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## INCIDENTS INVOLVING THE 1992 FUND

### PRESTIGE

#### Note by the Director

**Summary:**

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.

A major offshore clean-up operation was carried out using vessels from Spain and nine other European countries. 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. Approximately 1 900 km of shoreline has been affected in Spain and France. Around 138 000 tonnes of oily waste have been collected in Spain and some 18 300 tonnes in France.

Clean-up costs in Spain, France and Portugal up to the end of September 2003 have been estimated at €580 million (£407 million<sup><1></sup>). In the event that the Spanish authorities decide to remove the oil remaining in the wreck, the costs of these operations could be in the range of €50-200 million (£36-142 million), depending on the method used. Losses in the fisheries and related sectors in Spain, mainly as a result of fishing and harvesting bans imposed by the authorities, have been estimated by the 1992 Fund's experts in the region of €62 million (£44 million). The preliminary estimated level of claims from the tourism sector can be expected to be up to €50 million (£36 million) both in Spain and in France.

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

The total amount of the claims arising from the *Prestige* incident will significantly exceed the total amount of compensation available, 135 million Special Drawing Rights corresponding to €171.5 million (£120 million). In May 2003 the Executive Committee decided that the 1992 Fund payments

<1>

Conversion of currencies in this document has been made on the basis of the exchange rates as at 8 October 2003.

should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants, as assessed by the experts engaged by the Fund and the insurer. In view of the remaining uncertainty as to the level of admissible claims, the Director is unable to recommend an increase in the level of the 1992 Fund's payments.

**Action to be taken:** Decide the level of the 1992 Fund's payments.

## **1 The incident**

- 1.1 In November 2002, the Bahamas registered tanker *Prestige* (42 820 GT) was passing the Spanish Atlantic coast on her way from Latvia to Singapore. The ship was said to be carrying 76 972 tonnes of heavy fuel oil.
- 1.2 During the afternoon of 13 November, while some 30 km off Cabo Fisterra (Galicia, Spain) in bad weather, the vessel began listing and leaking oil. It was estimated that the *Prestige* lost up to 1 000 tonnes of oil initially, while drifting powerless towards the Spanish coast. Attempts to connect a towline to the stricken vessel, which was by then drifting dangerously close to Cabo Vilano, were finally successful.
- 1.3 In the early hours of 15 November, while the *Prestige* was being towed north-west to gain more distance from the Spanish coast, a section of shell plating in the vicinity of No. 3 starboard ballast tank was lost. During the afternoon, the captain reported a sudden increase in oil leakage, indicating the failure of internal bulkheads and rupture of cargo tanks. On 19 November the vessel finally broke in two and sank some 260 km west of Vigo (Spain), the bow section at a depth of 3 500 metres and the stern section at a depth of 3 830 metres. The break-up and sinking released additional cargo estimated in the region of 25 000 tonnes. Over the following weeks oil continued to leak from the wreck at a slowly declining rate.
- 1.4 A French remotely operated submersible vehicle (ROV) was used to seal and plug temporarily cracks and holes in the wreck to minimise the escape of oil. The operation appears to have been partially successful in that the amount of oil escaping decreased markedly, as confirmed by regular aerial surveillance undertaken by the Spanish and Portuguese authorities.
- 1.5 Due to the highly persistent nature of the *Prestige's* cargo, released oil drifted for extended periods with winds and currents, travelling great distances. Several 'waves' of shoreline oiling heavily contaminated Galicia (Spain), affecting its coastline between the National Park of Islas Cies near Vigo and Ferrol by early December. Remobilisation of stranded oil and 'fresh' strandings of increasingly fragmented and weathered oil continued, gradually moving into the Bay of Biscay and affecting the coast of Spain (Galicia, Asturias, Cantabria, País Vasco), France (Aquitaine, Poitou Charentes, Pays de la Loire, Brittany, and a small part of Normandie and Picardie) and the United Kingdom (the Channel Islands, Isle of Wight and a small part of Kent).
- 1.6 The *Prestige* was entered with the London Steamship Owners Mutual Insurance Association (London Club).

