

INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992

EXECUTIVE COMMITTEE 21st session Agenda item 3 92FUND/EXC.21/3/1 1 May 2003 Original: SPANISH

# INCIDENTS INVOLVING THE 1992 FUND

# PRESTIGE

# Submitted by Spain

Summary:	This document contains information on measures taken by Spain and the current situation following the incident of the tanker <i>Prestige</i> in Spanish coastal waters. It also describes the objectives of the Spanish Government following the incident, the pollution impact, clean-up operations, economic consequences, the sunken wreckage, legal steps taken, the investigation of the causes of the incident and the position of the Spanish authorities.
Action to be taken:	The Executive Committee is invited to take note of the information submitted with a view to adopting the necessary measures for earliest possible payment of compensation to the victims of the incident.
<b>Related documents:</b>	92FUND/EXC.20/5, 92FUND/EXC.20/5/1, 92FUND/EXC.21/3

# 1 Management of the crisis by the Spanish authorities

- 1.1 In managing the emergency caused by the sinking of the tanker *Prestige*, the Spanish authorities pursued the following objectives:
  - (1) Saving human life: Given the possible danger of imminent sinking and the real danger for the life of all the crew, a whole salvage operation was immediately mobilized, making possible the rescue of all crew members who wished to leave the ship.
  - (2) Combating pollution: When salvage vessels provided by the Spanish authorities arrived at the site of the incident, pollution of the sea had already taken place from the leaking of at least 4 000 tonnes of fuel oil. This led to activation of the National Contingency Plan for Marine Pollution (Plan Nacional de Contingencias por Contaminación Marina) and all available means for combating the pollution were mobilized.
  - (3) Preventing the tanker from running aground: The drifting of the *Prestige* without engines and crew towards the Spanish coast led to expectations of an imminent danger of its running

aground with serious consequences for persons and property on the coast. An additional danger was the threat of leakage of the whole cargo. For this reason, all possible steps were taken to counter the drifting and fully manage the situation.

- (4) Minimizing risks to humans and the Spanish coast: Once the tanker was under control, the following possibilities were considered:
  - entry into a port or another place of refuge,
  - removal of part of the cargo at sea,
  - or towing the tanker away from the coast to calm waters where a transfer operation could safely take place.
- 1.2 The following concurrent circumstances were taken into account:
  - The risk posed by the ship, with serious structural damage, without dependable engines and its crew, a leaking cargo, sinking and partially leaning to starboard;
  - Adverse weather conditions of strong winds and heavy seas;
  - The dangerous coastline of the Galician "Costa de la Muerte";
  - The presence of civilian populations all along the coast;
  - The rich fisheries in the Galician rias;
  - The obvious danger of a rupture of the towline near the coast;
  - The certainty that combating pollution is more effective the greater the distance of the source from the coast.
- 1.3 Also taken into consideration were the facts that Spanish regulations do not authorize entry into port of ships with structural damage; that E.U. or international regulations on possible refuges had not been prepared; that there is no designated place of refuge in the region, and that in trials carried out on the Galician coast it had been determined that in similar cases no entry into port or into areas of anchorage would be permitted. Experience with similar emergencies was also taken into consideration, in which an endangered ship was not permitted near the coast.
- 1.4 Taking these factors into consideration, the order to remove the tanker was carried out, and the authorities cooperated with the salvage firm in order to tow the tanker to quiet waters where the cargo could be transferred. The fourth objective of paragraph 1.1 was fulfilled as follows:
  - There were no deaths or injuries, despite the seriousness of the incident;
  - There was no direct threat to public health;
  - There was no need to evacuate coastal inhabitants;
  - There was no pollution of any primary production centres in the Galician rias;
  - Practically all the aquaculture was saved;
  - Furthermore, the largest and most effective plan for combating pollution undertaken so far was carried out, which permitted recovery of the greatest amount of fuel at sea, minimizing pollution of the shore to a large extent.

#### 2 <u>Impact of the pollution</u>

# 2.1 <u>Affected coast</u>

2.1.1 Out of a total of 1 064 beaches on the Spanish coast between the border with Portugal and the border with France, 743 beaches were affected to one degree or another. The beaches are now affected by a slower, minor process caused by the arrival of small amounts of residue from the cleaning of coastal areas. The affected autonomous communities are Asturias, the Basque Provinces, Cantabria and Galicia.

