



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992**

EXECUTIVE COMMITTEE
18th session
Agenda item 3

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71FUND/AC.9/13/9

INCIDENTS INVOLVING THE 1971/1992 FUNDS

AL JAZIAH 1

Note by the Director

Summary:

The *Al Jaziah 1* sank off Abu Dhabi (United Arab Emirates) on 24 January 2000, resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. 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 £893 000 million in respect of clean-up operations have been provisionally assessed at £400 000. Claims in respect of preventive measures have been settled at £385 000. 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 the Director's view there are reasonably good prospects of the IOPC Funds obtaining a favourable judgement against the shipowner in a recourse action. However, the Director has been advised that it is uncertain whether the defendant will have significant assets to enable the Fund to recover any substantial amounts. The Director is therefore of the opinion that the IOPC Funds should not take recourse action against the shipowner.

Action to be taken:

To decide whether the IOPC Funds should take 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. The clean-up operations and the subsequent salvage operations that took place were reported to the governing bodies at previous sessions.

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 (£840 000) were submitted to the IOPC Funds by two local affiliated oil companies that had been engaged in the clean-up response. These claims have been provisionally assessed at US\$580 000 (£375 000) pending the submission of further supporting documentation.
- 3.2 In August 2002 a third affiliated oil company resubmitted a claim, previously presented in August 2001, for US\$81 500 (£53 000). This claim has provisionally been assessed at US\$41 000 (£27 000).
- 3.3 Claims in respect of pollution prevention operations undertaken by a local salvage company have been settled for a total of US\$595 000 (£385 000).
- 3.4 No further claims for compensation are expected.

4 Criminal proceedings

- 4.1 Criminal proceedings were brought against the master of the *Al Jaziah 1* by the Abu Dhabi Public Prosecutor. In statement given to the Public Prosecutor the master had stated that the vessel was designed as a water carrier and was in a dangerous condition and badly maintained.
- 4.2 The Court held, *inter alia*, that the vessel had caused damage to the environment and that it 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 (£890) for causing damage to the environment.

5 Possible recourse action by the IOPC Funds

5.1 At their April/May 2002 session the governing bodies considered whether the Funds should take recourse action against the shipowner.

5.2 The *Al Jaziah 1* held a certificate of provisional registration issued by the registry of Honduras, which had at the time not ratified the 1992 Civil Liability Convention, but was Party only to the 1969 Civil Liability Convention. For this reason the United Arab Emirates was 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).

5.3 The Funds' legal advisers in the UAE had 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 informed the governing bodies that he concurred 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 considered that, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

5.4 The registered owner of the *Al Jaziah 1* at the time of the incident was Al Jazya Marine Services, an entity that 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 Muwakaba Trading. The Funds' legal advisers 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.

5.5 The governing bodies of the 1971 Fund and 1992 Fund decided that if investigations by the Funds' legal advisers revealed that the entity registered as the owner of the *Al Jaziah 1* or the individual in question had significant assets, the Funds should take recourse action against them (documents 92FUND/EXC.16/6 paragraph 3.3.7 and 71FUND/AC.7/A/ES.9/14, paragraph 8.5.7).

5.6 The vessel did not have any liability insurance. The Funds' legal advisers have continued their investigations into whether the entity registered as the owner of the *Al Jaziah 1* or the individual in question have any significant assets against which a judgement could be enforced.

5.7 The IOPC Funds' legal advisers in the UAE have established that the UAE national referred to in paragraph 5.4 works for the Abu Dhabi National Oil Co. in its Administration Department. The legal advisers have also identified four separate companies, which this person has ownership of or substantial shares in. Three of these companies either do not have valid trading licences or their trading records are unreliable. The fourth is a limited liability company engaged in the storage and transportation of oil. The person is reported to hold 50% of the shares in this latter company. The Funds' legal advisers have indicated that in the event of the IOPC Funds obtaining a judgement against the person in question, the Funds may be able to execute it against the dividends payable from his 50% share holding in the company or by obtaining a judicial sale of the shares under the UAE Commercial Companies Law.

5.8 The Funds' legal advisers have been unable to establish whether the above assets would be sufficient to satisfy the amount which the Funds may be awarded in a final judgement. They have suggested that the value of the shares in the company in question is uncertain. The legal advisers have also pointed out that although the IOPC Funds could take steps to attach 50% of the shares,

it would not be possible to prevent the disposal of the shipowner's assets during the litigation period.

- 5.9 The Director has been advised by the 1971 Fund's UAE lawyers that there are reasonably good prospects for the Fund to obtain a favourable judgement against the person in question and that it is likely that he would not be entitled to limit his liability. The total amount of the claims settled or pending is approximately US\$2.0 million (£1.3 million). The Fund's legal advisers have, however, also advised the Director that the Fund might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it is in any event uncertain whether the defendant will have sufficient assets to enable the Funds to recover any substantial amount. For this reason, the Director takes the view that the Funds should not take any recourse action against the owner of the *Al Jaziah 1*.

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 take recourse action against the registered owner of the *Al Jaziah 1* and the owner of that entity at the time of the incident (paragraph 5.9).
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