



INCIDENTS INVOLVING THE 1992 FUND

VOLGONEFT 139

Note by the Director

Objective of document:

To inform the Executive Committee of the latest developments regarding this incident.

Summary of the incident so far:

On 11 November 2007 the Russian registered tanker *Volgoneft 139* broke in two in the Kerch Strait linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that between 1 200 and 2 000 tonnes of fuel oil were spilt at the time of the incident.

Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil. Shoreline clean up in the Russian Federation was reported to have been undertaken by local villagers, municipal and regional government employees, civil emergency services, private specialist pollution response companies and the Russian military.

The ship was owned by JSC Volgotanker which has since been declared bankrupt by the Commercial Court in Moscow. The shipowner was insured for protection and indemnity liability by Ingosstrakh (Russian Federation). It appears that the insurance cover is limited to 3 million SDR (£3 million)^{<1>} which is well below the minimum limit under the 1992 Civil Liability Convention (1992 CLC) of 4.51 million SDR (£4.6 million). There is therefore an 'insurance gap' of some 1.5 million SDR (£1.5 million).

The insurer does not belong to the International Group of P&I Clubs and therefore the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 does not apply.

In February 2008 the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (£3 million). In September 2008 the Court of Cassation of Saint Petersburg and Leningrad Region rendered a judgement confirming the ruling by the Arbitration Court. The Fund appealed against this judgement before the Supreme Court in Moscow. In December 2008 the Supreme Court confirmed the decision by the Court of Cassation regarding the 1992 CLC limitation fund. When taking their decisions the courts relied on the argument that the amendments to the 1992 CLC on the increase of the shipowner's liability limit

<1>

In this document conversion of currencies has been made on the basis of the exchange rate as at 15 May 2009 (1 SDR = £1.0253 and £1 = RUB 49.4657).

had not been officially published in the Russian Federation and therefore could not be relied upon by the courts.

At a hearing in December 2008 before the Arbitration Court of Saint Petersburg and Leningrad Region, the Fund submitted pleadings asking the Arbitration Court to reconsider its earlier decision on the shipowner's limitation fund, on the basis that the amendments to the 1992 CLC on the increase of the shipowner's liability limit have now been officially published in the Russian Federation.

The insurer has pleaded before the Arbitration Court of Saint Petersburg and Leningrad Region the defence that the spill resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and his insurer are therefore not liable for the pollution damage caused by the spill. If this defence were to be successful, the 1992 Fund would be liable to pay compensation to victims of the spill from the outset.

The Fund's experts are examining the evidence available on the cause of the spill and have provisionally concluded that the storm of 11 November 2007 was not exceptional but irresistible in respect of the *Volgoneft 139* because the conditions associated with the storm were in excess of the vessel's design criteria. However, they have also concluded that it was not inevitable, in that the vessel should not have been exposed to the storm in the way it was.

Claims totalling RUB 8 131.7 million (£164.4 million) have been submitted as a result of the incident.

The total amount available for compensation under the 1992 Civil Liability and Fund Conventions is 203 million SDR (£208 million).

Recent developments:

A hearing took place in March 2009 before the Arbitration Court of Saint Petersburg and Leningrad Region, where the 1992 Fund again requested the Court to allow the Fund's experts additional time to examine the claims and enter into discussions with the claimants. The Court agreed to postpone its consideration of the merits of the claims until a hearing scheduled for 9 June 2009. The Court stated that it would take a decision on the issue of the increase of the limitation fund at the June 2009 hearing.

The Fund's experts are examining the documentation provided in support of the various claims.

Action to be taken:

Information to be noted

1 Summary of incident

Ship	<i>Volgoneft 139</i>
Date of incident	11.11.07
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	Breaking
Quantity of oil spilled	Between 1 200 and 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage (GT)	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR (£3 million)
CLC Limit	4.51 million SDR (£4.6 million)
CLC & Fund Limit	203 million SDR (£208 million)
STOPIA/TOPIA applicable	No
Claims for compensation so far	RUB 8 131.7 million (£164.4 million)

2 The incident

- 2.1 On 11 November 2007 the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Kerch Strait linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was at anchor when a severe storm caused rough seas with heavy swell. The aft part of the vessel remained afloat and using the casualty's own engines, the captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the nearby port of Kavkaz (Russian Federation). The fore part remained afloat at anchor for a while and then sank.
- 2.2 The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, where it remains for inspection. A month after the incident, the fore part was temporarily raised and 1 200 tonnes of fuel oil from tanks one and two were recovered. In August 2008 the fore part of the wreck was raised again and towed to the port of Kavkaz to prevent further pollution.

