



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
14th session
Agenda item 3

92FUND/EXC.14/8
2 October 2001
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

BALTIC CARRIER

Note by the Director

Summary:

The tanker *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. 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. Claims in respect of property damage and loss of earnings in the fishing and mariculture sectors have been submitted. 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).

Action to be taken:

- a) information to be noted; and
- b) decide whether the spill in Rostock falls within the scope of the 1992 Conventions.

1 The incident

- 1.1 The *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, was carrying some 30 000 tonnes of heavy fuel oil when on 29 March 2001 it collided with the *Tern* (20 362 GT), a sugar-laden bulk carrier registered in Cyprus, some 30 miles north-east of Rostock (Germany). The collision caused a hole approximately 20m² in one of *Baltic Carrier's* cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.

- 1.2 The *Baltic Carrier* remained at anchor near the collision site during the first week in April until lightering operations of the undamaged cargo tanks were completed. The vessel was then escorted to a shipyard in Szczecin (Poland) for repair.
- 1.3 The spilled oil drifted north-westwards from the collision point and quickly approached the Danish coast just north of the island of Falster. Considerable quantities of floating oil were found off the islands of Møn and Falster as well as in the sounds between Falster, Sjælland and Møn. The heaviest oiling of the shoreline occurred along the southern shores of Farø and Bogø. Lighter oiling of beaches occurred along the entire southern shores of Møn, along the northern coast of Falster and along the coastal areas of Sjælland east of Vordingborg.
- 1.4 A task force from the European Union attended the spill to evaluate the clean-up operations on behalf of the European Commission and to provide technical advice to the Danish authorities.
- 1.5 Representatives of the Helsinki Commission also attended and held a press conference to stress the importance of international co-operation among the Baltic States.
- 1.6 Both the *Baltic Carrier* and the *Tern* were entered in Assuranceforeningen Gard (the Gard Club).
- 1.7 Experts from the International Tanker Owners Pollution Federation Ltd (ITOPF) attended the incident on behalf of the Gard Club and the 1992 Fund.

2 Clean-up operations in Denmark

- 2.1 The Danish Coast Guard responded to the spill with seven of its oil response vessels. The Swedish and German authorities despatched three and two response vessels respectively, under the terms of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention).
- 2.2 Due to the nature of the oil, mechanical grabs were used to greater effect than skimmers in the recovery of the oil/water mix. After adjusting for water content, it was estimated that approximately 900 tonnes of oil was recovered, ie about one third of the spilled oil quantity.
- 2.3 Booms were used to protect the entrances to small harbours, to contain oil at sea to facilitate collection, and to drag oil towards the shore for land-based recovery. Booms were also deployed to protect ecologically sensitive areas, including wetlands and bird habitats.
- 2.4 Since the oil reached a number of shallow water areas, there was only limited possibility to conduct water-based recovery operations. In areas of depths greater than 70cm, shallow-draught workboats from the Swedish Coast Guard were able to recover oil. However, in many areas even these boats were unable to operate.
- 2.5 The offshore response was terminated on 2 April 2001, when it was established that no more floating oil could be found in open water areas accessible to large vessels. By 6 April all response vessels had discharged the collected oil into temporary storage barges. One Danish vessel remained on stand-by somewhat longer, as did the Swedish shallow-draft boats.
- 2.6 In the emergency phase the onshore clean-up was organised by the Danish Emergency Management Agency (the Agency). The shore-line clean-up involved several hundred people, including conscripts, police, municipal workers, contractors and local volunteers.
- 2.7 Specialised oil spill response equipment for the shore-based activities was supplied by the Agency from its emergency stocks, by the Swedish emergency services and from a Danish response equipment manufacturer. Much of the heavy equipment (eg excavators), ground transport and operators of the equipment were supplied by local commercial contractors or farmers in the area. Recovery was carried out using mechanical grabs and vacuum trucks.

Manual recovery was undertaken in areas not accessible to heavy equipment, along slightly-oiled beaches and in areas with rocky/cobble substrate or in more sensitive environments.

