



EXECUTIVE COMMITTEE
22nd session
Agenda item 3

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INCIDENTS INVOLVING THE 1992 FUND

OTHER INCIDENTS

Note by the Director

Summary: In this document developments are reported regarding the following incidents: *Dolly, Natuna Sea, Baltic Carrier, Incident in Spain, Incident in Guadeloupe, Incident in the United Kingdom and Spabunker IV.*

Action to be taken: Information to be noted.

1 Dolly

(Caribbean, 5 November 1999)

The incident

- 1.1 The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank on 5 November 1999 in 20 metres depth in Robert Bay, Martinique. So far no cargo has escaped.
- 1.2 There is a national park, a coral reef and mariculture near the grounding site, and artisanal fishing is carried out in the area. There are fears that fishing and mariculture would be affected if bitumen were to escape.
- 1.3 The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship did not have any liability insurance. The owner is a company in St Lucia.
- 1.4 The shipowner was ordered by the authorities to remove the wreck by 7 December 1999 but he did not comply with the order, probably due to lack of financial resources.

The definition of 'ship'

- 1.5 In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided to the 1992 Fund,

including the original drawings and a sketch showing modifications that were subsequently made to the vessel. The 1992 Fund's experts expressed the opinion that although the *Dolly* had been originally designed as a general cargo vessel, it had subsequently been adapted for the carriage of oil in bulk as cargo, and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention. The Committee decided that the *Dolly* fell within the definition of 'ship' as laid down in the 1992 Civil Liability Convention (document 92FUND/EXC.11/6, paragraph 4.2.5).

Measures to prevent pollution

- 1.6 Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by bitumen. These companies submitted their proposals on the basis of diving inspections of the wreck carried out in October and November 2000. The French authorities provided the 1992 Fund with copies of the proposals.
- 1.7 Two of the companies proposed removing the bitumen tanks intact while leaving the wreck in its current position. Both companies estimated the cost of such an operation to be in the region of US\$1.5 million (£970 000). The third company proposed righting the wreck and refloating it with its cargo on board, following which the bitumen would then be removed and the wreck scuttled in deep water. The cost of this method was estimated at US\$950 000 (£610 000).
- 1.8 In July 2001 the Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen. The Committee also instructed the Director to investigate the financial position of the shipowner document 92FUND/EXC.11/6, paragraph 4.2.14).
- 1.9 The 1992 Fund's experts examined the proposed methods and expressed the view that the third company's proposal was preferable on both technical and cost grounds. The French authorities have indicated that they favour refloating the wreck prior to removing the cargo, and then dismantling the wreck on shore, but that they will consider other options.
- 1.10 In July 2001 the Director informed the French Government of the Fund's experts' opinion. The Director also stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.
- 1.11 In September 2002 the French Government informed the 1992 Fund that in view of the anticipated costs of undertaking the operations, tenders were being sought through the Official Journal of the European Communities. The authorities further indicated that as a result of the delays necessitated by the tendering process, during which divers have made regular checks on the condition of the wreck, the operations were expected to commence towards the end of 2002 after the hurricane season. However, the operations have not yet started.
- 1.12 In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally FF1.2 million or €232 000 (£151 000) in respect of the costs of removing the bunker oil from the *Dolly*. It is stated in the writ of summons that further costs in excess of €2 million (£1.3 million) will be claimed in respect of the removal of the wreck and cargo.

2 Natuna Sea

(Singapore, 3 October 2000)

The incident

- 2.1 The Panamanian tanker *Natuna Sea* (51 095 GT) grounded in the Singapore Strait off Batu Behanti, Indonesia. The vessel was carrying a cargo of 70 000 tonnes of Nile Blend crude oil and an estimated 7 000 tonnes was spilled as a result of the grounding.
- 2.2 On the Singapore side of the Strait a number of islands and the south-east coast of Singapore were polluted. A number of Indonesian islands in the Strait were affected by oil. Oil also impacted the south-east tip of the Johor Peninsula in Malaysia.
- 2.3 The *Natuna Sea* is entered with the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

Applicability of the Conventions

- 2.4 At the time of the incident Singapore was Party to the 1992 Civil Liability Convention and the 1992 Fund Convention, Indonesia was Party to the 1992 Civil Liability Convention only and Malaysia was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 2.5 The limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention is approximately 22.4 million SDR (£18.9 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.2 million).

