



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

EXECUTIVE COMMITTEE
16th session
Agenda item 3

92FUND/EXC.16/4
5 April 2002
Original: ENGLISH

ASSEMBLY
9th session
Agenda item 8

71FUND/A/ES.9/11

INCIDENTS INVOLVING THE 1971/1992 FUNDS

AL JAZIAH 1

Note by the Director

Summary:

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 £1.0 million in respect of clean-up operations have been provisionally assessed at £418 000. Claims in respect of preventive measures have been settled at £412 000. Evidence disclosed in criminal proceedings against the master and crew of the *Al Jaziah 1* indicated that the vessel was not seaworthy and that this led to the vessel sinking. In light of the findings of the criminal action, the Director is of the view that the IOPC Funds should oppose any attempt by the shipowner to limit his liability under the 1969 Civil Liability Convention and should also pursue a recourse action against the shipowner in order to recover the amounts paid by the Funds in compensation.

Action to be taken:

- a) to decide whether the IOPC Funds should oppose any attempt by the shipowner to limit his liability; and
- b) to decide whether the IOPC Funds should pursue recourse action against the shipowner.

1 The incident

- 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).
- 1.2 It was 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.
- 1.3 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 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 intakes to two nearby power stations.
- 1.4 Local authorities mobilised teams of labourers to undertake onshore clean-up on various islands, much of which was completed within two weeks.
- 1.5 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 unpumpable material.
- 1.6 The sunken vessel was refloated by the salvors on 11 February 2000 and taken into the Abu Dhabi Freeport.

2 Previous considerations by the governing bodies of the 1971 and 1992 Funds

Definition of 'ship'

- 2.1 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their 8th and 2nd sessions respectively 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 (documents 92FUND/EXC.8/8, paragraph 4.2.5 and 71FUND/AC.2/A.23/22, paragraph 17.12.4).

Applicability of the 1971 and the 1992 Fund Conventions

- 2.2 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council also decided that since at the time of the incident the United Arab Emirates was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention as well as to the 1992 Civil Liability Convention and the 1992 Fund Convention, both the 1971 Fund Convention and the 1992 Fund Convention applied to the incident (documents 92FUND/EXC.8/8, paragraph 4.2.8 and 71FUND/AC.2/23/22, paragraph 17.12.6).

Distribution of liabilities between the 1971 and 1992 IOPC Funds

- 2.3 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that the liabilities should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis (documents 92FUND/EXC.9/12, paragraphs 3.8.13 and 3.8.14 and 71FUND/AC.2/A.23/22, paragraph 17.12.15).

3 Claims for compensation

- 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 affiliated 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\$ 579 339 (£406 000).
- 3.2 In August 2001 a third affiliated oil company submitted a claim for US\$98 000 (£68 000), which has provisionally been assessed at US\$26 000 (£18 000).
- 3.3 In July 2000 the FEA submitted a claim for Dhs 2 million (£375 000) 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.
- 3.4 In August 2000 claims for US\$40 000 (£28 400) and Dhs 47 000 (£9 200) were 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 for US\$29 000 (£20 000) and Dhs 47 000 (£9 200) respectively.

4 Criminal proceedings

- 4.1 Criminal proceedings were brought against the master of the *Al Jaziah 1* by the Abu Dhabi Public Prosecutor. At the trial the master stated that the vessel was designed as a water carrier and was in a dangerous and bad condition.
- 4.2 The Court held that, *inter alia*, the vessel 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.
- 4.3 The master was fined Dhs 5 000 (£950) for causing damage to the environment.

5 Possible recourse action by the IOPC Funds

- 5.1 The *Al Jaziah 1* held a certificate of provisional registration issued by the registry of Honduras, which has not ratified the 1992 Civil Liability Convention and is Party only to the 1969 Civil Liability Convention. For this reason the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's right of limitation (cf document 92FUND/EXC.8/8, paragraph 4.2.8).
- 5.2 The Funds' legal advisers in the UAE have expressed the view that the findings of the criminal court regarding the vessel's unseaworthiness would be persuasive in any civil action filed against the shipowner in the UAE. The Director concurs with the Funds' legal advisers. In the Director's view, the shipowner must have known or ought to have known that the ship was unseaworthy and that the sinking of the vessel was due to the fault or privity of the shipowner. For this reason the Director considers that, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner is not entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.
- 5.3 The registered owner of the *Al Jaziah 1* at the time of the incident was Al Jazya Marine Services, an entity which had been licensed to trade by the authorities in Abu Dhabi (United Arab Emirates). The sole proprietor of the entity at the time of the incident was a UAE national living in Abu Dhabi. 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. It is understood that he sold the entity in early 2001 and that the name of the entity was changed to Al Muwakabak

Trading. The Funds' legal advisers have advised the Director that such changes in name and ownership do not exonerate the original owner of the entity from liabilities which arose before the changes took place.

- 5.4 The vessel did not have any liability insurance. It is not known whether the entity registered as owner of the *Al Jaziah 1* or the individual in question have any significant assets against which a judgement could be enforced. The Funds' legal advisers are continuing their investigations into their financial situation. The Director is of the view that if there are sufficient assets, the Funds should take recourse action against the entity and its owner at the time of the incident.

6 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 the IOPC Funds should oppose the shipowner's right to limit his liability (paragraph 5.2); and
 - (c) to decide whether the IOPC Funds should pursue recourse action against the registered owner of the *Al Jaziah 1* and the owner of that entity at the time of the incident (paragraph 5.4).
-