



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
14th session
Agenda item 3

92FUND/EXC.14/2
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INCIDENTS INVOLVING THE 1992 FUND

Note by the Director

Summary:	A résumé of all incidents and all documents submitted under this agenda item is set out.
Action to be taken:	Information to be noted.

1 Introduction

- 1.1 Resolution N°5 of the 1992 Fund, which establishes the Executive Committee, provides that the Committee shall take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation.
- 1.2 There have been no new incidents that have given or may give rise to claims against the 1992 Fund since the 13th session of the Executive Committee held in June 2001. There are 10 incidents that took place before the 13th session, which are reported to the Executive Committee.

2 Presentation of documentation

- 2.1 The documentation presented to the 14th session of the Executive Committee has been structured in the following way:
 - (a) incidents which the Executive Committee is invited to consider on the basis of a separate document for each incident; and
 - (b) incidents which have been grouped together for practical reasons.
- 2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made – unless otherwise indicated – on the basis of the rates of exchange at the time that the respective

documents were written. However, for amounts representing actual payments by the 1992 Fund, the conversion has been made at the rate of exchange on the day of payment.

3 Summary of incidents

The situation in respect of the incidents involving the 1992 Fund can be summarised as follows:

3.1 Document 92FUND/EXC.14/3

- Incident in Germany (1996): On 20 June 1996 crude oil was found to have polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. Clean-up operations were undertaken by the German authorities. The German authorities have taken legal action against the owner of the Russian tanker *Kuzbass* (88 692 GRT), which is suspected of having caused the pollution. The authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund. The 1992 Fund intervened in the proceedings in order to protect its interests. On the basis of the evidence presented by the German authorities the Director considers that the pollution was caused by a discharge of crude oil closely resembling Es Sider crude from a tanker and that the *Kuzbass* was the most likely source of the contamination. The shipowner's insurer continues to maintain that the *Kuzbass* was not the source of the pollution.

No action requested.

3.2 Document 92FUND/EXC.14/4

- *Nakhodka* (Japan 1997): As at 10 October 2001, 458 claims totalling £198 million had been received. Total payments to claimants amounted to £92 million, including the payments made by the shipowner and his insurer totalling £4 million. It is anticipated that the assessments of all pending claims will be completed by the end of 2001.

Meetings were held in September and October 2001 between the Japanese Government, the IOPC Funds and the UK Club to discuss in detail the technical aspects of the claims relating to the construction and removal of the causeway, including the issue of whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds. Progress has been made and further discussions will be held.

No action requested.

3.3 Documents 92FUND/EXC.14/5, 92FUND/EXC.14/5/Add.1, 92FUND/EXC.14/5/Add.2, and 92FUND/EXC.14/5/Add.3

- *Erika* (France 1999): About 19 800 tonnes of heavy fuel oil was spilled from the *Erika* after it broke up and sank in severe weather on 12 December 1999. The sunken bow section contained some 6 400 tonnes of cargo and the stern section a further 4 700 tonnes. Operations to pump the remaining oil to the surface were carried out during the period June - September 2000. Clean-up operations continue in some areas. A number of public bodies and private entities have taken legal action in France against Total Fina, the owner of the *Erika*, the *Erika's* liability insurer and the vessel's management company, and the classification society. The classification society has taken legal action in Italy against *inter alia* the 1992 Fund requesting a declaration that the society was not liable for the incident. The 1992 Fund has taken recourse action in France against the classification society.

The Malta Maritime Authority and the French Permanent Commission of Enquiry Into Accidents at Sea have conducted investigations into the cause of the *Erika* incident. Although the findings of the two investigations differ in some of the detail, both bodies conclude that the incident was due to structural

failure as a result of severe corrosion, particularly in the ship's dedicated ballast tanks (document 92FUND/EXC.14/5/Add.1).

As has been reported to the Executive Committee at previous sessions, a number of allegations and threats have been made against the staff at the Claims Handling Office in Lorient, against the experts engaged by the 1992 Fund and against the Director. Recently, further allegations have been made accusing the Director of having committed fraud when converting the maximum amount of compensation payable under the 1992 Fund Convention, 135 million SDR, into French francs (document 92FUND/EXC.14/5/Add.2).

As at 11 October 2001, 5 637 claims for compensation had been submitted for a total of £82 million. Some 4 096 of these claims (73%) had been assessed at a total of £26.5 million, and payments totalling £14.9 million had been made in respect of 2 857 claims. The Director proposes that the level of payments should be maintained at 80%. Claims for reduction in tourism tax revenue and airport tax revenue are presented for consideration as to their admissibility (document 92FUND/EXC.14/5Add.3).

Action requested:

- To review the level of the 1992 Fund's payments.
- Decision on the admissibility of claims for reduction in revenue from tourism and airport taxes.

3.4 Document 92FUND/EXC.14/6

- *Al Jaziah 1* (United Arab Emirates, 2000): On 24 January 2000 the *Al Jaziah 1*, carrying fuel oil, sank off Abu Dhabi resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. The governing bodies of the 1992 and 1971 Funds decided that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. Five claims totalling £1.4 million in respect of clean-up and preventive measures have been presented to the IOPC Funds. Two claims have been provisionally assessed at £330 000 and the remaining three claims have been settled for £418 000.