Claims for compensation

- 2.6 All claims in Malaysia have been settled for a total of RM 2.2 million (£370 000). The 1971 Fund will therefore not be required to make any payments in respect of compensation and indemnification.
- 2.7 All claims in Indonesia have been settled for a total of US\$2.8 million (£1.8 million) and all claims in Singapore have been settled for a total of US\$8.4 million (£5.3 million). The 1992 Fund will therefore not be required to make any compensation payments in respect of the *Natuna Sea* incident.

3 Baltic Carrier

(Denmark, 29 March 2001)

The incident

- 3.1 The *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, was carrying some 30 000 tonnes of heavy fuel oil when 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 in one of the *Baltic Carrier's* cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.
- 3.2 Both the *Baltic Carrier* and the *Tern* were entered in Assuranceforeningen Gard (the Gard Club).

- 3.3 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.
- 3.4 The spilled oil drifted towards Danish coastal waters, polluting the shorelines of several islands, including Falster, Farø, Bogø and Møn.
- 3.5 Following the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 250 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 was removed. A small oil spill occurred in Rostock, which was cleaned up by the local fire brigade.
- 3.6 The *Tern* subsequently proceeded to Ventspils (Latvia) to discharge its cargo, and a further spillage of *Baltic Carrier* oil occurred in Ventspils. A local contractor was engaged by the Gard Club on behalf of the owner of the *Tern* to undertake clean-up operations and to remove the remaining oil from the forepeak tank.
- 3.7 The 1992 Fund Executive Committee considered at its June and October 2001 sessions the questions of whether the spills of *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions. As regards the spill in Rostock, the Committee noted that the costs of clean-up were insignificant, that the German authorities would not present a claim for compensation and that the question of whether the spill of *Baltic Carrier* oil in Rostock was covered by the 1992 Conventions was academic. The Committee therefore decided not to give the matter any further consideration. As regards the spill of *Baltic Carrier* oil from the *Tern* in Ventspils, the Committee instructed the Director to continue his investigations recognising that if all claims arising in Ventspils were settled by the shipowner without any involvement of the 1992 Fund, the question of the applicability of the 1992 Conventions to the spill in Ventspils might also become academic.

Claims for compensation

- 3.8 Claims totalling DKr 70.2 million (£6.2 million) in respect of onshore clean-up costs, property damage, economic losses in the fishing and mariculture sectors and environmental monitoring have been settled for DKr 54.9 million (£4.8 million). Claims totalling DKr 47.5 million (£4.1 million) in respect of costs of clean-up at sea and onshore are still being assessed, but interim payments totalling DKr 36.2 million (£3.2 million) have been made.
- 3.9 A claim for DKr 1.9 million (£170 000) in respect of additional costs of renovation work on a causeway between Bogø and Møn due to the presence of oil in the underlying boulders of the causeway is also being assessed.
- 3.10 In October 2003 the Gard Club informed the 1992 Fund that a global settlement had been reached with the *Tern*'s interests, and that the *Baltic Carrier* interests had paid some US\$512 000 (£308 000) to the *Tern*'s interests in respect of claims for pollution damage in Ventspils. The Gard Club also informed the 1992 Fund that it reserved its right to include claims paid to the *Tern*'s interests for pollution damage caused by *Baltic Carrier* oil in an eventual claim against the 1992 Fund.
- 3.11 The shipowner/Gard Club's total claims exposure for pollution damage arising from the *Baltic Carrier* incident amounts to some DKr 104.3 million (£9.2 million), plus US\$512 000 (£308 000) in respect of pollution damage in Ventspils paid on the basis of the apportionment of liability for the collision between the two vessels. The limitation amount applicable to the ship is some DKr 118 million. (£10.4 million). The Director is therefore of the view that it is unlikely that the 1992 Fund will be required to make any

compensation payments in respect of this incident. However, in the event that the Gard Club were to pursue claims against the 1992 Fund in respect of pollution damage resulting from the spill of *Baltic Carrier* oil from the *Tern*, the Executive Committee will have to give the matter further consideration.

