



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
2nd session
Agenda item 3

92FUND/EXC.2/2
7 January 1999
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

INCIDENT IN GERMANY

Note by the Director

Summary:	The 1992 Fund has been notified of a legal action taken by the German authorities against the owner of a ship which is suspected of having caused oil pollution in Germany in 1996.
Action to be taken:	Give the Director instructions in respect of this incident.

1 The incident

1.1 From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture was removed from the beaches.

1.2 The German authorities notified the 1992 Fund of the incident shortly after the spill.

1.3 The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. Chemical analysis showed that there was Libyan crude oil in the samples.

1.4 Computer simulations of currents and wind movements made by the Maritime and Hydrographic Agency indicated that the oil could have been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the Isle of Sylt.

1.5 Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m³ of oil which could not be discharged by the ship's pumps.

1.6 The *Kuzbass* departed from Wilhelmshaven on 11 June 1996 and passed a control point near the Dover Coast Guard station on 14 June 1996. Based on an evaluation of data provided by Lloyds Maritime Information Services, the German authorities maintain that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question.

1.7 Analysis of oil samples taken from the *Kuzbass* matched the results of the analysis of samples taken from the polluted coastline. According to the German authorities comparisons with an analytical chemical database on North Sea crude oils originally developed by the Federal Maritime and Hydrographic Agency showed that the pollution was not caused by crude oil from North Sea platforms.

1.8 The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his P & I insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

2 1992 Fund's involvement

2.1 The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

2.2 If the German authorities were to pursue a claim against the 1992 Fund, the question arises of whether they have proved that the damage resulted from an incident involving one or more ships (Article 4.2(b) of the 1992 Fund Convention). This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of "ship" contained in the 1992 Civil Liability Convention.

2.3 The definition of "ship" in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers and so, by reference, does the definition of ship in the 1992 Fund Convention. Article I.1 of the 1992 Civil Liability Convention reads:

"Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2.4 The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£32 million).

3 Legal actions

3.1 In July 1998 the Federal Republic of Germany, represented by the Waterways and Shipping North Directorate in Kiel, brought legal action in the Court of first instance in Flensburg against the shipowner and his insurer, claiming compensation for the cost of the operations referred to in paragraph 1.1 above for an amount of DM2 610 226 (£930 000). The Court was requested to notify the 1992 Fund of the action, pursuant to Article 7.6 of the 1992 Fund Convention.

3.2 The German authorities have based their legal actions *inter alia* on the facts set out in paragraphs 1.3 - 1.7. The 1992 Fund is examining the documents presented in support of the actions.

3.3 The 1992 Fund was notified on 18 November 1998 of the legal actions against the owner of the *Kuzbass* and the West of England Club. The West of England Club has been served with the action, whereas the Russian shipowner has not yet been served.

3.4 The Director will intervene in the legal proceedings in due course to protect the 1992 Fund's interests, and the necessary preparations for the intervention are being undertaken by the Fund's German lawyer.

4 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 give the Director such instructions as it may deem appropriate in respect of this incident.
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