No action requested.

- *Zeinab* (United Arab Emirates, 2001): On 14 April 2001 the *Zeinab* was arrested by the multi-national maritime Interception Forces. The vessel subsequently sank off Dubai in unknown circumstances resulting in the loss of some 400 tonnes of oil and the pollution of the coast. Some 1 100 tonnes of oil remaining onboard was removed from the sunken vessel. The governing bodies of the 1971 and 1992 Funds decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. However, both bodies decided not to authorise the Director to settle claims until the exact circumstances surrounding the sinking of the vessel were known, in particular whether the Fund could be exonerated from paying compensation for pollution damage in accordance with Article 4.2(a) of the 1971 and 1992 Fund Conventions.

Although the Director's further investigations have not revealed any details surrounding the sinking of the *Zeinab*, he is of the view that the arrest by the multi-national maritime Interception Forces could not be considered as "an act of war, hostilities, civil war or insurrection" and that the IOPC Funds would not be able to invoke the defence provided in Article 4.2(a).

Claims totalling £343 000 have been submitted in respect of clean-up operations and further claims are expected.

Action requested:

- Consider whether the *Zeinab* incident resulted from an act of war.
- Decide whether to authorise the Director to settle claims arising from the incident.

3.5 Document 92FUND/EXC.14/7

- *Natuna Sea* (Indonesia 2000): The grounding of the *Natuna Sea* in the Singapore Strait resulted in a spill of some 7 000 tonnes of crude oil. The oil affected Singapore, Malaysia and Indonesia. Claims for pollution damage in Malaysia have been settled for a total of £426 000, well within the limit applicable to the *Natuna Sea* under the 1969 Civil Liability Convention. Claims arising in Singapore and Indonesia total £136 million and the 1992 Fund may therefore be required to make payments for pollution damage in Singapore.

No action requested.

3.6 Document 92FUND/EXC.14/8

- *Baltic Carrier* (Germany 2001): The *Baltic Carrier* collided with the bulk carrier *Tern* in the Baltic Sea off the coast of Germany resulting in an escape of some 2 500 tonnes of heavy fuel oil. The oil affected several of the Danish islands. Oil thought to have originated from the *Baltic Carrier* was found on the south-west coast of Sweden. The offshore clean-up was carried out by vessels from Denmark, Germany and Sweden. Onshore clean-up was undertaken by the Danish authorities. Substantial claims for compensation for the costs of clean-up operations are expected. As at 28 September 2001 55 claims in respect of property damage and economic losses in the fishing and mariculture sectors had been submitted totalling £2.4 million of which 20 had been settled for a total of £63 000. It is not yet possible to estimate the total amount of the claims or whether the 1992 Fund will be required to make payments.

Some oil spilled from the *Baltic Carrier* entered the forepeak tank of the *Tern*, some of which was subsequently spilled from the latter vessel in Rostock (Germany) and Ventspils (Latvia). The Director considers that the spill in Rostock falls under the 1992 Conventions, but that more details are required as to the events leading to the spill in Ventspils before a decision can be taken as to whether that spill falls under the Conventions.

Action requested:

- Decision in respect of whether the spill in Rostock falls within the scope of the 1992 Conventions.

3.7 Document 92FUND/EXC.14/9

- *Slops* (Greece 2000): The *Slops* suffered a fire and explosion whilst at anchor in the port of Piraeus (Greece). At its June 2000 session the Executive Committee decided that the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident. A claimant who had been unable to obtain compensation from the owner of the *Slops* maintained that the vessel fell within the definition of 'ship' and requested that his claim be submitted to binding arbitration in accordance with Internal Regulation 7.3 of the 1992 Fund. This request was rejected by the Executive Committee at its January 2001 session. The Director understands that the claimant may take legal action against the 1992 Fund.

No action requested.

3.8 Document 92FUND/EXC.9/10

- *Mary Anne* (Philippines 1999): The *Mary Anne* sank in the entrance to Manila Bay spilling an unknown quantity of intermediate fuel oil. The shipowner's insurer has settled claims in respect of oil removal and clean-up for £1.8 million. The insurer has informed the Fund that there are no other claims arising from the incident. The insurer has maintained that the shipowner was in breach of the insurance policy and has indicated that it may request the shipowner and the 1992 Fund to reimburse it the amounts paid in compensation.

No action requested.

3.9 Document 92FUND/EXC.9/11

- *Dolly* (Martinique 1999): The *Dolly* sank in 20 metres of water with a cargo of some 200 tonnes of bitumen on board. The 1992 Fund's experts examined the proposals made by three salvage companies on how to eliminate the threat of pollution by bitumen. The proposal favoured by the Fund's expert would involve refloating the wreck, removing the cargo and scuttling the ship in deep water. The French authorities also favour refloating prior to removal of the cargo, but propose to cut up the wreck on shore instead of scuttling it at sea.

No action requested.

4 **Action to be taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.
