



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
61st session
Agenda item 4

71FUND/EXC.61/3
16 April 1999

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INCIDENTS INVOLVING THE 1971 FUND

AEGEAN SEA

Note by the Director

Summary:

The Director was instructed by the Executive Committee at its 59th session to continue his discussions with the Spanish Government so as to enable progress to be made towards solving outstanding issues. On 8 April 1999 a meeting was held in Madrid where constructive discussions took place. The progress made is reported.

Action to be taken:

Information to be noted.

1 Introduction

1.1 At its 60th session the Executive Committee considered the various outstanding issues in relation to the *Aegean Sea* incident (Spain, 3 December 1992) on the basis of a document prepared by the Director (document 71FUND/EXC.59/4). The discussions were summarised in the Record of Decisions (document 71FUND/EXC.59/17, paragraphs 3.3.1 - 3.3.22). The Committee instructed the Director to continue his discussions with the Spanish Government so as to enable progress to be made towards solving outstanding issues. The developments since that session were reported to the Committee's 60th session in document 71FUND/EXC.60/3 and the discussions were reflected in the Record of Decisions (document 71FUND/EXC.60/17, paragraph 3.2.1 - 3.2.9). Reference is made to these documents.

2 Recent discussions with the Spanish Government

2.1 On 8 April 1999, a meeting was held in Madrid between Mr F Marhuenda, Director of the Minister's Office (Director del Gabinete de Ministro) of the Ministry of Education and Culture, and the Director. At this meeting the main outstanding issues were discussed, in particular:

- the need for evidence to support the claims
- the conditions of the loans given by the Instituto de Crédito Oficial to claimants in the mariculture and fishery sectors
- time bar in respect of the claims presented before the Civil Court in La Coruña
- possible recourse action by the 1971 Fund against the Spanish State.

2.2 The Spanish Government's representative undertook to submit to the 1971 Fund an additional legal opinion on various issues and to make available to the Fund documentation in support of the claims.

2.3 It was agreed that in order to facilitate progress, the efforts should be focused on the following questions:

- an examination of the documentation in support of the claims which will be submitted by the Spanish Government (see section 3 below)
- an analysis of the legal issue relating to time bar in respect of a group of claimants (see section 5 below)
- the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund (see section 6 below).

3 Evidence to support the claims

3.1 The Spanish Government has undertaken to make available to the 1971 Fund documentation of some 1 000 pages to support the pending claims in the fishery and mariculture sectors, both those presented in the criminal proceedings and those brought in the civil proceedings. It has been indicated that the documentation includes an official assessment of these claims made by the Spanish Government, supported by a study carried out by the Instituto Español de Oceanografía as well as other documents.

3.2 It has been tentatively agreed that the documentation will be made available to the 1971 Fund in the very near future and that on that occasion the Spanish Government's experts will make an oral presentation to the 1971 Fund's/UK Club's experts of the content of the documentation.

3.3 Subject to any instructions that the Executive Committee may wish to give him, the Director intends to instruct the experts engaged by the 1971 Fund and the UK Club to examine the documentation with priority. It is the intention that the experts of the 1971 Fund and the UK Club will meet with the Spanish Government's experts as soon as possible to discuss the evidence submitted.

3.4 The Director hopes that the examination of the supporting documentation and the discussions between the various groups of experts would make it possible to present a report on the assessment of the claims to the Executive Committee's 62nd session.

4 Loans to claimants given by the Instituto de Crédito Oficial

4.1 At its 59th session, the Spanish Government informed the Executive Committee that in June 1997 and September 1998 the Government had authorised loans to certain Spanish claimants for a total amount of Pts 22 500 million (£90 million) through Instituto de Crédito Oficial. These loans were granted on the basis of the study by the Instituto Español de Oceanografía. The Spanish Government made the point that this would facilitate progress, since the 1971 Fund would have to negotiate with only one claimant (document 71FUND/EXC.59/17, paragraph 3.19).

4.2 The Director has asked the Spanish Government to inform him of the conditions of the loans.

5 Question of time bar

5.1 A number of claimants have brought actions against the 1971 Fund in the Civil Court of La Coruña. The question has arisen as to whether these claims are time-barred. Two opinions were presented to the 1971 Fund by the Spanish Government in April 1998, one prepared by the Legal Department of the Ministry of Public Administrations and one by a Spanish law firm (Cuatrecasas), both of which concluded that the actions brought against the 1971 Fund in the Civil Court were not time-barred. The 1971 Fund has obtained an opinion by a former Spanish Supreme Court judge, Mr Santos Briz, on the time bar issue, and Mr Santos Briz' conclusion is that those claims were extinguished and thus time-barred.

5.2 The Executive Committee took note of the situation at its 59th session. In view of the different opinions presented in respect of the time bar issue, the Director was instructed to study further this very complex issue. The Committee noted that the civil actions would be served on the 1971 Fund in the near future. It was noted that, once served, the 1971 Fund would have to present all its defences within a short period of time, including any defence to the effect that the claims were time-barred, and that it would not be possible to raise that defence at a later stage. Pending further study, the Committee instructed the Director to raise the defence of time bar in the civil proceedings (document 71FUND/EXC.59/7, paragraphs 3.3.11 and 3.3.12).

