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COMPENSATION
FUNDS 1971 AND
1992

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INCIDENTS INVOLVING THE 1971/1992 FUNDS

ZEINAB

Note by the Director

Summary:

The *Zeinab* sank off Dubai (United Arab Emirates) on 14 April 2001, resulting in the loss of some 400 tonnes of oil and the subsequent pollution of the coast. The governing bodies decided that both the 1971 and the 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the 1971 and 1992 Funds on a 50:50 basis. This incident is, as regards the 1971 Fund, covered by insurance, subject to a deductible of £220 325. The total amount paid in compensation by the 1971 Fund exceeds the deductible.

The Director has investigated further whether the Funds should pursue a recourse action against the shipowner. This investigation shows that it is unlikely that the Funds would make any recovery as a result of a successful recourse action, and for this reason the Director questions whether it would be meaningful to take such action. However, the governing bodies may nevertheless wish to consider whether the Funds should take recourse action in the UAE in order to demonstrate their support for efforts to discourage the operation of substandard ships.

Action to be taken:

To decide whether the IOPC Funds should take recourse action against the shipowner.

1 The incident

- 1.1 On 14 April 2001, the Georgian-registered vessel *Zeinab*, suspected of smuggling oil from Iraq, was arrested by the multi-national interception forces. The vessel was being escorted to a holding area in international waters when it lost its stability about 16 miles from the Dubai coastline (United Arab Emirates, UAE) and sank in 25 metres of water.
- 1.2 The vessel was reported having been carrying a cargo of 1 500 tonnes of fuel oil, of which it is estimated that some 400 tonnes was spilled at the time of the incident. The oil drifted towards the nearby shorelines in Dubai and also reached the coasts of the northern Emirates of Sharjah and Ajman.
- 1.3 Some 1 100 tonnes of cargo remained in the unbreached tanks and this cargo was successfully removed from the sunken vessel without further significant spillage of oil.

- 1.4 It appears that the *Zeinab* was not entered with any classification society and was not covered by any liability insurance.

2 Applicability of the Conventions and the distribution of liabilities between the 1971 and 1992 Funds

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their June 2001 sessions that, since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis (documents 92FUND/EXC.13/7, paragraphs 3.4.8 and 3.4.11 and 71FUND/AC.5/A/ES.8/10, paragraphs 5.6.8 and 5.6.11).

3 Claims for compensation

- 3.1 Claims in various currencies totalling £1.3 million were submitted in relation to clean-up and pollution prevention measures. These claims were settled at £1.0 million and have been paid.
- 3.2 No further claims have been submitted.
- 3.3 Claims arising from this incident will be time barred on or shortly after 14 April 2004.

4 Consideration of whether the Funds should take recourse action against the shipowner

Initial investigation

- 4.1 In 2002 and 2003 the Funds carried out an investigation into the identity and whereabouts of the owner of the *Zeinab*. The Georgia Maritime Transport Administration confirmed that the vessel was entered into the Georgian Ship State register on 7 June 2000 and that the registered shipowner was an Iraqi national. There was evidence that the shipowner was a shareholder of two other companies in the UAE unrelated to shipping. The UAE immigration authorities confirmed that the shipowner had left the UAE on 19 March 2002 and that there was no record of him returning to the UAE since. There were indications that the shipowner was living in Baghdad (Iraq).

Consideration at the governing bodies' October 2003 session

- 4.2 At the October 2003 sessions of the governing bodies, most delegations shared the Director's view that, as long as the shipowner was not living in UAE but probably in Iraq, it would not be meaningful to take recourse action against him. However, some delegations expressed the view that the fact that the shipowner was probably living in Iraq should not in itself prevent the Funds from taking recourse action against him outside the UAE provided that he had assets against which a favourable judgement could be enforced.
- 4.3 The governing bodies decided that the matter should be reconsidered before the expiry of the three-year time bar period (14 April 2004). It was also decided that the Director should investigate further the financial standing of the two companies in which the shipowner allegedly held shares, whether he still held the shares, and if so, what their value was (documents 92FUND/EXC.22/14, paragraph 3.5.19 and 71FUND/AC.12/22, paragraph 15.8.18).