#### 2.2 Fishing, aquaculture and shellfish harvesting

- 2.2.1 Pollution from the incident of the tanker *Prestige* off the Spanish coast has affected the fishing grounds and coast of north-western Cantabria and has led to a need to prohibit fishing and shellfish harvesting. This prohibition was adopted by the central government in coordination with the administrations of the autonomous communities after joint operations of testing, sampling and study.
- 2.2.2 In order to determine the prohibitions or restrictions on fishing and shellfish harvesting, a series of criteria were applied based on:
  - Evolution of the spill and its effect on coastal areas, both offshore and onshore, and on fishing in those areas and the fishing and shellfish gathering techniques used;
  - The need to prevent fish and shellfish unfit for consumption from reaching consumers;
  - The need to prevent fishing and shellfish harvesting activities from hindering the combating of pollution in the affected areas;
  - Use of personnel and materials from the fishing and shellfish sectors (which were very effective) for removing the spill produced as a consequence of the dispersal and break-up of the fuel oil.
- 2.2.3 Applying the first criterion and available field data (observations on land, at sea and from the air), the first prohibition of fishing and shellfish harvesting, in function of the fishing techniques used, was declared on 16 November 2002, three days after the incident, followed by successive prohibitions in accordance with the criteria described earlier.
- 2.2.4 These limitations led to the total or partial closing of 100% of the north-western Cantabrian coast in Spain, from the border with Portugal to the border with France. In the fishing sector, 13 904 fishermen and shipowners and in the shellfish sector 5 337 shellfish and barnacle harvesters were unable to work while the most extensive restrictions were in force.
- 2.2.5 The work of the Spanish Oceanographic Institute (Instituto Español de Oceanografía), the Spanish Agency for Food Security (Agencia Española de Seguridad Alimentaria) and marine research and regulatory centres of the autonomous communities, plus review of the criteria used to declare the closings, resulted in the first lifting of the ban on shellfish harvesting on 30 January 2003. The following situation existed as of 1 May 2003:
  - The coast on which activities are prohibited affects 13% of the north-western Cantabrian coast.
  - Currently, prohibitions affect 3 561 fishermen and shipowners, 664 shellfish and barnacle harvesters and one area of beds of 12 platforms.
- 2.2.6 The important socio-economic activity of aquaculture deserves separate mention because this activity was no closed. Thanks to preventive operations, mussels raised in a total of 3 200 beds were affected in only a single area with 12 floating platforms.

#### 2.3 <u>Tourism</u>

2.3.1 The annual total income from tourism in the affected autonomous communities is calculated at 6570 million euros. Hotel capacity in the affected regions is 119 274 beds in 3 219 hotels.

## 3 <u>Clean-up operations</u>

#### 3.1 <u>Clean-up at sea</u>

- 3.1.1 Currently, surveillance and clean-up activities are continuing, but the special boats contracted for combating pollution have been deactivated. The following aerial and naval vessels remain active:
  - 13 Spanish helicopters
  - various Spanish boats
  - 11 Spanish rescue boats
  - eight patrol boats of the Naval Service of the Civil Police (Servicio Marítimo de la Guardia Civil)
  - nine fisheries inspection boats of the Regional Government of Galicia (Xunta de Galicia).
- 3.1.2 In addition, the following means of the Spanish armed forces are currently being used:
  - nine ships (including boats equipped with remotely operated vehicles (ROV) for searching sea bottoms)
  - smaller boats
  - Air Force airplanes
  - Army helicopters
  - 79 vehicles (lorries, buses, excavators, tow-trucks, etc.)
  - 20 000 miscellaneous items (kitchens, showers, tents, bedding, generators, barrels, etc.).
- 3.1.3 Clean-up operations on the sea floor have begun using the following means on parts of the affected coast:
  - 6 divers and 80 support personnel from the Ministry of Defence
  - divers from the Ministry of the Interior (GEAS)
  - six divers from the Regional Government of Galicia (Xunta de Galicia) and Ayuntamiento de Vigo
  - a cable-laying ship, the *Teneo*
  - the remotely operated vehicle *Nereus IV* of the Ministry for Development (Ministerio de Fomento) and the Ministry for the Environment.
- 3.1.4 Currently, there are 6 405 metres of booms laid out, 42 313 metres of booms are stored ready for use, and there are 21 768 metres of damaged or unusable booms.
- 3.1.5 The amount of fuel oil recovered up until now at sea is 48 218.1 m<sup>3</sup>: 14 946.4 m<sup>3</sup> by special antipollution boats and 33 271.7 m<sup>3</sup> by fishing boats.
- 3.2 <u>Onshore clean-up</u>
- 3.2.1 Manual means are being used to clean up the beaches and rocky areas because it is the procedure that produces the least amount of residue. Mechanized means are used for transportation of waste, with effectiveness depending on the accessibility of the area. As of 20 April 2003, a total of 687 482 manpower days have been used for collection, of which 37% were volunteers, 30% members of the armed forces and the rest contracted.
- 3.2.2 Clean-up plans were prepared specifically for cleaning up rocky areas and engineering works in function of their biological importance, accessibility, landscape and social criteria, etc. and based on a description of the affected areas and the proposed operational methods. This plan called for

