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INCIDENTS INVOLVING THE 1971/1992 FUNDS

TWO UNITED ARAB EMIRATES INCIDENTS - AL JAZIAH 1 AND ZEINAB

Note by the Director

Summary:

Al Jaziah 1: The vessel sank off Abu Dhabi (United Arab Emirates), resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. The governing bodies of the 1992 and 1971 Funds decided that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also 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. Claims totalling US\$1.4 million (£1.0 million) and Dhs 2.1 million (£396 000) have been submitted in respect of clean-up operations and preventive measures.

Zeinab: The vessel sank off Dubai (United Arab Emirates), resulting in the loss of some 400 tonnes of oil and the subsequent pollution of the coast. Some 1 100 tonnes of oil remaining onboard was removed from the sunken vessel. The governing bodies of the 1992 and 1971 Funds decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also 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. However, both bodies decided not to authorise the Director to settle claims until the exact circumstances surrounding the sinking of the vessel were known. Claims totalling US\$480 000 (£343 000) have been submitted in respect of clean-up operations. Further claims are expected.

Action to be taken:

- a) Take note of the information contained in this document;
- b) Consider whether the circumstances in the *Zeinab* case should be considered as an act of war or hostilities; and
- c) Decide whether to authorise the Director to settle claims arising from the *Zeinab* incident.

1 *Al Jaziah 1*

1.1 The incident

- 1.1.1 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 north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates).
- 1.1.2 The vessel held a certificate of provisional registration issued by the Registry of Honduras, expiring 12 November 2000. It has been alleged that it was owned by a company in Abu Dhabi and Dubai. It appears that the vessel was not entered with any classification society and did not hold any liability insurance.
- 1.1.3 It is 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.
- 1.1.4 At the IOPC Funds' request a representative of the International Tanker Owners Pollution Federation Ltd (ITOPF) went to Abu Dhabi to follow the clean-up operations, liaise with the competent authorities and advise the authorities and bodies involved on the practical aspects of any clean-up. The Funds also appointed a local surveyor to assist ITOPF and to monitor the salvage operations.
- 1.1.5 Local oil companies organised the response to the spill using their own resources and those of an industry stockpile located in Abu Dhabi as well as some equipment from the stockpile of the Oil Spill Response Limited in Southampton (United Kingdom). Although the initial response involved the application of dispersants from supply vessels and helicopters, these operations were scaled down when it became apparent that they were not effective. Some defensive booming of sensitive areas was undertaken, including the seawater intake to two nearby power stations.
- 1.1.6 Local authorities mobilised teams of labourers to undertake onshore clean-up on various islands much of which was completed within two weeks.
- 1.1.7 The Federal Environment Agency (FEA) of the United Arab Emirates appointed a local salvage company to stem further oil leaks from the wreck and to remove the remaining oil on board. The oil removal operation was completed on 7 February 2000, and it was reported that some 430 tonnes of oil had been removed from the sunken vessel. Approximately 70 tonnes of oil was reported to have remained on board as clingage and un pumpable material.
- 1.1.8 The sunken vessel was refloated by the salvors on 11 February 2000 and taken into the Abu Dhabi Freeport.

1.2 Previous considerations by the 1992 Fund Executive Committee and the 1971 Fund Administrative Council

Definition of 'ship'

- 1.2.1 At its 8th session in July 2000 the 1992 Fund Executive Committee considered the question of whether the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and as incorporated into the 1971 and 1992 Fund Conventions respectively.
- 1.2.2 During the discussions in the Executive Committee, it was generally accepted that a craft fell within the concept of 'seagoing ship or other seaborne craft' if it was actually operating at sea. The Committee took the view therefore that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 92FUND/EXC.8/8, paragraph 4.2.5).

- 1.2.3 At its 2nd session in October 2000 the Administrative Council of the 1971 Fund also decided that the *Al Jaziah I* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1971 Fund Convention (document 71FUND/AC.2/A.23/22, paragraph 17.12.4).

