



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971 AND  
1992

EXECUTIVE COMMITTEE  
30th session  
Agenda item 3

92FUND/EXC.30/7  
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Agenda item 14

71FUND/AC.17/12/3

## INCIDENTS INVOLVING THE 1971/1992 FUNDS

### AL JAZIAH 1

#### Note by the Director

**Summary:**

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 appointed an expert to investigate the nature of the incident and the payments made by the 1971 Fund. The expert has not submitted a report and has recently informed the court that he is unable to complete his report. It is expected that the Court will appoint a new expert in due course.

**Action to be taken:** Information to be noted.

### **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 northeast of the port of Mina Zayed, Abu Dhabi, United Arab Emirates (UAE). 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. The sunken vessel was re-floated by the salvors and taken into the Abu Dhabi Freeport.
- 1.2 The vessel was not entered with any classification society and did not hold any liability insurance.

### **2 Applicability of the Conventions**

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 1* 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).

### **3 Claims for compensation**

Claims in various currencies totaling £1.4 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at £1.1 million. The 1971 and 1992 Funds will not be required to make any further compensation payments.

### **4 Criminal proceedings**

4.1 The Abu Dhabi Public Prosecutor brought criminal proceedings against the master of the *Al Jaziah 1*. 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.

4.2 The Court held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfill 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. The master was fined Dhs 5000 (£741) for causing damage to the environment.

### **5 Recourse action**

5.1 At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds decided that the Funds should pursue recourse action against the shipowner (document 71FUND/AC.9/20, paragraph 15.10.10 and 92FUND/EXC.18/14, paragraph 3.5.9).

5.2 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 (£0.95 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

5.3 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.

5.4 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.

5.5 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 expert on two occasions and provided supplementary information as requested by the expert.

5.6 In August 2005, the Funds' lawyers in the UAE reported that the expert had informed the Court that he could not complete his report due to other commitments. The lawyers also reported that the Court would be appointing a new expert in due course.

**6 Action to be taken by the governing bodies**

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

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