



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
1st session
Agenda item 4

92FUND/EXC.1/3
18 September 1998
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INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN GERMANY

Note by the Director

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

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 undertook clean-up operations at sea and onshore, and some 2 130 tonnes of oil and sand mixture were removed from the beaches.

1.2 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.

1.3 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 showed that the pollution was not caused by crude oil from North Sea platforms.

1.4 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.

2 1992 Fund's involvement

2.1 The German authorities notified the 1992 Fund of the incident. 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, 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.

2.2 The German authorities have informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

2.3 If the German authorities were to pursue a claim against the 1992 Fund, the question arises of whether they have proved that the damage resulted from an incident involving one or more ships. This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of "ship" contained in the 1992 Civil Liability Convention.

2.4 The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£31 million).

3 Legal action

3.1 In July 1998, the German authorities brought legal action in the Court of first instance in Flensburg against the shipowner and his insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg), claiming compensation for the cost of the operations referred to in paragraph 1 above for an amount of DM2 610 226 (£890 000). They have requested that the Court should notify the 1992 Fund of the action, pursuant to Article 7.6 of the 1992 Fund Convention.

3.2 The Director intends to intervene in the legal proceedings to protect the Fund's interests, once the 1992 Fund has been notified of the legal action against the shipowner and his insurer.

4 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) give the Director such instructions as it may deem appropriate in respect of this incident.
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