



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
14th session
Agenda item 3

92FUND/EXC.14/3
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INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN GERMANY

Note by the Director

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| Summary: | The 1992 Fund has been notified of a legal action taken by the German authorities against the owner of a ship which is suspected of having caused oil pollution in Germany in 1996. The 1992 Fund has intervened in the proceedings. |
| Action to be taken: | Give the Director instructions in respect of this incident. |

1 The incident

- 1.1 From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture was removed from the beaches.
- 1.2 The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. The German authorities have maintained that comparisons with an analytical chemical database on North Sea crude oils originally developed by the Agency showed that the pollution was not caused by crude oil from North Sea platforms. Chemical analysis showed that the oil in the samples was of Libyan origin.
- 1.3 Computer simulations of currents and wind movements made by the Maritime and Hydrographic Agency indicated that the oil could have been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the isle of Sylt.

- 1.4 Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m³ of oil which could not be discharged by the ship's pumps.
- 1.5 The *Kuzbass* departed from Wilhelmshaven on 11 June 1996 and passed a control point near the Dover Coast Guard station on 14 June 1996. Based on an evaluation of data provided by Lloyds Maritime Information Services, the German authorities maintain that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question. According to the German authorities, analyses of oil samples taken from the *Kuzbass* matched the results of the analyses of samples taken from the polluted coastline.
- 1.6 The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his P & I insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

2 1992 Fund's involvement

- 2.1 The German 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.
- 2.2 If the German authorities were to pursue a claim against the 1992 Fund, the question arises as to whether they have proved that the damage resulted from an incident involving one or more ships as defined in the 1992 Civil Liability Convention (cf Article 4.2(b) of the 1992 Fund Convention).
- 2.3 The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers in certain circumstances and so, by reference, does 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 The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£34 million).

3 Legal actions

- 3.1 In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the shipowner and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million (£830 000).
- 3.2 The 1992 Fund was notified in November 1998 of the legal actions. In August 1999, the 1992 Fund intervened in the proceedings in order to protect its interests.
- 3.3 The owner of the *Kuzbass* and the West of England Club presented pleadings to the Court. The position taken by the owner and the Club is summarised below.

The chemical analyses provided by the German authorities have shown only that the oil carried in the *Kuzbass* and the oil found ashore both originated from

Libya, without stating that the chemical composition of the oils was identical. The chemical analyses carried out on behalf of the shipowner and the Club, however, demonstrated that the oils were not identical. In particular, the latter analyses showed that, although both oils were of Libyan origin, the oil carried by the *Kuzbass* was Libyan Brega crude oil whereas the polluting oil was not Libyan Brega crude oil.

With respect to the question of whether the oil pollution might have been caused by the washing of the tanks of the *Kuzbass*, tank washing would normally be carried out only in exceptional cases, ie if a tank had to be repaired or if another cargo had to be taken on board that should not come into contact with the residues of the cargo carried on a previous voyage. In the case of the *Kuzbass*, the tanker was proceeding to the Mediterranean to load a cargo of crude oil and the conditions of the tanks were such that they did not require washing. In addition, it would not have been technically possible to pump out the oil which remained on board.

In the period between 18:30 hours on 12 June 1996 and 19:00 hours on 13 June 1996 the *Kuzbass* was lying at anchor to carry out repairs on the ship's cooling system.

The route followed by the *Kuzbass* was far from the areas where the oil which caused the pollution was alleged to have been discharged into the sea. Copies of the original Russian sea charts, the course recorder and the ship's logbook have been provided in support of this position.

As regards the data provided by Lloyd's Maritime Information Services showing that there were no other movements of tankers with Libyan crude oil on board in June 1996 in the area in question, the reports of Lloyd's Maritime Information Services cover only laden tankers, and do not give any information on the movements of unladen tankers which are most likely to carry out tank washing.

3.4 The shipowner and the West of England Club have also referred to the results of the investigation of the German police and of the Italian public prosecutor^{<1>}, both of which, according to the owner and the Club, have not found any valid evidence to support the accusation against the *Kuzbass*.

3.5 In their reply to the Court, the German authorities made the following points:

The *Kuzbass* had carried Libyan crude oil. The analysis of samples of the oil on the polluted beaches had established that this oil was also Libyan crude oil. The *Kuzbass* was the only oil tanker passing the North Sea en route to Helgoland Bay during June 1996. There was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass*. The analysis carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence. The assertion by the shipowner and the Club that the two oils were not identical was not sustainable, on the basis of current scientific standards. The *Kuzbass* had a leak between a sloptank and a cargo tank. It was no longer maintained that the oil pollution was caused by a single tank washing, but the pollution was caused by the discharge of slops. It must be assumed, therefore, that on a previous laden voyage crude oil cargo had leaked into the slop tank, which had already contained slops originating from previous tank washings, resulting in a mixture of slops

<1> The port of discharge of the next cargo was in Italy.

highly enriched with crude oil. The *Kuzbass* had then discharged this mixture on the voyage from Cuxhaven to the Mediterranean.