3 Clean-up operations and response

- 3.1 Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine are understood to have been affected by the oil. A significant part of the shoreline of the Taman Peninsula, the Tuzla Spit, Chushka Spit and the beaches near the village of Ilyich were allegedly affected by the oil (cf map at Annex). A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and attempts were made to contain and recover the oil at sea. Shoreline clean up in the Russian Federation is understood to have been undertaken by local villagers, municipal and regional government employees, civil emergency services, private specialist pollution response companies and the Russian military and civil emergency forces under the supervision of the Prime Minister, Mr Viktor Subkov.
- 3.2 During at-sea operations 200 tonnes of heavy fuel oil are reported to have been recovered. The Ukrainian authorities have indicated that an unknown amount of oil sank to the sea bed. However, officials of the Regional Administration of the Krasnodar Region believe this is unlikely. During the shoreline clean up in the Russian Federation some 70 000 tonnes of oily debris with a mixture of soil, sand and sea grass were said to have been recovered.
- 3.3 Heavy bird casualties, in excess of 30 000, were reported and a representative of the Sea Alarm Foundation, an environmental agency based in Belgium, travelled to the Russian Federation in an attempt to assist with wildlife rehabilitation efforts.

4 1992 Civil Liability and Fund Conventions

The Russian Federation is a party to the 1992 Civil Liability and Fund Conventions. Ukraine deposited an instrument of ratification to the 1992 Civil Liability Convention (1992 CLC) with the Secretary-General of IMO on 28 November 2007 but this Convention did not enter into force in Ukraine until November 2008 and therefore is not applicable to this incident. Ukraine has not acceded to, or ratified, the 1992 Fund Convention.

5 The shipowner and its insurer

5.1 The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, JSC Volgotanker was declared bankrupt by the Commercial Court in Moscow.

5.2 The *Volgoneft 139* was insured by Ingosstrakh for 3 million SDR (£3 million), ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4 510 000 SDR (£4.6 million). There is therefore an 'insurance gap' of some 1.5 million SDR (£1.5 million).

5.3 The *Volgoneft 139* was not insured by a P&I Club belonging to the International Group of P&I Clubs and was therefore not covered by the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006.

6 Meetings between the Russian authorities and the Secretariat

6.1 In November and December 2007, the Director and the Head of the Claims Department contacted the Russian Embassy in London and the Ministry of Transport in Moscow offering the help of the 1992 Fund to the Russian authorities to deal with the incident. A number of meetings took place at the 1992 Fund offices at which the compensation regime was explained in detail and information was provided to the Russian authorities. In particular, the 1992 Fund offered to send experts from the International Tanker Owner's Pollution Federation (ITOPF) who were on stand-by, ready to travel to the Russian Federation to monitor the situation and provide advice to the Russian authorities in the event that claims for compensation were to be made in the future. However, no official reply was received from the Russian authorities and without the required letters of invitation and visas neither the representatives of the 1992 Fund nor the experts from ITOPF could visit the affected area to monitor the clean-up operations.

6.2 In April 2008, a meeting took place in London between representatives of the Russian Government, one of the Russian claimants, the shipowner, the Fund Secretariat and the 1992 Funds' experts. Ingosstrakh was invited but did not attend the meeting. At the meeting it was agreed that the claimant and the 1992 Fund would jointly request the Court to grant the parties sufficient time to examine the documentation and to discuss its contents. It was also agreed that the 1992 Fund's representatives and experts should visit Moscow to discuss the claims arising from the incident.

6.3 In May 2008, meetings took place in Moscow at the Ministry of Transport where further claims were submitted. At the meetings the Russian delegation informed the 1992 Fund that, as per order of the Government of the Russian Federation, the Ministry of Transport would be the main speaker on behalf of all Russian Central and Regional Government claimants. The Russian delegation stated that they were preparing the supporting documentation required which would be presented to the 1992 Fund, with translations in English, in the near future. The 'insurance gap' issue was discussed at the meeting. The Russian delegation stated that they understood the problem and that, with goodwill from all the parties, a solution would be found. The delegation pointed out that, under Russian law, international agreements take precedence over national law and that the Russian authorities would examine who should pay for the 'insurance gap' (Ingosstrakh or the Russian Government). It was mentioned that the Russian authorities intended to submit a document to the 1992 Fund with their legal analysis. It was agreed that the 1992 Fund's representatives and experts should also visit the area affected by the spill and hold discussions with the regional authorities.