## **2 Clean-up operations**

### *Spain*

- 2.1 A response to the pollution was immediately initiated in Galicia by the Spanish Maritime Safety Agency (Sociedad de Salvamento y Seguridad Maritima, SASEMAR).
- 2.2 Both the central Government's Department of Coastal Protection (Dirección General de Costas) and the regional government of Galicia (Xunta de Galicia) became involved in shoreline protection and clean-up as well as managing coastal resources such as fisheries and national

parks. At a later stage the regional governments of Asturias, Cantabria and País Vasco also became involved in clean-up operations.

- 2.3 The competent authorities in France, the Netherlands and the United Kingdom as well as the European Commission were asked for assistance in the form of anti-pollution equipment and vessels. The first vessels arrived on 16 November and the fleet gradually increased to more than 15 ships from 10 countries.
- 2.4 The biggest problems encountered by the vessels and their crews were the severe weather conditions and the highly viscous nature of the oil. Only a few vessels managed successfully to recover significant quantities of oil after it had been at sea for a number of weeks. In addition to increasing viscosity, floating oil fragmented into countless patches of ever-decreasing size. This caused problems with detection from the air and hence the guidance of vessels to locate recoverable oil. In addition, offshore tuna boats and trawlers, mussel farming vessels and small fishing boats were used to collect oil manually and mechanically along different parts of the Spanish and French coasts.
- 2.5 From the very beginning of the incident, shoreline protection was attempted through booming. Coordinated initially by SASEMAR and carried out by contractors and fishing cooperatives, increasing quantities of booms were placed on stand-by and deployed in the many rias along the Spanish coast.
- 2.6 Shoreline clean-up was initially limited to the stretches of sandy beaches and rocky foreshores. Military personnel, fishery associations and volunteers, supported by machinery to transport oily waste from the sites, undertook the predominantly manual work.
- 2.7 When small fragments of oil and tarballs repeatedly impacted large stretches of sandy shorelines along the northern coast of Spain, beach cleaning machines were used. In other places sand was sieved through screens to remove oil fragments. Natural cleaning through the scouring action of the sea during winter storms has also taken place and greatly improved the state of intertidal areas of the shoreline. In addition, secondary cleaning was undertaken by means of pressure washing in affected areas.
- 2.8 By late September 2003, some 44 000 tonnes of liquid waste (oil/water mixtures) had been collected by vessels operating from Spain. The corresponding figures for solid waste was 94 000 tonnes.
- 2.9 Some minor clean-up operations continue.

#### *France*

- 2.10 The French authorities took over the co-ordination of the at sea recovery operations in early January 2003. A fleet of 16 vessels, including specialist recovery vessels from France, Germany, Netherlands, Norway and Spain was still operating in the Bay of Biscay on 27 January, despite the limited quantities of oil available for recovery. By mid-April most of the specialised recovery vessels had been stood down although about 20 small fishing boats were engaged to recover floating oil close inshore and to collect oil stranded on sandbanks in the entrance to the Arcachon Basin (next to Bordeaux, France).
- 2.11 Most of the shorelines affected in France are composed of hard-packed sand, which were relatively easy to clean, both manually and mechanically. In May 2003 the fragmented oil, which up to then was limited to an area extending from the Spanish border to the Gironde Estuary, affected the west and north facing coastline of Finistere (Brittany).
- 2.12 By late September 2003, about 1 300 tonnes of liquid waste had been recovered by fishing vessels and specialised response vessels, whilst some 17 000 tonnes of solid waste had been collected from French shorelines.

