



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
63rd session
Agenda item 3

71FUND/EXC.63/8
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INCIDENTS INVOLVING THE 1971 FUND

PONTOON 300

Note by the Director

Summary:	Further payments have been made in respect of clean-up claims. The 1971 Fund has taken recourse action against the owner of the tug <i>Falcon 1</i> which was towing the <i>Pontoon 300</i> when the incident occurred.
Action to be taken:	Review the level of the 1971 Fund's payments.

1 Introduction

- 1.1 Intermediate fuel oil was spilled from the barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1* off Hamriyah in Sharjah, United Arab Emirates. The barge had reportedly become swamped during high seas and strong north-westerly winds on 7 January 1998 and had taken on water whilst losing oil. During the course of the night of 8 January, the barge sank and settled on the seabed at a depth of 21 metres, six nautical miles off Hamriyah. It is estimated that some 8 000 tonnes of oil was spilled.
- 1.2 The *Pontoon 300* was registered in Saint Vincent and the Grenadines and was owned by a Liberian company. The barge was not covered by any insurance for oil pollution liability. The tug *Falcon 1* is registered in Abu Dhabi and owned by a citizen of that Emirate.
- 1.3 The *Pontoon 300* was a flat-top barge 8 037 tons dwt. The barge was constructed with 24 buoyancy tanks in six rows of four tanks each, and a double centre bulkhead. Divers reported signs of diesel oil having been loaded in fore and aft ballast tanks in the barge. Most of the tanks on the barge were interconnected.
- 1.4 Several unsuccessful attempts to raise the barge were made during January 1998. The barge was finally lifted on 3 February 1998 and was towed into the port of Hamriyah. After oil residues had been removed, the barge was towed out to sea and scuttled.

2 Clean-up operations

- 2.1 The spilt oil spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.
- 2.2 The Federal Environment Agency (FEA) co-ordinated spill response activity, with support from the Frontier and Coast Guard Service and municipal authorities. Onshore clean-up operations were carried out by an oil company and a number of local contractors. Collected oily waste was transported to an inland disposal site. The work was completed in June 1998.

3 Applicability of the 1969 and 1971 Conventions

In February 1998 the Executive Committee decided that the *Pontoon 300* fell within the definition of 'ship' in the 1969 Civil Liability Convention, since it had been established that the barge was actually transporting oil in bulk as cargo from one place to another.

4 Level of the 1971 Fund's payments

- 4.1 In view of the continuing uncertainty as to whether the total amount of the claims might exceed the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £51 million), the Executive Committee decided in February 1998 to limit the level of the 1971 Fund's payments to 50% of the loss or damage actually suffered by each claimant as assessed by the 1971 Fund's experts at the time the payment was made (document 71FUND/EXC.57/15, paragraphs 3.11.8 and 3.11.9). In April 1998 the Committee increased the level of payments to 75% (document 71FUND/EXC.58/15, paragraph 3.9.5). The Committee decided at its 59th and 62nd sessions to maintain this payment level (document 71FUND/EXC.59/17, paragraph 3.12.2 and document 71FUND/EXC.62/14, paragraph 3.10.2).
- 4.2 The Director considers that uncertainty as to the total amount of the claims remains. For this reason he takes the view that it would be appropriate to maintain the level of the 1971 Fund's payments at 75% of the total loss or damage suffered by each claimant.

5 Claims for compensation

- 5.1 As at March 2000, 11 claims for compensation for clean-up operations had been received, totalling Dhs 7.4 million (£1.3 million). Eight of these claims, totalling Dhs 5.3 million (£895 000), have been presented by the FEA. Seven of the FEA claims have been settled at Dhs 2.8 million (£480 000), and the 1971 Fund has paid 75% of the settlement amount.
- 5.2 A local contractor submitted claims totalling Dhs 2.2 million (£365 000) in respect of clean-up work. These claims were accepted in full and the 1971 Fund paid 75% of the settlement amount.
- 5.3 It is expected that the Umm Al Quwain municipality will submit a claim in the near future. It appears that the claim will relate to losses suffered by some 200 fishermen following the spill, beach-cleaning costs, damage to facilities of the Marine Resources Research Centre, costs of studies undertaken by Al Ain University and the FEA and damage to mangroves.

6 Investigation into the cause of the incident

The 1971 Fund's lawyers in the United Arab Emirates are investigating the cause of the incident, with the assistance of technical experts. The 1971 Fund has obtained crew statements, collected by the police in the course of its investigation.

7 Legal action against the owners of the tug *Falcon 1*

- 7.1 At its 62nd session, the Executive Committee considered the possibility of taking recourse action against the owner of the tug *Falcon 1*. Such a claim in tort would under the law of the United Arab Emirates be time-barred when three years have lapsed from the date when the person who suffered the damage became aware of the act which caused the damage. However, it might be argued that the pollution damage in this case arose out of a towage operation, and the time bar period would then be two years from the date of termination of the operation.
- 7.2 The Committee therefore decided that, as a precaution, the 1971 Fund should commence legal action against the owner of the *Falcon 1* within the two year time bar period (6 January 2000) (document 71FUND/EXC.62/14, paragraph 3.10.11).
- 7.3 Legal proceedings were commenced against the owner of the tug *Falcon 1* on 4 January 2000. The owner of the tug has since expressed a willingness to enter into discussions with the 1971 Fund. For this reason, the parties requested that the Dubai Court grant an adjournment to proceedings. This was done formally by the 1971 Fund's lawyers, but informally by the lawyers acting for the tug owner, who have not yet filed a power of attorney. The action is currently adjourned until 16 April 2000, and it is anticipated that the hearing on that day will again be adjourned by joint consent. It is expected that such discussions between the 1971 Fund and the tug owner will take place in the near future.

8 Criminal proceedings

- 8.1 In November 1999, the Ajman Criminal Court of first instance found the master of the tug *Falcon 1*, the tug owner and alleged cargo owner and their respective general managers guilty of misuse of the barge *Pontoon 300*, which was not in a seaworthy condition and thus in violation of UAE law, and causing harm to the people and the environment by use of the unseaworthy barge. The master of the *Falcon 1*, the tug owner and its general manager appealed, but the alleged cargo owner and its general manager did not.
- 8.2 On 23 February 2000, the Ajman Criminal Court of Appeal found the tug owner and its general manager not guilty, but confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and its general manager personally (*in absentia*). The judgement is currently being translated from Arabic into English.

9 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 review the level of the 1971 Fund's payments; and
 - (c) to give the Director such instructions in respect of this incident as it may deem appropriate.
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