



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
22nd session
Agenda item 3

92FUND/EXC.22/2
13 October 2003
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

Note by the Director

Summary: A résumé of all incidents and all documents submitted under this agenda item is set out.

Action to be taken: Information to be noted.

1 **Introduction**

- 1.1 Resolution N°5 of the 1992 Fund, which establishes the Executive Committee, provides that the Committee shall take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation.
- 1.2 There have been four new incidents that have given or may give rise to claims against the 1992 Fund since the 21st session of the Executive Committee held in May 2003. There are 16 incidents that took place before that session, which are reported to the Executive Committee.

2 **Presentation of documentation**

- 2.1 The documentation presented to the 22nd session of the Executive Committee has been structured in the following way:
 - (a) incidents which the Executive Committee is invited to consider on the basis of a separate document for each incident; and
 - (b) incidents which have been grouped together for practical reasons.
- 2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made – unless otherwise indicated – on the basis of the rates of exchange at the time that the respective documents were written. However, for amounts representing actual payments by the 1992 Fund, the conversion has been made at the rate of exchange on the day of payment.

3 Summary of incidents

The situation in respect of the incidents involving the 1992 Fund can be summarised as follows:

3.1 Document 92FUND/EXC.22/3

- *Incident in Germany* (1996): The German authorities took legal action against the owner and the insurer of a ship, the *Kuzbass*, suspected of having caused oil pollution in Germany in 1996. The shipowner and the insurer maintained that the polluting oil did not originate from the *Kuzbass*. The 1992 Fund intervened in the proceedings and maintained that the *Kuzbass* was the most likely source of the pollution. The German authorities also took legal action against the 1992 Fund to prevent their claim from becoming time-barred. The Court of first instance held that the shipowner and the insurer were jointly and severally liable for the pollution damage. The shipowner and the insurer have appealed against the judgement mainly on the grounds that the chemical analyses of the pollution samples did not provide conclusive proof that the oil originated from the *Kuzbass* and that there were three other vessels in the area of the incident at the relevant time which could have caused the pollution.

No action requested.

3.2 No document

- *Nakhodka* (Japan, 1997): An Agreement between the IOPC Funds and the owner of the *Nakhodka* and his insurer on a global settlement of all outstanding issues was signed on 28 October 2002. The governing bodies had previously authorised the Director to conclude such an agreement. As a result of the agreement the insurer reimbursed the Funds £27.3 million in respect of the Funds' compensation payments and £3.6 million in respect of the Funds' share of the joint costs. The IOPC Funds withdrew their legal actions against the shipowner, his insurer and other parties. All claims have been settled and paid in full. Details of the agreement were reported to the governing bodies at their February 2003 sessions (document 92FUND/EXC.20/2 and 71FUND/AC.10/3).

3.3 Document 92FUND/EXC.22/4

- *Incident in Sweden* (2000): Several Swedish islands in the Baltic Sea were polluted in September 2000. Investigations by the Swedish authorities indicated that the oil could have been discharged from the tanker *Alambra* during a ballast voyage to Tallinn, Estonia. Analyses of pollution samples undertaken by the Swedish authorities were shown to match samples taken from the *Alambra*. The owner of the *Alambra* and his insurer maintain that the oil did not originate from that ship. The Director has examined the analytical data obtained by the Swedish authorities and concurs with their conclusion regarding the origin of the pollution.

The Swedish Government has taken legal action against the shipowner and the insurer claiming compensation for clean-up costs totalling £405 000. The Government has also taken legal action against the 1992 Fund maintaining that the Fund would be liable to compensate the Swedish Government if neither the shipowner nor his insurer were held liable to pay compensation. The 1992 Fund has decided to intervene in the proceedings.

No action requested.

3.4 Documents 92FUND/EXC.22/5

- *Erika* (France, 1999): As of 7 October 2003, 6 785 claims for compensation have been submitted and 95% of the claims have been assessed. Compensation payments totalling £50 million in respect of 5 359 claims have been made. Some 600 claimants took legal action against the shipowner, his insurer and the 1992 Fund. Since the actions were taken, out-of-court settlements have been reached with over 200 claimants. In April 2003 the Director increased the level of compensation payments to 100% of the amount of the loss or damage actually suffered by claimants.