- 6.4 In June 2008 a team of 1992 Fund representatives and experts travelled to Moscow, Krasnodar and Novorossiysk to hold discussions with the central and regional authorities and another claimant, and to visit the area affected by the spill. During the visit, meetings took place with representatives of the Ministry of Transport, Federal Service on the Supervision in the Sphere of the use of the Nature (Rosprirodnadzor), Krasnodar Regional Administration and a clean-up contractor based in Novorossiysk. A field trip also took place to the port of Kavkaz where the Fund's representatives and experts inspected the aft part of the *Volgoneft 139* tied up at a berth outside the main port. The 1992 Fund's representatives were also transported by boat to the location in the Kerch Strait in which the fore part lay submerged. It was observed that some seven months after the incident, oil was still coming out from the fore part of the wreck being visible as sheen on the surface of the water. During the visit valuable information in respect of the cause of the incident was provided and additional information in respect of claims was requested. It was agreed that the Fund's representatives and experts would visit the Russian Federation again to hold further meetings with the national and regional authorities.
- 6.5 A further visit to Moscow, Krasnodar, Novorossiysk and Temryuk took place in September 2008. During this visit the 1992 Fund's representatives met with representatives of the Ministry of Transport, the Service on the Supervision in the Sphere of the use of the Nature, the Krasnodar Regional Government and claimants. The Russian authorities provided assistance to the 1992 Fund's representatives and experts during the three visits to the Russian Federation.
- 6.6 It is expected that further visits to the Russian Federation will take place in 2009.
- 6.7 A number of meetings have subsequently been held in London between the Russian Authorities, the Fund Secretariat and their experts to facilitate the exchange of information and to monitor the progress of claims.

7 Limitation proceedings and the 'insurance gap'

- 7.1 In February 2008 the Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, the P&I insurer and the 1992 Fund. A number of other claimants have also brought proceedings in the same court (cf section 9).
- 7.2 In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 636 700 equivalent to 3 million SDR (£3 million).
- 7.3 At a hearing in April 2008 the 1992 Fund presented pleadings, requesting the Court to allow time for the 1992 Fund to examine the claims and enter into discussions with the claimants. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC is 4.51 million SDR (£4.6 million) and that, under the Russian constitution, international conventions to which the Russian Federation is a party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (£3 million) should be amended.
- 7.4 In May 2008 the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the ruling by the Arbitration Court of Saint Petersburg and Leningrad Region establishing the shipowner's limitation fund in the RUB equivalent to 3 million SDR. The 1992 Fund, after having examined the Court's decision, decided to appeal to the Second Appeal Court (Court of Cassation).
- 7.5 In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. The Court of Cassation in its reasoning considered that, since Russian law had not been amended to reflect the adopted amendments to the 1992 CLC and still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139*, RUB 116 636 700, equivalent to 3 million SDR (£3 million), it was for Russian Courts to apply the limits of liability as published in the Russian official Gazette.

- 7.6 The 1992 Fund has appealed against this judgement before the Supreme Court in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003. In December 2008 the Supreme Court confirmed the decision by the Court of Cassation.
- 7.7 At a hearing in December 2008 before the Arbitration Court of Saint Petersburg and Leningrad Region, the 1992 Fund again requested the Court to allow the Fund's experts additional time to examine the claims and enter into discussions with the claimants. The Court in an interim decision agreed to postpone its consideration of the merits of the claims until a hearing fixed for the end of March 2009. At the same hearing, the Fund submitted pleadings asking the Arbitration Court to reconsider its earlier decision on the shipowner's limitation fund, on the grounds that the amendments to the limits of the amount available under the 1992 Civil Liability and Fund Convention as from November 2003 had been officially published in Russia in October 2008 and that therefore those amendments were now officially part of Russian national law. The Court stated that it was not ready to take a decision on the issue of the increase of the limitation fund at that point in time but that it would do so at the next hearing.
- 7.8 A hearing took place in March 2009 before the Arbitration Court of Saint Petersburg and Leningrad Region, where the 1992 Fund again requested the Court to allow the Fund's experts additional time to examine the claims and enter into discussions with the claimants. The Court agreed to postpone its consideration of the merits of the claims until a hearing fixed for 9 June 2009. The Court stated that it would take a decision on the issue of the increase of the limitation fund at that hearing.

