repair firm located in the area closed off by the authorities in the period immediately following the incident has claimed compensation in respect of losses allegedly suffered as a result of eight days' loss of business.

3.8.2 At its 35th session, the Executive Committee questioned whether the alleged losses could be considered as damage caused by preventive measures, since the main purpose of the closure of the area was not established, ie whether for preventing pollution or facilitating clean-up operations or for other reasons. The Director was instructed to examine this claim further.

3.8.3 It appears that the closure of the area was decided upon by the authorities in order to secure that preventive measures, clean-up operations and other activities in connection with the grounding of the AEGEAN SEA would not be obstructed by the general public. The losses allegedly suffered by the claimant could therefore, in the view of the Director, be considered as damage caused by preventive measures. For this reason, the Director takes the view that the operator of the car repair firm should in principle be entitled to compensation for any substantiated loss of earnings during the above-mentioned eight day closure.

Ship Agencies

3.8.4 Five ship agencies have claimed compensation for losses totalling Pts 2 714 875 (£15 340) allegedly suffered as a result of the AEGEAN SEA incident, which allegedly led to vessels which had been booked for entry into the port of La Coruña being diverted because the port of La Coruña was closed.

3.8.5 The losses allegedly suffered by the ship agencies are not a direct result of contamination but are an indirect result of the ships in question being diverted from the port of La Coruña. For this reason, it can be questioned whether these losses can be considered as damage by contamination. It appears, however, that these losses are not a more indirect result of the incident than certain claims for losses suffered by the owners or operators of the shops, the café and the bar referred to in paragraph 3.7.1 above which were accepted in principle by the Committee at its 35th session. The Director considers, therefore, that these claims should in principle be accepted.

Loss of Hire

3.8.6 A claim has been submitted by a Swedish company, being time charterers of a vessel, for recovery of hire payments made to the shipowner, although the vessel could not be used since it was detained in La Coruña from 3 to 5 December 1993 as the port had been closed by the authorities.

3.8.7 A shipowner has claimed compensation for six days' loss of hire, due to the fact that the closure of the port of La Coruña prevented his ship, which was to be launched from a repair slip, from sailing.

3.8.8 The port of La Coruña was closed because of the oil spill. For this reason, the Director considers that the losses allegedly suffered by the time charterer and the shipowner referred to in paragraphs 3.8.6 and 3.8.7 should be considered as damage by contamination. He proposes therefore that these claims should in principle be accepted.

Oil Inspection Companies

3.8.9 Two oil inspection companies have lodged claims for loss of work on six tankers which were diverted to other ports due to the closure of the port of La Coruña. One of the claims includes loss of work on the AEGEAN SEA. These claims total Pts 1 691 605 (£8 700).

3.8.10 In the view of the Director, it is likely that quantities of oil corresponding to those on board the diverted ships would later be transported to the port of La Coruña on other ships, and the claimants would then inspect these cargoes. The Director considers, therefore, that these claimants have not shown that they have suffered any economic loss. For this reason, he proposes that these claims should be rejected.

Passenger Ferry Operator

3.8.11 An operator of a passenger ferry has alleged that, as a result of the oil pollution caused by the AEGEAN SEA incident, the service between Mugardos and Ferrol had to be suspended from 5 to 8 December 1992 when Mugardos harbour was severely oiled and that the service from the latter date to 15 December 1992 was irregular. He has also maintained that the number of passengers carried in January and February 1993 was lower than normal, since the journey by sea was unpleasant due to the oil spill. He has claimed compensation for the losses suffered as a result of this situation.

3.8.12 The Director considers the loss allegedly suffered by the ferry operator should be considered as damage by contamination to the extent that it was caused by the oil spill and that this claim should therefore be accepted in principle.

4 Limitation Proceedings

4.1 By decision of 30 December 1992, the Court in La Coruña ordered the shipowner to constitute a limitation fund, fixing the limitation amount at Pts 1 121 219 450 (£6.3 million). The Court has not taken any decision concerning the shipowner's right to limitation.

4.2 The limitation fund was constituted on 20 January 1993 by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

5 Investigations Into the Cause of the Incident

5.1 The Court in La Coruña is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Spanish Government is making an administrative enquiry to establish the cause of the grounding.

5.2 The IOPC Fund will be following these investigations through its Spanish lawyer and such technical experts as may become necessary.

