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COMPENSATION
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1992

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INCIDENTS INVOLVING THE 1971/1992 FUNDS

TWO UNITED ARAB EMIRATES INCIDENTS - AL JAZIAH 1 AND ZEINAB

Note by the Director

Summary:

Al Jaziah 1: The *Al Jaziah 1* sank off Abu Dhabi (United Arab Emirates) on 24 January 2000, resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. The governing bodies of the 1971 and 1992 Funds decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. All claims arising from this incident have been settled for a total of £1.1 million.

The governing bodies decided in October 2002 that the 1971 and 1992 Funds should take recourse action against the shipowner on the grounds that the vessel was not seaworthy and that the shipowner was not entitled to limit his liability. The recourse action was commenced in January 2003. The Abu Dhabi Court of first instance is expected to issue a judgement before the end of this year.

Zeinab: 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. All claims arising from this incident have been settled and paid. The total of the settlement amounts paid by the 1971 Fund exceeds the deductible.

Action to be taken: Information to be noted.

1 *Al Jaziah 1*

1.1 The incident

- 1.1.1 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).

1.1.2 It was 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. As regards details of the spill, clean-up operations and the subsequent salvage operations, reference is made to the documents submitted to the governing bodies at their October 2000 session (documents 92FUND/EXC.9/11 and 71FUND/A.23/14/11, paragraphs 1.3 - 1.8).

1.2 Applicability of the Conventions and the distribution of liability between the 1971 and 1992 Funds.

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their October 2000 sessions that, since the United Arab Emirates was at the time of the *Al Jaziah I* 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.9/12, paragraphs 3.8.13 and 3.8.14 and 71FUND/AC.2/A.23/22, paragraph 17.12.15).

1.3 Claims for compensation

1.3.1 Claims in various currencies totalling £1.4 million were submitted in relation to clean-up operations and preventive measures. These claims were settled at £1.0 million and have been paid.

1.3.2 All further claims became time barred on or about 24 January 2003, and therefore the Funds will not be required to make any further compensation payments.

1.4 Criminal proceedings

1.4.1 The Abu Dhabi Public Prosecutor brought criminal proceedings against the master of the *Al Jaziah I*. In a statement given to the Public Prosecutor the master had stated that the vessel was designed as a water carrier and was in a dangerous condition and badly maintained.

1.4.2 The Court held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and was not authorised by the UAE Ministry of Communications to carry oil. The Court concluded that the sinking of the vessel was due to these deficiencies.

1.4.3 The master was fined Dhs 5 000 (£750) for causing damage to the environment.

1.5 Recourse action by the IOPC Funds

1.5.1 At their October 2002 sessions the governing bodies of the 1971 and 1992 Funds considered whether to pursue recourse action against the owner of the *Al Jaziah I*. The Funds' lawyers in the UAE expressed the view that the findings of the criminal court regarding the vessel's unseaworthiness would be persuasive in any civil action filed against the shipowner in the UAE. The Director concurred with the Funds' lawyers and also expressed the view that the shipowner must have known or ought to have known that the ship was unseaworthy and that the sinking of the vessel was due to the fault or privity of the shipowner. The Director considered that pursuant to Article V.2 of the 1969 Civil Liability Convention the shipowner was therefore not entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

1.5.2 The Funds' lawyers further expressed the view that there were reasonably good prospects for the Funds to obtain a favourable judgement against the shipowner and that it was likely that he would not be entitled to limit his liability. They also advised, however, that the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

- 1.5.3 During the discussion by the governing bodies, 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 sub-standard ships and enforcing the 'polluter pays' principle. In recommending that the Funds should pursue a recourse action, those delegations recognised that the prospects of enforcing a favourable judgement were limited, but in their view it was 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.
- 1.5.4 The governing bodies of the 1971 and 1992 Funds decided that the Funds should pursue recourse action against the shipowner. In so deciding it was recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement (documents 92FUND/EXC.18/14, paragraph 3.5.9 and 71FUND/AC.9/20, paragraph 15.10.9).
- 1.5.5 In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£1.0 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 1.5.6 In May 2003 the defendants filed pleadings in which they argued that the Funds had not submitted admissible evidence in respect of the incident or details of the alleged losses suffered by the parties, and that the subrogation of the claimants' rights had not been done correctly under UAE law. They further argued that the persons who were alleged to have suffered losses had not exercised their right to claim against the shipowner under the Civil Liability Conventions. It was argued that under Articles 2, 4.1 and 5 of the Fund Conventions, the Funds should only pay compensation if the persons suffering pollution damage had been unable to obtain recovery from the shipowner under the Civil Liability Conventions.
- 1.5.7 The Funds submitted further pleadings in June 2003 arguing that the shipowner had failed to set up a limitation fund in accordance with the 1969 and 1992 Civil Liability Conventions, and that since there was no indication that the shipowner had any intention of paying compensation, the Funds had decided to pay compensation to those who had suffered pollution damage. The Funds further argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which requires a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Funds also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities
- 1.5.8 In November 2003, the Abu Dhabi Court of first instance issued a preliminary judgement appointing an expert to investigate the nature of the incident and the payments made by the 1971 Fund. The Fund and its lawyers met with the experts on two occasions and provided supplementary information as requested by the expert. The expert is expected to submit his report to the court in September 2004.
- 1.5.9 The Court is expected to render its judgement before the end of 2004.

2 *Zeinab*

2.1 The incident

- 2.1.1 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.

- 2.1.2 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.
- 2.1.3 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.
- 2.1.4 It appears that the *Zeinab* was not entered with any classification society and was not covered by any liability insurance.

2.2 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).

2.3 Claims for compensation

- 2.3.1 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.
- 2.3.2 All further claims became time barred on or about 14 April 2004, and therefore the Funds will not be required to make any further compensation payments

2.4 Recourse action against the shipowner

- 2.4.1 At their February 2004 sessions, the governing bodies of the 1971 and 1992 Funds considered whether the Funds should pursue recourse action against the owner of the *Zeinab*. The Funds' lawyers in the UAE had expressed the view that the Funds had a reasonable prospect of obtaining a favourable judgement against the shipowner. However, they had stated that it would be extremely difficult to enforce any judgement against the shipowner since it had not been established that he was in the UAE and there was no evidence to suggest that he had any substantial assets there.
- 2.4.2 During the discussions in the governing bodies, most delegations expressed the view that since the prospects of pursuing a successful recourse action were poor the Funds should not pursue recourse action against the owner of the *Zeinab*. Some delegations emphasised that the impracticability of making a recovery against the shipowner was the sole justification for deciding not to take recourse action.
- 2.4.3 Emphasising that the IOPC Funds should in principle take recourse action in order to discourage the operation of substandard ships, the governing bodies decided not to pursue a recourse action against the owner of the *Zeinab* on the sole ground that it would be extremely difficult to pursue such an action for legal and practical reasons (documents 92FUND/EXC.24/8, paragraph 3.2.8 and 71FUND/AC.13/8, paragraph 3.2.8)

2.5 Recovery from the 1971 Fund's insurance policy

- 2.5.1 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 (£48 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.

- 2.5.2 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). The 1971 Fund's payments exceed the deductible and the 1971 Fund has recovered from its insurer all payments made by it in excess of the deductible.

3 Action to be taken by the governing bodies

The governing bodies are invited to take note of the information contained in this document;
