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OIL POLLUTION  
COMPENSATION  
FUND 1971

ASSEMBLY  
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Agenda item 17

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## INCIDENTS INVOLVING THE 1971 FUND

### AL JAZIAH 1

#### Note by the Director

<b>Summary:</b>	The <i>Al Jaziah 1</i> , carrying fuel oil, sank off Abu Dhabi (United Arab Emirates), resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. The United Arab Emirates is a Party to both the 1971 Fund Convention and the 1992 Fund Convention.
<b>Action to be taken:</b>	Consider the application of the 1971 and 1992 Fund Conventions to this incident and the distribution of liabilities between the 1971 and 1992 Funds.

#### 1 The incident

- 1.1 On 24 January 2000 the tanker *Al Jaziah 1* (reportedly of 681 GRT) laden with fuel oil sank in about 10 metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates).
- 1.2 The vessel held a certificate of provisional registration issued by the Registry of Honduras, expiring 12 November 2000. It has been alleged that it was owned by a company in Abu Dhabi and Dubai. It appears that the vessel was not entered with any classification society. It also appears that there was no liability insurance covering the vessel.
- 1.3 It is estimated that approximately 100 - 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled.
- 1.4 At the IOPC Funds' request a representative of the International Tanker Owners Pollution Federation Ltd (ITOPF) went to Abu Dhabi to follow the clean-up operations, liaise with the

competent authorities and advise the authorities and bodies involved on the practical aspects of any clean-up. The Funds also appointed a local surveyor to assist ITOPF and to monitor the salvage operations.

- 1.5 Local oil companies organised the response to the spill using their own resources and those of an industry stockpile located in Abu Dhabi as well as some equipment from the stockpile of the Oil Spill Response Limited in Southampton (United Kingdom). Although the initial response involved the application of dispersants from supply vessels and helicopters, these operations were scaled down when it became apparent that they were not effective. Some defensive booming of sensitive areas was undertaken, including the seawater intake to two nearby power stations.
- 1.6 Local authorities mobilised teams of labourers to undertake onshore clean-up on various islands much of which was completed within two weeks.
- 1.7 The Federal Environment Agency (FEA) of the United Arab Emirates appointed a local salvage company to stem further oil leaks from the wreck and to remove the remaining oil on board. The oil removal operation was completed on 7 February 2000, and it was reported that some 430 tonnes of oil had been removed from the sunken vessel. Approximately 70 tonnes of oil was reported to have remained on board as clingage and unpumpable material.
- 1.8 The sunken vessel was refloated by the salvors on 11 February 2000 and taken into the Abu Dhabi Freeport.

## **2 Definition of 'ship'**

- 2.1 At its 8th session, the 1992 Executive Committee considered the question of whether the *Al Jaziah I* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention and as incorporated into the 1971 and 1992 Fund Conventions respectively. The discussion was based on a note prepared by the Director (document 92FUND/EXC.8/4).
- 2.2 The definitions of 'ship' set out in Article I.1 of the 1969 Civil Liability Convention and of the 1992 Civil Liability Conventions read:

### 1969 Civil Liability Convention

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.

### 1992 Civil Liability Convention

'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.

These definitions are incorporated in the 1971 and 1992 Fund Conventions, respectively.

- 2.3 The 1992 Fund Executive Committee noted that the *Al Jaziah I* was reportedly some 40 years old, and that it was believed that it had been built in the Netherlands. The Committee further noted that the vessel had a rudder and propeller, but that it did not carry even basic navigation equipment. The Committee also noted that the design of the vessel was of the type approved by the Dutch Small Ship Inspectorate as an 'inland waters motor tankship' and that at the time of the incident the vessel was operating in open seas unmodified in any material way from the original

design, a characteristic feature of which was a very low forecastle. It was also noted that it was not known whether the vessel had been converted for carriage of oil.