Considerations by the Executive Committee in March, June and October 2008 and March 2009

- 7.9 The Executive Committee considered this issue in March, June and October 2008 and March 2009. At the Committee's March 2009 session many delegations reiterated their deep concern and disappointment with the fact that, in their view, the Russian Government had failed to correctly implement the Conventions and that there was still no solution to this question, which had already been raised at previous meetings. One delegation suggested that if the final decision by the Russian Courts did not resolve the issue of the insurance gap, the amount of the insurance gap should be deducted when paying compensation to the Russian Government in this case, as in the view of that delegation it was the responsibility of the Russian Government to correctly implement the Conventions (cf document 92FUND/EXC.44/10, paragraphs 3.4.8 – 3.4.12).

8 Cause of the incident

- 8.1 Ingosstrakh has submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).
- 8.2 At its October 2008 session the Executive Committee was informed that the 1992 Fund had appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. The experts visited the area where the incident took place and inspected the aft part of the wreck in the port of Kavkaz.
- 8.3 In summary, the preliminary conclusions reached by the 1992 Fund's experts were:
- (i) The storm of 11 November 2007 was not exceptional. There are records of similar and comparable storms being experienced in the region four times in the past 20 years.
 - (ii) There were timely forecasts of the storm and conditions were accurately predicted.
 - (iii) The storm of 11 November 2007 was irresistible insofar as the *Volgoneft 139* was concerned. The conditions associated with the storm were in excess of the vessel's design criteria. Their

analysis shows that the hull would have been overloaded if waves of a length similar to that of the *Volgoneft 139* and in excess of four metres height were encountered.

- (iv) It was not inevitable that the *Volgoneft 139* would be caught in the storm for the following reasons:
- (a) According to the certificate of class as modified by a 'condition of class' of 6 July 2007, the vessel was restricted from trading south of the Kerch Strait. This restriction was confirmed in an enquiry report by the Russian authorities that stated that: 'for navigation in the Kerch Strait to the south of the sand bank of Tuzla the season is restricted from April to October inclusive. Thus the tanker was in this area beyond the limits of the period of navigation allowed by the Register.' The casualty would have been avoided if the *Volgoneft 139* had been operating within the limits prescribed in her certificate of class as valid at the material time.
 - (b) Before the vessel reached the exposed area the Master received information that made it clear that there would be at least 36 hours before the envisaged ship-to-ship transfer would take place. The Master should have acted on this information and returned to a place where shelter could be obtained from the southerly winds which were forecast. Had he done so the casualty would have been avoided.
 - (c) By early afternoon of 10 November, the forecasts were indicating severe weather with winds from the south east. The Kerch Strait provides no shelter to south easterly winds and therefore to avoid exposure to strong winds and rough seas it was necessary to proceed back to the north immediately.
 - (d) Investigations indicate that the Kerch Strait anchorage is regarded as a commercial port. The port functions with commercial and administrative facilities such as agency and customs and it is administered and monitored by a Vessel Traffic Service and Traffic Control. A proper system of control and monitoring of vessels in the Kerch Strait anchorage should have provided storm warnings and advisory notices or notices of direction for vessels posing a particular risk if exposed to extreme weather, such as river tankers awaiting ship-to-ship transfer operations. A proper system would have provided for such vessels being advised or directed to vacate the southern anchorage and proceed north with priority for transit through the Kerch channel in advance of a storm. A proper system would have closed the anchorage to such vessels approaching from the north when a storm warning was in force. The casualty would have been avoided had the vessel been directed to proceed to the north in advance of the storm.

8.4 At the October 2008 session of the Executive Committee the Russian delegation stated that it did not agree with the information provided by the Director that the storm of 11 November 2007 was not exceptional, since according to official reports the weather conditions in the Kerch Strait on that date were absolutely abnormal and had not been encountered in the area for 50 years. The Russian delegation stated that it also disagreed with the information provided in item (iv) of the preliminary conclusions of the 1992 Fund's experts since the *Volgoneft 139* was not restricted for navigation in the Kerch Strait between November and March. That delegation offered to provide additional information in this respect (cf document 92FUND/EXC.42/14, paragraph 3.8.16).

