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COMPENSATION
FUND

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INCIDENTS INVOLVING THE IOPC FUND

AEGEAN SEA

Note by the Director

1 The Incident

1.1 In the morning of 3 December 1992, during a period of heavy weather, the Greek OBO AEGEAN SEA (57 801 GRT) ran aground while approaching La Coruña in north-western Spain. The ship 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. No oil remained 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 in the sea.

1.2 Due to the heavy 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. As a result of the 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.

1.3 In areas where access from the shore was possible, efforts were made to remove floating oil, using vacuum trucks, skimmers and pumps. A quantity of about 5 000m³ of oil/water mixture was collected and delivered to local oil reception facilities for processing.

1.4 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 was delivered to a contractor for final disposal.

1.5 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 was transported to a disposal contractor for treatment.

1.6 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. As conditions improved, these restrictions were removed, and fishing was back to normal in August 1993. The restrictions affected some 3 000 fishermen, including shellfish harvesters.

1.7 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. Some of the farms were slightly affected by tainting, and the purification plants were closed for several months. All but one of the plants have been reopened.

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 31 January 1994, 1 077 claims have been received by the Joint Claims Office totalling Pts 10 725 607 671 (£51 million). 585 claims have been approved for a total amount of Pts 58 895 152 (£279 120). Out of the approved claims, 550 have been paid for a total amount of Pts 40 542 226 (£192 140), 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 Claims have also been submitted to the Court in La Coruña. As at 31 January 1994, these claims totalled some Pts 21 000 million (£100 million). 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.

3.1.3 At its 36th session, the Executive Committee took note of the situation in the court proceedings in respect of the claims filed with the Court. In view of the high amount of these claims, the Executive

Committee took the view that caution had to be exercised when making payments to claimants at this stage in order to ensure that the provisions of Article 4.5 of the Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director, therefore, that the IOPC Fund should, at this stage, only make partial payments in respect of accepted claims which should not exceed 30-40% of the amount approved (document FUND/EXC.36/10, paragraph 3.3.21).

3.1.4 In the light of the uncertainty as to the total amounts of the claims, the Director has decided to limit any payment by the IOPC Fund, at least for the time being, to 25% of the established damage suffered by the claimants concerned.

3.2 Clean-up Operations and Preventive Measures

3.2.1 The Spanish Government and some of its agencies, the Government of the Region of Galicia and some local authorities incurred costs for clean-up operations and preventive measures. The Spanish Government's claim totals Pts 1 059 235 549 (£5.1 million). The Government of the Region of Galicia has presented a claim which totals Pts 175 173 776 (£830 200). Five local authorities have presented claims totalling Pts 596 058 933 (£2.8 million). Contacts concerning these claims have been made with the claimants, and further documentation in support of the claims has been requested.

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 21 contractors, totalling Pts 1 280 287 740 (£6.1 million). So far, one claim has been settled at Pts 16 495 500 (£78 180) but has not yet been paid. The payment will be limited to 25% of this amount. The other claims are being examined by the IOPC Fund's experts, who have identified the need for further documentation.

3.2.3 In addition, claims totalling Pts 4 300 000 (£20 400) have been submitted by 20 individuals who allegedly were employed by the mayor of Mugardos for on-shore clean up. These claims are being discussed with the claimants.

3.2.4 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).

3.2.5 Meetings have taken place between the Joint Claims Office staff, technical experts appointed by the shipowner, the UK Club and the IOPC Fund and the representatives of various tug companies and suppliers of other craft that were involved in the clean-up operations. The claimants have been informed of the views of the Club and Fund's experts with regard to the reasonable cost of the services rendered, and their replies are awaited.

3.3 Property Damage

3.3.1 As a result of the incident, a number of houses were contaminated by smoke from the burning oil. Two hundred claims in respect of costs incurred for cleaning contaminated houses have been approved for a total amount of Pts 30 869 229 (£146 300). A number of claims have been received in respect of costs for cleaning contaminated yachts, motor launches and other boats. 378 such claims have been approved for a total amount of Pts 7 236 984 (£34 300). Further claims of these kinds are being examined.

3.3.2 Ten claims totalling Pts 6 966 306 (£33 000) have been submitted in respect of contamination of fishing nets and loss of lobster pots. One claim has been settled at Pts 187 500 (£890), and 25% of this amount will be paid shortly. The examination of the remaining claims has not been completed, since the supporting documentation is insufficient.

3.4 Boat Fishermen and Shellfish Gatherers

3.4.1 Claims have been received from three groups of boat fishermen and shellfish gatherers, namely independent fin-fish fishermen, independent shellfish harvesters and associations (cofradías) representing fin-fish fishermen and shellfish harvesters.

