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UPDATE ON THE REPORT ON WFP CHARTERED FLIGHT KSV 3275 TO KOSOVO

**Investigations, Compensation and Liability
Exposure**

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INTRODUCTION

1. The purpose of this report is to respond to the request made by the Executive Board at its First Regular Session of 2000 (decision 2000/EB.1/1). It also aims to provide a general update on the expenditure incurred and the events occurring subsequent to the crash of the WFP chartered flight KSV 3275—specifically with respect to the various investigations commenced, the possible compensation payable and WFP's potential liability exposure. Given the legal complexities of this matter and the fact that investigations are still ongoing, it is at present impossible to predict WFP's liability exposure in legal and monetary terms.

INVESTIGATIONS COMMENCED

The French Bureau Enquêtes-Accidents (BEA)

2. Subsequent to the accident and further to Annex 13 of the Convention on International Civil Aviation, an investigation was launched by the French BEA, by virtue of their capacity as the State of Registration of the accidented ATR 42-300 aircraft. The French authorities produced a Final Report which was published on 28 February 2000. This Report concluded that the accident was caused essentially by an accumulation of errors committed by Si Fly, the aircraft crew, the ATC controller and those in charge of the airport. Specifically, the reasons were that: the crew lacked procedural discipline; the military air traffic controller, who had no previous experience in working in mountainous areas, seemingly forgot about the Si Fly, aircraft; Si Fly, due to financial pressures, was interested mainly in getting the job done quickly, thus failing at times to respect procedures; and the airdrome was opened to civil aircraft without a thorough advance evaluation of the operating conditions. Additionally, two other factors which contributed to causing the accident were: crew fatigue and the undertaking of a flight with an out-of-service or disconnected GPWS.

Criminal Proceedings before the *Tribunale di Roma*

3. The legal basis for actions taken by the *Tribunale di Roma* is to be found in the Italian *Codice di Procedura Penale* (Code of Criminal Procedure). In Italy, after the occurrence of an accident, the nearest Court seizes jurisdiction and appoints a *Pubblico Ministero* (Public Prosecutor—PM) to investigate the reasons for the said accident and eventually prosecute those responsible. The PM appointed in this instance is Mr Roberto Staffa. His investigation is covered by the judicial secrecy process. However, through newspaper reports it has been revealed that so far he has carried out the following tasks: appointed two aeronautical experts to compile a report on the incident; interviewed the French BEA with respect to their findings; and by means of a Letter Rogatory he has requested that the ATC Controller be interviewed. It is estimated that this investigation shall be completed on or around August 2000.

United Nations Mission for Kosovo (UNMIK)

4. It appears that UNMIK set up a Board of Inquiry (BOI) to report on the facts of the accident. The setting up of such a BOI is a standard procedure whenever there is an accident involving UNMIK members. It is essentially a factual report detailing the facts as



known and annexing all the relevant documentation. Upon completion, this report shall be sent to the United Nations Department of Peacekeeping Operations (DPKO) in New York for further review and onward transmission to the United Nations Legal Department. In this instance, it is estimated that the BOI Report shall be completed by 15 May 2000 and at that stage shall be transmitted to DPKO.

Kosovo Force (KFOR)

5. KFOR has not undertaken an inquiry. Under KFOR's rules, when an alleged crime has occurred, any type of investigation or inquiry to be carried out is to be effected by the sending State of the person being investigated which in this case would be England. This probably explains why the British Ministry of Defence initiated the inquiry described hereafter.

British Ministry of Defence

6. The British Ministry of Defence set up a BOI to investigate specifically whether or not the RAF officer who was in the ATC on the day of the incident bears any criminal responsibility for his actions and generally, investigate the operational effect of the RAF procedures and whether or not said procedures require amendment. It is estimated that a summary of the findings of the BOI shall be available on or around August 2000.

COMPENSATION

All Passengers/General Passenger Liability Insurance

7. By virtue of Regulation (EEC) No. 2407/92 and Regulation (EC) 2027, the air carrier/operator has an obligation to be insured up to a maximum of 100,000 Special Drawing Rights (SDRs) (valued on 11.05.00 at US\$130,998) per passenger and a reasonable amount thereafter. This legal obligation was complied with in the present instance through a series of contractual links between WFP, Balmoral and Si Fly. When the accident occurred the corresponding general passenger insurance coverage was the insurance taken out by Si Fly with their Italian insurers SASA. As a result, each of the 21 passengers aboard the ATR was covered by this general passenger insurance up to a legal maximum of 100,000 SDRs. Any party claiming a greater amount would have to initiate legal proceedings against the potentially responsible parties. The attorney appointed by SASA to represent their legal interests is an Italian lawyer, Mr Giuseppe Guerreri, and he is at present in contact with the victims' families or their legal representatives with a view to processing the said payments of 100,000 SDRs to the corresponding next-of-kin of each of the respective victims.

Supplementary Insurance

Employees of the United Nations Family

WFP

8. Three employees/consultants of WFP were on board the aircraft. All of these individuals were covered by the WFP Personal Accident Insurance. Compensation for the amount of US\$250,000 shall be paid to the deceased's next-of-kin in the near future.



UNMIK

9. Five employees of the Civilian Police Unit who were on duty with UNMIK on board the aircraft. By virtue of the UNMIK rules on compensation coverage for death occurring during the performance of official duties on behalf of the United Nations, the maximum amount awardable is twice the officer's annual base salary, less allowances or US\$50,000, whichever is the greater amount. The said claims are being handled by DPKO. WFP filed the relevant paperwork to commence the claim process for each of the five victims; and the respective national Permanent Missions to the United Nations in New York have provided the additional information to complete the claim. The internal DPKO Board shall meet during the month of May to consider these claims and it is thought that the corresponding payments shall be made forthwith.

UNV

10. UNV had one employee who perished in the accident and they shall pay compensation in the amount of US\$100,000 to the victim's next of kin.

Employees of various NGOs

11. It would appear that many of the NGOs had taken out insurance coverage for their employees in accidents while in the performance of their duties. These amounts vary from NGO to NGO and it remains unclear whether every individual was actually covered by this type of indemnity insurance.

LIABILITY EXPOSURE

12. The legal implications resulting from any accident can be criminal and civil. In this case the existence of a criminal action, if any, is being investigated by the *Tribunale di Roma*. However, the civil actions for compensation due for the death of the passengers could potentially have much more far-reaching implications, at least on an economic level. Even though the Report emitted by the French BEA does not assess individual or collective responsibility, its conclusions are fairly indicative as to where the real liability lies. In this case, based on the aforesaid Report, Si Fly, UNMIK and KFOR could all have some potential share in the responsibility for this accident. However, given that most investigations are still ongoing, WFP's potential liability exposure, if any, cannot be evaluated at this stage.

CURRENT EXPENDITURE UNDER THE KSV3275 DISASTER SPECIAL ACCOUNT

13. Expenditure charged to the KSV3275 Disaster Special Account to date in the year 2000 amounts to US\$104,000. This brings the total charges to the special account to US\$540,000, including expenditure as at 31 December 1999 reported to the Executive Board last February (WFP/EB.1/2000/3/1). The majority of recent expenditures relates to efforts to expedite the necessary legal and insurance processes. The Secretariat is pleased to report that the Government of Italy has made a generous donation of 210 million lire to the Special Account, which will reduce the overall charge to WFP's General Fund.