Applicability of the 1971 Fund and the 1992 Fund

- 1.2.4 At its 8th session the 1992 Fund Executive Committee also considered the applicability of the 1971 and 1992 Fund Conventions to the *Al Jaziah I* incident, since at the time of the incident the United Arab Emirates was Party to both Conventions.
- 1.2.5 A number of delegations stated that since the Committee had already decided that the *Al Jaziah I* fell within the definition of 'ship' for the purpose of the two sets of Conventions, and since the United Arab Emirates was a Party to all four Conventions, both sets of Conventions would apply to pollution damage arising from this incident in the United Arab Emirates. The Committee decided that the Director should inform the authorities of the United Arab Emirates that, in the view of the 1992 Fund, the 1971 Fund Convention and the 1992 Fund Convention applied to the *Al Jaziah I* incident (document 92FUND/EXC.8/8, paragraphs 4.2.7 and 4.2.11).
- 1.2.6 The Committee noted that the *Al Jaziah I* had held a certificate of provisional registration issued by the Registry of Honduras, and that Honduras was a Party to the 1969 Civil Liability Convention, but not to the 1992 Civil Liability Convention. The Committee took the view 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 Vienna Convention on the Law of Treaties) (document 92FUND/EXC.8/8, paragraph 4.2.8).
- 1.2.7 The Administrative Council of the 1971 Fund also decided at its 2nd session that both the 1971 Fund Convention and the 1992 Fund Convention applied to the *Al Jaziah I* incident (document 71FUND/AC.2/23/22, paragraph 17.12.6).

Distribution of liabilities between the 1971 and 1992 Funds

- 1.2.8 At its 9th session in October 2000 the 1992 Fund Executive Committee considered that, since there were neither provisions in the Fund Conventions nor any rules under general treaty law governing the issue under consideration, a practical and equitable solution should be agreed between the two Funds. The Committee decided that, subject to the agreement of the 1971 Fund, the liabilities should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis (document 92FUND/EXC.9/12, paragraphs 3.8.13 and 3.8.14).
- 1.2.9 The Administrative Council of the 1971 Fund at its 2nd session agreed to a distribution of liabilities on a 50:50 basis (document 71FUND/AC.2/A.23/22, paragraph 17.12.15).

1.3 Claims for compensation

- 1.3.1 In August 2000 claims in respect of clean-up costs totalling US\$1.3 million (£920 000) were submitted to the IOPC Funds by two local oil companies that had been engaged in the clean-up response. One of the claims included the costs of mobilising equipment from the stockpile of Oil Spill Response Limited in Southampton (United Kingdom). These claims have been provisionally assessed at US\$461 000 (£330 000) pending further details from the claimants.
- 1.3.2 In August 2001 one of the oil companies referred to in paragraph 1.3.1 submitted a further claim for US\$98 000 (£68 000). The Funds' experts are examining this claim.
- 1.3.3 The FEA submitted a claim for Dhs 2 million (£380 000) in respect of operations undertaken by a local salvage company to stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Free Port. This claim was settled for the amount claimed in May 2001.

- 1.3.4 Claims for US\$40 000 (£28 400) and Dhs 47 000 (£9 200) were also submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated. These claims were settled in May 2001 in the amounts at US\$ 29 000 (£20 358) and Dhs 47 000 (£9 200) respectively.

2 Zeinab

2.1 The incident

- 2.1.1 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.
- 2.1.2 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.
- 2.1.3 Some 1 100 tonnes of cargo remained in the unbreached tanks and this cargo was successfully removed from the sunken vessel without further significant spillage of oil.
- 2.1.4 It appears that the *Zeinab* was not entered with any classification society and was not covered by any liability insurance.
- 2.1.5 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.

2.2 Clean-up operations

- 2.2.1 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.
- 2.2.2 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.

2.3 Considerations by the 1992 Fund Executive Committee and the 1971 Fund Administrative Council at their June 2001 sessions

Definition of 'ship'

- 2.3.1 At its 13th session in June 2001 the 1992 Fund Executive Committee considered the question of whether the *Zeinab* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and as incorporated into the 1971 and 1992 Fund Conventions respectively.
- 2.3.2 The Committee noted that the *Zeinab* appeared to have been built in 1967 in Spain as a two-hatch general cargo vessel of some 4 354 dwt. The Committee further noted that at some stage around 1998, the vessel had been converted to carry oil in bulk by installing 12 tanks within the cargo holds, although when the conversion had been undertaken the hatch coamings had been left in place and the tanks covered by a tarpaulin so that the *Zeinab* maintained the outward appearance of a general cargo vessel.
- 2.3.3 The Committee noted that since the *Zeinab* was actually carrying oil in bulk as cargo at the time of the incident, it should be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention. It was further noted that the *Zeinab* was clearly

capable of carrying oil in bulk as cargo, and had been frequently used for carrying oil in the region. The Committee considered that it would be difficult to argue that it was not a ship for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee therefore took the view that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 92FUND/EXC.13/7, paragraph 3.4.6).

- 2.3.4 At its 5th session in June 2001 the 1971 Fund Administrative Council also decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 71FUND/AC.5/ES.8/10, paragraph 5.6.6).