- 2.8 When the emergency response phase was terminated on 9 April 2001, responsibility for cleaning was transferred to the municipalities concerned. Discussions took place between the municipalities regarding the techniques and standards for the fine-scale shoreline cleaning. The municipalities requested assistance from the Agency for the co-ordination of the operations.
- 2.9 Clean-up work, including the fine cleaning of the coastline and the disposal of oily waste, was completed during the summer.
- 2.10 Oil/water collected in the offshore operations was brought by the respective response vessels to the nearby port of Vordingborg, where it was transferred to barges. Oil and oiled debris recovered from the shore were transferred to temporary storage in barges and on land.
- 2.11 In line with Danish policy, most of the collected oil and oily debris was disposed of by incineration.
- 2.12 More than 2 000 dead birds have been reported, including swans, herons, ducks, and moorhens. In accordance with Danish policy, bird washing was not carried out. It was also considered that many of the birds would have died before they could have been brought into any washing facilities.

3 Oil pollution in Sweden

- 3.1 At the Executive Committee's 13th session, the Swedish observer delegation stated that oil thought to have originated from the *Baltic Carrier* had been found on the south-west coast of Sweden and that clean-up operations had been undertaken to remove the oil. That delegation further stated that the analysis had not yet been completed, but that if the polluting oil matched the oil from the *Baltic Carrier*, the Swedish Coast Guard and local authorities intended to file claims in respect of clean-up operations.
- 3.2 No further information has been received as regards any claim in respect of clean-up operations in Sweden.

4 Oil pollution in Rostock and Ventspils

- 4.1 The *Tern* suffered severe damage to its bow above and below the water line leading to the flooding of the vessel's forepeak. Some of the cargo oil spilled by the *Baltic Carrier* entered the forepeak tank of the *Tern* immediately following the collision. On the day of the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern's* forepeak tank. During the latter vessel's stay in Rostock its bow was cleaned and most of the oil in the forepeak tank was removed. A small oil spill occurred in Rostock. Clean-up operations were undertaken by the local fire brigade at a cost of DM 600 (£200). It is understood that the German authorities do not intend to carry out an investigation into the events leading to the spill.
- 4.2 After about 800 tonnes of the *Tern's* cargo of sugar had been redistributed to trim the vessel by the stern Class' approval was obtained for the vessel to proceed with a tug escort to its discharge port of Ventspils (Latvia). The *Tern* discharged its cargo in Ventspils from 5 to 17 May 2001, during which time a further spillage of *Baltic Carrier* oil occurred.
- 4.3 A local contractor in Ventspils was engaged by the Gard Club to undertake clean-up operations in Ventspils and to remove the remaining *Baltic Carrier* oil from the forepeak tank. About 95 tonnes of oil was removed from the damaged tank. The Gard Club has received claims for pollution damage from the Ventspils Port Authority as well as from the owners of the terminal alongside which the spill occurred, the Marine Environment Organisation, a yacht harbour,

fishermen and the owners of other vessels that were in the port at the time. It is understood that the Club intends to settle the oil pollution claims on best possible terms, without consulting the 1992 Fund. The Fund will obviously not be bound by any settlements made by the Club.

- 4.4 At its 13th session the Executive Committee considered the question as to whether the spill of *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions or, in other words, how far the liability of the ship originally carrying the oil reached. It was noted that the *Tern* was a bulk carrier and was therefore not a 'ship' for the purpose of the 1992 Civil Liability Convention.
- 4.5 The Executive Committee noted that under Article III.1 of the 1992 Civil Liability Convention the owner of the ship carrying the oil was liable for pollution damage caused by his ship as a result of an incident. The Committee also noted that 'pollution damage' was defined as loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship (Article I.6) and that 'incident' meant any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage (Article I.7).
- 4.6 The Committee noted that the oil spilled in Rostock and Ventspills originated from the *Baltic Carrier* and caused damage by contamination outside that ship, and that in the Director's view had the oil from the *Baltic Carrier* which entered the *Tern* spilled on to the sea at the collision point shortly after the collision, there would not be any doubt that the 1992 Conventions would have applied to that spill.
- 4.7 The Committee considered the question of whether the fact that the *Tern* had been moved with the *Baltic Carrier* oil in the forepeak tank before this oil spilled into the sea at Rostock should imply that this spill was not caused by a series of occurrences having the same origin, ie the collision. The Committee noted that since it had been necessary and prudent to bring the *Tern* to Rostock for inspection, the Director considered that there was a sufficiently close link of causation between the collision and the pollution damage caused in Rostock and that this spill fell within the scope of the 1992 Conventions.
- 4.8 The Committee noted that as regards the spill in Ventspills, the situation was, in the Director's view, different, since it had not been a foreseeable consequence of the collision that the oil originating from the *Baltic Carrier* would cause pollution damage in Latvia. It was noted that it was known at the time of departure from Rostock that there was *Baltic Carrier* oil remaining on board the *Tern*. The Committee noted the Director's view that the voyage from Rostock to Ventspills constituted an intervening factor breaking the link of causation between the collision and the pollution damage in Ventspills, and that the spill in Ventspills therefore constituted a different incident caused by an event, the origin of which was not the collision, nor an occurrence having its origin in the collision, but the failure to remove the oil from the *Tern*. The Committee noted that the Director considered therefore that this latter oil spill did not fall within the scope of the 1992 Conventions and that the liability for the pollution damage in Ventspills would not fall on the owner of the *Baltic Carrier* but would have to be determined under common law.
- 4.9 A number of delegations took the view that it was not foreseeable that the collision between the *Baltic Carrier* and the *Tern* would lead to pollution in Ventspills and that the *Tern*'s voyage from Rostock to Ventspills constituted an intervening factor which broke the link of causation between the collision and the pollution damage in Ventspills.
- 4.10 Other delegations considered that before any decision could be taken on the scope of application of the 1992 Conventions to the spills in Rostock and Ventspills, it would be necessary to establish the precise chain of events that led to the spills.
- 4.11 One delegation considered that there was no clear cut answer to the question, but that it could be argued that the *Tern* was only an agent carrying the oil to a different location and that that vessel

