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INCIDENTS INVOLVING THE IOPC FUND

AEGEAN SEA

Note by the Director

1 Introduction

1.1 On 3 December 1992, during heavy weather, the Greek OBO *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. All 32 crew members were rescued by helicopter after the grounding. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section smouldered for several days but remained to a large extent 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. While 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 As regards the clean-up operations, reference is made to paragraphs 1.2-1.4 of document FUND/EXC.40/5.

1.3 The present document sets out the situation in respect of claims settlements. It also gives information on the legal proceedings in the Spanish courts. Two issues of principle regarding the admissibility of claims are submitted to the Executive Committee for consideration, one regarding social security payments and the other relating to costs of promotion of fish products.

2 Effects on fishery activities

2.1 The Fisheries Council of the Region of Galicia imposed a comprehensive fishing ban in the affected area, comprising near-shore waters and the shoreline. 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.

2.2 There is extensive raft cultivation of mussels in Ria de Betanzos. Even though physical contamination of the rafts by oil was slight, tainting of mussels occurred. There are also turbot and salmon farms and clam and mussel purification plants in the area. Some of the farms were affected by oil and the purification plants were closed for several months. All the plants have been reopened.

3 Claims handling

The Spanish authorities set up a public office in La Coruña to give information to potential claimants concerning the procedure for presenting claims and to distribute claim forms provided by the IOPC Fund. The IOPC Fund, the shipowner and the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, "UK Club") established a joint office in La Coruña to receive and handle claims for compensation. This Joint Claims Office has worked closely with the Spanish authorities and claimants in order to facilitate the handling of the claims.

4 Claims for compensation

General situation

4.1 As at 23 March 1995, 1 258 claims had been received by the Joint Claims Office, totalling Pts 23 101 million (£113 million). Compensation has been paid in respect of 761 claims for a total amount of Pts 1 361 million (£6.6 million). Out of this amount, the UK Club has paid Pts 806 million (£3.9 million) and the IOPC Fund Pts 555 million (£2.7 million).

4.2 Claims have also been submitted to the Court of first instance in La Coruña, totalling some Pts 20 765 million (£101 million). These claims correspond to a large extent to those presented to the Joint Claims Office. The IOPC Fund's lawyers and experts are examining the claim documents.

4.3 In view of the high total amount of the claims presented to the Court, the Executive Committee took the view, at its 36th session, that caution had to be exercised when making payments to claimants, in order to ensure that the provisions in Article 4.5 of the Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director that the Fund should make only partial payments in respect of accepted claims not exceeding 30%-40% of the amount approved (document FUND/EXC.36/10, paragraph 3.3.21). In the light of the uncertainty of the total amount of the claims, the Director decided to limit the payments to 25% of the established damage suffered by each claimant.

4.4 In the light of certain information provided by the Spanish authorities in October 1994, the Director informed the Executive Committee, at its 41st session, that in his view the uncertainty as to the total amount of the claims had been reduced. The Committee noted that, for this reason, the Director had decided to increase partial payments to 40% of the damage suffered by the respective claimants as assessed by the IOPC Fund on the basis of the advice of its experts at the time when a partial payment or additional partial payment was to be made. The Committee endorsed the Director's decision (document FUND/EXC.41/2, paragraphs 4.1.4 and 4.1.5).

4.5 Dissatisfaction has been expressed in Spain, inter alia in the media and in connection with demonstrations in La Coruña, about the length of time it is taking to settle claims and pay compensation. In the Director's view, the delay in the settlement of claims and the payment of compensation in the *Aegean Sea* case is due to the fact that most major claimants have not presented the documentation or other evidence required for the assessment of the losses actually suffered, in spite of repeated requests made to the claimants through the Joint Claims Office and directly by the Director that such documentation be submitted. In accordance with the position taken by the Executive Committee and by the Assembly in its endorsement of the conclusions of the 7th Intersessional Working Group, the Director has informed the claimants that compensation can be paid only to a claimant who had substantiated his loss (documents FUND/A.17/35, paragraph 26.5 and FUND/A.17/23, paragraph 7.2.33).

Clean-up costs

4.6 The Spanish Government, the Government of the Region of Galicia and some local authorities incurred costs for clean-up operations and preventive measures. Some clean-up operations at sea and on shore were carried out 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, the UK Club and the IOPC Fund.

