



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
20th session
Agenda item 3

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INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by the Director

Summary:

The *Prestige*, laden with 77 000 tonnes of heavy fuel oil, broke in two off the coast of Galicia (Spain) spilling an unknown but substantial quantity of heavy fuel oil. It is estimated that both the bow and stern sections, which are lying in some 3 500 metres of water, still contain significant quantities of oil. A major offshore clean-up operation was carried using vessels from Spain and nine other European countries. Clean-up operations continue along some 800 km of shoreline. The shipowner's P & I insurer and the 1992 Fund have established a claims handling office in La Coruña.

Action to be taken:

Decide (a) whether to authorise the Director to settle and pay claims, (b) the level of the 1992 Fund's payments, (c) the conversion of the maximum amount of compensation available under the 1992 Conventions into Euros, and (d) whether to endorse the Director's proposal regarding the funding of compensation payments.

1 The incident

- 1.1 On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), en route from Ventspils (Latvia) to Singapore, suffered structural damage in heavy seas some 30 miles off Cape Finisterre (Spain) (see attached map). The *Prestige* drifted to within 5 miles of the coast before salvage vessels were able to attach lines to the tanker on 14 November 2002. The ship was towed away from the coast and on 19 November 2002 it broke in two some 170 miles west of Vigo (Spain). The two sections of the vessel sank in about 3 500 metres of water. All members of the crew were airlifted to safety prior to the break up of the vessel.

- 1.2 The *Prestige* was carrying a cargo of 77 000 tonnes of heavy fuel oil, an unknown quantity of which was lost before the vessel broke up. A further unknown quantity of oil was released when the vessel broke in two.
- 1.3 The *Prestige* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

2 Clean-up operations

- 2.1 Clean-up operations at sea were led by the Sociada Nacional de Salvamento y Seguridad Maritima (SASEMAR). A major offshore oil recovery operation was undertaken with vessels from Spain, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal and the United Kingdom participating in the clean-up. The response was often hampered by severe weather and those vessels without any cargo heating capability had difficulty discharging the recovered oil. Up to 1 000 fishing vessels also participated in the clean-up in sheltered coastal waters. It was reported that some 12 500 tonnes of oil-water mixture were collected at sea. Although the level of at sea clean-up was scaled down in mid-December, operations are expected to continue for some time.
- 2.2 A major attempt was also made to protect a number of estuaries and sensitive areas by means of defensive booming. Over 20 000 metres of boom was deployed and a further 36 000 metres, much of it brought from outside of Spain, was staged at key locations for deployment in the event of new threats from oil at sea.
- 2.3 Manual clean-up of shorelines was undertaken by a workforce comprising military and local government personnel, contractors and volunteers. Some 5 500 personnel were involved in the clean-up in mid-December. The onshore clean-up is expected to continue for some considerable time.
- 2.4 Liquid oily waste, mainly from offshore clean-up operations, was stored at two MARPOL waste reception facilities and a power station and will eventually be recycled. Solid wastes generated from shoreline clean-up operations will be stored temporarily until final disposal options have been identified.
- 2.5 The London Club and the 1992 Fund has monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF) and a network of Spanish surveyors.

3 Impact of the spill

- 3.1 Some 270 beaches along an 800 km stretch of the Spanish coastline between Bilbao in the north and Vigo in the west have been polluted with oil to varying degrees. The heaviest oiling occurred between La Coruña and Cabo Torinaña (see map).
- 3.2 Oil also entered Portuguese waters, although as at 20 December 2002 no oil had gone ashore in Portugal.
- 3.3 In view of the potential impact of the French coast the French authorities activated the national contingency plan for shorelines (Plan Polmar Terre), but the plan was subsequently deactivated when the threat receded.
- 3.4 Fishing and mariculture are very important industries in Galicia and the Galician Fisheries Council, the regulatory authority, imposed a ban on fishing and shellfish harvesting over an extensive area.
- 3.5 A number of onshore fish farms, depuration plants and aquaria, all of which rely on regular supplies of clean seawater, were affected as a result of the entrainment of oil in their intakes. In

some cases the situation was considered so serious that the authorities insisted on seafood stocks being destroyed.

- 3.6 A Spanish fisheries expert engaged by the 1992 Fund and the London Club is monitoring the effects of the pollution on fishing and mariculture.

4 The wreck

- 4.1 The two sunken parts of the *Prestige* contain significant quantities of oil. A survey carried out by a French mini submarine revealed oil escaping from a number of openings in the tanks several weeks after the sinking, despite the ambient temperature on the seabed being around 3-4° C. The quantity of oil being released has been estimated at between 50 and 125 tonnes per day.

- 4.2 It is understood that the *Prestige* had loaded heavy fuel oil with two different specifications, one with a pour point (the temperature below which the oil will not flow) of 12° C and the other with a pour point of 3° C. Both types of oil were combined in the *Prestige's* tanks to produce a composite-oil with a pour point of 6° C. It is expected that the rate of release of the oil will decrease with time.

- 4.3 The Spanish authorities have set up a scientific commission to consider what action, if any, should be taken to deal with the remaining cargo on board the two sections of the wreck.