3.4.2 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 authorisation did not extend to losses which might be suffered in the future (document FUND/EXC.35/10, paragraph 3.3.5).

3.4.3 One association has submitted a separate claim for Pts 2 492 422 000 (£11.8 million). This association has received a partial payment of Pts 28 million (£132 700) from the UK Club. In the light of the situation in respect of the claims referred to in paragraphs 3.1.3 and 3.1.4 above, this payment was limited to 25% of the losses assessed on the basis of published official statistics. Discussions are continuing with that association with a view to it providing documents to demonstrate the quantities of the losses suffered by its members.

3.4.4 Discussions have also been held with a committee representing another ten cofradías which have presented claims for Pts 4 858 615 485 (£23 026 600). These discussions continue with a view to obtaining documentary evidence to support the losses suffered by their members. Meanwhile, it has been agreed with the claimants that a partial payment should be made for a total amount of Pts 361 million (£1.7 million), representing 25% of the losses assessed on the basis of official statistics. It is expected that this payment will be effected shortly.

3.4.5 Some 130 claims, totalling Pts 2 110 699 421 (£10.0 million), have been received from independent fin-fish fishermen and shellfish harvesters, and these claims are being investigated individually. So far, final settlements totalling Pts 4 399 700 (£20 850) have been reached with three of these claimants, and these claims have been paid. The main obstacle to processing the balance of these claims is lack of documentary evidence as to the quantum of the losses.

3.5 Near-Shore Aquaculture

3.5.1 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.

3.5.2 In a Resolution issued on 12 April 1993 by the Fisheries Council of the Region of Galicia, it was stated that all cultivated produce within the Sada-Lorbé area should be destroyed. The experts engaged by the IOPC Fund, the shipowner and the UK Club did not consider that it was justified to carry out a total destruction of these products. However, it was accepted by these experts 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. The experts considered it premature to destroy smaller mussels covered by the Resolution, or to destroy salmon, oysters and scallops, in view of the possibility of taint being removed by a process of natural depuration. The Resolution was, nevertheless, put into effect on 9 August 1993, and the destruction was completed by 24 September.

3.5.3 At its 35th session, the Executive Committee considered 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 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. (document FUND/EXC.35/10, paragraph 3.3.11).

3.5.4 The experts engaged by the IOPC Fund and the UK Club have endeavoured to obtain sufficient evidence in the form of sample testing in order to enable them to assess whether the destruction of the above-mentioned products was justified. So far, they have not been able to get much evidence. Their opinion remains, therefore, that there was not sufficient justification for the total destruction of the produce in the affected area. A monitoring programme is being carried out to determine the development of taint in the mussels.

3.5.5 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 (£14.9 million), comprising losses in relation to sales of mussels, oysters, scallops and salmon from December 1992 to the end of 1995. So far no supporting documents have been presented. A preliminary examination by the IOPC Fund's experts indicates that there is no reason to assume any future losses.

3.5.6 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).

3.5.7 One mussel farmer has presented a claim for Pts 494 517 881 (£2.3 million) for loss of income. This claim is being examined. A partial payment of Pts 23 million (£109 000) has been made to this claimant, representing 25% of the loss assessed on the basis of published official statistics.

3.6 Claims in respect of Social Security Payments

3.6.1 Claims have been submitted by two public bodies responsible for making unemployment benefit payments in the amounts of Pts 9 505 770 (£45 050) and Pts 6 897 323 (£32 700). The payments have been made to 32 persons who allegedly had been made redundant due to the reduction in work as a result of the restrictions placed on fishery activities following the incident.

3.6.2 One of these public bodies has submitted a claim for Pts 38 184 756 (£181 000) for loss of income, due to a reduction of contributions made to the Social Security Fund by employers who had reduced their workforce.

3.6.3 In the view of the Director, the claims referred to in paragraphs 3.6.1 and 3.6.2 above can not be considered as relating to "damage caused by contamination" and should therefore be rejected.

3.7 Payments by a Regional Authority and the EC

3.7.1 Payments were made by the Fisheries Council of the Region of Galicia to some 365 fishermen and some 1 535 shellfish gatherers who had been prevented from fishing by restrictions imposed because of the pollution. Each person received a certain amount for each day when he was unable to fish. The amounts paid by the Fisheries Council, totalling Pts 438 383 000 (£2.10 million), are being reclaimed by the Council. It has been indicated, however, that this claim may be withdrawn.

3.7.2 In addition, payments were made by the European Community (EC) for distribution to fishermen and shellfish gatherers. The details of the amounts paid and the distribution thereof are not yet available.

3.7.3 The Director submits to the Executive Committee for consideration the question whether the amounts paid by the Fisheries Council and the EC should be deducted from the compensation payable by the shipowner and the IOPC Fund.