4.7 So far, 100 claims relating to clean-up operations have been received, totalling some Pts 5 114 million (£25 million). Partial payments, totalling Pts 17.6 million (£85 900), have been made to 28 claimants. The remaining claims are being examined.

Property damage

4.8 A number of houses were contaminated by smoke generated by the burning oil and had to be cleaned. Yachts and other boats were also contaminated. Payments totalling Pts 47 million (£229 300) have been made in settlement of 696 claims for the cleaning of houses and boats.

Near-shore aquaculture

4.9 There is an important aquaculture industry in the area affected by the spill, concentrated in the Sada-Lorbé area, consisting of the cultivation of mussels, salmon, oysters and scallops. Mussel cultivation is the most important activity, representing more than 80% of the total harvest value.

4.10 A Resolution issued on 12 April 1993 by the Fisheries Council of the Region of Galicia 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 a total destruction of these products was justified. However, the experts accepted 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 that the destruction of a sufficient quantity of the largest commercially harvestable size mussels was justified, 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.

4.11 The experts engaged by the IOPC Fund and the UK Club endeavoured to obtain sufficient evidence in the form of sample testing to enable them to assess whether the above-mentioned destruction was justified. A monitoring programme was carried out to determine the natural depuration of the mussels.

4.12 In April 1994 the Director accepted that, on the basis of the test results provided, it was not unreasonable to destroy the marketable size mussels and salmon that would have been harvested during 1993. As for the IOPC Fund's position of principle on claims for the destruction of farmed fish and shellfish, reference is made to the Report of the 7th Intersessional Working Group (document FUND/A.17/23, paragraphs 8.11.2-8.11.5).

4.13 Fifteen claims totalling Pts 6 249 million (£30 million) have been received for losses relating to clam, mussel, turbot and salmon farms. The information presented in support of these claims is very limited. On the basis of this information and after an examination of statistics published by the Fisheries Council, the IOPC Fund and the UK Club have made a provisional assessment of the losses sustained. As a result,

one claimant received partial payments totalling Pts 48 million (£234 100) in November 1993 and November 1994. During the period January-March 1995, the IOPC Fund made partial payments totalling Pts 362 million (£1.7 million) in respect of seven claimants. All claimants have been invited to submit further supporting documents so as to make a proper assessment of the claims possible.

Depuration plants

4.14 Claims from seven depuration plants amount to Pts 1 617 million (£7.9 million). On the basis of the limited information provided, the experts of the IOPC Fund and the UK Club have made a provisional assessment of the losses sustained in respect of six of these claims. As a result, these claimants have received partial payments totalling Pts 105 million (£512 200) during the period December 1994-February 1995. The remaining claim is being examined by the experts.

Onshore aquaculture

4.15 Two onshore fish farms in the affected area have presented claims totalling Pts 1 524 million (£7.4 million) for alleged loss of stock caused by pollution. One of these claimants received a partial payment of Pts 32 million (£156 100) in March 1995. The other claimant has been requested to submit further documentation.

Boat fishing and shellfish harvesting

4.16 Claims from some 3 680 fishermen and shellfish harvesters total Pts 9 332 million (£46 million). Some of these claims have been lodged by individuals and others by groups. Partial payments, totalling Pts 726 million (£3.5 million), were made during 1993 and 1994 to these claimants. Three claimants were paid in full for a total of Pts 3 068 668 (£15 000).

4.17 Several meetings were held in 1994 and 1995 with representatives of a number of fishermen and shellfish harvesters to discuss the handling of their claims. The Director has repeatedly invited the claimants to provide more information substantiating their losses, to enable the UK Club and the IOPC Fund to assess these claims properly and to make further partial payments. Some documentation was presented in the beginning of March 1995, and the documents are being examined by the IOPC Fund's experts.

4.18 An important element in the evaluation of these claims has been the official statistics compiled by Centro Informacion Pesquera e Marisquera (CIPEM) for the fisheries and shellfish harvesting sectors. The claimants have argued that the CIPEM statistics grossly under-estimate the actual income of fishermen and shellfish harvesters. The Fisheries Council of the Region of Galicia has agreed with suggestions to the effect that the official record keeping by CIPEM is substantially wrong.

