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COMPENSATION
FUND 1971

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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. A municipality has presented a claim which mainly relates to environmental damage. 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:	(a) review the level of the 1971 Fund's payments; and (b) decide whether the 1971 Fund should pursue the recourse action.

1 The incident

- 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

At its 57th session, 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 (document 71FUND/EXC.57/15, paragraph 3.11.4).

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 £55 million), the Executive Committee decided at its 57th session to limit 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, paragraph 3.11.9). At its 58th session, the Committee increased the level of payments to 75% (document 71FUND/EXC.58/15, paragraph 3.9.5). The Administrative Council decided at its 1st session, acting on behalf of the 5th extraordinary session of the Assembly, dealing with items on the Agenda of the 63rd session of the Executive Committee, to maintain this payment level (document 71FUND/AC.1/EXC.63/11, paragraph 3.7.4).
- 4.2 The total amount claimed against the 1971 Fund as at 20 September 2000 was Dhs 206 million (£40 million). However, claims against the 1971 Fund will not become time-barred until 7 January 2001 or shortly thereafter. In view of the continuing uncertainty as to the total amount of the claims, the Director 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

Settled claims

- 5.1 As at 20 September 2000, 11 claims for compensation for clean-up operations had been received, totalling Dhs 7.4 million (£1.4 million).
- 5.2 Eight of these claims, totalling Dhs 5.3 million (£1 million), which were presented by the FEA, have been settled at a total of Dhs 4.2 million (£812 000), and the 1971 Fund has paid 75% of the settlement amount.
- 5.3 A local contractor submitted three 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.

Unsettled claims

- 5.4 In May 2000 the Municipality of Umm al Quwain presented claims against the 1971 Fund totalling Dhs 198.8 million (£39 million) on behalf of fishermen, tourist hotel owners, private property owners, a marine research centre and the municipality itself. These claims are in respect of economic losses, property damage, clean-up and environmental damage as set out in paragraphs 5.5 - 5.11 below.

Fishermen and tourism

- 5.5 A claim for Dhs 10 million (£1.9 million) has been submitted in respect of losses suffered by 200 fishermen who were allegedly prevented from fishing for some 30 days due to the presence of oil at sea. No documentary evidence has been provided to support the claim. Although some disruption to fishing activities was experienced at the time of the incident, the 1971 Fund's experts have indicated that it was not on the scale claimed.
- 5.6 A claim totalling Dhs 307 000 (£59 000) has been made in respect of damage to fishing boats and fishing gear. No details have been provided but the claim appears to be based upon estimates.
- 5.7 A claim totalling Dhs 765 000 (£150 000) has been submitted for economic losses allegedly suffered by two hotels in Umm al Quwain. No supporting documentation has been provided. The 1971 Fund's experts have indicated that other factors such as the weather and the fact that the incident coincided with the Holy month of Ramadan may have contributed to any alleged downturn in hotel occupancy.

Property damage

- 5.8 Claims totalling Dhs 7.0 million (£1.3 million) have been submitted in respect of damage to the properties of four private individuals. No details have been provided regarding the nature of the damage, although it is understood that the sea defence walls of the properties in question and adjacent rocky shorelines were oiled. However, a local contractor collected the oil manually, and residual stains on rocks and sea walls were rapidly removed by natural wave action.

Clean-up

- 5.9 A claim totalling Dhs 19.7 million (£3.8 million) has been made in respect of alleged clean-up operations of beaches and creeks in Umm al Quwain. The claim is based on an offer made by a contractor based in the Sultanate of Oman, and there is no evidence that the contractor was actually engaged to undertake the work. Furthermore, the clean-up was organised by the FEA, which appointed a local contractor to undertake the work, the cost of which was approved by the 1971 Fund (see paragraph 5.2 above).

Marine resource research centre

- 5.10 A claim for Dhs 6.4 million (£1.2 million) was submitted by a local marine resources research centre in respect of clean-up costs, disruption to its activities in fish culture, fish larvae and shrimp production and damage to the bushes of an experimental mangrove project. The amounts claimed in respect of all these items appear to be based upon estimates, and again no supporting documents have been provided to explain the nature of the alleged losses and the basis of the claimed amounts. According to the 1971 Fund's experts, although some of the experimental mangroves were oiled as a result of the incident, they were cleaned naturally after six months without the loss of any bushes or the need to replant seedlings.

Environmental damage

- 5.11 The Umm al Quwain Municipality has claimed Dhs 192 million (£37 million), the major part of which, some Dhs 161 million (£31 million), relates to alleged losses of fish stocks and other

marine resources, including mangroves. These losses are reportedly based on studies, surveys, experiments and estimates of the economic value of the affected resources. The estimation of the damage appears to be based upon theoretical models.