2.13 Some minor clean-up operations continue.

### **3 Impact of the spill**

#### *Spain*

- 3.1 The coastline of Galicia, which is one of the richest fishing areas in Europe, was most adversely affected by the incident. The impact was lighter in Asturias, Cantabria and País Vasco. Fisheries exclusion zones were put in place shortly after the incident banning virtually all fishing along about 90% of the coastline and in places extending 8-10 miles offshore. These bans caused widespread economic impact to thousands of people engaged in fishing and related activities. Some of the bans covered areas unaffected by oil from the *Prestige*.
- 3.2 Fishing bans were also imposed in Asturias, Cantabria and País Vasco, although some of them were on a limited scale and did not affect all species and all types of fishing. Furthermore, fishing activity in these regions is less economically important during the period November to April due to seasonal factors and closures related to stock management.
- 3.3 By April 2003 bans remained only in four northern areas of Galicia. In early October all the remaining bans were lifted.
- 3.4 The fishing bans did not cover aquaculture, even though this sector was affected by pollution. There is a major turbot farming industry using onshore tanks supplied with seawater abstracted via sub-surface intakes. In Galicia a number of important fish farms are located in areas that were heavily polluted, although most took measures to prevent oil entering the rearing tanks and continued to operate. However, despite these efforts stocks were destroyed at one of the smaller farms on the order of the health authorities.
- 3.5 The major aquaculture activity in Galicia is the rearing of mussels on rafts. Although no mussel rafts were directly affected by oil, a downturn in demand was reported.
- 3.6 Although the rearing of molluscs in private parks in intertidal areas was not subject to closures, some areas were physically oiled and owners reported that depuration plants were refusing to accept their products, effectively closing their markets. It is understood that the mussel industry may present a large claim relating to sales delays and market reassurance.
- 3.7 A small proportion of Galician depuration plants and aquariums, which rely on a regular supply of clean seawater, were closed either as a result of actual or perceived contamination of their intakes or due to limited supplies of marine products arising from the fishing bans. Stocks at some of these facilities were reported to have suffered mortality as a result of these difficulties.
- 3.8 The loss for the fisheries sector in Spain has been estimated by the experts engaged by the London Club and 1992 Fund at some €62 million (£44 million).
- 3.9 The coasts of Galicia, Asturias, Cantabria and País Vasco are attractive tourist destinations for those seeking outdoor activities and high quality seafood. The affected region is particularly popular with the domestic market but does not have a high profile with overseas tourists compared with other parts of mainland Spain.
- 3.10 From a preliminary analysis of statistics provided by various tourism bodies within the affected area it is clear that tourism businesses have suffered a decline in 2003. The difficulty faced is identifying the level of that decline that is due to the *Prestige* incident since a number of other factors need to be considered, such as a general decline in travel (particularly from some overseas markets) due to a fear of terrorism, the SARS scare, the slowdown of the European economy and the impact of the heatwave across Europe, which made some inland areas less attractive and increased visitor numbers to northern European destinations.

- 3.11 It is expected that more accurate statistics will be available in the near future once data for the whole tourism season has been collected. At this stage it is estimated that the claims from the sector in Spain could total up to €50 million (£36 million).

*France*

- 3.12 Fisheries impacts in France have been fairly limited. On 5 January 2003 the French authorities imposed a ban on the sale of shellfish, primarily oysters, from the Arcachon Basin due to the presence of oil in the entrance to the Basin. However, on the basis of analyses of samples of seawater, fish and shellfish, which confirmed that the levels of petroleum hydrocarbons were within acceptable limits, the ban was lifted on 15 January 2003.
- 3.13 It is anticipated that the greatest potential impact in France will be on the tourism sector, since the southern Atlantic coast is noted for its sand beaches. It supports hotels and other serviced accommodation, second homes, self-catering accommodation and campsites.
- 3.14 The factors mentioned in paragraph 3.10 above are relevant also in assessing the level of claims that can be anticipated in France. An analysis of national figures against those for the affected area should assist in isolating the effects of the incident itself. At this stage it is estimated that the claims from the tourist sector in France could total €50 million (£36 million). Again, it is expected that further details will be available once data for the whole tourism season has been collected.

*Portugal*

- 3.15 No oil is reported to have gone ashore in Portugal. There have also been no indications of significant impact on Portuguese fisheries, tourism and other economic resources.

*United Kingdom*

- 3.16 The United Kingdom Maritime & Coastguard Agency (MCA) has reported that oil has stranded on the Channel Islands, the south shores of the Isle of Wight and at Ramsgate in Kent. Samples analysed on behalf of the MCA match with samples collected in France and tested by the French national laboratory. Since fingerprints of the samples collected in the United Kingdom are nearly identical to *Prestige* oil, MCA is fairly certain that the stranded oil originated from the *Prestige*.

