



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971 AND  
1992

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71FUND/A/ES.8/8

## INCIDENTS INVOLVING THE 1971/1992 FUNDS

### ZEINAB

#### Note by the Director

**Summary:**

On 14 April 2001 the *Zeinab*, carrying about 1 500 tonnes of fuel oil, sank off Dubai (United Arab Emirates) resulting in the loss of some 400 tonnes of fuel oil and the subsequent pollution of the coastal areas. Some 1 100 tonnes of oil remaining on board was removed from the sunken vessel. Clean-up operations were completed by early May 2001. The United Arab Emirates is a Party to both the 1971 Fund Convention and the 1992 Fund Convention.

**Action to be taken:**

Consider:

- a) whether the *Zeinab* falls within the definition of 'ship';
- b) the application of the 1971 and 1992 Fund Conventions to this incident; and
- c) the distribution of liabilities between the 1971 Fund and the 1992 Fund.

### 1 The incident

- 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 the vessel lost its stability about 16 miles from the Dubai coastline and sank in 25 metres of water.
- 1.2 The vessel was reported to be 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 (see attached map).

- 1.3 Some 1100 tonnes of cargo remained in the unbreached tanks and this cargo was successfully removed from the sunken vessel without further significant spillage of oil.
- 1.4 It appears that the *Zeinab* was not entered with any classification society and was not covered by any liability insurance.
- 1.5 At the IOPC Funds' request a local surveyor was engaged to follow the clean-up and cargo salvage operations, liaise with the competent authorities and advise the authorities and bodies involved on the practical aspects of clean-up.

## **2 Clean-up operations**

- 2.1 Clean-up operations at sea, which commenced almost immediately, were co-ordinated by the Dubai Port Authority. Initially, dispersants were applied from vessels and from aircraft. Subsequently, booms and skimmers were used to contain and collect floating oil.
- 2.2 Local authorities mobilised teams of local labourers and mechanical equipment to undertake onshore clean-up. Cleaning of amenity areas was accomplished very rapidly and all major clean-up operations were completed by 6 May 2001.

## **3 Impact of the spill**

- 3.1 Oil affected a number of amenity beaches in Dubai and Sharjah and also impacted the Ajman coastline. Some beachside villas had their sea defence walls stained.
- 3.2 Oil also affected desalination plants in Sharjah and Ajman. The desalination plant in Sharjah had to be closed down temporarily on a number of occasions which led to a shortage of water supply to the city.
- 3.3 A number of amenity beaches were oiled and oil entered the port area in Port Rashid causing staining of sea defences and of vessels.
- 3.4 The oil may have affected Dubai's tourist industry, although the prompt cleaning of amenity shorelines may have helped to limit losses.
- 3.5 Fishing activities and fish markets were reportedly not affected.

## **4 Operations to prevent further oil escaping from the wreck**

- 4.1 Operations to remove the oil remaining on board by pumping commenced on 27 April 2001 and were completed on 4 May 2001.
- 4.2 The recovered oil is at present stored at the Dubai dry-dock reception facilities pending a final decision by the authorities on how to dispose of the oil.

## **5 Definition of 'ship'**

- 5.1 The *Zeinab* appears to have been built in 1967 in Italy as a two-hatch general cargo vessel of some 4 354 dwt. At some stage around 1998, the vessel was converted to carry oil by installing 12 tanks within the cargo holds, although when the conversion was undertaken the hatch coamings were left in place and the tanks covered by a tarpaulin so that the *Zeinab* maintained the outward appearance of a general cargo vessel. The question arises as to whether the vessel falls within the definition of 'ship' under either or both of the 1969/1971 Conventions and the 1992 Conventions.
- 5.2 The definitions of 'ship' set out in Article I.1 of the 1969 Civil Liability Convention and of the 1992 Civil Liability Conventions read:

*1969 Civil Liability Convention*

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.

*1992 Civil Liability Convention*

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

These definitions are incorporated in the 1971 and 1992 Fund Conventions, respectively.

- 5.3 The *Zeinab* was actually carrying oil in bulk as cargo at the time of the incident, and it should therefore be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 5.4 The *Zeinab* was clearly capable of carrying oil in bulk as cargo, and had been frequently used for carrying oil in the region. It would be difficult to argue that it was not a ship for the purpose of the 1992 Convention Civil Liability Convention and the 1992 Fund Convention.
- 5.5 The Director proposes therefore that the *Zeinab* should be considered a 'ship' for the purpose of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Conventions.