4.19 The IOPC Fund's experts accept that the CIPEM data may be incomplete. They take the view however, that the CIPEM data must be considered a valid and indispensable part of the assessment, particularly for those claims which are poorly documented.

5 Claims submitted to the Executive Committee for consideration

Social security payments

5.1 At its 41st session, the Executive Committee considered claims submitted by two Spanish public bodies responsible for making unemployment benefit payments in the amounts of Pts 9 509 770 (£46 400) and Pts 6 896 323 (£33 600) to people 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.

5.2 The Spanish Government had advised the Director that there were indeed two public bodies responsible for matters of social security in Spain, as set out in paragraphs 5.2.1-5.2.4 below.

Instituto Social de la Marina (ISM)

5.2.1 ISM is a public body with responsibility for social security matters relating to seafarers, which includes fishermen but not land based shellfish gatherers. This body has submitted a claim in the amount of Pts 9 509 770 (£46 400) in respect of unemployment benefit payments made to employees whose employers were unable to operate their businesses following the incident, eg fishermen and mussel farm workers.

5.2.2 A second claim in the amount of Pts 38 184 756 (£186 300) has been submitted by ISM for the contributions to the Social Security System that would have been paid by the employers to the Social Security System had their business operations not been interrupted by the incident. Under Spanish law employers are obliged to continue paying contributions to the Social Security System in respect of employees made temporarily redundant, for a fixed period in order to maintain the rights and benefits of the now unemployed workers. To alleviate the employers' burden to pay contributions to the Social Security System while not operating his business, two Royal Decrees were issued following the *Aegean Sea* incident, allowing the employers' contributions to be paid by the Spanish Treasury, under the management of ISM, to the Social Security System. The IOPC Fund has been informed that any amount paid by the IOPC Fund in respect of this part of the claim from ISM will be reimbursed to the Treasury, through ISM.

Instituto Nacional de Empleo (INEM)

5.2.3 INEM is a public body with responsibility for social security matters relating to all persons other than seafarers.

5.2.4 This body has submitted a claim in the amount of Pts 6 896 323 (£33 600) in respect of unemployment benefit payments made to employees whose employers were unable to operate their businesses following the incident, as explained in paragraph 5.2.1 above.

5.3 At its 41st session, the Executive Committee examined only the claims relating to unemployment benefit payments made by the two public bodies referred to above for Pts 9 509 770 (£46 400) and Pts 6 896 323 (£33 600), respectively. The consideration of the claim relating to contributions to the Social Security System for Pts 38 184 756 (£186 300) was postponed until the Committee's 42nd session.

5.4 At its 41st session, the Executive Committee noted that the payments effected by the two public bodies concerned had been made to 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. It was noted that these claims gave rise to a question of principle similar to the one relating to claims for loss of income suffered by employees in sea-related activities who had been made redundant. It was also recalled that the question of the admissibility of claims of this latter type had been discussed by the 7th Intersessional Working Group which had not been able to draw any conclusions in respect of such claims and had referred the issue to the Assembly for consideration at its 17th session. It was further noted that the Assembly had not considered it appropriate to take any decision in respect of this issue, but had decided that the IOPC Fund should adopt a cautious approach in respect of such claims (document FUND/A.17/35, paragraph 26.10).

5.5 The Executive Committee recalled that it had previously rejected claims for loss of income suffered by persons who had been made redundant and that, since the Assembly had not taken a position on this issue, the Committee's decision was maintained. The Committee took the view that public bodies paying unemployment benefits could not be given a more favourable position vis-à-vis the IOPC Fund than people

who had been made redundant. For this reason, the Executive Committee rejected the claims presented by these two bodies (document FUND/EXC.41/2, paragraph 4.1.7).

5.6 The Spanish delegation stated that it reserved its right to revert to this issue and to submit further information for consideration by the Executive Committee (document FUND/EXC.41/2, paragraph 4.1.8).

5.7 The Spanish delegation has submitted such further information and requested that these claims be reexamined. The position of the Spanish delegation is summarised as follows:

5.7.1 The basis for the position taken by the Spanish delegation is that the measures taken by the Spanish Government were directly and strictly intended to prevent or minimize the consequences of the incident (preventive measures). To this effect, the Spanish Government took two types of measures.