#### **4 Removal of the oil from the wreck**

- 4.1 The Spanish State set up a Scientific Commission to study the various possibilities for dealing with the wreck. This Commission concluded that there were two possible solutions, namely extraction of the fuel remaining in the wreck by pumping and the confinement of the ship in a structure of concrete or steel.
- 4.2 Additionally, an International Technical Committee was set up under the coordination of the Spanish oil company Repsol YPF. This Committee considered three possible methods: filling shuttle bags on the sea bed through pipes let into the wreck's tanks and floating them to the surface; releasing and entrapping the oil in a dome constructed over the wreck for later extraction; pumping the oil from the ship's tanks to the surface via pipelines.
- 4.3 The Committee also proposed a program of work involving the commencement of removal of the oil at the end of the summer 2003 using shuttle bags. Concurrently with this operation, design work for the dome solution would be carried out in case the shuttle bag method did not function satisfactorily. The pumping method would also be designed and tested/simulated in case the two other solutions did not work.
- 4.4 Under the control of REPSOL YPF, equipment employed in the offshore oil industry to establish oil reserves in underground reservoirs was used to assess the quantity of oil remaining in the

wreck's tanks. As a result of this work, the quantity of oil remaining in the wreck has now been estimated at 13 300 tonnes in the bow section and 900 tonnes in the stern section.

- 4.5 Tests of the shuttle bags to be used to float oil to the sea surface have been carried out off Marseilles and on the wreck. It is anticipated that oil removal operations using the shuttle bags will be tried early in 2004, when better weather can be expected.

## **5 Claims Handling Offices**

- 5.1 In anticipation of a large number of claims, and after consultation with the Spanish Authorities, the London Club and the 1992 Fund established a Claims Handling Office in La Coruña (Spain). The office, which has four staff members, became operational on 20 December 2002.
- 5.2 After consultation with the French Government the 1992 Fund and the London Club established a Claims Handling Office in Bordeaux (France), which opened on 17 March 2003. Two staff members operate this office.

## **6 Claims for compensation**

### *Spain*

- 6.1 As at 8 October 2003 the Claims Handling Office in La Coruña had received 321 claims totalling €30 million (£376 million). One of these claims for €31.6 million (£93 million), has been made by a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters.
- 6.2 On 2 October 2003 the Spanish Government submitted a claim for €383.7 million (£272 million) relating to costs incurred until the end of July 2003 in respect of at sea and on shore clean up operations, compensation payments to fishermen and shellfish harvesters made by the Central Government, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns. Further claims from the Spanish Government are expected.
- 6.3 The table below provides a breakdown of the different types of claims:

Type of claim	No. of claims	Amount claimed €
Property damage	125	2 123 474
Clean-up (local authorities)	16	4 060 874
Clean-up (Spanish Government)	1	311 119 547
Mariculture	7	2 394 082
Fisheries and shellfish gathering	82	132 339 042
Fisheries and shellfish gathering (Spanish Government) <sup>&lt;1&gt;</sup>		32 265 680
Tourism (private claimants)	2	113 876
Tourism (Spanish Government)		3 867 707
Fish processors/sellers	56	4 926 825
Miscellaneous (private claimants)	32	515 933
Miscellaneous (Spanish Government)		36 480 002
<b>Total</b>	<b>321</b>	<b>530 207 042</b> (£376 million)

<1> This claim relates to compensation payments by the Spanish authorities to fishermen and shellfish gatherers. Part of this claim overlaps with claims in the fisheries and shellfish gathering categories submitted directly to the Claims Handling Office.

*France*

- 6.4 The Claims Handling Office in Bordeaux has received a steady flow of enquiries from potential claimants and claim forms have been distributed as appropriate. The majority of enquiries have come from persons engaged in oyster cultivation and marketing.
- 6.5 By 8 October 2003, 123 claims totalling €3.2 million (£2.3 million) had been received. A small number of local authorities in Finistere have presented or expressed the intention to submit claims for clean up. The table below provides a breakdown of the different types of claims.

Type of claim	No. of claims	Amount claimed €
Property damage	1	20 000
Clean-up	5	306 292
Mariculture	97	540 575
Shellfish gathering	2	19 889
Fishing boats	1	18 470
Tourism	16	2 269 458
Fish processors / vendors	0	0
Miscellaneous	1	8 400
<b>Total</b>	<b>123</b>	<b>3 183 084</b> (£2.3 million)

*Portugal*

- 6.6 Claims are expected in respect of clean-up and preventive measures in Portugal. The Portuguese authorities have so far not submitted any claim but have indicated that the clean-up costs amount to some €2.6 million (£1.8 million).

