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OIL POLLUTION
COMPENSATION
FUND

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39th session
Agenda item 3

FUND/EXC.39/3
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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 21 April 1994, 1 169 claims have been received by the Joint Claims Office totalling Pts 14 935 937 975 (£74 million). Payments have been made in respect of 619 claims for a total amount of Pts 1 065 207 073 (£5.2 million). 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 15 April 1994, these claims totalled some Pts 21 000 million (£104 million). The IOPC Fund's lawyers and experts are at present carrying out detailed examination of the claims documents. It appears 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 and 38th sessions, 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 therefore instructed the Director,

at its 36th session, 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 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. The Executive Committee was informed of the Director's decision at its 38th session (document FUND/EXC.38/9, paragraph 3.3.15).

3.1.5 In the following paragraphs, information is given on the groups of claims in respect of which there have been substantive developments since the Executive Committee's 38th session. As for the other groups of claims, reference is made to document FUND/EXC.38/4.

3.2 Near-Shore Aquaculture

3.2.1 In the area affected by the spill, there is significant 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.

3.2.2 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.

3.2.3 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. A monitoring programme is being carried out to determine the development of taint in the mussels.

3.2.4 In respect of the farmed mussels and salmon that were destroyed pursuant to the Resolution of the Fisheries Council of 12 April 1993, the Director has accepted in April 1994 that, on the basis of the test results provided, it was not unreasonable to destroy the marketable sized mussels and salmon that would have been harvested during 1993.

3.2.5 In March 1994 a meeting was held between representatives of the Regional Fisheries Council, the Regional and Central Governments, and technical experts appointed by the shipowner, the UK Club and the IOPC Fund. The purpose of the meeting was to consider the technical issues surrounding the claims that are expected from the aquaculture sector, and to explore the question of the justification of the mussel destruction. The outcome of the meeting was as follows:

- (a) The Fisheries Council of the Region of Galicia agreed to provide assistance in the sampling of the remaining mussels. Experts from the Council and IOPC Fund attended while samples of mussels were taken on 22 March. The results of the analysis are expected soon.
- (b) The Fisheries Council agreed to provide data on survival and growth rates, harvesting and selling plans in respect of fish and shellfish as well as any relevant technical notes

and reports to assist in the quantification of any losses. This information has been provided and is being studied by the relevant experts.

- (c) The Fisheries Council has provided an explanation of the standards and criteria applicable for determining whether conditions in cultivation areas are suitable for the resumption of normal activities. In accordance with the relevant regulations, for activity to recommence the concentration of oil residue will have to be reduced to levels which will not cause tainting. Samples are being taken of water and mussels for analysis every month. The Fisheries Council has stated that it has no objection to establishing common criteria and that it is prepared to discuss any other type of analysis that the experts appointed by the UK Club and IOPC Fund might propose.
- (d) The UK Club, the IOPC Fund and the Fisheries Council undertook to exchange analytical results of tests undertaken in respect of water quality and on cultivated species (mussels, salmon, etc). This exchange will take place in the near future.
- (e) Further, the Fisheries Council agreed to provide information relating to particular problems encountered by fish-farmers in the area.

3.2.6 It has been acknowledged that further meetings of technical experts may be required to resolve issues surrounding the quantification of losses from the aquaculture industry.

3.3 On-Shore Aquaculture

In April 1994 the experts appointed by the UK Club and the IOPC Fund visited an on-land turbot farm known to have suffered problems following the spill. This farm, which was supplied with sea water through subsurface water intakes, was prohibited by the Fisheries Council from selling its fish shortly after the incident but was allowed to market its fish from February 1993. The farm management advised the experts, however, that no market had been found for the fish and that there were on-going problems with high mortality and with poor growth rates. No decision has yet been made by the turbot farmer regarding the future of the existing stock. The experts are continuing their investigation of the situation at this farm. Agreement has been reached with the Fisheries Council for a series of chemical analyses to be carried out, to test for hydrocarbons and bacteria in fish from this farm.

4 Payments by the Fisheries Council of the Region of Galicia and the Commission of the European Community

4.1 At its 38th session, the Executive Committee noted that the Fisheries Council of the Region of Galicia had submitted a claim for the reimbursement of payments which it had made to fishermen and shellfish gatherers following the AEGEAN SEA incident, and that payments had also been made to some claimants by the Commission of the European Community.

