



EXECUTIVE COMMITTEE
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Agenda item 3

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71FUND/AC.23/11/1

INCIDENTS INVOLVING THE 1971/1992 FUNDS

AL JAZIAH 1

Note by the Director

Objective of document:	To inform the Executive Committee of the latest developments regarding this incident and to discuss the possibility of a settlement with the shipowner.
Summary of the incident so far:	<p>The <i>Al Jaziah 1</i> sank off Abu Dhabi (United Arab Emirates) on 24 January 2000, resulting in the loss of 100 to 200 tonnes of oil and the subsequent pollution of coastal areas. The governing bodies of the 1971 and 1992 Funds decided that both the 1971 and the 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 Dhs 6.4 million (£870 000).</p> <p>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.</p> <p>In a judgement rendered in March 2008 the Abu Dhabi Court of first instance decided that the shipowner should pay the Funds the amount of Dhs 6 402 282.00 (£870 000)^{<1>} and that this amount should be distributed equally between the 1971 and 1992 Funds.</p> <p>The IOPC Funds has been informed by its lawyers in the United Arab Emirates that the shipowner had debts of some Dhs 63 million (£9.8 million) including the amount awarded to the 1971 and 1992 Funds. The Funds' lawyers have advised the Funds that in the present circumstances it will be very difficult to recover the amounts awarded by the Court of first instance.</p> <p>The Director is of the view that the Funds should approach the shipowner to discuss a settlement taking into account the defendant's financial situation.</p>
Action to be taken:	Decide whether to instruct the Director to approach the shipowner and discuss a settlement on the basis of the judgement by the Abu Dhabi Court of first instance.

<1>

In this document conversion of currencies has been made on the basis of the exchange rate as at 10 September 2008 (1 Dhs = £0.1551 and 1 SDR = £0.8760) except in respect of payments made by the 1971 and 1992 Funds where the conversion has been made at the rate on the date of payment.

1 Summary of the incident

Ship	<i>Al Jaziah 1</i>
Date of incident	24.01.00
Place of incident	Abu Dhabi, United Arab Emirates
Cause of incident	Sinking
Quantity of oil spilled	100-200 tonnes of fuel oil
Flag State of ship	Honduras
Gross tonnage (GT)	681 GT
P&I insurer	None
CLC Limit	3 million SDR (£2.6 million)
Compensation	All the claims have been settled and paid, for a total amount of Dhs 6.4 million (£870 000). The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Legal proceedings:	The Funds have taken recourse action against the shipowner claiming reimbursement of the amount paid in compensation, ie Dhs 6.4 million (£870 000). The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner has not sufficient assets.

2 The incident

- 2.1 On 24 January 2000, the tanker *Al Jaziah 1* (681 GT), laden with fuel oil, sank in about ten metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi, United Arab Emirates (UAE). It was estimated that approximately 100 to 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 refloated by salvors and taken into the Abu Dhabi Freeport.
- 2.2 The vessel was not entered with any classification society and did not hold any liability insurance.

3 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 1971 Fund and the 1992 Fund on a 50:50 basis.

4 Claims for compensation

Claims in various currencies totalling Dhs 7.9 million (£1.2 million) were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at Dhs 6.4 million (£870 000). The 1971 and 1992 Funds will not be required to make any further compensation payments.

5 Criminal proceedings

- 5.1 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.
- 5.2 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. The master was fined Dhs 5 000 (£775) for causing damage to the environment.

6 Recourse action

6.1 Consideration by the governing bodies of the 1971 and 1992 Funds in October 2002

6.1.1 At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds considered whether the Funds should take recourse action against the shipowner. It was noted that the Director had been advised by the Funds' UAE lawyers that there were reasonably good prospects for the Funds to obtain a favourable judgement against the person in question and that it was likely that he would not be entitled to limit his liability. It was also noted, however, that the Funds' lawyers had also advised the Director 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.

6.1.2 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.

6.1.3 The Committee decided that the 1992 Fund should pursue a recourse action against the shipowner.

6.2 Legal action by the Funds

6.2.1 In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the entity being the registered owner^{<2>} of the Al Jaziah 1 and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£870 000) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

6.2.2 In November 2003 the Court issued a preliminary judgement appointing an expert to investigate the cause of the incident and the payments made by the Funds. The Funds and its lawyers met with the expert on two occasions and provided supplementary information as requested by the expert.

6.2.3 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 Court therefore appointed a new expert. The Funds and its lawyers met with the new expert in October 2005 and provided all information requested by him in order for him to be able to complete his report.

6.2.4 The expert submitted his report to the Court in July 2006. In his report the expert confirmed the following:

- The incident had caused pollution damage to various parties within the Emirate of Abu Dhabi.
- The Funds had paid a total of Dhs 6.4 million (£870 000) in compensation to those affected by the pollution.
- The ship had not been registered as an oil tanker and its insurance policies had expired.
- The shipowner was liable for the damage caused by the incident.

6.2.5 For details of the exchange of information between the court expert, the shipowner and the Funds reference is made to the 2007 Annual Report pages 70 and 71.

^{<2>} Under the law of the United Arab Emirates, this type of entity, known as 'sole proprietorship', does not have assets or liabilities separate from its owner.

- 6.2.6 In early 2008, the court expert submitted its final report confirming the conclusions reached in July 2006.
- 6.2.7 In a judgement rendered in March 2008 the Court decided to order the shipowner to pay the Funds an amount of Dhs 6 402 282.00 (£870 000) and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.
- 6.2.8 The shipowner has not appealed against the judgement and therefore it has become final.
- 6.2.9 The Funds have requested the Court to enforce the judgement and at a hearing in July 2008 the Court bailiff informed the Funds' lawyers that the shipowner was in serious financial difficulties. It was suggested that the Funds would have to investigate whether the shipowner had other financial resources to pay the judgement.
- 6.2.10 The Funds' lawyers have been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million (£9.8 million) including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 (£650) per month from his salary towards the payment of his debts.
- 6.2.11 The Funds' lawyers have investigated whether the shipowner has additional assets available to pay the judgement but according to the investigation carried out the shipowner has no additional assets. Therefore it appears that it would be very difficult to execute the judgement against the shipowner.
- 6.3 Director's considerations
- 6.3.1 Provided the information stated in paragraph 6.2.10 is correct, the shipowner, who has debts of some Dhs 63 million (£9.8 million) and has given an undertaking to pay Dhs 4 200 (£650) per month from his salary, would need some 1 250 years (AED 63 million/AED 4 200 month/12) to pay all its debts.
- 6.3.2 Under the circumstances the Director is of the view that the Funds should approach the shipowner to discuss a settlement taking into account his financial situation.

7 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 to instruct the Director to approach the shipowner and discuss a settlement on the basis of the judgement by the Abu Dhabi Court of first instance; and
 - (c) to give the Director any other instructions as it may deem appropriate.
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