- 2.4 The 1992 Fund Executive Committee noted that the *Al Jaziah I* had an expired hull insurance with the Saudi Arabian Insurance Company LTD.EC, which covered trading in 'the Persian Gulf, Gulf of Oman, Indian Ocean, East African Coast and Red Sea', and that it was reported that the *Al Jaziah I* had frequently been used by the Abu Dhabi National Oil Company to transport fuel oil in the region.
- 2.5 During the discussions in the 1992 Fund Executive Committee, it was generally considered that a craft fell within the concept of 'seagoing ship or other seaborne craft' if it was actually operating at sea. The Committee took the view therefore that the *Al Jaziah I* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 92FUND/EXC.8/8, paragraph 4.2.5).
- 2.6 The 1971 Fund Assembly is invited to consider whether the *Al Jaziah I* falls within the definition of 'ship' in the 1969 Civil Liability Convention and the 1971 Fund Convention.

### **3 Applicability of the 1971 and the 1992 Fund Conventions**

- 3.1 The United Arab Emirates is a Party to both the 1971 Fund Convention (since March 1984) and the 1992 Fund Convention (since November 1998), having not denounced the former when acceding to the latter.
- 3.2 The 1992 Fund Convention provided a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention when the total quantity of contributing oil received in States that were Parties to the 1992 Protocol to the Fund Convention (or which had deposited instruments of accession in respect of that Protocol) reached 750 million tonnes. This condition was fulfilled on 15 May 1997. There is no corresponding provision in respect of States that have deposited instruments of accession after that date. It appears, however, that it was not intended that States should continue to be Parties to both the 1971 Fund Convention and the 1992 Fund Convention after that time.
- 3.3 The United Arab Emirates deposited its instrument of ratification of the 1992 Fund Convention on 19 November 1997, ie after 15 May 1997. It was therefore under no formal treaty obligation to denounce the 1971 Fund Convention. The Director has made several contacts with representatives of the United Arab Emirates, however, drawing their attention to the problems that could arise if the United Arab Emirates remained a Party to the 1971 Fund Convention, and explaining the importance of the Emirates' denouncing that Convention as soon as possible. In April 2000 the Director visited the Undersecretary of the Ministry of Foreign Affairs of the Emirates and discussed this issue with leading officials.
- 3.4 At its 8th session the 1992 Fund Executive Committee considered the applicability of the 1971 and 1992 Fund Conventions to the *Al Jaziah I* incident. The Director expressed the view that since the United Arab Emirates is a Party to both the 1969/1971 Conventions and the 1992 Conventions, from a treaty law point of view both sets of Conventions would apply to pollution damage in the United Arab Emirates.
- 3.5 The 1992 Fund Executive Committee recalled that the United Arab Emirates was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention as well as to the 1992 Civil Liability Convention and the 1992 Fund Convention, having not denounced the former two Conventions. It was also noted that the 1971 Fund Convention had been incorporated in the law of the Emirates by a Federal Decree of 1983 and the 1992 Fund Convention by a Federal Decree of 1997, and that the former decree had not been repealed and was still in force. It was also recalled that the 1992 Fund Convention did not contain any provisions governing the simultaneous application of these four instruments after the expiry of the transitional period on 15 May 1998.

- 3.6 During the discussion in the 1992 Fund Executive Committee a number of delegations stated that since the Committee had already decided that the *Al Jaziah 1* fell within the definition of 'ship' for the purposes of the two sets of Conventions, and since the United Arab Emirates was a Party to all four Conventions, both sets of Conventions would apply to pollution damage arising from this incident in the United Arab Emirates.
- 3.7 It was noted that the *Al Jaziah 1* had held a certificate of provisional registration issued by the Registry of Honduras, and that Honduras was a Party to the 1969 Civil Liability Convention, but not to the 1992 Civil Liability Convention. The 1992 Fund Executive Committee took the view that the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's liability (cf Article 30.4(b) of the Vienna Convention on the Law of Treaties).
- 3.8 Two delegations raised the issue of the liability of the Fund if the ship operated illegally, or if the flag State and the State where the ship was loaded did not ensure that the ship had insurance under the 1969 and 1992 Civil Liability Conventions. The Director pointed out that since it was unlikely that the *Al Jaziah 1* was capable of carrying more than 2 000 tonnes of oil as cargo, there was no compulsory insurance requirement under Article VII.1 of the Civil Liability Conventions, and that it was irrelevant for the applicability of the Fund Conventions whether or not a ship was operated illegally.
- 3.9 The 1992 Fund Executive Committee decided that the Director should inform the authorities of the United Arab Emirates that, in the view of the 1992 Fund, the 1971 and 1992 Fund Conventions applied to the *Al Jaziah 1* incident (document 92Fund/EXC.8/8, paragraph 4.2.11).
- 3.10 The 1971 Fund Assembly is invited to consider the applicability of the 1971 and 1992 Fund Conventions to the incident.