4 Incident in Spain

(Spain, 5 September 2000)

The incident

- 4.1 Between 5 and 15 September 2000 persistent oil landed on several beaches in Lugo and La Coruña in Galicia, Spain. Shoreline clean-up operations were carried out by the local fire brigades of the municipalities of Cervo and Xobe in the north of Galicia.
- 4.2 Investigations by the Spanish authorities indicated that the oil could have been discharged on or around 5 September 2000 within the Spanish Exclusive Economic Zone to the north of Galicia, possibly from the Maltese tanker *Concordia I* (159 147 GT) which had passed the area at the assumed time of the oil spill on a ballast voyage from Rotterdam (Netherlands) to Sidi Kirir (Egypt). The French authorities had previously informed the Spanish authorities of a discharge of oil from the *Concordia I* in the Bay of Biscay on 5 September 2000.
- 4.3 The Spanish authorities boarded the *Concordia I* in Algeciras (Spain) on 7 September 2000 and took samples of oil from various tanks. According to the Spanish authorities the analyses of the oil samples from the polluted beaches matched those of samples taken from the *Concordia I*. The shipowner has maintained that the oil did not originate from the *Concordia I*.
- 4.4 The *Concordia I* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).
- 4.5 The limitation amount applicable to the *Concordia I* under the 1992 Civil Liability Convention is 59.7 million SDR (£50 million).
- 4.6 The municipalities of Cervo and Xobe have submitted claims totalling Pts 1 million or €6 000 (£3 800) to the Standard Club and to the 1992 Fund in respect of the costs of clean-up operations.

Applicability of the Conventions

- 4.7 The Spanish authorities made available to the 1992 Fund the data obtained from the analyses of the samples of oil taken from the *Concordia I* and the samples of oil collected from the shorelines.
- 4.8 The Director examined the data provided by the Spanish authorities and concurred with their conclusion that the oil from the *Concordia I* matched the polluting oil from the affected shorelines. The 1992 Fund informed the Spanish authorities and the Standard Club of his conclusions and provided copies of the analytical data to the Club for their examination. The Standard Club has sought a further technical opinion on the interpretation of the analytical data.
- 4.9 In October 2002 the Executive Committee decided to authorise the 1992 Fund to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the

satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention (document 92FUND/EXC.18/4, paragraph 3.12.14).

- 4.10 There have been no developments in respect of this incident since it was last reported to the Executive Committee at its October 2002 session.

5 Incident in Guadeloupe

(Guadeloupe, 30 June 2002)

- 5.1 On 23 July 2002 the Mayor of Petit-Bourg (Guadeloupe, Caribbean) informed the 1992 Fund of a pollution incident that affected the coast of the town on 30 June 2002. On 1 July 2002 he had issued a ban on sea bathing at Petit-Bourg until clean-up operations had been completed. On 5 July a ban was imposed prohibiting foot-fishing pending the results of analyses carried out by the Department of Sanitation and Health.
- 5.2 Guadeloupe is a Department of France, which is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 5.3 The Mayor of Petit-Bourg has estimated the costs of clean-up at approximately €340 000 (£220 000). He has stated that the Department of Guadeloupe intends to submit claims for compensation to the 1992 Fund.
- 5.4 The Mayor has stated that the pollution resulted from an illegal discharge at sea and that the authorities are trying to identify the ship responsible. Samples of the oil have been sent to a laboratory in France for analysis. The 1992 Fund has requested that it be kept informed of the results of the analysis.
- 5.5 The Executive Committee decided in October 2002 to authorise the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention (document 92FUND/EXC.18/14, paragraph 3.12.14).
- 5.6 In September 2003 the 1992 Fund received further information following investigations by the authorities into the source of the pollution. A number of vessels were identified as potential sources all of which appear to have been general cargo vessels. It therefore seems unlikely that the 1992 Fund will be required to make any compensation payments.

6 Incident in the United Kingdom

(United Kingdom, September 2002)

- 6.1 On 29 September 2002 an unknown quantity of emulsified oil stranded on a 3-kilometre stretch of shoreline of the English Channel near Hythe, Kent (United Kingdom). Clean-up of the shorelines was undertaken by contractors appointed by the Shepway District Council with the assistance of Kent County Council. A total of 24 tonnes of oily waste material was collected and taken to a disposal facility in Kent. The costs of clean-up have been provisionally estimated at around £7 000.