was no different to any other agent. It was that delegation's view the fact that the ship had been moved from one location to another should not be the deciding factor, but rather whether the pollution in Ventspills was foreseeable, and that the crucial element was whether the subsequent pollution was as a result of ordinary or gross negligence. That delegation considered that gross negligence would be sufficient to break the link of causation, ordinary negligence would not, but there was insufficient information surrounding the spills in Rostock and Ventspills to determine the degree of negligence.

- 4.12 The Executive Committee decided that it was premature to make a decision on the scope of application of the 1992 Conventions beyond the pollution damage that occurred as a result of the oil spill which took place at the location of the collision and that a decision on the question of whether the Conventions applied also to the spills in Rostock and Ventspills should be deferred to the next session. The Committee instructed the Director to carry out further investigations into the chain of events that led to the spills in Rostock and Ventspills (document 92FUND/EXC.13/7, paragraph 3.3.29).
- 4.13 The Director has continued his investigations, but has so far been unable to obtain further information regarding the spills in the two ports.
- 4.14 As mentioned in paragraph 4.1, as regards the spill in Rostock it appears that the German authorities will not carry out an investigation into the circumstances surrounding the spill. Nevertheless it is the Director's view that given the fact that the bow of the *Tern* was open to the sea and that the forepeak tank contained oil spilled from the *Baltic Carrier*, the minor spill in Rostock was probably unavoidable and was an inevitable consequence of the original incident. For that reason the Director remains of the view that this spill falls within the scope of the 1992 Conventions.
- 4.15 The Director is continuing his investigations into the cause of the spill in Ventspills. He considers that until more details are available as to the events leading to the spill it is premature for the Executive Committee to take a decision as to whether the spill falls under the 1992 Conventions.

5 Claims for compensation

- 5.1 The Committee decided at its 13th session to authorise the Director to make final settlement on behalf of the 1992 Fund of all claims for pollution damage in Sweden and Denmark arising from the *Baltic Carrier* (document 92FUND/EXC.13/7, paragraph 3.3.19).
- 5.2 Experts have been appointed to assess claims for compensation. After claims have been assessed by the experts, the experts' reports are submitted to the Gard Club and the 1992 Fund for their consideration and approval.
- 5.3 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 Dkr 28.9 million (£2.4 million).
- 5.4 Twenty claims, mainly for property damage, have been settled for Dkr 750 000 (£63 000). Property damage claims involved physical damage to agricultural land and private gardens resulting from clean-up operations, and the oiling of fishing boats, fishing gear and mariculture facilities. Claims in respect of damage to agricultural land and gardens have been assessed in line with guidelines used by Danish telecommunications companies for the payment of compensation for damage caused by cable laying operations. Claims for contamination of fishing gear have been assessed on the basis of replacement costs after having taken into account the age of the oiled equipment and its normal working life. Some of these claims have also given rise to economic loss claims.
- 5.5 Claims have been submitted by three fish farms for Dkr 26.5 million (£2.3 million). The floating cages of three fish farms were oiled. At the time of the oiling the fish farms were in the process

of being stocked with young trout, which were to be reared for the production of roe for sale to Japan.