8.5 Additional information was supplied in a report submitted by the Russian authorities to the Fund in February 2009 (cf document 92FUND/EXC.44/6/1 and Annex) and was presented to the Executive Committee at its 44th session held in March 2009. This report also provides some additional information on the response to the incident. The report is being studied by the experts engaged by the 1992 Fund, who are finalising a report on the cause of the incident, to be submitted to the Court at its next hearing (cf paragraph 7.8).

8.6 At the March 2009 session concern was expressed about the differences of opinion that appeared to exist between the Russian Federation and the Secretariat regarding the nature of the storm. One delegation pointed out that even though the storm at the time of the *Volgoneft 139* incident had been severe, in its

preliminary opinion it could not be considered a natural phenomenon of an exceptional, inevitable and irresistible character as meant in Article III.2(a) of the 1992 CLC. One delegation asked whether there were previous cases where the relevant provision of the Convention had been applied and whether any reference material existed to determine when a storm should be considered a natural phenomenon of an exceptional, inevitable and irresistible character. The Director stated that the Secretariat had not yet fully explored the possible interpretations and applications of the concept of 'force majeure' but that the Secretariat was for the time being not convinced that this was a case of 'force majeure'.

- 8.7 At the same session the Russian delegation stated that, contrary to what item (iv) of the preliminary conclusions of the 1992 Fund's experts seemed to suggest, there had been proper systems of control in place in the Kerch Strait area at the time of the incident.
- 8.8 At that session the observer delegation of Ukraine made a statement in respect of certain conclusions contained in document 92FUND/EXC.44/6/1, submitted by the Russian Federation, in particular with regard to comments made on traffic regulation and monitoring of the Ukraine-operated anchorage at the trans-shipment complex in the Kerch Strait, as well as on the adequacy of Ukrainian search and rescue support in the area. One delegation noted with concern that there seemed to be an unfortunate difference of opinion between the two administrations concerned about their precise responsibilities for the vessel at the time of the incident (cf document 92FUND/EXC.44/10, paragraphs 3.4.37-3.4.42).

9 Claims for compensation

9.1 The claims situation as at 15 May 2009 is summarised in the table below:

Category	Claimant	Claim RUB	Claim £	Current situation
Clean up	Contractor	RUB 63.9 million	£1.3 million	Interim assessment completed.
Clean up	Regional Government	RUB 121.6 million	£2.5 million	Documentation submitted being examined.
Environmental damage	Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor)	RUB 6 048.1 million	£122.3 million	No supporting documentation submitted. Claim calculated on the basis of 'Metodika'.
Environmental monitoring	Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor)	RUB 0.5 million	£10 110	Documentation submitted being examined.
Clean up	Ministry of Emergencies	RUB 4.3 million	£86 900	No supporting documentation submitted.
Reinstatement measures	Regional Government	RUB 1 819.6 million	£36.8 million	Documentation submitted being examined.
Clean up	Charterer	RUB 9.4 million	£190 000	Documentation submitted being examined.
Clean up	Shipowner	RUB 20.4 million	412 400	Documentation submitted being examined.
Tourism	Private industry	RUB 21.5 million	£434 650	Documentation submitted being examined.
Fisheries	Private industry	RUB 22.4 million	£452 800	Documentation submitted being examined.
Total		RUB 8 131.7 million	£164.4million	