An examining magistrate in Paris is carrying out a criminal investigation into the cause of the incident. Charges have been brought against various parties. At the request of a number of parties, the Commercial Court in Dunkirk appointed a panel of experts to investigate the cause of the incident. These investigations are not yet completed.

Pending the outcome of the ongoing investigations into the cause of the incident, the Executive Committee at its October 2002 session, authorised the Director to take recourse actions against various parties, including the registered shipowner and his insurer, as a protective measure, against several parties before the expiry of the three-year time period.

Depending on the outcome of the ongoing investigations there could be grounds for the 1992 Fund to take recourse action against the French State. The Director considers that the 1992 Fund should take steps to prevent such a claim from becoming time barred.

Action requested:

- Give the Director instructions in respect of the various court proceedings and
- Consider whether to instruct the Director to take the necessary steps to prevent a potential claim against the French State from becoming time barred.

3.5 Document 92FUND/EXC.22/6 (71FUND/AC.12/13/7)

- *Al Jaziah 1* (United Arab Emirates, 2000): The governing bodies decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. All claims arising from this incident have been settled for a total of £1.1 million.

The governing bodies decided in October 2002 that the 1971 and 1992 Funds should take recourse action against the shipowner on the grounds that the vessel was not seaworthy and that the shipowner was not entitled to limit his liability. The recourse action was commenced in January 2003.

No action requested:

- *Zeinab* (United Arab Emirates, 2001): The governing bodies decided that both the 1971 and the 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. This incident is, as regards the 1971 Fund, covered by insurance, subject to a deductible of £220 325. Claims in respect of costs of clean-up and preventive measures have been settled and paid at £1.0 million by the Funds. Since the 1971 Fund's payments have exceeded the deductible, the Fund has recovered £220 000 from the insurer.

The Funds have carried out an investigation into the identity and whereabouts of the owner of the *Zeinab*, with a view to taking recourse action. Since the shipowner no longer resides in the United Arab Emirates, but probably in Iraq, the Director is of the view that it would not be meaningful to take recourse action against him.

Action requested:

- Decide whether the Funds should take recourse action against the shipowner.

3.6 Document 92FUND/EXC.22/7

- *Slops* (Greece, 2000): At its July 2000 session the Executive Committee decided that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident.

Two companies which carried out clean-up operations took legal action against the 1992 Fund, arguing that the *Slops* fell within the definition of 'ship' and that, since the shipowner was manifestly incapable of satisfying their claims for compensation and they had taken all reasonable measures against him, they were entitled to compensation from the Fund.

The Court of first instance held that the *Slops* fell within the definition of 'ship'. The 1992 Fund has appealed against the judgement, as decided by the Executive Committee, arguing *inter alia* that the *Slops* was a floating industrial unit for the processing of oil residues and was not intended to carry oil.

No action requested.

3.7 Document 92FUND/EXC.22/8

- *Prestige* (Spain, 2002): The Bahamas registered tanker *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 its cargo. The bow and stern sections, which are lying in some 3 500 metres of water, are estimated to contain 13 300 tonnes and 900 tonnes of oil respectively. The Spanish authorities are considering various options for removing the oil from the wreck.

The oil from the *Prestige* affected the Atlantic coast from Vigo in Spain to Brest in France, as well as causing intermittent and light contamination on the French and English coasts of the English Channel as far as the Dover Strait.

The shipowner's P & I insurer and the 1992 Fund have established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France). These Offices have received a number of claims.

On the basis of figures provided by the Spanish, French and Portuguese Governments the total costs of the incident are estimated at some £703 million. However, the Director still has concerns regarding the Spanish Government's figures in respect of the costs of operations relating to the wreck and considers that it would be prudent to include an additional amount of £71 million to give a sufficient safety margin, giving a total figure of £781 million.