6 Court Proceedings in La Coruña

6.1 On 31 August 1993, the Court in La Coruña seized with the criminal proceedings against the master of the AEGEAN SEA and the pilot in charge of its entry into the port of La Coruña rendered a decision which contained inter alia the following elements:

- (i) The master of the AEGEAN SEA and the pilot were ordered to provide guarantees within seven days of the order, the master for Pts 8 000 million (£40 million) and the pilot for Pts 4 000 million (£20 million).
- (ii) The UK Club and the IOPC Fund shall be liable, jointly and severally, with the master and the pilot within their respective legal limits. They were ordered to provide security for Pts 12 000 million (£60 million) within seven days. It was stated that if this security was not provided, the Court will arrest their property in accordance with the applicable provisions of the Code of Criminal Procedure.
- (iii) If the UK Club and IOPC Fund do not provide sufficient security, such security should be provided by the owner of the cargo (Repsol Petroleo SA) and the owner of the AEGEAN SEA (AEGEAN SEA Traders Corporation).

6.2 The IOPC Fund has appealed against this decision. The Fund has maintained that it does not have a direct liability under the Fund Convention since the IOPC Fund is liable only when the amounts actually paid under the Civil Liability Convention are insufficient to meet all claims in full. It has also argued that criminal proceedings are actions against individuals and that there is no link between the Fund and the accused persons, namely the master and the pilot.

6.3 The Court requested the parties to present defense pleadings on the merits of the claims for compensation. The IOPC Fund submitted such pleadings to the Court on 14 September 1993.

6.4 In its pleadings, the IOPC Fund has maintained that the pilot and the Military Commandant of the Port of La Coruña (Comandante Militar de Marina) are liable for the grounding. The Fund has argued that the pilot's liability is based on the fact that he ordered the master to enter the port of La Coruña at 2.00 am, in spite of the severe weather conditions and being aware that the weather could deteriorate further. In addition, in the Fund's view, the pilot is liable because he did not meet the ship at the designated pilot boarding station, in accordance with the applicable Pilot Regulations. As regards the Military Commandant of the Port, in the view of the Fund, his liability is based on the fact that he

was aware of an order prohibiting ships of the kind of the AEGEAN SEA from entering the port at that time of the night, at the prevailing state of the tide, and in such severe weather conditions.

6.5 So far claims totalling Pts 21 319 168 755 (£109 million) have been filed with the Court in the criminal proceedings. The IOPC Fund's lawyers and experts have not yet been able to make a detailed examination of the claims documents. It appears, however, that the claims presented to the Court to a large extent correspond to the claims presented to the Joint Claims Office in La Coruña, although there seems to be differences in respect of some claims. In addition, many of the claims submitted to the Court are partly duplications of other claims.

6.6 In its pleadings, the IOPC Fund has dealt in a provisional manner with the various claims and groups of claims submitted to the Court. The Fund generally maintained that most of the claims were not supported by sufficient documentation. It has also stated that the amounts claimed were, in respect of many claims, excessive. The Fund has argued that as regards many claims there was no link of causation between the oil pollution and the alleged damage.

6.7 The Court will in the near future decide on the procedure to be followed for its examination of the claims. The IOPC Fund's lawyer and experts are preparing detailed defence pleadings.

7 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in the present document;
 - (b) take note of the situation as regards claims relating to:
 - (i) clean-up operations and preventive measures (paragraph 3.2);
 - (ii) damage to property (paragraph 3.3);
 - (iii) boat fishermen and shellfish gatherers (paragraph 3.4);
 - (iv) on-land fish farms and purification plants (paragraph 3.5);
 - (v) near-shore aquaculture (paragraph 3.6);
 - (vi) other claims considered by the Executive Committee at its 35th session (paragraphs 3.7.1-3.7.9)
 - (c) give the Director such instructions as it may deem appropriate in respect of claims arising out of this incident, in particular claims relating to:
 - (i) car repair firm (paragraphs 3.8.1-3.8.3);
 - (ii) ship agencies (paragraphs 3.8.4-3.8.5);
 - (iii) loss of hire (paragraphs 3.8.6-3.8.8);
 - (iv) oil inspection companies (paragraphs 3.8.9-3.8.10);
 - (v) passenger ferry operator (paragraphs 3.8.11-3.8.12); and
 - (d) give the Director such instructions as it may deem appropriate in respect of the court proceedings in La Coruña (paragraph 6).
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