- 5.12 In a letter to the Umm al Quwain Municipality the Director has drawn attention to the fact that claims in respect of property damage and economic losses actually sustained are admissible in principle but that before the 1971 Fund can assess these items of the claim, considerable supporting documentation will be required. The Director has also pointed out that claims for environmental damage are not admissible.
- 5.13 It is understood that in September 2000 the Umm al Quwain Municipality brought legal action against the tug owner and the cargo owner in the Umm al Quwain Court. The amount claimed in the legal action is Dhs 190.8 million (£37.4 million) plus 9% interest. The 1971 Fund has not been joined in these proceedings.

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 Criminal proceedings

- 7.1 In November 1999, the Criminal Court of first instance found the master of the tug *Falcon 1*, the tug owner and the 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 his general manager appealed against the judgement, but the alleged cargo owner and his general manager did not.
- 7.2 In February 2000, the Criminal Court of Appeal found the tug owner and his general manager not guilty. The Court of Appeal confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and his general manager, on the grounds of their being liable for misuse of the *Pontoon 300*, which was not in a seaworthy condition, and for causing damage to people and the environment by the use of an unseaworthy barge.

8 Recourse action against the owner of the tug *Falcon 1*

- 8.1 At its 62nd session, the Executive Committee considered the possibility of the 1971 Fund's taking recourse action against the owner of the tug *Falcon 1*. The Committee noted that 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 that caused the damage but that 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. The Committee therefore decided that, as a precaution, the 1971 Fund should commence legal proceedings 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).
- 8.2 The 1971 Fund took legal action against the individual who owned the tug *Falcon 1* and the company which owned the cargo carried by the *Pontoon 300*. The Fund has maintained that since the sinking of the *Pontoon 300* occurred due to the negligence of the *Falcon 1* during the towage, the *Falcon 1* is responsible for the sinking and the tug owner is liable for the ensuing damage.
- 8.3 The owner of the tug expressed willingness to enter into discussions with the 1971 Fund. For this reason, the parties requested that the Dubai Court should grant an adjournment of the proceedings. This was done formally by the 1971 Fund's lawyers, but informally by the lawyers acting for the

tug owner. The owner of the tug subsequently decided not to hold any discussions, and in May 2000 he filed pleadings opposing the Fund's action, making the following points:

- The Dubai Courts have no jurisdiction, in this case.
- The 1971 Fund has no title to pursue a claim against the tug owner, and in any event the 1971 Fund has filed its claim prematurely.
- Since the Court of Appeal had found the tug owner and the general manager not guilty, they have no liability in civil law for the damage resulting from the incident.
- The incident resulted from storms that were more than Force 11 and was therefore caused by 'force majeure' and the owner of the tug is not liable.
- There was negligence on the part of the local authorities in attempting to salvage the *Pontoon 300*.

- 8.4 The 1971 Fund's lawyers have advised the Director that the Dubai court has jurisdiction since one of the defendants has a place of business in Dubai. They have also advised that the 1971 Fund has the right to take recourse action based on Article 9 of the 1971 Fund Convention which forms part of the law of the United Arab Emirates. The release, receipt and subrogation document signed by the claimants who have received payments from the 1971 Fund would in their view give the Fund the right to pursue actions in respect of these payments under that Article. The Fund's lawyers have maintained that the tug *Falcon 1* was in control of the *Pontoon 300* and therefore legally responsible for the *Pontoon 300* in accordance with the principles of the law on towage. The lawyers have stated that under Articles 315 – 317 of the Maritime Code of the Emirates the towing vessel and the vessel being towed were jointly liable for any loss suffered by third parties arising out of the towage operation.
- 8.5 The 1971 Fund's lawyers have also mentioned that the tug owner might be entitled to limit his liability under the Maritime Code unless the incident was a result of the personal fault of the owner. It appears that the *Falcon 1* is of 254.47 GRT. Under the law of the Emirates the tonnage limitation figure would be some Dhs 75 000 (£14 500).
- 8.6 As reported in paragraph 5.13 it is understood that the Municipality of Umm Al Quwain took legal action in September 2000 against the tug owner and owner of the cargo carried by the *Pontoon 300* claiming compensation for Dhs 190 .8 million (£29 million).
- 8.7 The Director is continuing his considerations relating to the recourse action.

9 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to review the level of the 1971 Fund's payments;
 - (c) to give the Director instructions regarding the recourse action against the owner of the *Falcon 1*; and
 - (d) to give the Director such instructions in respect of this incident as it may deem appropriate.
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