



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
1st extraordinary session
Agenda item 13

92FUND/A/ES.1/12
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INCIDENTS OF INTEREST TO THE 1992 FUND

Incident in Germany

Note by the Director

1 The incident

1.1 On 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. According to the German authorities, computer simulations of currents and wind movements indicated that the oil had been discharged between 12 and 18 June approximately 60–100 nautical miles north-west of the Isle of Sylt. The German authorities started clean-up operations at sea and on shore on 21 June 1996. Some 2 130 tonnes of oil and sand mixture were removed from the beaches. The cost of these operations has been indicated at some DM5 million (£2.1 million).

1.2 The 1992 Fund was notified of this incident by telephone on 3 July 1996, by which time the clean-up operations were almost completed, and on 17 July 1996 by letter from the Federal Ministry of Transport.

1.3 The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. Chemical analysis indicated that the oil was Libyan crude.

1.4 The German authorities have informed the Director that the incident may have resulted in losses for the fishing and tourism industries in the affected area.

2 Claims for compensation

2.1 Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. Analysis of oil samples taken from the ship matched the results of the analysis of samples taken from the polluted coastline. Comparisons with chemical analytical data on North Sea crude oils have shown that the pollution was not caused by crude oil from North Sea platforms.

2.2 The German authorities have approached the owner of the *Kuzbass* and requested that he accepts responsibility for the oil pollution. They have stated that, failing this, the authorities would take legal action against him.

2.3 The German authorities' notification of 17 July 1996 referred to in paragraph 1.2 above was addressed to the International Oil Pollution Compensation Fund 1992. It appears that the authorities maintain that the ship from which the oil originated was an unladen tanker. The definition of "ship" in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers, and so does by reference the definition of ship in the 1992 Fund Convention. Article I.1 of the 1992 Civil Liability Convention reads:

"Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2.4 As stated above, the German authorities intend to claim compensation from the owner of the *Kuzbass* for the cost of the clean-up operations. The limitation amount applicable to the *Kuzbass* is estimated at approximately 38 million SDRs (£35 million). The German authorities have stated, however, that if these attempts were to be unsuccessful, the authorities would claim against the 1992 Fund.

2.5 The ship is entered in the West of England Ship Owners' Protection and Indemnity Association (Luxembourg).

2.6 If the German authorities were to pursue a claim against the 1992 Fund, the question arises whether they have proved that the damage resulted from an incident involving one or more ships (Article 4.2(b) of the 1992 Fund Convention). This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of the ship referred to above.

3 Action to be taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) give the Director such instructions as it may deem appropriate in respect of the incident dealt with in this document.
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