- 9.2 The Russian Central and Regional Governments have presented claims totalling RUB 7 994.1 million (£161.6 million). These claims relate to environmental damage (cf section 10), the costs of clean up and preventive measures and the costs of reinstatement of the marine environment.
- 9.3 In January 2008 the 1992 Fund received a claim for compensation from a Russian clean-up contractor for the amount of RUB 73.5 million (£1.5 million) for the cost of clean-up operations, discharging oil from the aft part of the tanker, towage of the aft part to Kavkaz (Russian Federation) and removal of the oil from the sunken fore part. Following an examination of the documentation submitted, the 1992 Fund approved an interim assessment of this claim in the amount of RUB 30 million (£606 500). The difference between the claimed and assessed amounts is largely accounted for by the apparent duplication of a number of items claimed, and the fact that the salvage operations had a dual purpose (salvage and preventative measures). In February 2009 the Fund received a letter from the claimant expressing its disagreement with aspects of the assessment, providing additional information and reducing their claim to RUB 63.9 million (£1.3 million). This information is being analysed by the experts engaged by the Fund.
- 9.4 The Kerch Merchant Port (Ukraine) has submitted a claim before the Arbitration Court in Saint Petersburg and Leningrad Region totalling RUB 15 341 177 (£310 100) in respect of damage to property and costs incurred in clean-up operations. This claim relates to damage caused in Ukraine, which was not party to the 1992 CLC at the time of the incident and is not party to the 1992 Fund Convention. The 1992 Fund will therefore not have to pay compensation in respect of this claim.
- 9.5 In September 2008, the Regional Government provided documentation to the 1992 Fund in support of the claims it had submitted. Additional supporting documentation has been provided to the Arbitration Court in Saint Petersburg and Leningrad Region, including a map of the affected area. The documentation is being examined by the 1992 Fund's experts.
- 9.6 The charterer of the *Volgoneft 139*, a subsidiary company of the shipowner, has presented a claim for RUB 5.2 million (£105 100), later increased to RUB 9.4 million (£190 000) for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The 1992 Fund's experts are examining the documentation submitted.
- 9.7 The shipowner has also submitted a claim, totalling RUB 20.4 million (£412 400) for the cost of clean-up and preventive measures. This claim has not been accepted by the Arbitration Court, which has argued that a party cannot be claimant and defendant in the same proceedings. The 1992 Fund's experts are nevertheless examining the documentation submitted, since under the 1992 CLC and Fund Conventions any person can carry out preventive measures even if it is the owner of the polluting ship (cf Article I of 1992 CLC and Article 4.1 of 1992 Fund Convention).
- 9.8 Four claims, totalling RUB 22.4 million (£450 800), have been received from the fisheries sector, and one claim, for RUB 21.5 million (£434 650), from the tourism sector. In September 2008, the 1992 Fund's representatives held a meeting with representatives of two of the fisheries claimants and the tourism claimant. Documentation has been provided by two of the claimants and is being examined by the 1992 Fund's experts.

10 Metodika claim

- 10.1 At a meeting in May 2008 the Russian authorities informed the 1992 Fund that the Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor) had submitted a claim for environmental damage for some RUB 6 048.1 million (£122.3 million). This claim is based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by the Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor) to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions.

- 10.2 At the March 2009 session many delegations emphasised that the use of 'Metodika' to calculate environmental damage was not in accordance with the Conventions and conflicted, in particular, with the definition of pollution damage in Article I.6 of the 1992 CLC. It was pointed out that calculation of damages should not be based on abstract models, that in order to assess a claim for environmental damage detailed information about measures actually undertaken was needed and that only substantiated claims were eligible for compensation. The Russian delegation stated that the claim calculated under the 'Metodika' formula had not been brought by the Ministry of Natural Resources or any other Ministry, but by an Agency responsible for the environment. That delegation stated that the Agency had submitted the claim in Court before carrying out the actual calculation of damages. It was also stated that the Russian Courts were aware that the law which regulates the application of 'Metodika' also allows other methods of calculating damages to the environment, including the costs incurred in clean-up operations. That delegation also stated that the Environmental Agency would submit documentation to the IOPC Funds in support of its claim.

11 Recent developments

- 11.1 A meeting took place in April 2009 between the Fund's Secretariat, its experts and a member of the Russian delegation. The Russian representative was optimistic that the Russian Courts were very likely to reject the methodical claim. He stated that, in accordance with 'Metodika' regulations, the authorities had the choice between submitting a claim on the basis of a formula or on the basis of the actual expenditure incurred in clean-up operations. He suggested that the Fund might also wish to submit this argument before the Arbitration Court in Saint Petersburg.
- 11.2 The Russian representative also stated that the Minister of Transport had written to his counterpart in the Ministry of Natural Resources suggesting that the Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor) should resubmit its claim on the basis of actual expenditure which would not contravene the 1992 CLC and Fund Conventions.
- 11.3 The issue of the 'insurance gap' of 1.5 million SDR (£1.5 million) was also discussed. The Secretariat stated that in assessing the claims submitted by local and federal authorities it had been noted that clean-up costs of RUB 48 741 300 (£985 355) appeared to have been paid directly from Russian Federal funds. These costs had so far not been claimed from the Fund or in Court. If costs like this, for a total amount equivalent to the 'insurance gap', and provided they were assessed by the Fund's experts as admissible for that amount, were not claimed by the Federal Government but offset against the 'insurance gap', the problem could be resolved. The Russian representative was receptive to the idea and said that he understood that the Ministry of Finance would not claim for these costs and that it was worth exploring this possibility.
- 11.4 The Fund's Secretariat has been informed that the Minister of Transport has written to the Vice-Prime Minister of the Russian Federation bringing to his attention the problems arising from this case. As suggested by the Russian representative the Director has also written to the Vice-Prime Minister of the Russian Federation expressing the Funds' concerns.