Further investigations

- 4.4 Subsequent investigations have revealed that the shipowner holds 25% of the shares in relation to one of the two companies referred to in paragraph 4.1, which has an authorised share capital of AED300 000 (£50 000). Although UAE law requires companies to file annual financial reports to the Ministry of Economy and Commerce, the Funds' lawyers found that there are no public records available in relation to the financial status of that company. The investigation has shown

that a relative of the shipowner and a UAE national own the second company and that the owner of the *Zeinab* has no financial interest in this company. Both companies have small offices manned by a small number of staff in Hamriyah port in Dubai. The Funds' lawyers have stated that the only assets in the UAE directly owned by the owner of the *Zeinab* appear to be a three-year old motorcar whose registration has not been renewed since October 2002.

- 4.5 The Director's further investigations have also revealed that relatives of the owner of the *Zeinab* own two small tankers and a small bulk carrier. The bulk carrier is registered in Ghana and its certificate of registry indicates as owner a person who is probably the brother of the owner of the *Zeinab*. The two tankers have been reported to be trading in Iraqi oil in international waters. The Dubai marine police was not able to provide any details in relation to the two tankers, as they do not call at UAE ports.
- 4.6 Recent investigations have indicated that the shipowner may be living illegally in the UAE under a new identity.

Director's considerations

- 4.7 As regards the question as to whether the Funds should take recourse action against the owner of the *Zeinab*, the Funds' lawyers have advised that under UAE law such actions can be taken by filing a claim with the UAE Courts prior to the expiry of the three-year time bar period. They have stated that service upon the defendant (which is undertaken by the Court) may be effected after the expiry of that period either directly (which is likely to be difficult or if not impossible), or if direct service cannot be carried out, through publication of notices in the local press. They have further expressed the view that the Funds have a reasonable prospect of obtaining a favourable judgment against the shipowner. However, they have stated that it would be extremely difficult to enforce any judgment against the shipowner since it has not been established that he is in the UAE and there is no evidence to suggest that he has any substantial assets there. The Funds' lawyers have further stated that it would take up to one year to obtain a judgment by the first instance court, that the defendant would have an unlimited right of appeal, firstly to the Dubai Court of Appeal and secondly to the Court of Cassation, and that these appeals could result in the proceedings lasting up to three years. It is possible, however, that the shipowner would not appear in court even if he had been served and a default judgement could then be obtained more quickly.
- 4.8 The Funds' lawyers have indicated that the cost of the legal proceedings (exclusive of court fees) in the first instance court could reach US\$45 000 (£24 000), that if the case were to proceed to the Court of Cassation, the costs could reach US\$75 000 (£40 000) and that further costs would be incurred if execution proceedings were necessary. They have added that the costs could be substantially higher if the shipowner raised complex arguments but would be substantially lower if the shipowner were not to contest the matter. They have also advised that in the event of a favourable judgment being obtained, court fees would be recoverable but that lawyer fees and execution costs would only be recoverable for a nominal amount.
- 4.9 As regards commencing recourse proceedings in Iraq against the owner of the *Zeinab*, the Funds' lawyers in UAE have stated that the Civil Courts in Iraq are operational. They have also advised that in order for the Iraqi Courts to effect service on the shipowner in Iraq, the Funds would have to provide the Court with a specific address at which the shipowner could be served, which may prove problematic as the relevant ministries are not operational and the Iraqi courts will not permit service to be effected by publication through the Iraqi press unless a specific address for him in Iraq can be given. However, the Funds' lawyers do not know if the shipowner is in Iraq, and if so, of his whereabouts or whether he has any assets there. If proceedings were taken in Iraq, the Funds' lawyers have also expressed the view that the Iraqi Courts might not assume jurisdiction over an action against the shipowner since the *Zeinab* was registered in Georgia and the incident took place in UAE territorial waters.