The total amount compensation available is 135 million Special Drawing Rights corresponding to £120 million. In view of the remaining uncertainties as to the level of admissible claims the Director feels unable to propose an increase in the level of payments beyond 15% of the loss or damage suffered by the respective claimants.

Action requested:

- Decide the level of the 1992 Fund payments.

3.8 Document 92FUND/EXC.22/9

- *Victoriya* (Russian Federation, 2003): The Russian river/sea-going tanker *Victoriya* suffered a fire and explosion at a terminal on the Volga river some 1 300 km inland from the Caspian Sea and the Sea of Azov. An unknown quantity of crude oil was spilled into the river, which impacted one bank of the river and a number of islands. Efforts are being made to clean up the remaining oil before the river freezes at the end of November.

Since the 1992 Conventions apply to pollution damage caused *inter alia* in the territory of Contracting States the Director is of the view that the Conventions apply to pollution damage caused by incidents occurring on inland waters, including rivers.

Action requested:

- Decide whether the 1992 Conventions apply to pollution damage arising from incidents occurring in rivers, and if so, decide whether to authorise the Director to settle claims arising from the incident.

3.9 Document 92FUND/EXC.22/10

- *Buyang* (Republic of Korea, 2003): The vessel struck a submerged rock in a channel between Geoje Island and Tongyeong City, spilling 35-45 tonnes of heavy fuel oil. The oil impacted a number of islands in an area that supports important mariculture activities. It is unlikely the total admissible claims will exceed the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. However, some contribution will be made by the Fund towards costs incurred in connection with the use of experts appointed jointly by the 1992 Fund and the vessel's insurer.

No action requested.

- *Hana* (Republic of Korea, 2003): The vessel was struck by another tanker in the port of Busan resulting in a spill of around 34 tonnes of medium fuel oil. The oil contaminated the hulls of a large number of vessels in the Port of Busan. The impact of the spill on fisheries was minimal. It is unlikely that the 1992 Fund will be required to pay any compensation in respect of this incident. However, some contribution will be made by the Fund towards costs incurred in connection with the use of experts appointed jointly by the 1992 Fund and the vessel's insurer.

No action requested.

3.10 Document 92FUND/EXC.22/11

- *Dolly* (Caribbean, 1999): The *Dolly* was carrying a cargo of 200 tonnes of bitumen when it sank in 20 metres depth. 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. The French authorities informed the 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 operations have not yet started.

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally £151 000 in respect of the costs of removing the bunker oil from the *Dolly*. It is stated in the writ that further costs in excess of £1.3 million will be claimed in respect of the removal of the wreck and cargo.

No action requested.

- *Natuna Sea* (Indonesia, 2000): The oil spilled from the *Natuna Sea* affected Singapore, Malaysia and Indonesia. 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.

All claims for pollution damage in Malaysia have been settled well below the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention. All claims for pollution damage in Indonesia have been settled for a total of £1.8 million and all claims in Singapore have been settled for a total of £5.3 million. Neither the 1971 Fund nor the 1992 Fund will therefore be required to make any compensation payments in respect of the *Natuna Sea* incident.

No action requested.

- *Baltic Carrier* (Germany, 2001): 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. 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 a small oil spill occurred. The *Tern* subsequently proceeded to Ventspils (Latvia) to discharge its cargo, where further spillage of *Baltic Carrier* oil occurred.

Claims for pollution damage in Denmark have been settled for a total of £4.8 million. Claims totalling £4.3 million are being assessed. The *Baltic Carrier*'s insurer, which is also the insurer of the *Tern*, has

informed the 1992 Fund that a global settlement was reached with the *Tern's* interests, as a result of which the *Baltic Carrier* interests had paid some £308 000 to the *Tern's* interests in respect of claims for pollution damage in Ventspils.

It is unlikely that the 1992 Fund will be required to make any compensation payments in respect of this incident. However, the insurer has 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. If the insurer were to pursue that claim against the 1992 Fund, the Executive Committee will have to give further consideration to the question of the applicability of the 1992 Conventions to the oil pollution in Ventspils.