5.7.2 The Statute on Workers (Article 47) allows the authorities dealing with labour matters to grant a temporary suspension of employment contracts as a result of so-called *force majeure*. Consequently, the 1984 Act on Protection in case of Unemployment considers that such a temporary suspension of the employment contracts gives the persons concerned the corresponding right to unemployment benefits.

5.7.3 On the basis of this legislation, the Spanish authorities granted a suspension of the employment contracts of those employers and employees whose activities were directly affected by the contamination resulting from the *Aegean Sea* incident, without any doubt for the purpose of avoiding more extensive damage, such as bankruptcies, redundancy of employees and payment of significant amounts in compensation to such employees.

5.7.4 As a result of this decision, the Spanish State incurred costs totalling Pts 16 406 093 (£80 000) in unemployment benefits (Pts 9 509 770 + Pts 6 896 323), as set out in paragraphs 5.2.1 and 5.2.4 above). It should be clear that these payments are not unemployment payments resulting from collective redundancies but from a temporary suspension of the unemployment contracts due to *force majeure*.

5.7.5 Secondly, according to Spanish law, the employers are obliged to continue to pay contributions to the Social Security System in respect of the employees concerned during a temporary suspension of the employment contracts. Through a specific and exceptional decision (Royal Decree of 15 January 1993), for the purpose of mitigating the losses suffered by the employers as a result of the *Aegean Sea* incident, the Spanish State decided that these social security contributions should be paid by the Spanish Treasury, for a total of Pts 38 184 756 (cf paragraph 5.2.2 above).

5.7.6 It is obvious that these decisions contributed directly to prevent and minimise greater damage which, with certainty, would have been caused by the incident if these employers had not been given such support.

5.7.7 In view of these facts, satisfactory answers have been given to the questions set out in the Report of the Intersessional Working Group (document FUND/A.17/23, paragraph 7.2.56). The group entitled to social security payments is known. The period for which compensation is payable in respect of the temporary suspension of the employment contracts is clear. The relationship between the measures taken and the compensation under the Civil Liability Convention and the Fund Convention is clearly established in Article I.4 of the Fund Convention.

5.8 The reference by the Spanish delegation to the Report of the Working Group relates to paragraph 7.2.56 of document FUND/A.17/23, which reads as follows.

The Working Group recognised that if the IOPC Fund were to accept in principle claims by employees of the type discussed above, several additional questions would have to be addressed, namely:

- ▶ which groups of employees would be entitled to compensation?
- for what period of time would compensation be payable?
- ▶ what would be the relationship between social security systems and compensation under the Civil Liability Convention and the Fund Convention?

5.9 It should be noted that paragraph 7.2.56 in the Report of the Working Group is preceded by the following text (document FUND/A.17/23, paragraph 7.2.55):

It was noted that there was a diversity of opinions within the Working Group in respect of whether the IOPC Fund should pay compensation for loss of income to employees who had been made redundant as a result of an oil spill. The Working Group considered, therefore, that the matter should be referred to the Assembly for decision.

5.10 The Spanish delegation has taken the view that the claims relating to social security payments *should be considered* as preventive measures. The delegation has emphasized that the payments under consideration are not social security payments in the normal sense but payments in the context of temporary suspension of employment contracts and not for redundancies. It has also been pointed out that the measures were taken to prevent or minimize pure economic loss, such as bankruptcies, redundancy of employees and payment of significant amounts of compensation to such employees.

5.11 The IOPC Fund's position is that measures to prevent or minimise pure economic loss which would fall under the definition of "pollution damage" as interpreted by the IOPC Fund should be considered as preventive measures, provided that they fulfilled the following requirements (document FUND/A.17/23, paragraph 7.2.35):

- ▶ the costs of the proposed measures were reasonable;
- ▶ the costs of the measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- ▶ the measures were appropriate and offered a reasonable prospect of being successful; and
- ▶ in the case of a marketing campaign, the measures related to actual targeted markets.

5.12 It should be emphasized that to be admissible the costs should relate to measures to prevent or minimise losses which, if sustained, would qualify for compensation under the Civil Liability Convention and the Fund Convention.