4.2 Payments had thus been 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 had 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), were reclaimed by the Council.

4.3 The Spanish delegation requested that the Executive Committee should postpone any decision on these claims to its 39th session. The delegation also stated that, subject to formal approval by the competent authorities, the Fisheries Council of the Region of Galicia would withdraw its claim for reimbursement of the amount paid by the Council to the victims.

4.4 It was noted by the Committee that in its decision to grant aid to the victims of the AEGEAN SEA incident, the Commission of the European Community had stated that the aid would be considered as a reimbursable advance, should it be found that accident insurance covered these costs, in which case the Commission would take measures to ensure repayment.

4.5 During the discussions at the Executive Committee's 38th session, a number of delegations stated that these claims gave rise to questions of principle of considerable legal importance. It was pointed out that it was necessary for the IOPC Fund to ensure that claimants were not compensated twice for the same damage by receiving payments both under the Conventions and from other sources. *It was argued that any payments from other sources should be deducted from the amount of the established claims, whether or not such payments were reclaimed by the payer.* It was emphasised that it would be necessary to establish whether, in the present case, the Region of Galicia and the Commission of the European Community had through their payments acquired by subrogation the rights of the persons to whom payments had been made.

4.6 The Executive Committee decided to postpone any decision on these claims to its 39th session and instructed the Director to examine in detail the various issues raised during the discussions. The Director was also instructed to contact the Commission of the European Community to obtain further information in respect of its payment following the AEGEAN SEA incident as well as payments following other incidents. The Committee expressed the view that it would be necessary for the Fisheries Council of the Region of Galicia to give the Director detailed information of any payments made by it to the victims, so as to enable him to present a document on the issues to be examined at the 39th session of the Committee.

4.7 The Executive Committee decided that, pending its decision as to whether or not the payments made by the Fisheries Council and the Commission of the European Community should be deducted from the compensation payable under the Conventions, the Director should deduct the amount of these payments from any sum approved for compensation.

4.8 The issue of payments granted by the Commission of the European Community is dealt with in a separate document (document FUND/EXC.39/7). For the reasons set out in paragraph 2.8 of that document, the Director takes the view that the payments made by Directorate General XIV in respect of the AEGEAN SEA incident should be deducted from any compensation payable by the shipowner, the UK Club and the IOPC Fund.

4.9 The Spanish delegation has submitted a document (document FUND/EXC.39/3/1) in which an explanation is provided of the basis on which aid payments were made by the Fisheries Council. It is stated in that document that the Fisheries Council will not present a claim for the overall amount of the aid given.

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

5 Social Security Payments

5.1 At its 38th session, the Executive Committee considered claims which had been submitted by two public bodies in respect of unemployment benefits paid to 32 individuals 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. The Committee also examined a claim presented by one of these public bodies for loss of income due to a reduction in contributions made to the Social Security Fund by employers who had reduced their workforce.

5.2 At the request of the Spanish delegation, the Executive Committee decided to postpone its consideration of these claims to its 39th session, so as to enable the Spanish Government to submit

additional information, and to enable it to consider the results of the deliberations of the Intersessional Working Group on this matter.

5.3 The Spanish delegation has notified the Director that additional information will be provided soon.

6 Legal Proceedings

6.1 There has been no significant developments in the legal proceedings since the Executive Committee's 38th session.

6.2 The Director, the Joint Claims Office and lawyers and experts acting for the IOPC Fund are preparing these pleadings, in consultation with the UK Club, and these pleadings will be presented at the appropriate moment.

6.3 In its provisional pleadings on the merits of the claims for compensation, presented in September 1993, 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. The Court has, in fact, ordered the pilot to provide a guarantee of Pts 4 000 million (£20 million). 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. The Court has, in a decision of 15 March 1994, decided that the Military Commandant of the Port of La Coruña is not liable, but this decision is not final.

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) 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) near-shore aquaculture (paragraph 3.2);
 - (ii) on-shore aquaculture (paragraph 3.3);
 - (iii) payments by the regional authority of Galicia and the Commission of the European Community (paragraph 4);
 - (iv) social security payments (paragraph 5); and
 - (c) 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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