5.3 These civil actions have not yet been served on the 1971 Fund.

6 Recourse action

6.1 Criminal proceedings were initiated in the Criminal 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. The Court considered not only the criminal aspects of the case but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the UK Club, the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

6.2 In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 200) or one day's imprisonment for each Pts 5 000 (£20) not paid. The master, the pilot and the Spanish State appealed against the judgement, but on 18 June 1997 the Court of Appeal upheld the judgement.

6.3 The Criminal Court of first instance and the Court of Appeal held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each of them on a 50% basis, to compensate victims of the incident. It was also held that the UK Club and the 1971 Fund were directly liable for the damage caused by the incident and that this liability was joint and several. In addition, the Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

6.4 There exist differences of opinion between the Spanish State and the 1971 Fund as to the interpretation of the judgements. The Spanish Government has maintained that the UK Club and the 1971 Fund should pay up to the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), and that the Spanish State would pay compensation only if and to the extent that the total amount of the established claims exceeded that amount. The Fund has maintained that the final distribution of the compensation payments between the various parties declared civilly liable should be: the UK Club and the 1971 Fund 50% of the total compensation for the damage (within their respective limits laid down in the Conventions), the State the remaining 50%.

6.5 At its 58th session, the Executive Committee decided that it was necessary for the 1971 Fund to take measures to protect its right to take recovery action against the Spanish State unless the disagreement between the Spanish State and the Fund as to the distribution of liability were solved out of court. For this reason, the Director was instructed to seek to obtain, well in advance of 18 June 1998

(ie within one year of the date of the Court of Appeal's judgement), a binding commitment by the Spanish Government to the effect that, if the 1971 Fund were to bring a recovery action against the Spanish State, the Spanish State would not invoke the time bar. The Committee emphasised that such an agreement would have to be signed by somebody who, under Spanish constitutional law, would have the capacity of binding the State in this regard. The Committee further instructed the Director that, should such a commitment not be given by the Government, the Fund should take recovery action against the Spanish State by 18 June 1998 in order to preserve the Fund's rights, pending a solution of the disagreement between the State and the Fund (document 71FUND/EXC.58/15, paragraph 3.2.21).

6.6 On 12 June 1998 the Spanish Ambassador in London and the Director signed an agreement under which the Spanish State undertook not to invoke the time bar if the competent bodies of the Fund were to decide to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund, provided that such an action was taken within one year of the date of the agreement. The 1971 Fund, on its part, undertook not to bring legal action against the State within the first eleven months of the date of the agreement.

6.7 At the meeting in Madrid on 8 April 1999 referred to in paragraph 2.1 above, the representative of the Spanish Government agreed that the period for the 1971 Fund's taking recourse action against the Spanish State should be further extended by one year and that an agreement to this effect should be concluded as soon as possible.

6.8 The Director proposes that the Executive Committee should authorise him to conclude such an agreement well before 12 June 1999.

7 Additional legal opinion presented by the Spanish Government

7.1 On 12 April 1999 the Spanish Government made available to the 1971 Fund the additional legal opinion referred to in paragraph 2.2 above, which had been given by four professors at Universidad Carlos III in Madrid. The written opinion, which is of some 180 pages, deals *inter alia* with the issues of time bar and distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund.

7.2 The Director will examine this opinion, with the assistance of the 1971 Fund's Spanish lawyer and other legal experts, as required. It has been agreed that the issues dealt with in the opinion will be discussed between the Spanish Government and the Director in due course. A report on this issue will be made to the Executive Committee's 62nd session.

8 Consultation Group

8.1 At its 57th session the Executive Committee decided to set up a Consultation Group to assist the Director in his search for solutions of the outstanding issues. The Committee appointed the following delegates as members of the Group:

Mr C Coppolani (France)
Mr W Oosterveen (Netherlands)
Professor H Tanikawa (Japan)
Mr A H E Popp (Canada)
Professor L S Chai (Republic of Korea)
Captain A Saúl Bandala (Mexico)

8.2 At its 59th session the Executive Committee decided to renew the mandate of the Consultation Group. It was noted that only one of the States represented in the Group remained a Member of the 1971 Fund and that that State would cease to be a Member in the near future. The Committee considered that, since it was important to secure the continuity of the Consultation Group, the Group's composition should remain unchanged. It was emphasised, however, that the members of the Group did not participate as representatives of their Governments but in their personal capacity. The

Committee also noted that, if an agreement was reached with the Spanish Government, that agreement would have to be submitted to the Committee for approval.

8.3 It is expected that the Consultation Group will meet on 27 April 1999.

9 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to authorise the Director to conclude an agreement to the effect that the period for the 1971 Fund's taking recourse action being extended by one year from 12 June 1999 (paragraph 6.8); and
 - (c) to give the Director such other instructions as the Committee may deem appropriate in respect of this incident.
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