5.13 The Executive Committee has not previously examined whether social security payments of the type under consideration could be considered as "costs of preventive measures". The Director submits this issue to the Executive Committee for consideration.

Promotion of fish products

5.14 The Regional Government (Xunta) of Galicia has presented a claim for Pts 30 million (£146 300) relating to the cost of a campaign for promotion of Galician fish products. The promotion consisted of announcement of some 20 seconds of the following message in the national and local radio, as well as the publication of this message in the national, regional and local press (translation from Spanish):

- ▶ From Galicia and so fresh.
- ▶ Of the 1309 kilometres of coastline, hardly 100 kilometres were affected.
- ▶ Galicia still has many kilometres of coastline, rivers, clean and productive waters where the most varied and delicious fish and shellfish are caught, as fresh as always.
- ▶ With all guarantees.
- ▶ The Fisheries Council, Xunta de Galicia.

5.15 It is recalled that the Executive Committee has previously addressed the issue of whether costs of activities to prevent or minimise "pure economic loss" are admissible under the Civil Liability Convention and the Fund Convention, such as tourism promotion and the marketing of fish products. The Committee has taken certain decisions in this regard, and the 7th Intersessional Working Group agreed with the position taken by the Committee (document FUND/A.17/23, paragraphs 7.2.34-7.2.38). The conclusions of the Intersessional Working Group were endorsed by the Assembly at its 17th session (document FUND/A.17/35, paragraph 26.5). The IOPC Fund's position in respect of claims of this type can be summarised as follows (document FUND/A.17/23, paragraphs 7.2.35-7.2.38, 7.2.41 and 7.2.42 and Annex, paragraphs 2.6.2-2.6.4).

5.15.1 In order to be admissible such claims should fulfill the following requirements:

- ▶ the costs of the proposed measures were reasonable;
- ▶ the cost of measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- ▶ the measures were appropriate and offered a reasonable prospect of being successful; and
- ▶ in the case of a marketing campaign, the measures related to actual targeted markets.

5.15.2 In order to be admissible the costs should relate to measures undertaken to prevent or minimise losses which, if sustained, would qualify for compensation under the Civil Liability Convention and the Fund Convention. The costs of marketing campaigns or similar activities are admissible only if the activities undertaken were in addition to measures normally carried out for this purpose, ie that compensation is granted only for the additional costs resulting from the need to counteract the negative effect of the pollution. Since a promotion or marketing campaign would have an impact on aspects other than those affected by the pollution, it is important that any compensation should be restricted to counteracting the effects of pollution damage.

5.15.3 The criterion of "reasonableness" should be assessed in the light of the particular circumstances of the case and taking into account the interests involved. The assessment should be made on the basis of the facts known at the time that the measures were taken. The difficulty of assessing the effects of abstract preventive measures is recognised. As regards marketing campaigns, measures of too general a nature should be rejected.

5.16 It appears that the purpose of the promotion campaign carried out by the Fisheries Council was to convince the general public in Spain that the fish and shellfish from those parts of Galicia not affected by the *Aegean Sea* incident were untouched by oil. The purpose was therefore to counteract any public perception that all seafood products from Galicia were contaminated. The question is whether this promotion activity fulfils the criteria adopted by the IOPC Fund. The campaign was intended to prevent that pure economic loss was suffered as a result of market resistance in respect of Galician products from outside the contaminated area. On the other hand, it is likely that potential customers regarded the whole of Galicia as one single area in respect of seafood products. Another question is whether the campaign fulfils the criterion that it should relate to actual targeted markets.

5.17 As set out above, the IOPC Fund's position is that the cost of marketing campaigns or similar activities are admissible only if the measures taken relate to actual targeted markets. In addition, measures of too general a nature do not qualify for compensation. In the Director's view, the promotion activities

carried out by the Fisheries Council of Galicia were of a general nature, and did not relate to actual targeted markets. For this reason, the Director proposes that this claim should be rejected.

6 Investigations into the cause of the incident

6.1 The Court in La Coruña is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The IOPC Fund has been following this investigation through its Spanish lawyer.

6.2 A Commission set up by the Spanish administration investigated the cause of the incident. The Commission concluded that a major part of the blame for the incident rested with the master of the *Aegean Sea* and that a contributing factor had been the deteriorating weather conditions immediately before the incident. The IOPC Fund presented observations on the above-mentioned report, in consultation with the shipowner and the UK Club. Subsequently, the Spanish authorities informed the Director that the report was final and that the IOPC Fund's observations could not be taken into account.