*United Kingdom*

- 6.7 Depending on whether much more oil comes ashore in the United Kingdom, the United Kingdom Government and local authorities might submit a claim for costs resulting from any clean-up of United Kingdom shores.

**7 Contacts with Governments**

- 7.1 The Spanish Government has appointed a Commissioner to coordinate all activities relating to the incident.
- 7.2 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 Governments of Galicia, Asturias, Cantabria and País Vasco.
- 7.3 The Director and the Head of the Claims Department have held discussions with the Vice-President of the Spanish Government, the Commissioner mentioned above, the Vice-Minister of Finance, the Minister of Agriculture, Fisheries and Food and the State lawyer (Abogado General del Estado) as well as with the President and Minister of Fisheries of the Regional Government (Xunta) of Galicia. 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, other regional authorities and the 1992 Fund.
- 7.4 Discussions have also been held between the French Government and the Director and the Head of the Claims Department on the handling of claims and related issues.

## **8 Payments and other financial assistance by the Spanish Authorities**

- 8.1 The Spanish Government and regional authorities have been making payments of some €40 (£26) per day to all those directly affected by the fishing bans. These include shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. Some of these payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and it is expected that further subrogated claims will be presented in the near future.
- 8.2 The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of waivers of social security payments.
- 8.3 The Spanish State has made available to victims of the pollution credit facilities totalling €100 million (£71 million) which may be increased. Loans are provided through the Instituto de Credito Oficial (ICO), a financial agency of the State. The Government Delegation or Sub-delegation in the affected areas determines the amount of a loan, which can only be awarded in respect of property damage and the costs of reinstatement. The Spanish State has requested the 1992 Fund to assist with the evaluation of the loss or damage suffered by those seeking loans. As the damage covered by these loans will eventually form the basis of claims against the Fund either directly or in subrogation, the Fund has agreed to assist the Spanish State in carrying out such evaluations.
- 8.4 As at 8 October 2003, the Claims Handling Office in La Coruña had received requests to assess the losses suffered by 41 loan applicants totalling €250 351 (£178 000). The documents submitted have been examined by the Club and Fund's experts, but in the majority of instances it has been necessary to request further information to allow an evaluation to be carried out. Thirty-six applications have been preliminarily assessed at a total of €82 937 (£59 000).
- 8.5 In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making an appropriation of €160 million (£113 million) to compensate in full the victims of the pollution. Under this Decree the Spanish Government will acquire by subrogation the rights of those victims who decide to claim under this legislation. To receive compensation the claimants must renounce the right to claim compensation in any other way in relation to the *Prestige* incident and transfer their rights of compensation to the Spanish Government. The Decree provides that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions. The procedure for the assessment of the claims submitted under this Royal Decree has not yet been decided.

## **9 Shipowner's liability**

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£16.2 million). In 28 May 2003 the shipowner deposited €22 777 986 (£16.2 million) with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund.

## **10 Investigations into the cause of the incident**

- 10.1 A Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of one civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain.
- 10.2 The Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, is gathering the necessary information to be able to issue a report on the *Prestige* accident. Given the scale of the incident, it will take some time for the investigation to be completed.



- 10.3 As regards France, an examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.
- 10.4 The 1992 Fund is following these investigations through its Spanish and French lawyers.

### **11 Court actions in Spain**

Nine hundred and sixty-nine claimants who allegedly suffered losses as a result of the incident have joined the legal proceedings before the Court in Corcubi3n (Spain). No details of the losses have been provided to the Court. Some of these claimants have submitted claims to the Claims Handling Office in La Coru3a.

### **12 Court actions in France**

- 12.1 At the request of a number of communes, the Administrative Court in Bordeaux has appointed experts to establish the extent of the pollution at various locations in the affected area. The court experts have held a number of meetings.
- 12.2 In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Court of Commerce in Marennes requesting provisional payments of amounts totalling approximately €400 000 (£284 040). A hearing is scheduled for November 2003.

