



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 3

71FUND/EXC.59/13
5 October 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

PONTOON N°300

Note by the Director

Summary:	The clean-up operations have been completed. Claims of £1.2 million have been submitted. Compensation payments so far total £344 800. No fishery or tourism related claims have been received.
Action to be taken:	Decide on the level of the 1971 Fund's payments.

1 The incident

1.1 On 7 January 1998, intermediate fuel oil was spilled from the barge *Pontoon N°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 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.

1.2 The *Pontoon N°300* was registered in Saint Vincent and the Grenadines and was owned by a Liberian Company. It appears that 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 N°300* was a flat-top barge of 4 233 gross tons and 9 885 tons loaded displacement. The deadweight tonnage for the *Pontoon N°300* was 8 037 tons. The barge was constructed with 24 buoyancy tanks in six rows of four tanks each, and a double centre bulkhead. Divers have also reported signs of diesel oil having been loaded in fore and aft ballast tanks in the barge.

1.4 At its 57th session, the Executive Committee decided that the *Pontoon N°300* fell within the definition of 'ship' in the 1969 Civil Liability Convention (document 71FUND/EXC.57/15, paragraph 3.11.4).

1.5 A number of delegations observed that the circumstances of the case (such as the apparent absence of an insurance certificate and the use of buoyancy tanks for cargo) merited close scrutiny, with a view to possible recourse action. It was stressed, however, that the 1971 Fund's priority should be the payment of compensation to claimants, and that questions of recourse should be considered separately.

2 Attempts to raise the sunken barge

2.1 Divers employed by a local salvage contractor, Whitesea Shipping & Supply Co (WSS), surveyed the sunken *Pontoon N°300* on 8 January 1998 who reported that at least 3 000 - 4 000 tonnes of intermediate fuel oil had escaped. During the following week further work was carried out by the divers to plug and seal the various points of seepage. In the afternoon of 9 January there was a sudden release of about 300 tonnes of intermediate fuel oil when a tank cover broke free after divers had been plugging remaining leaks from cracks and holes. The divers later discovered that most of the tanks on the barge were interconnected, making it more difficult to estimate the total quantity of oil which had been spilled.

2.2 WSS had been appointed by the Sharjah Ports Authority on 8 January to inspect the sinking barge and to plug the worst leaks at a fixed price of US\$20 000 (£12 000). On completion of this phase the Federal Government of the United Arab Emirates appointed WSS as salvor to remove oil from the tanks and raise the sunken barge for a lump sum of Dhs 2 million (£330 000).

2.3 An attempt to raise the barge on the evening of 20 January ended in failure and the barge sank for a second time. A small quantity of oil was spilled. A second salvage attempt was made on 21 January, but this attempt was also unsuccessful and the barge sank for a third time. During the course of the night a substantial quantity of oil was spilled, possibly as much as 100 tonnes. Further attempts were made to raise the barge during the following week but these attempts were also unsuccessful. The barge was finally lifted on 4 February 1998, and on 6 February was towed into the port of Hamriya. After oil residues had been removed, the barge was towed out to sea and scuttled.

3 Clean-up operations

3.1 The spilt oil spread over 40 kilometres of coastline, affecting four Emirates, namely Sharjah, Ajman, Umm Al Quwain and Ras Al Khaymah. The worst affected Emirate was Umm Al Quwain, where there is a beach hotel and a fishing harbour at Al Naqaa.

3.2 For the first six days after the initial spill, oil drifted off the coast. On 13 January strong onshore winds drove the drifting oil ashore and deposited it on sandy beaches and in the adjoining vegetation. The only oil remaining offshore was the small continuous release from the sunken wreck.

3.3 Intermediate fuel oil is naturally dispersible, and natural dispersion in the surf zone significantly reduced the quantity of oil deposited on the shorelines.

3.4 Initially, very little was done to deal with the spilt oil and there was uncertainty as to who was in charge. At a meeting on 9 January 1998 chaired by the Minister of Health, in his capacity as Chairman of the Federal Environment Agency (FEA), it was clarified that FEA was to co-ordinate spill response activity, with support from the Frontier and Coast Guard Service (FCGS) and municipal authorities. However, co-ordination and control of clean-up activity by FEA was hampered by a lack of resources and funding. Onshore clean-up operations were carried out by ADNOC, the Dubai Petroleum Company, Fairdeal, Lamnalco and other local contractors under the co-ordination of FEA. Collected oily waste was

transported to an inland disposal site. All shoreline clean-up operations were suspended on 24 January, when government funds allocated for the task had been exhausted.

3.5 After a standstill of seven weeks, beach cleaning was resumed on 12 March 1998 with a labour force of 100 men provided by Lamnalco. The work was completed in June 1998.

4 Claims for compensation

4.1 As at 30 September 1998, ten claims for compensation had been received. These claims, totalling Dhs 7 370 000 (£1.2 million), relate to clean-up operations.

4.2 Seven of these claims, totalling Dhs 5 216 000 (£835 000), have been presented by the FEA. Clarification has been requested in respect of certain items relating to some of these claims.

4.3 Lamnalco (a local contractor) has submitted three claims totalling Dhs 2 154 000 (£345 000) in respect of work carried out between 12 March and 10 June 1998. These claims have been settled at Dhs 2 153 000 (£344 800) and paid at 75% of the agreed amount (ie Dhs 1 615 000 (£258 600)), following the decision of the Executive Committee at its 58th session to raise the level of payments from 50% to 75%.

4.4 No claims have been submitted so far in respect of losses in the fishery or tourism related industries.

5 Level of the 1971 Fund's payments

5.1 At its 57th session, the Executive Committee authorised the Director to make final settlements of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. In view of the 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 £48 million), the Executive Committee decided that, for the time being, the 1971 Fund's payments should be limited to 50% of the loss or damage actually suffered by each claimant, as assessed by the experts of the Fund at the time the payment was made (document 71FUND/EXC.57/15, paragraphs 3.11.8 and 3.11.9).

5.2 Although at the time of the 58th session of the Executive Committee there was still a degree of uncertainty as to the total amount of the claims arising out of the *Pontoon N°300* incident, the Committee decided to increase the limit of the 1971 Fund's payments to 75% of the loss or damage actually suffered by the respective claimants (document 71FUND/EXC.58/15, paragraph 3.9.5).

5.3 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 £48 million), the Director considers that it would be appropriate to maintain the level of the 1971 Fund's payments at 75% of the loss or damage actually suffered by each claimant.

6 Investigations into the cause of the incident

6.1 The Director has instructed the 1971 Fund's lawyers in the United Arab Emirates to investigate the cause of the incident, with the assistance of technical experts, as required. At the Executive Committee's 57th session, it was pointed out that some claimants might be those against whom recourse action would have to be taken, and that particular caution regarding the payment of compensation would be needed in respect of payments to such claimants.

6.2 At the Committee's 58th session, the Director was instructed to continue his investigations into the cause of the incident and to explore the possibilities of taking recourse actions.

6.3 The Director is continuing the investigation into the cause of the incident, in particular as to whether there are grounds for the 1971 Fund to take recourse action against any third party.

6.4 The shipowner has not commenced limitation proceedings.

7 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to consider whether to increase the level of the 1971 Fund's payments; and
 - (c) to give the Director such other instructions as the Committee may deem appropriate in respect of this incident.
-