**6 Applicability of Conventions**

- 6.1 The United Arab Emirates is a Party to both the 1971 Fund Convention and the 1992 Fund Convention, having not denounced the former when acceding to the latter. The 1992 Fund Executive Committee considered the applicability of the two Conventions at its 8th session in the context of the *Al Jaziah 1* incident (document 92FUND/EXC.8/4, paragraphs 3.1 – 3.10). The Administrative Council of the 1971 Fund, acting on behalf of the 23rd session of the Assembly, also considered the matter at its 2nd session (document 71FUND/A.23/14/11, paragraphs 3.1 - 3.10). The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that both the 1971 Fund Convention and the 1992 Fund Convention applied to that incident (documents 92FUND/EXC.8/8, paragraph 4.2.11 and 71FUND/AC.2/A.23/22, paragraph 17.12.6).
- 6.2 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, which have been implemented into national law, the Director takes the view that both sets of Conventions apply to the incident.
- 6.3 As mentioned above, the *Zeinab* was reportedly registered in Georgia, which at the time of the incident was a Party to the 1969 Civil Liability Convention, but not to the 1992 Civil Liability Convention.<sup><1></sup> It appears, therefore, that the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's liability (cf Article 30.4(b) of the 1969 Vienna Convention on the Law of Treaties).

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<1> Georgia became Party to the 1992 Civil Liability Convention and the 1992 Fund Convention on 18 April 2001.

## **7 Distribution of liabilities between the 1971 Fund and the 1992 Fund**

- 7.1 The question of the distribution of liabilities between the 1971 and 1992 Funds was in a corresponding situation also considered by the Administrative Council of the 1971 Fund at its 2nd session (document 71FUND/A.23/14/11, paragraphs 4.10 - 4.6) and the 1992 Fund Executive Committee at its 9th session (document 92FUND/EXC.9/11, paragraphs 4.1 - 4.6) in the context of the *Al Jaziah I* incident which occurred in the United Arab Emirates in 2000. Both bodies concluded that, since there were neither provisions in the Fund Conventions nor any rules under general treaty law governing the simultaneous application of the two sets of Conventions, a practical and equitable solution should be agreed between the two Funds. Both bodies therefore decided to distribute the liabilities between the 1971 Fund and the 1992 Fund on a 50:50 basis (documents 71FUND/AC.2/A.23/22, paragraphs 17.12.7 - 17.12.15 and 92FUND/EXC.9/12, paragraphs 3.8.7 - 3.8.15).
- 7.2 It should be noted that each claimant has the right to pursue his claim against either the 1971 Fund or the 1992 Fund. The Fund against which the claim is pursued is liable for the total amount of the damage up to the limit of its liability under the respective Convention and the distribution of liabilities between the two Funds will have to be negotiated between them.
- 7.3 The Director therefore proposes that the liabilities arising out of the *Zeinab* incident should be distributed between the 1971 Fund and the 1992 Fund on a 50:50 basis.

## **8 Claims for compensation**

- 8.1 Claims are anticipated in respect of clean-up and operations to remove the remaining oil from the *Zeinab*. Claims for consequential and pure economic losses can also be expected. It is not possible at this stage to make an estimate of the total amount of the claims.
- 8.2 As mentioned above, it appears that the *Zeinab* was not covered by any liability insurance. It is unlikely that the shipowner would be able to pay compensation.
- 8.3 Under Internal Regulation 7.4 of the 1971 Fund and the 1992 Fund, the Director may without prior approval of the Assembly or the Executive Committee make a final settlement of any claim for compensation, if he estimates that the total cost to the Fund in question of satisfying all claims arising out of the relevant incident is not likely to exceed 2.5 million SDR (£2.3 million).
- 8.4 The governing bodies may wish to consider whether they are prepared to authorise the Director to make final settlements on behalf of the respective Fund of all claims arising out of the *Zeinab* incident to the extent that the claims do not give rise to any questions of principle which have not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

## **9 Cause of the incident**

The Director is investigating the cause of the incident with the assistance of the IOPC Funds' United Arab Emirates lawyers and technical experts.

## **10 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 consider whether the *Zeinab* falls within the definition of 'ship' in the 1969 Civil Liability Convention and the 1971 Fund Convention and the definition of 'ship' in the 1992 Civil Liability Convention and 1992 Fund Convention;

- c) to consider the application of the 1971 Fund Convention and the 1992 Fund Convention to the incident;
- d) to consider the distribution of liabilities between the 1971 Fund and the 1992 Fund;
- e) to consider whether to authorise the Director to make final settlements of claims arising from this incident; and
- f) to give the Director such instructions in respect this incident as they may deem appropriate.

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