Applicability of the Conventions

- 2.3.5 At its 13th session, the 1992 Fund Executive Committee decided that 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 had been implemented into national law, both sets of Conventions applied to the incident (document 92FUND/EXC.13/7, paragraph 3.4.8).
- 2.3.6 It was noted that the *Zeinab* was reportedly registered in Georgia, which at the time of the incident was a Party to the 1969 Convention but not the 1992 Civil Liability Convention and that the United Arab Emirates was a Party to the 1969 Civil Liability Convention. It was noted 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) (document 92FUND/EXC.13/7, paragraph 3.4.9).
- 2.3.7 At its 5th session the 1971 Fund Administrative Council also decided that both sets of Conventions applied to the *Zeinab* incident, but 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 (document 71FUND/AC.5/A/ES.8/10, paragraphs 5.6.8 and 5.6.9).

Distribution of liabilities between the 1971 and 1992 Funds

- 2.3.8 Having recalled the decisions in respect of the *Al Jaziah 1* incident, both the 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that the liabilities arising out of the *Zeinab* incident should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis (documents 92FUND/EXC.13/7, paragraph 3.4.11 and 71FUND/AC.5/A/ES.8/10, paragraph 5.6.11).

Settlement of claims

- 2.3.9 Both the 1992 Fund Executive Committee and the 1971 Fund Administrative Council considered at their 13th and 5th sessions respectively whether to authorise the Director to make final settlements on behalf of the 1992 Fund and the 1971 Fund of all claims arising out of the *Zeinab* incident to the extent that the claims did not give rise to question of principle which had not been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.
- 2.3.10 One delegation raised concerns that the *Zeinab* appeared to have been engaged in oil smuggling and had not been properly classified and certified to carry oil. In that delegation's view if the 1992 or 1971 Fund were to entertain claims for compensation arising from the incident, the Funds might be seen to be encouraging the operation of sub-standard ships at a time when concerted efforts were being made to improve the quality of shipping. In addition, attention was drawn to the obligations of Contracting States under Article VII.10 of the 1992 and 1969 Civil Liability Conventions.
- 2.3.11 Another delegation referred to Article 4.2(a) under which the Fund was exonerated from paying compensation for pollution damage resulting from *inter alia* an act of war or hostilities. That delegation expressed the view that this defence was worth exploring more closely.

- 2.3.12 Some delegations considered that the multi-national interception forces were merely carrying out policing duties to ensure that sanctions imposed by the United Nations Security Council were respected. Those delegations considered that even if the sinking of the *Zeinab* had been due to a deliberate act, this would be a matter for a possible recourse action by the Fund rather than constituting a defence under Article 4.2(a).
- 2.3.13 The United Arab Emirates delegation stated that the area in question was no longer under war and that observation of the United Nations Resolutions had no bearing on the right to compensation for oil pollution damage.
- 2.3.14 A number of delegations expressed concerns about authorising the Director to settle claims until the exact circumstances surrounding the sinking of the *Zeinab* were known.
- 2.3.15 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that in view of the reservations expressed by a number of delegations it was premature to authorise the Director to settle claims for compensation arising from the incident and that the matter should be given further consideration at the next sessions of the Executive Committee and the Administrative Council (documents 92FUND/EXC.13/7, paragraph 3.4.20 and 71FUND/AC.5/A/ES.8/10, paragraph 5.6.20).

2.4 Recent developments

Circumstances surrounding the sinking of the Zeinab

- 2.4.1 The Funds' lawyers have been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting copies of documents recovered from the *Zeinab*. In response to that request the US Navy provided copies of the Certificates of Ownership and Navigation issued by the Georgian Maritime Administration and a brief report by the Boarding Officer of the US Navy. The Certificate of Ownership dated 7 June 2000 gave the name of the owner and an address of his representative in Dubai. The Certificate of Registration, also issued on 7 June 2000, indicates that the *Zeinab* is a cargo vessel of 2 178 GT. No IMO number is given on the Certificate.
- 2.4.2 The Boarding Officer states in his report *inter alia* that measurements and soundings of upper tanks indicated that there was 1 300 tonnes of fuel oil onboard. It is also stated that the boarding team could not access the lower tanks due to the sounding tubes being welded shut. The boarding team estimated that had the lower tanks been full, the total quantity of oil on board would have been about 3 000 tonnes. The boarding team found old fuel receipts indicating that up to 3 000 tonnes of oil had been loaded and discharged on previous occasions and on the basis of this the boarding team decided to divert the vessel.
- 2.4.3 The Funds' technical expert has also been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting information regarding the sequence of events leading up to the sinking of the vessel. No progress has been made in obtaining such details. The Funds' lawyers are trying to obtain information from the United Arab Emirates Ministry of Foreign Affairs and Ministry of Interior.
- 2.4.4 The Funds' expert has recently reviewed a video of the vessel sinking taken by an observer on the United States Navy arresting vessel and an underwater video of the sunken vessel taken by divers who assisted in the oil removal operations.
- 2.4.5 The underwater video shows clearly that the majority of the tank openings had been removed, which would have allowed seawater to flow directly into the tanks thereby decreasing the vessel's overall freeboard. The Funds' expert considers that under the prevailing conditions of 2 metre waves, this would have been sufficient to contribute to the ingress of water into the tanks. Since the vessel was not equipped with pumps capable of removing large volumes of seawater, the loss of freeboard could have resulted in the flooding of the machinery spaces and the forepeak, which