3.8 Ship Agencies

3.8.1 Two ship agencies have claimed compensation for losses totalling Pts 2 714 875 (£12 870) allegedly suffered as a result of the AEGEAN SEA incident, which allegedly led to five vessels which had been booked for entry into the port of La Coruña being diverted because the port was closed.

3.8.2 The claims were considered by the Executive Committee at its 36th session. During the discussion, several delegations expressed their doubts as to whether the losses allegedly suffered by these claimants should be considered as "damage caused by contamination". The Executive Committee decided to instruct the Director to examine these claims further and submit them to the Committee for consideration at its 38th session (document FUND/EXC.36/10, paragraphs 3.3.13 and 3.3.14).

3.8.3 Further investigation has shown that four of these ships were scheduled to load petroleum products in the port of La Coruña, whereas the fifth ship would have called at that port to discharge a cargo of molasses. In the Director's view it is likely that the same or other vessels would have had to call at the port after it being reopened to load the petroleum products in question, and that the cargo of molasses would have been discharged in the port at some later date. Normal agency fees would then be paid. The Director considers, therefore, that the claimants have not shown that they have suffered any economic loss, and he proposes that the claims should be rejected.

3.8.4 It should be noted that, at its 36th session, the Executive Committee examined claims by two oil inspection companies for loss of work on six tankers which were diverted to other ports due to the closure of the port of La Coruña. In the view of the Executive Committee, it was 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 that the claimants would then inspect these cargoes. The Committee considered, therefore, that these claimants had not shown that they had suffered any economic loss. For this reason, the Committee decided that these claims should be rejected (document FUND/EXC.36/10, paragraphs 3.3.15 and 3.3.16).

4 Investigations into the Cause of the Incident

4.1 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.

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

5 Court Proceedings in La Coruña

5.1 By a decision of 30 December 1992, the Court in La Coruña ordered the shipowner to deposit security for an amount of Pts 1 121 219 450 (£5.3 million). That amount corresponds to the estimated limit of liability applicable to the AEGEAN SEA, but the Court has not taken any decision concerning the shipowner's right to limitation. On 20 January 1993 a bank guarantee was provided by the UK Club on behalf of the shipowner as security for the amount determined by the Court.

5.2 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 (£38 million) and the pilot for Pts 4 000 million (£19 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 (£57 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).

5.3 The IOPC Fund has appealed against this decision. The Fund has maintained that it did not have a direct liability under the Fund Convention since the IOPC Fund was liable only when the amounts actually paid under the Civil Liability Convention were insufficient to meet all claims in full. It also argued that criminal proceedings were actions against individuals and that there was no link between the Fund and the accused persons, namely the master and the pilot. This appeal was rejected, since under Spanish law decisions of this kind are not subject to appeal but will be reviewed in connection with the final judgement.

5.4 The position set out in the IOPC Fund's appeal was endorsed by the Executive Committee at its 36th session (document FUND/EXC.36/10, paragraph 3.3.18).

5.5 At its 36th session, the Executive Committee expressed its serious concerns in respect of the decision rendered by the Court in La Coruña. The Committee was concerned that the position taken by the Court requesting the IOPC Fund to provide security was at variance with the Fund Convention which formed part of Spanish law. The Committee instructed the Director not to put up any security in the Court. The Director was also instructed to take all legal measures to protect the IOPC Fund's assets in the event that enforcement of the Court's decision was sought. In addition, the Director was instructed to inform the Spanish Government of the IOPC Fund's position and the reasons therefor (document FUND/EXC.36/10, paragraph 3.3.20).

5.6 In its pleadings on the merits of the claims for compensation, 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 heavy weather and being aware that the weather would 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, which he should have done 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 like 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.

5.7 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.

5.8 On 10 December 1993 the Court of Appeal in La Coruña revoked a decision by the Court of first instance dated 10 July 1993, in which the Court of first instance rejected a petition by a trade

union that the Military Commandant of the port of La Coruña and the Harbour Master of Repsol Petroleo SA responsible for the oil terminal should be ordered to give evidence. The reason for the rejection given by the Court of first instance was that the petition had been made too late. The Court of Appeal ruled that the evidence requested should be taken and that the preparation for an oral hearing should be recommenced, enabling the parties to present pleadings and submit evidence on the merits of the claims for compensation. It appears that, as a consequence of the Court of Appeal's decision, the decision by the Court of first instance dated 31 August 1993 no longer applies.

5.9 The Court of first instance 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.

6 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) 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) social security payments (paragraph 3.6);
 - (ii) payments by a regional authority and the EC (paragraph 3.7);
 - (iii) ship agencies (paragraph 3.8); and
 - (c) give the Director such instructions as it may deem appropriate in respect of the court proceedings in La Coruña (paragraph 5).
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