



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992**

EXECUTIVE COMMITTEE
1st session
Agenda item 4

92FUND/EXC.1/8
19 October 1998
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

MILAD 1 INCIDENT

Note by the Director

Summary:	The coastal tanker <i>Milad 1</i> , which had a crack in the hull, was lightened off Bahrain without any spill of oil. Temporary repairs were carried out to prevent ingress of water.
Action to be taken:	Decide whether the cost of the temporary repairs falls within the scope of application of the 1992 Fund Convention.

1 The incident

1.1 On 5 March 1998 the Belize registered coastal tanker *Milad 1* (801 GRT) was intercepted by the United States Coast Guard (USCG), 25 nautical miles north east of Bahrain and within its EEZ.

1.2 The tanker was carrying 1 500 tonnes of mixed diesel/crude oil and was found by the USCG to have a crack in the hull approximately 6 metres long, allowing sea water into the ballast tanks. The USCG considered that the *Milad 1* was in danger of sinking and that it posed a grave threat of pollution to the coast of Bahrain. The USCG therefore placed damage control experts on board to stabilise the tanker using pumps to compensate for the flooding. The USCG subsequently relocated the tanker to a more central position in the Gulf, some 50 nautical miles to the north-east of Bahrain. The shipowner sent another tanker to lighten the *Milad 1*, and the lightening operation took place on 15 March 1998.

1.3 The Marine Emergency Mutual Aid Centre (MEMAC)^{<1>} in Bahrain engaged a contractor to undertake temporary repairs to the *Milad 1* to prevent the ingress of water, at a cost of BD21 168 (£33 000). It appears that the repairs were carried out at the place where lightening took place.

1.4 No oil was spilled during the events described above.

1.5 The owner of the *Milad 1*, who according to MEMAC is an individual based in the United Arab Emirates at the time of the incident, co-operated with MEMAC by providing another tanker for the lightening operations. However, he did not contribute to the cost of the repairs to the *Milad 1*. According to the Federal Environmental Agency of the United Arab Emirates, he has since disappeared. MEMAC has not been able to establish whether the *Milad 1* was insured for pollution liabilities.

2 Claims for compensation

The 1992 Fund has received a claim for compensation from MEMAC for the cost of the repairs to the *Milad 1* for BD21 168 (£33 000).

3 Applicability of the 1992 Conventions

3.1 At the time of the incident Bahrain was Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.

3.2 The question has arisen whether the events in this case fall within the definition of 'incident' in Article I.8 of the 1992 Civil Liability Convention which reads:

'Incident' means occurrence, or series of occurrences having the same origin, which causes pollution damage.

3.3 In accordance with that Article, and contrary to the 1969 and 1971 Fund Convention, the 1992 Conventions apply to preventive measures even if there was no spill of oil, provided that there was a grave and imminent threat of the occurrence causing pollution damage in the territory, territorial sea or exclusive economic zone (EEZ) (or an equivalent area) of a State Party to the respective 1992 Convention.

3.4 The *Milad 1* never came closer to the coast of Bahrain than some 25 nautical miles. However, the winds and currents in the area are reported by MEMAC to be such that there was a risk that if oil had escaped from the *Milad 1*, the oil could have reached the territory or territorial waters of Bahrain thereby causing pollution damage. In any event, the oil could have affected fishing in the EEZ of Bahrain^{<2>}. It could be argued, therefore, that the occurrence constituted a grave and imminent risk of pollution damage to the territory, territorial sea or EEZ of a State Party to the 1992 Fund Convention, and that the cost of the repairs would constitute costs of preventive measures.

<1> MEMAC was established by the Regional Organization for the Protection of the Marine Environment (ROPME), an organisation set up to implement the Kuwait Action Plan, adopted by the signatories to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, 1976. The functions of MEMAC are to facilitate co-operation between member States and provide assistance to those States when requested on contingency planning and oil spill response.

<2> MEMAC has informed the 1992 Fund that the ship was intercepted in the EEZ of Bahrain. However, under 1992 Fund Resolution 4, a State which has established an EEZ before its ratification of the 1992 Fund Convention should inform the Secretary-General of IMO accordingly, or if an EEZ has been established after ratification notify the Director accordingly. No such notification has been received.

3.5 The Director considers that the USCG report on the events could be useful for the definition of whether or not there was a grave and imminent risk of pollution damage. He has therefore requested that MEMAC provide the 1992 Fund with a copy of that report. The Director takes the view that the USCG report should be examined before a position is taken on the admissibility of the claim by MEMAC.

3.6 Under Article 4.1 (b) of the 1992 Fund Convention, the 1992 Fund pays compensation to a claimant only if he has been unable to obtain full and adequate compensation for the damage under the 1992 Civil Liability Convention "because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him".

3.7 The question is whether the claimant, MEMAC, has taken all reasonable steps to pursue the legal remedies available to it. As mentioned above, it appears that the shipowner has disappeared, and MEMAC has not been able to establish whether the *Milad 1* had any insurance covering oil pollution liabilities.

3.8 The Director considers that more information concerning the owner is required before a decision can be taken as to whether MEMAC has fulfilled its obligations in this regard.

4 **Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as it may deem appropriate in respect of this incident.
-