- 6.2 The local authorities requested the Maritime and Coastguard Agency (MCA) to carry out analyses of the pollution samples, the results of which were sent to the 1992 Fund.
- 6.3 The analytical report produced for the MCA by a laboratory in Scotland concluded that the oil residues collected from the shoreline were most likely to have originated from a spillage of heavy Middle Eastern crude oil. The Director concurred with this conclusion. Since there are no refineries or crude oil pipelines in the vicinity of Hythe, the Director further concluded that the oil most probably originated from an oil tanker, ie a 'ship' as defined in the 1992 Civil Liability Convention.
- 6.4 The Executive Committee decided at its October 2002 session to authorise the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention (document 92FUND/EXC.18/4, paragraph 3.12.14).
- 6.5 Extensive investigations by the MCA revealed no reports of oil slicks from vessels transiting the area or from aircraft passing overhead. An earlier study by the MCA on tanker movements in the English Channel indicated that between five and ten tankers (laden and unladen) transit the area each day. Despite extensive enquiries the MCA was unable to identify the vessel responsible for the discharge. In the light of the Director's conclusion in paragraph 6.3 above it was therefore agreed to pay claims in respect of this incident.
- 6.6 A claim submitted by Shepway District Council in respect of its costs incurred in cleaning the foreshore near Hythe following the pollution incident has been settled at the claimed amount of £5 400.
- 6.7 No further claims have been received and none are expected in respect of this pollution incident.

7 Spabunker IV

(Spain, 21 January 2003)

The incident

- 7.1 The Spanish bunker barge *Spabunker IV* (647 GT), laden with a mixed cargo of 1 029 tonnes of intermediate fuel oil, 169 tonnes of gas oil and 176 tonnes of marine diesel sank in heavy seas in Algeciras Bay, Spain. One member of the crew was lost as a result of the sinking.
- 7.2 Only small quantities of oil were released from the wreck, most of which dissipated before reaching nearby shorelines. Two areas of shoreline in Gibraltar were lightly polluted. These shorelines were cleaned under the direction of the Gibraltar port authority.
- 7.3 The Spanish Maritime Safety Agency (Sociedad de Salvamento y Seguridad Marítima, SASEMAR) mobilized a considerable amount of equipment, including an offshore recovery vessel, from La Coruña in Galicia (where it had been staged in response to the *Prestige* incident). In the event very little of it was deployed due to the limited quantity of oil spilled. Some defensive booming of river inlets and port entrances was carried out in Spain and Gibraltar.

7.4 SASEMAR appointed a salvage company to remove the remaining cargo from the wreck on the seabed. This was successfully completed without further loss of oil. Seven weeks after the oil had been removed the salvors raised the wreck.

7.5 The *Spabunker IV* was entered with the Britannia Steam Ship Insurance Association Ltd (Britannia Club).

Claims for compensation

7.6 The limitation amount applicable to the *Spabunker IV* under the 1992 Civil Liability Convention is some 3 million SDR (€4.9 million or £3.4 million).

7.7 Claims have been submitted by the Spanish Government for €5.4 million (£3.8 million) in respect of removing the oil from the wreck and wreck removal. Further claims totalling €628 000 (£438 000) have been submitted by private claimants for costs of clean-up and preventive measures in Spain.

7.8 The authorities in Gibraltar have submitted claims totalling £18 350 in respect of clean-up and preventive measures.

7.9 Although the total amount of the claims exceed the limitation amount applicable to the *Spabunker IV*, the claim by the Spanish Government relates to operations that had a dual purpose, namely preventive measures and wreck removal. This claim is being assessed.

7.10 The Director is of the view that it is unlikely that the 1992 Fund will be called upon to make any compensation payments arising from this incident. The Executive Committee may, nevertheless, wish to authorise the Director to settle claims arising out of the *Spabunker IV* incident to the extent that they do not give rise to issues of principle not previously considered by the Funds' governing bodies.

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; and,
 - b) to decide whether to authorise the Director to settle claims in respect of the *Spabunker IV*.
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