No action requested.

- *Incident in Spain* (2000): Oil landed on several beaches in Spain. Investigations by the Spanish authorities indicated that the oil could have been discharged from the Maltese tanker *Concordia I*. The owner of the *Concordia I* has maintained that the oil did not originate from this ship. The Spanish authorities have submitted a claim to the shipowner and his insurer for £3 800 in respect the costs of clean-up.

The Spanish authorities have made available data obtained from the analysis of the samples taken from the *Concordia I* and of the samples of oil collected from the shorelines. The Director concurs with the Spanish authorities conclusion that the oil from the *Concordia I* matches oil collected from the shorelines. The shipowner's insurer has sought a further technical opinion on the interpretation of the analytical data.

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

No action requested.

- *Incident in Guadeloupe* (2002): A pollution incident affected the coast of a town in Guadeloupe (Caribbean) in June 2002. The pollution was believed to have resulted from an illegal discharge of oil at sea. Samples of the oil were taken for analysis. The clean-up costs are estimated at £220 000.

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.

No action requested.

- *Incident in the United Kingdom* (2002): Oil stranded on the south coast of the United Kingdom. An analysis of the pollution led the Maritime and Coastguard Agency (MCA) to the conclusion that the oil was most likely a heavy Middle Eastern crude oil. The Director concurred with this conclusion, and since there are no refineries or crude oil pipelines in the area, he further concluded that the oil most probably originated from a tanker.

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.

Despite extensive enquiries the MCA was unable to identify the vessel responsible for the discharge. In the light of the Director's conclusion the 1992 Fund paid a local authority £5 400 in respect of clean-up costs. No further claims are expected in respect of this incident.

No action requested.

- *Spabunker IV* (Spain, 2003): The Spanish bunker barge *Spabunker IV* sank in heavy seas in Algeciras Bay, Spain. One member of the crew was lost as a result of the sinking. Only small quantities of oil were released from the wreck, most of which dissipated before reaching nearby shorelines. The Spanish Maritime Safety Agency (Sociedad de Salvamento y Seguridad Maritima, (SASEMAR) mobilised a considerable amount of clean-up equipment. A salvage company appointed by SASEMAR removed the remaining cargo from the wreck and thereafter raised the wreck from the seabed.

The Spanish Government has submitted claims for £3.8 million in respect of removing the oil from the wreck and wreck removal. Further claims totalling £438 000 have been submitted by private claimants for costs of clean-up and preventive measures in Spain. The authorities in Gibraltar have submitted claims totalling £18 350 in respect of clean-up and preventive measures. It is unlikely that the 1992 Fund will be called upon to make any compensation payments arising from this incident.

Action requested:

- Decide whether to authorise the Director to settle claims in respect of this incident.

3.11 Document 92FUND/EXC.22/13

- *Duck Yang* (Republic of Korea, 2003): The coastal tanker sank after dragging its anchor and striking a barge and a quay wall in the port of Busan. A spill of approximately 300 tonnes of fuel oil became widely scattered within the confines of the port causing disruption to port operations and the contamination of the hulls of over 100 ships. It is too early to predict whether the total claims arising from this incident will exceed the limitation amount applicable to the *Duck Yang* under the 1992 Civil Liability Convention.

Action required:

- Decide whether to authorise the Director to settle claims arising from this incident
- *Kyung Won* incident (Republic of Korea 2003): The un-powered barge stranded on the breakwater of a small fishing port spilling about 100 tonnes of heavy fuel oil. About 14 km of shoreline were polluted to varying degrees impacting fisheries and mariculture. The barge did not have any liability insurance.

Although claims for the costs of clean-up operations and compensation claims in respect of losses in the fishery and mariculture sectors are anticipated, it not possible to estimate the magnitude of the claims at this stage. It is unlikely that the shipowner will have the financial resources to make significant compensation payments.

Action required:

- Decide whether to authorise the Director to make payments in respect of this incident even if the shipowner does not make any payments.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.