- 3.6 The Court appointed an expert to consider the evidence as to the origin of the oil, and in particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan Brega crude oil. The expert concluded that the samples in question contained without any doubt residues of crude oil typical of those found in tank washings (slops) from oil tankers. He stated that there was no trace of sludge in the samples. The expert expressed the view that the quantity of oil recovered (ie several hundred tonnes) ruled out that sludge oil had contributed to the pollution. On the basis of the examination carried out by the Federal Maritime and Hydrographic Agency the oil in question was in his view without any doubt Libyan crude oil, but it was not possible to relate this oil to a particular well. The expert also stated that it was not possible to establish whether the pollution was caused by the cargo carried by the *Kuzbass* without having access to samples taken from its slops tank.
- 3.7 The shipowner and the West of England Club have agreed with the expert's conclusion, in particular that the oil originated from Libya but could not be attributed to a particular Libyan well, that it was impossible to attribute the oil to a particular vessel if no sample from the ship was available, and that such samples were never taken from the *Kuzbass* even though the opportunity to do so arose when the vessel was inspected in Italy in July 1996 by the German authorities who decided not to require such sampling. They have also stated that the expert's finding that the samples taken from the beaches contained typical characteristics of residues from tank washing but no characteristics of sludge did not lead any further since all tankers which passed in the North Sea at the relevant time could have washed their tanks and caused the pollution. The shipowner and the West of England P & I Club have maintained throughout that the evidence available shows that the oil pollution was not caused by oil from the *Kuzbass*.
- 3.8 The German authorities have submitted comments on the expert's report as to the origin of the oil. The authorities have maintained that on the basis of the expert's findings and the evidence available the pollution must have been caused by the *Kuzbass*. They have also argued that Lloyd's Maritime Information Service on tanker movements in the North Sea, as well as an analysis of Libyan crude oil exports, clearly showed that in June 1996 no tanker other than the *Kuzbass*, coming directly from Libya with a cargo of Libyan crude oil, sailed from Helgoland Bay and along the German and Dutch coasts with its cargo tanks containing residues of Libyan crude oil. The authorities have stated that urgent repairs to a cracked cargo tank had necessitated the tank cleaning.
- 3.9 The shipowner and the West of England Club have also presented a report based on joint work by a former chief engineer of the shipowner and by an independent expert who both had examined the *Kuzbass* engine logbook and other technical documents. They both have stated that according to the engine log there was no cargo or ballast pump activity recorded from the completion of discharge in Wilhemshaven until the completion of the maintenance work, that the use of cargo or ballast pumps would have been impossible during the time the repairs were taking place, and that according to the log entries the vessel was anchored for essential maintenance of the ship's cooling water system from 18:30 hours on 12 June until 19:00 hours on 13 June 1996.
- 3.10 The German authorities have challenged this report, in particular the interpretation of the logbook entry relating to the alleged maintenance work. The authorities have explained why in their view no other tanker except the *Kuzbass* could have caused the pollution.

- 3.11 The court is expected to decide in the near future on the procedure for the handling of the case.

4 Considerations by the Director

- 4.1 The Director concurs with the findings of the court expert. The Director has also studied the analytical data submitted by the Federal Maritime and Hydrography Agency, in particular the

mass spectrograms of the pollution samples, which in his opinion show a remarkable match with Libyan Es Sider crude as opposed to Libyan El Brega crude, the latter being the oil transported by the *Kuzbass* on the voyage immediately prior to the alleged pollution offence.

- 4.2 According to the schedule of Libyan crude exports produced by Lloyd's Maritime Information Services, prior to carrying the cargo of El Brega crude to Willhemshaven, the *Kuzbass* had carried two cargoes of Es Sider crude (loaded on 14 February and 28 March 1996) and one cargo of Ras Lanuf crude (loaded on 22 February 1996). If the *Kuzbass* had been the source of the pollution, and if this had resulted from the overboard discharge of slops accumulated over several voyages, this may in the Director's view explain why the mass spectrograms of the pollution samples most resembled mass spectrograms of Es Sider crude.
- 4.3 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.

5 Recent developments

- 5.1 The Director has recently held informal discussions with the West of England Club as regards the evidence presented to the Court.
- 5.2 However, the West of England Club has informed the 1992 Fund that on the basis of all the evidence available it continues to maintain that the *Kuzbass* was not the source of the pollution.
- 5.3 In view of the position taken by the shipowner and the West of England Club, the Director has concluded that the issues relating to liability will have to be decided by the German Courts.

6 Action to be taken by the Executive Committee

The Executive Committee is invited:

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