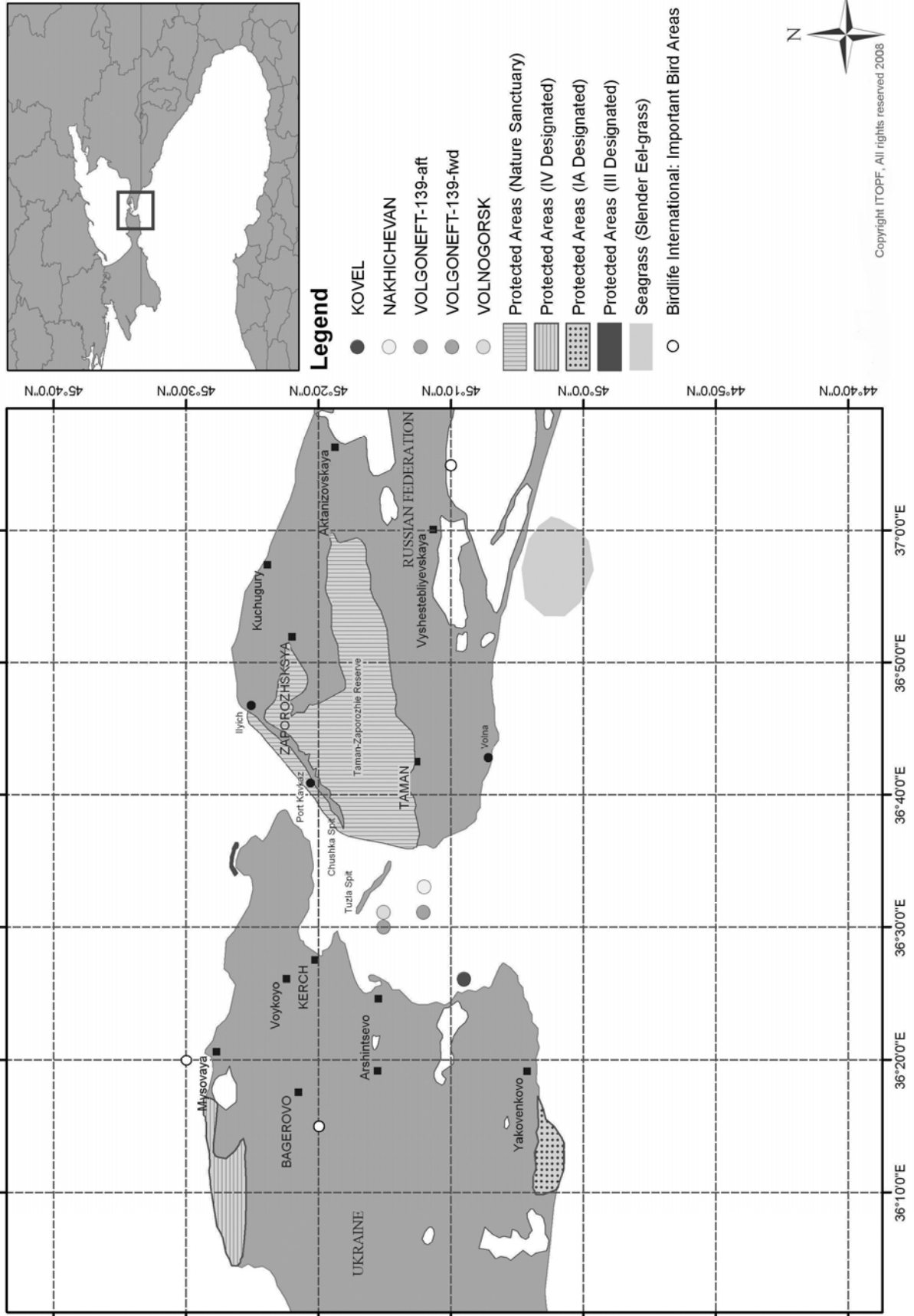
12 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX



Copyright ITOPF, All rights reserved 2008