### **13 Court actions in the United States**

- 13.1 The Spanish State has taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident estimated to exceed US\$700 million (£422 million). The Spanish State has maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.
- 13.2 ABS has denied the allegation made by the Spanish State and has in its turn taken action against the State, arguing that if the State suffered damage this was caused in whole or in part by its own negligence. ABS has made a counterclaim and has requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.
- 13.3 Regional authorities of the Pa3s Vasco have taken legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US\$50 million (£30 million). The authorities have argued *inter alia* that ABS was in breach of its duty to inspect the *Prestige* adequately and had classified the vessel as seaworthy when it was not.

### **14 Maximum amount available under the 1992 Fund Convention**

- 14.1 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 Special Drawing Rights (SDR), should be converted into the national currency in question, ie Euro, 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.
- 14.2 At its 2nd session in October 1997, 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 explicitly recognised that the Executive Committee would take decisions on the date for conversion.

- 14.3 Following the same principles in the *Prestige* incident, the Executive Committee decided at its 20th session in February 2003 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 that session, ie 7 February 2003 (document 92FUND/EXC.20/7, paragraph 3.4.66).
- 14.4 The rate of exchange on 7 February 2003 was 1 Euro = 0.78707700 SDR. As a result 135 million SDR corresponds to €171 520 703 (£122 million)

## 15 Level of payments

### *Consideration by the Executive Committee in February 2003*

- 15.1 The Executive Committee considered the level of payments in respect of the *Prestige* incident at its 20th session, held in February 2003 (document 92FUND/EXC.20/7, paragraphs 3.4.42 - 3.4.62).
- 15.2 Unlike in previous cases, the insurer of the *Prestige*, the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club), decided not to make payments up to the shipowner's limitation amount. At the Executive Committee's February 2003 session the representative of the London Club drew the Committee's attention to the advice it had received from its legal advisers in Spain, which indicated that if the Club were to make payments to claimants in line with past practice it was highly likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund with the result that the Club could end up paying twice the limitation amount. The London Club representative stated that, despite lengthy discussions between the Club's legal advisers and lawyers representing the Spanish State, the Club was not convinced that a double payment situation could be avoided, which left the Club no alternative but to deposit the limitation fund with a competent court in Spain or France, recognising that this could result in the money becoming unavailable for the payment of claims for several years.
- 15.3 A number of delegations accepted that the 1992 Fund could not dictate to the London Club that it should make compensation payments without the Club receiving a guarantee that it would not be required to pay double the limitation amount. In those delegations' view, it would therefore be necessary for the Fund to make payments from the outset since the concerns of the victims of pollution damage were paramount. It was noted that if the 1992 Fund were to depart from its previous policy of not paying claims before the insurer had paid up to the limitation amount, the Fund could only pay up to 135 million SDR minus the shipowner's limitation amount under the 1992 Civil Liability Convention.
- 15.4 The Executive Committee considered that it was not possible at that stage to make any meaningful assessment of the magnitude of the total amount of the established claims arising from the *Prestige* incident. The Committee decided that, in view of this uncertainty, the Director's authority to make payments should, for the time being, be limited to provisional payments under Internal Regulation 7.9 (document 92/FUND/EXC.20/7, paragraph 3.4.61).

### *Consideration by the Executive Committee in May 2003*

- 15.5 The Executive Committee again considered the level of payments at its 21st session held in May 2003. The discussions are reflected in the Record of Decisions of the session (document 92/FUND/EXC.21/5, paragraphs 3.2.23-3.2.40).