the systematic cleaning of rocks and infrastructure using water jets and other means adapted to specific environmental conditions.

- 3.2.3 In order to clean buried fuel oil from beaches, 4 485 samples were taken along the Galician coast. Buried fuel oil is being removed from 48 polluted beaches. Likewise, sampling has begun in the rest of the affected autonomous communities in order to detect the possible presence of buried fuel oil on beaches.
- 3.2.4 As a final phase, projects for reinstating the environment will be drafted for areas in which nature areas have been damaged, either as a result of the spill or because of the clean-up and removal.
- 3.2.5 Currently, 62 501.7 tonnes of waste have been collected ashore.

#### 4 <u>Economic consequences</u>

- 4.1 The estimated total cost of the incident of the *Prestige* to the Spanish public administration (central government, autonomous communities and local governments) is based on data on expenses known to have been incurred as of 31 March, plus an estimate of the cost of operations that have not yet been completed: namely offshore clean-up, coastal clean-up, restoration of the environment still to be carried out, neutralization of the wreck, and inspection and cleaning of sea bottoms, etc.
- 4.2 The estimated damage to the fishing, shellfish harvesting and aquaculture sectors is based primarily on data on recent sales in these sectors.
- 4.3 The following estimate has been made, but does not include economic consequences that could affect the tourist sector.

	Offshore clean-up	134.4
	Onshore clean-up and reinstating the environment	226.4
Public administrations	Neutralization of the wreck	57.3–70.2
	Assistance	140.0
	Miscellaneous	2.0
Expenses of private parties		102.0
Total		662.1-675.0

# Table 1. Economic Consequences in Spain (millions of euros)

#### 5 <u>Neutralization of the wreck</u>

#### 5.1 <u>Scientific Advisory Committee (Comité Científico Asesor) (CCA)</u>

5.1.1 On 9 December 2002, a Scientific Advisory Committee was formed to begin immediate monitoring and management of the sealing of the leaks in the wreck of the *Prestige* and at the same time to carry out a study of the options for permanently neutralizing the wreck.

#### 5.2 <u>Sealing of leaks</u>

5.2.1 At the beginning of December, IFREMER/GENAVIR was hired to carry out dives with the bathyscaph *Nautile* in order to find the wreck and observe its status. During the first dive campaign, which took place between 1 and 9 December, 14 leaks were identified whose combined flow was estimated to be 125 tonnes/day. Since then, the *Nautile* has made 10 inspection dives and

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15 dives to seal leaks. This work reduced the total flow (bow and stern) of fuel oil by between one and two tonnes per day.