would have been sufficient to sink the vessel. According to the expert the videos do not show any structural deformation or collision damage.

- 2.4.6 It will be recalled that at its 1st session in October 1998, the 1992 Fund Executive Committee considered the applicability of the 1992 Conventions to the *Milad 1* incident (document 92FUND/EXC.1/8). This vessel had been intercepted by a United States Coast Guard contingent of the multi-national maritime interception forces in international waters some 25 nautical miles north-east of Bahrain. The vessel, which was carrying 1 500 tonnes of mixed diesel/crude oil, was found by the Coast Guard to have a crack in its hull, allowing seawater to enter a ballast tank.
- 2.4.7 The Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain contacted a ship repair company based in Bahrain, which undertook to provide a salvage tug and repair team to investigate the damage and undertake temporary emergency repairs. MEMAC submitted a claim for BD 21 168 (£33 000) to the 1992 Fund for the costs of providing the tug and the repair team to attend the *Milad 1*.
- 2.4.8 At its 2nd session the Executive Committee considered whether the events in this case fell within the definition of ‘incident’ in Article I.8 of the 1992 Fund Civil Liability Convention (document 92FUND/EXC.2/5, section 3), and in particular whether the occurrence had constituted grave and imminent threat of causing pollution damage in the territory and territorial sea of a State Party to the 1992 Fund Convention. The Committee noted the Director’s view that, in light of the critical condition of the vessel and the prevailing wind conditions, these requirements were fulfilled. The Committee endorsed the Director’s position on this point. The Committee also considered that, in the circumstances, sending a repair team to the site was a reasonable preventive measure, although the repairs were not subsequently undertaken (document 92FUND/EXC.2/10, paragraph 3.4.2).
- 2.4.9 At its 3rd session the 1992 Fund Executive Committee decided that, taking all factors into account, MEMAC had taken all reasonable steps to pursue the legal remedies available to it and that MEMAC’s claim was therefore admissible (92FUND/EXC.3/7, paragraph 3.2.8). Throughout the consideration of the *Milad 1* incident neither the issue of the circumstances which gave rise to the crack in the vessel’s hull nor that of whether the interception could be invoked as a defence under Article 4.2(a) of the 1992 Fund Convention were raised.
- 2.4.10 In the Director’s view, the interception by the multi-national maritime intervention forces could not be considered as “an act of war, hostilities, civil war or insurrection”, and the IOPC Funds would not be able to invoke the defence provided in Article 4.2(a). Nevertheless the Director is of the view that if, in light of his subsequent investigations, it transpires that the sinking of the *Zeinab* was a deliberate act, this might be a matter for a possible recourse action by the Funds.
- 2.4.11 The governing bodies may wish to reconsider 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 questions of principle which have not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

Claims for compensation

- 2.4.12 The Dubai Ports Authority has submitted claims totalling US\$480 000 (£343 000) in respect of costs of preventive measures and clean-up.
- 2.4.13 Claims are anticipated from the FEA in respect of the operations to remove the remaining oil from the sunken wreck.
- 2.4.14 Claims are also anticipated from the Dubai Municipality in respect of shoreline clean-up operations. The costs are expected to be in the region of US\$1.2 million (£850 000).

2.4.15 Further claims are expected from local oil companies that participated in the clean-up operations.

3 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) in the case of the *Zeinab* incident to consider whether the circumstances which led to the sinking should be considered as an act of war or hostilities;
 - c) in the case of the *Zeinab* incident to consider whether to authorise the Director to make final settlements of claims arising from this incident; and
 - d) to give the Director such instructions in respect of these incidents as they may deem appropriate.
-