- 15.6 The Spanish and French delegations estimated that the total losses in their countries were €662-677 million and €104-193 million respectively, ie a total of €766-870 million (£547-621 million).
- 15.7 The Spanish and French delegations emphasised that these figures were preliminary assessments and that there were great uncertainties particularly as regards potential losses in the tourism sector.
- 15.8 The Director mentioned that the Spanish authorities had not included any allowance for tourism losses, but that he considered, in the light of the Fund's experts' estimates, that some €40 million should be reserved for possible losses in Spain in that sector. The Director expressed his concern regarding the Spanish delegation's estimate of the costs of operations relating to the wreck, bearing in mind that a decision had yet to be made on the method to be used. In view of these uncertainties, the Director considered that it would be prudent to include an additional amount of €100 million (£71 million) to give a sufficient safety margin, giving a total figure for the incident of around €1 000 million (£709 million). The Director stated that on the basis of this global figure it would be possible to set the level of payments at around 17%. He expressed the view, however, that it would be necessary to fix any payment level at a round figure and that he considered therefore that if the Committee were to decide on a level of payment, it should be set at 15% of the loss or damage actually suffered by the respective claimants. He recognised that a payment level of 15% was very low and suggested that it would be for the Committee to decide whether such a low level was meaningful. He made the point that it was likely that some of the uncertainties regarding the level of claims would be eliminated, or at least reduced, by early autumn of 2003, which might make it possible to increase the level of payments at the Committee's October 2003 session.
- 15.9 Most delegations supported the Director's proposal for a level of payments at 15%. In supporting the proposal, some delegations acknowledged that 15% represented a very low level of payments, but that it could nevertheless help to alleviate financial hardship, particularly in the case of small businesses.
- 15.10 Some delegations proposed that the Director should be authorised to increase the level of payments if and to the extent he considered it safe to do so. The Director stated that, in view of the importance of this issue, he considered that the level of payments should be decided by the Committee and not by the Director.
- 15.11 The Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club (document 92 FUND/EXC.21/5, paragraph 3.2.32)
- 15.12 The Executive Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to the claimants (document 92FUND/EXC.21/5, paragraph 3.2.34).
- 15.13 The Director made the point that, in the case of an incident of the magnitude and the complexity of the *Prestige* incident, progress could only be made if there was close co-operation between the Governments of the States concerned and between these Governments and the 1992 Fund. He referred to the great value of the co-operation between the French Government and the Fund in the *Erika* case. He hoped that the discussions between the Spanish, French and Portuguese Governments would continue for the purpose of finding innovative solutions to facilitate payments. He added that, if the Governments concerned so wished, the Fund Secretariat would be pleased to assist in such discussions.

*The Director's analysis of the present situation*

- 15.14 In October 2003 the Spanish Government informed the Director that it had estimated the total costs of the incident as regards Spain as follows:

Fishing and shellfish harvesting	€29 million
Other private businesses	€100 million
Clean-up offshore	€84 million
Clean-up onshore	€15 million
Removal of oil from the wreck	€60 million
Other losses	€8 million
<b>Total</b>	<b>€795 million</b> <b>(£564 million)</b>

- 15.15 The French Government informed the Director that the preliminary estimates given at the May 2003 session were still valid as set out below:

Clean-up	€78 million
Tourism	€1-100 million
Fisheries and mariculture	€6 million
Environmental damage	€9 million
<b>Total</b>	<b>€104-193 million</b> <b>(£74-137 million)</b>

- 15.16 The costs in respect of Portugal have been estimated by the Portuguese authorities at €2.6 million (£1.8 million)
- 15.17 Based on the figures given by the Spanish, French and Portuguese Governments the total costs of the incident can be estimated at some €90 million (£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, bearing in mind that no decision has been made on the method to be used. The Director feels that it would be prudent to include an additional amount of €100 million (£71 million) to give a sufficient safety margin, giving a total figure of €100 million (£781 million).
- 15.18 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.

## **16 Funding of compensation payments**

- 16.1 At its session held on 8 and 9 May 2003 the Administrative Council, acting on behalf of the Assembly, considered whether contributions should be levied for payment during the second half of 2003 to enable the 1992 Fund to make prompt payments of compensation or whether payments should be financed by borrowing from other Major Claims Funds or the General Fund. In light of the significant surplus on the 1992 Fund *Nakhodka* Major Claims the Administrative Council decided, as proposed by the Director, that payments of compensation and expenses relating to the *Prestige* incident, over and above 4 million SDR payable from the General Fund, should for the period up to 1 March 2004 be financed by loans from the 1992 Fund *Nakhodka* Major Claims Fund and, if required and possible, from the General Fund or the *Erika* Major Claims Fund. It was noted that such loans would be repaid with interest in accordance with established practice (document 92FUND/A/ES.7/7, paragraph 5.14).
- 16.2 The Director has submitted a proposal to the Assembly for consideration at its October 2003 session relating to the levy of contributions in respect of the *Prestige* incident (document 92FUND/A.8/20)

**17 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 decide on the level of compensation payments; and
- (c) 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.

\* \* \*

ANNEX



Coast lines of Spain, France and the United Kingdom affected to various degrees by the Prestige incident