- 5.3 <u>Permanent solution</u>
- 5.3.1 There is no precedent of recovery of a similar amount of fuel oil (approximately 37 500 tonnes) at this depth (3 830 metres).
- 5.3.2 The Scientific Advisory Committee considered several options, (containment, breaking-down the fuel oil, re-floating the hulls and extraction of the fuel oil), with several variants for each option. It recommended two solutions: recovery of the fuel oil through pumping and containment within the hull.
- 5.3.3 The Spanish authorities were informed of these recommendations in a meeting on 14 February 2003 and commissioned REPSOL YPF to carry out a study of their technical feasibility. REPSOL YPF is cooperating with other domestic and international companies in the oil sector.
- 5.3.4 Between 10 and 14 March 2003, 40 technicians from the following oil companies, BP, ENI, PETROBRAS, STATOIL, TOTAL FINA ELF and REPSOL YPF, met in Ávila. As a result of the conclusions adopted unanimously at that meeting, the Government of Spain signed an agreement with REPSOL YPF for carrying out the required activities.
- 5.3.5 The work programme and objective stipulated by the agreement are:
  - 1. Development of a remotely operated vehicle (ROV) for operation at 4 000 metres;
  - 2. Inspection and re-enforcement of the sealed cracks;
  - 3. Gathering the data required for design and eventual implementation of all solutions concerning the container, contents, water, soil and volume;
  - 4. Completion of a pilot test for extraction of the fuel oil using buoy-bags (*bolsas-lanzadera*) and, if successful, recovery of all the fuel oil;
  - 5. Simultaneous completion of the design and, if necessary, construction and installation of a canopy to contain pollution;
  - 6. Simultaneous completion of the design and simulation of the extraction of the fuel oil by pumping under the assumption that the other solutions are not feasible.
- 5.3.6 Work is taking place simultaneously on the technological development of three possible solutions, which will be tried consecutively, only if the previous solution is found to be insufficient or impractical.

# 6 <u>Legal action</u>

- 6.1 The Corcubión Examining Court continues holding Preliminary Proceedings 960/02 for suspected crimes of disobedience and damage to natural resources. Recently, three members of the Spanish central government testified before the court as a result of accusations of Plataforma "Nunca Mais": a delegate of the Government of Galicia, the Director General of the Merchant Marine and the Captain of the port of La Coruña.
- 6.2 The captain of the tanker *Prestige* was released on 6 February 2003 after having deposited the required bail of three million euros and remains at the disposition of the court while residing in Barcelona, the place in Spain where he elected to establish residence.

- 6.3 The Spanish authorities have provided the court with all the documents required for establishing the facts concerning the incident. Provision of full proof requested from the owner of the tanker, the charterer and other parties related to the facts remains pending.
- 6.4 Distancing itself from usual practice, the insurer against third-party liabilities, the London P&I Club, still has not limited its liability before the court or competent authority and does not intend to make provisional payments to those who have suffered loss in order to prevent double payment, despite the fact that the Spanish legal regime on this matter is the same as that of other countries: namely the 1992 Civil Liability Convention (CLC 92). In order to prevent difficulties in processing payments, the insurer has been offered the possibility of limiting his liability, either through the court under a procedure of voluntary jurisdiction or legally designating the Caja General de Depósitos of the Spanish Ministry of Finance (Ministerio de Hacienda espagñol) as competent authority as prescribed in Article 5.3 of CLC 92. None of these possibilities has been accepted.

#### 7 Investigation of the causes of the incident

- 7.1 With immediate effect at the time of the incident of the *Prestige*, the Standing Commission for Investigation of Maritime Incidents (Comisión Permanente de Investigación de Siniestros Marítimos) was set up, has carried out a study of the voluminous documentation available and has interviewed a large number of persons connected with the incident.
- 7.2 The Commission, having studied the information at its disposal, has concluded that the determining cause of the incident was a structural failure in the area of the ballast tanks n°2 (stern) and 3, both starboard, consisting of the local loss of strength due to stress, loss or fracture of the side longitudinal stiffeners, which would lead to the loss of strength in its plates and their consequent stress, thus making possible a large opening and even the loss of the plates.

#### 8 Position of the Government of Spain

8.1 The Government of Spain incurred heavy expenses during management of the crisis, as a result of the salvage operations and in combating pollution. At the same time, a broad programme of direct and indirect economic assistance has been carried out in order to avoid damaging consequences for the affected fishing and shellfish sectors. The parties involved in the crisis (the owner, the shipowner, owner of the cargo, the insurance company covering third-party liability and the certification body) have made no contribution to dealing with the crisis. Defence of Spanish public and private interests affected by the incident requires filing a claim with the IOPC Fund 1992 for all the economic considerations described above.