#### **4 Distribution of liabilities between the 1971 Fund and the 1992 Fund**

- 4.1 The simultaneous application of the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention in respect of incidents occurring during the transitional period up to 15 May 1998 was governed by Article 36bis of the 1992 Fund Convention. The 1992 Fund would pay compensation only if and to the extent that the claimant had been unable to obtain full compensation under the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention in that order.
- 4.2 There are no corresponding provisions regarding the applicability of these four instruments after the expiry of the transitional period. The issue would therefore, in the Director's view, have to be resolved on the basis of the general rules of treaty law. It appears that the 1969 Vienna Convention on the Law of Treaties does not give any guidance in this respect.
- 4.3 During the discussions at the 1992 Fund Executive Committees' 8th session, a number of delegations expressed the view that any decision regarding the distribution of liabilities between the 1971 and 1992 Funds should be deferred until the October 2000 sessions of the 1992 Fund Executive Committee and the 1971 Fund governing bodies. The Director was instructed to give the matter further consideration with a view to making a proposal at these sessions (document 92FUND/EXC.8/8, paragraph 4.2.10).
- 4.4 In the Director's view there are two options available.
- 4.5 One option would be to apply by analogy Article 36bis of the 1992 Fund Convention, although its application is expressly limited to the transitional period. Under this option the 1992 Fund would not pay any compensation unless the total amount of the established claims exceed 60 million SDR (£55 million). As regards the *Al Jaziah 1* incident, this would most likely result in the 1992 Fund not having to pay any compensation.

- 4.6 The other option would be to distribute the liabilities between the 1991 Fund and the 1992 Fund. It appears that a 50:50 distribution between the two Funds would be reasonable. The Director favours this option, since Article 36bis of the 1992 Fund Convention does not apply to this incident.

## **5 Claims for compensation**

- 5.1 In August 2000 claims in respect of clean-up costs totalling US\$1.3 million (£920 000) were submitted to the IOPC Funds by two local oil companies engaged in the response. One of the claims included the costs of mobilising equipment from the stockpile of Oil Spill Response Limited in Southampton (United Kingdom).
- 5.2 The FEA submitted a claim for Dhs 2 million (£387 000) in respect of operations undertaken by a local salvage company to stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Free Port.
- 5.3 Claims for US\$40 000 (£28 400) and Dhs 47 500 (£9 200) were also submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated.
- 5.4 The IOPC Funds' experts are currently examining these claims. Further claims are expected.
- 5.5 Under Internal Regulation 7.4, the Director may without the prior approval of the Assembly or the Executive Committee make final settlement of any claim for compensation, if he estimates that the total cost to the 1971 Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 2.5 million SDR (£2.3 million).
- 5.6 The Assembly may wish to consider whether it is prepared to authorise the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of the *Al Jaziah I* incident to the extent that the claims do not give rise to any questions of principle which have not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

## **6 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
  - (b) to consider whether the *Al Jaziah I* falls within the definition of 'ship' in the 1969 Civil Liability Convention and the 1971 Fund Convention;
  - (c) to consider the application of the 1971 Fund Convention to the incident;
  - (d) to consider the distribution of liabilities between the 1971 Fund and the 1992 Fund;
  - (e) to consider whether to authorise the Director to make final settlements of claims arising from this incident; and
  - (f) to give the Director such instructions in respect of this incident as it may deem appropriate.
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