- 4.10 For the purpose of the consideration of whether the Funds should pursue a recourse action against the owner of the *Zeinab*, reference should be made to the deliberations of the governing bodies in respect of recourse action against the shipowner in the *Al Jaziah 1* case. In the latter case, the shipowner who was a UAE national had ownership of or substantial shares in four separate companies. The Funds' lawyers had been unable to establish whether these assets would be sufficient to satisfy the amount that the Funds may be awarded in a final judgement. In that case, most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of substandard ships and enforcing the 'polluter pays principle'. In recommending that the IOPC Funds should pursue a recourse action those delegations recognised that the prospects of enforcing a favourable judgement were limited, but that it was in their view nevertheless important for the Funds to take a stand. Some delegations considered, however, that the Funds should be realistic and not pursue a recourse action if the shipowner had no assets. In that case, the governing bodies of the 1971 and 1992 Funds decided to pursue a recourse action against the shipowner (document 92FUND/EXC.8/14, paragraphs 3.5.8 and 3.5.9 and 71FUND/AC.9/20, paragraphs 15.10.8 and 15.10.9).
- 4.11 In the Director's view however, there are considerable differences between the *Al Jaziah 1* and the *Zeinab* cases. In the *Al Jaziah 1* case, the shipowner was a UAE national who was easily identifiable and could be served with the recourse action directly by the court, whereas in the *Zeinab* case the shipowner is a foreign national (Iraqi) whose whereabouts are uncertain. Further, in the case of the *Al Jaziah 1* it was established that the shipowner had assets, albeit limited, against which a favourable judgement could be enforced, although the Funds' lawyers in that case were unable to establish whether these assets would be sufficient to satisfy the amount that the Funds may be awarded in a final judgement. In the *Zeinab* case, the Funds' lawyers have not been able to identify any substantial assets in the UAE and have also indicated that due to the uncertainty of the shipowner's whereabouts in the UAE, it would be very difficult to enforce a judgement rendered by a UAE court against him. Any recourse action would also result in the Funds incurring considerable legal costs.
- 4.12 Since it is unlikely that the Funds would make any recovery from the shipowner as a result of a successful recourse action, the Director questions whether it would be meaningful to pursue a recourse action in the UAE against him. However, the governing bodies may wish to consider whether the IOPC Funds should in the *Zeinab* case, as in the *Al Jaziah 1* case, take recourse action in the UAE in order to demonstrate their support for efforts to discourage the operation of substandard ships.
- 4.13 The Director considers that in any event it would not be meaningful for the IOPC Funds to pursue a recourse action against the shipowner in Iraq.

5 Recovery from the 1971 Fund's insurance policy

- 5.1 The 1971 Fund's liability for compensation and indemnification for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, is covered by insurance. The insurance policy covers the 1971 Fund's liabilities up to 60 million SDR (£51 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention as well as legal and other experts' fees, subject to a deductible of 250 000 SDR for each incident.
- 5.2 In July 2002 the Administrative Council decided that the relevant date for conversion of this amount into Pounds Sterling should be the date of the incident, ie 14 April 2001. The Council decided that on the basis of the SDR: pounds sterling exchange rate on 12 April 2001, 1 SDR=£0.88130, (13, 14, 15 and 16 April being non-banking days), the deductible under the policy would be £220 325 (document 71FUND/AC.8/6, paragraph 3.5.6).

5.3 Since the 1971 Fund's payments have exceeded the deductible, the Fund has recovered £220 000 from the insurer. It is expected that further amounts paid by the 1971 Fund in excess of the deductible will be recovered from the insurer.

6 Action to be taken by the governing bodies

The governing bodies are invited:

- (a) to take note of the information contained in this document;
 - (b) to decide whether the IOPC Funds should take recourse action against the shipowner; and
 - (c) to give the Director such other instructions in respect of this incident as they may deem appropriate.
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