- 5.6 The Gard Club arranged for a Norwegian laboratory to obtain samples of water and fish from one of the fish farms for analysis of concentrations of a group of Polynuclear Aromatic Hydrocarbons (PAHs), which are often used to provide guidance on whether marine products are fit for human consumption or should be subject to temporary harvesting or sales bans. Although the analyses showed that PAH levels in seawater were not significantly different from background levels in adjacent waters unaffected by the spill, the results for fish were less conclusive, since no comparative data for an unpolluted control site were available. Whilst slightly elevated PAH levels were found compared with results from other recent spills in Europe, the Gard Club's and the Fund's experts considered that these levels would quickly subside and that it would be technically feasible to continue cultivating fish in the affected areas, given the normal timetable for spring/summer cultivation and autumn slaughter.
- 5.7 However, the owners of the fish farms contacted their Japanese buyers who indicated that they would not be willing to purchase roe produced in the area during 2001. It is understood that the fish farm owners tried but failed in their efforts to obtain permission from the Danish authorities to cultivate the fish at alternative sites. The fish farm owners also indicated that rearing fish in the area for an alternative market would be uneconomic, and they therefore decided to abandon the rearing of fish in 2001. Norwegian mariculture experts appointed by the Gard Club after consultation with the Fund are examining the claims.
- 5.8 It is not yet possible to make an evaluation of the total amount of the claims for compensation and consequently it is not known whether the limitation amount applicable to the *Baltic Carrier* (see section 7) will be exceeded and whether the 1992 Fund will be called upon to pay compensation.

6 Environmental monitoring

- 6.1 The Danish authorities indicated their intention to carry out a study of the distribution of the oil and to investigate if further clean-up is necessary, possibly through biodegradation.
- 6.2 At a meeting held in Copenhagen on 12 May 2001, the Director drew the attention of the Danish authorities to the 1992 Fund's policy in respect of post-spill studies as set out in the Fund's Claims Manual and in particular to the importance of the 1992 Fund being given the possibility of becoming involved at an early stage in the selection of the experts who would carry out the planned environmental study and in the determination of the mandates of the experts.
- 6.3 The Director considered that whilst the purpose of the proposed study, which was said to focus on the impact of the spill on recreational and economic resources, appeared to relate to 'pollution damage' as defined in the 1992 Conventions, there appeared to be some degree of overlap with a monitoring programme already undertaken by the authorities in connection with the damage to the fish farm referred to in paragraphs 5.4 - 5.6. The Director also expressed doubts to the Danish authorities about the need to measure PAHs in sediment samples in the context of the impact of the spill on recreational activities and has requested further details of the proposal to measure PAHs in mussels.
- 6.4 The Danish authorities submitted a revised proposal for environmental monitoring in June 2001. The Gard Club, the 1992 Fund and their experts discussed this proposal in detail. In summary, the reason given by the Danish authorities for the monitoring was for the authorities to obtain an overview of the current situation in order to act appropriately and to monitor the environmental situation following the pollution incident until conditions "normalised". It was also noted that in the proposal it was acknowledged that PAHs, due to their property of heavily tainting the taste of products for human consumption, pose little toxicological threat for humans.

- 6.5 After consultation with the 1992 Fund the Gard Club responded to the Danish authorities confirming acceptance of the costs of certain parts of the programme that were consistent with the Fund's criteria for environmental studies, in particular the proposal to study the effects of the clean-up on flora. The Fund and the Club also acknowledged the possibility that reinstatement measures might be appropriate in accelerating the natural recovery of certain areas damaged during the shoreline clean up operations. In the response it was also stated that costs for the long-term environmental monitoring programme would not be accepted. The Danish authorities were also informed of the wealth of data available from previous oil spills in other countries, which indicated that, notwithstanding the known carcinogenicity of many PAH compounds, the public health implications from oil and/or PAH contamination in seafood were unlikely to be significant.

7 Limitation of liability

- 7.1 The shipowner has not yet commenced limitation proceedings.
- 7.2 The limitation amount applicable to the *Baltic Carrier* is estimated at Dkr 118 million (£9.5 million).

8 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 give the Director such instructions in respect of this incident as it may consider appropriate.
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