7 Court proceedings in La Coruña

7.1 Criminal proceedings have been initiated in the Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the Port of La Coruña.

7.2 On 30 December 1992, the Court of first instance handling the criminal proceedings ordered the shipowner to deposit security for an amount of Pts 1 121 219 450 (£5.5 million). This amount corresponds to the estimated limit of liability applicable to the *Aegean Sea*, but the Court has not taken any decision about the shipowner's right to limitation. The security 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.

7.3 On 31 August 1993, the Court seized with the criminal proceedings rendered a decision containing the following elements.

- ▶ 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 (£39 million) and the pilot for Pts 4 000 million (£19.5 million).
- ▶ The UK Club and the IOPC Fund were liable, jointly and severally with the master and the pilot, within their respective legal limits. The Club and the Fund were ordered to provide security for Pts 12 000 million (£59 million) within seven days. If this security was not provided, the Court would arrest their property in accordance with the applicable provisions of the Code of Criminal Procedure.
- ▶ If the UK Club and IOPC Fund did 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).

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

7.5 At its 36th session, the Executive Committee expressed its concern that the Court's request for security from the IOPC Fund was at variance with the Fund Convention, which forms part of Spanish law. The Committee instructed the Director not to put up any security in the Court (document FUND/EXC.36/10, paragraph 3.3.20).

7.6 In its provisional pleadings on the merits of the claims for compensation, presented in September 1993, the IOPC Fund maintained that the pilot and the Military Commandant of the Port of La Coruña (Comandante Militar de Marina) were liable for the grounding. The Fund argued that the pilot was liable because he ordered the master to enter the port of La Coruña at 2.00 am, despite the heavy weather and being aware that the weather would deteriorate further. In addition, in the IOPC Fund's view, the pilot was liable because he did not meet the ship at the designated pilot boarding station, thus contravening the applicable Pilot Regulations. In the view of the Fund, the liability of the Military Commandant of the Port was based on his being 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.

7.7 The Court decided that the Military Commandant of the Port was not liable. It is possible that this question will be reopened, should the criminal proceedings reveal that the Military Commandant is indeed liable.

7.8 The Court of first instance had scheduled a hearing in the criminal proceedings for four weeks commencing 13 March 1995. In the criminal proceedings the Court would also consider the claims for compensation which had been presented. Since the master of the *Aegean Sea* did not appear at the hearing, the Court postponed the criminal proceedings to a later date.

7.9 A number of claimants who have presented claims to the Joint Claims Office have not submitted any claims in the criminal proceedings. Most of them have indicated that they will present their claims in civil proceedings at a later stage against the shipowner, his insurer and the IOPC Fund.

7.10 It should be noted that, when criminal proceedings have been brought against a given defendant, no action for compensation may be pursued in separate civil proceedings against the same defendant until the criminal proceedings have been brought to an end.

7.11 It is likely that claims for compensation will be pursued against the shipowner, his insurer and the IOPC Fund both in civil proceedings and in criminal proceedings. The claims presented in the criminal proceedings exceed the maximum amount of compensation available under the Civil Liability Convention and the Fund Convention. If the total amount established by the courts were to exceed the maximum amount available, it would in the Director's view be difficult for the respective courts to ensure that the provisions in the Civil Liability Convention and the Fund Convention relating to equal treatment of claimants would be respected (Article V.4 of the Civil Liability Convention and Article 4.5 of the Fund Convention).

7.12 Under Article III.4 of the Civil Liability Convention, no claim for pollution damage may be made under the Convention or otherwise against the servants or agents of the shipowner. The master does clearly fall within the concept of "servants of the owner". Nevertheless, claims for compensation have been brought against the master of the *Aegean Sea* in the criminal proceedings.

8 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 as regards claims relating to;
 - (i) social security payments (paragraphs 5.1-5.13);
 - (ii) promotion of fish products (paragraphs 5.14-5.17); and
 - (c) give the Director such instructions as it may deem appropriate in respect of the on-going court proceedings (paragraphs 7.1-7.12).
-