5 Claims for compensation

- 5.1 The clean-up operations at sea and onshore will result in claims for significant amounts from the Spanish Central and Regional Governments, assisting States, clean-up contractors, equipment suppliers and local authorities. The disposal of the oil will also give rise to large claims. If the authorities decide to remove the remaining oil from the wreck, this will result in substantial costs.

- 5.2 It is expected that claims from the fishing and aquaculture sector will be very large, particularly if the fishing bans are maintained for several months.

- 5.3 Claims can also be anticipated from the tourist sector, although the clean-up of the affected shorelines should be completed well before the start of the 2003 tourist season.

- 5.4 Claims can be expected in respect of pollution damage and preventive measures in France and Portugal.

- 5.5 It is impossible to make any estimate of the total amount of claims at this stage, but it is certain that it will exceed the total amount available under the 1992 Conventions, 135 million SDR. Further information concerning the potential claims will be given in an addendum to this document.

- 5.6 The Executive Committee may wish to consider whether, and, if so, to what extent, it is prepared to authorise the Director to make final settlement of claims arising out of this incident on behalf of the 1992 Fund to the extent that the claims do not give rise to questions of principle which have not previously been decided by the Committee.

- 5.7 The Committee may also wish to consider whether and, if so, to what extent the Director should be authorised to make payments.

6 Assessment of claims for compensation

- 6.1 The Director, the Deputy Director/Technical Adviser and the Head of the Claims Department have visited Madrid and La Coruña (Galicia) to discuss the situation with representatives of the Spanish Central Government and the Regional Government of Galicia (Xunta de Galicia).

- 6.2 The Director and the Head of the Claims Department held discussions with the Vice-President of the Spanish Government, the Vice-Minister of Finance, the State lawyer and the Minister of Agriculture, Fisheries and Food as well as with the Xunta's Minister of Fisheries. It was generally agreed that it was important to avoid the difficulties faced in connection with the *Aegean Sea* incident and that this could only be achieved through a high level of co-operation between the Spanish Government, the Xunta de Galicia, the shipowner's insurer and the 1992 Fund.

7 Claims Office

- 7.1 In anticipation of a large number of claims, and after consultation with the Spanish Government and the Xunta de Galicia, the London Club and the 1992 Fund have established a Claims Handling Office in La Coruña. The office became fully operational on 20 December 2002.
- 7.2 Prior to the official opening of the Claims Office, three French nationals, one of whom had been responsible for demolishing part of the Claims Office in Lorient (established to deal with claims arising from the *Erika* incident) in December 2001, on 12 December 2002 forced their way into the La Courña Office as the newly appointed manager, Capt J Astorica and his deputy, Ms A Pestaña, were entering the building. Despite the manager's appeal for calm, the intruders daubed 'FIDAC, Erika, Prestige' on the wall of the entrance hall with fuel oil collected from the shoreline. They then forced entry into the second floor office with a container of fuel oil and refused to leave until the television and press arrived. In the event the police arrived first and persuaded the intruders to leave the premises without violence. After being questioned at the nearby police station the three intruders were released without charge, although one of the intruders stated that he would attack the office again in the New Year.

8 Applicability of the 1992 Conventions

- 8.1 Spain is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 8.2 France is also Party to the 1992 Conventions. The 1992 Civil Liability Convention and the 1992 Fund Convention entered into force in respect of Portugal on 13 December 2002, the date of the incident.
- 8.3 The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €25 million (£15.9 million).

9 Maximum amount payable under the 1992 Fund Convention

- 9.1 Under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Prestige* incident under the 1992 Conventions (135 million SDR) should be converted into the national currency in question, ie Euros, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 9.2 At its 2nd session the Assembly decided, in the context of the *Nakhodka* incident, that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of the session (document 92FUND/A.2/29, paragraph 17.2.8). In its decision in the *Nakhodka* case the Assembly had explicitly recognised that the Executive Committee would take decisions on the date for conversion.
- 9.3 The Executive Committee applied the same principles at its 6th session in February 2000 in connection with the *Erika* incident (document 9FUND/EXC.6/5, paragraph 3.29). In October 2000 the Assembly approved the report of the Executive Committee's session at which this matter

was considered and endorsed the position taken by the Committee at its 6th session in October 2001 (document 92FUND/A.6/28, paragraph 21.4).

- 9.4 Following the same principles in the *Prestige* incident, the Director proposes that the conversion of 135 million SDR into Euros should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 20th session.

10 Funding of compensation payments

The Director considers that an extraordinary session of the Assembly should be convened during the week of 6 May 2003 to consider whether contributions should be levied for payment during the second half of 2003 to enable the 1992 Fund to make prompt payments of compensation. Payments at an earlier stage can be made through the General Fund or by borrowing from other Major Claims Funds.

11 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 the handling of this incident and of claims arising there from as it may deem appropriate;
- (c) to decide whether to authorise the Director to make final settlements of claims;
- (d) to decide whether to authorise the Director to make payments of claims and to determine the level of such payments;
- (e) to determine the date to be used for the conversion of 135 million SDR into Euros; and
- (f) to consider the Director's proposal as regards the funding of compensation payments.

PRESTIGE

Coastline most heavily affected

