



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
2nd session  
Agenda item 3

92FUND/EXC.2/5  
18 January 1999  
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## INCIDENTS INVOLVING THE 1992 FUND

### MILAD 1

#### Note by the Director

**Summary:**

The coastal tanker *Milad 1* developed a crack in its hull off the coast of Bahrain. A salvage tug with a repair team on board was mobilised to stand by to undertake temporary emergency repairs. The tanker was eventually towed to a more central location in the Persian Gulf where it was lightered without any spill of oil and without the need for emergency repairs.

**Action to be taken:**

Decide whether the cost of mobilising the salvage tug and repair team 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 a United States Coast Guard (USCG) contingent of the Multinational Maritime Interception Forces (MIF) in international waters some 25 nautical miles north-east of Bahrain.

1.2 The tanker, which was carrying 1 500 tonnes of mixed diesel/crude oil, was found by the USCG to have a crack in the hull approximately 20 cm long, allowing sea water to enter a ballast tank. 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 placed crew on board to try and stabilise the tanker using pumps to counteract the flooding. The master of the *Milad 1* requested permission to off-load part of the cargo to bring the crack above the water line.

1.3 The Marine Emergency Mutual Aid Centre (MEMAC)<sup><1></sup> in Bahrain contacted a number of shipping companies to identify a shipowner willing to lighter 500 - 700 tonnes of cargo and accept the oil in lieu of payment of the costs involved. A company based in Bahrain agreed to make a tug and barge available for lightering. The lightering operation was authorised by the Bahrain Government and the USCG.

1.4 On 6 March the tug and the barge arrived alongside the *Milad 1*. On learning that the cargo was a mixture of diesel oil and crude, the crew refused to receive it into the barge. MEMAC contacted BMS Ltd, a ship repair company based in Bahrain, which agreed to provide a salvage tug and repair team to investigate the damage and undertake temporary emergency repairs.

1.5 On 8 March BMS Ltd inspected the *Milad 1* and found that the crack had increased to 45 cm in length and was continuing to propagate, necessitating additional repair equipment. MEMAC made contact with a representative of the owner of the *Milad 1*, who was based in the United Arab Emirates at the time of the incident. The owner's representative agreed to the emergency repairs being undertaken and also offered to provide another tanker, the *Al-Mtama*, for lightering the *Milad 1*.

1.6 On 11 March the USCG reported that the crack in the hull of the *Milad 1* had increased to more than 3 metres. On 12 March, after consultation with the Bahrain Government and MEMAC, the USCG decided to tow the *Milad 1* to a more central location in the Persian Gulf, some 50 nautical miles to the north-east of Bahrain. BMS Ltd was requested to escort the *Milad 1* and remain on standby during the lightering operation in case emergency repairs became necessary.

1.7 On 15 March the cargo on board the *Milad 1* was transferred to the *Al-Mtama*, and both vessels were allowed to sail. No oil was spilled at any time during the operations, and no emergency repairs were carried out at sea.

1.8 Although MEMAC received a hand written telefax from a representative of the shipowner agreeing to pay for any repair costs, MEMAC has subsequently been unable to recover any costs for the provision of the salvage vessel and repair team. 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 BD21 168 (£33 000) from MEMAC for the cost of providing a salvage tug and repair team to attend the *Milad 1*. The claim is supported by an invoice from BMS Ltd.

## **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 any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

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<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.

3.3 In accordance with that Article, and unlike the 1969 Civil Liability Convention 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 At its 1st session in October 1998, the 1992 Fund Executive Committee instructed the Director to investigate further the various issues in the *Milad 1* case in order to establish whether or not the occurrence had constituted a grave and imminent risk of pollution damage to the territory or territorial sea of a State Party to the 1992 Fund Convention and, if so, whether the claim for the cost of providing an emergency repair capability was admissible (document 92FUND/EXC.1/8). Since that session the 1992 Fund has received further information from MEMAC and the USCG.

3.5 According to information provided by the USCG and MEMAC, the *Milad 1* never came closer to the coast of Bahrain than some 25 nautical miles. However, on the basis of wind data provided by the Bahrain Directorate of Meteorology, it is clear that had any spill occurred from the *Milad 1* during the period 6 - 12 March 1998, when it was located closest to Bahrain, the oil could have reached the coast of Bahrain, thereby causing pollution damage. The Director therefore considers that in view of the critical condition of the vessel and the prevailing wind conditions, the occurrence constituted a grave and imminent threat of causing pollution damage in the territory and territorial sea of a State Party to the 1992 Fund Convention. He also considers that, in the circumstances, the steps taken by MEMAC to engage a ship repair company which sent a repair team to the site was a reasonable preventive measure, although the repairs were not subsequently undertaken.

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 In October 1998 MEMAC provided the 1992 Fund with a copy of the Provisional Patent of Navigation (PPN) in respect of the tanker *Milad 1*, issued by the International Merchant Marine Registry of Belize. The PPN had expired on 19 December 1997 (ie shortly before the incident), but the registered owner at the time of issue of the PPN was given as Gulf Oil Transport Shipping Co Inc, with an address in Panama. MEMAC informed the 1992 Fund in January 1999 that attempts had been made to contact the owner's representative in the United Arab Emirates who had engaged the lightering vessel but had been informed by the authorities that he was no longer in the country. MEMAC also stated that it had written to the registered owner in Panama but had received no reply.

3.8 The Director considers that, in view of the relatively low amount involved, there is little more that MEMAC could reasonably be expected to do to trace the owner in pursuance of its claim under the 1992 Civil Liability Convention and that MEMAC has taken all reasonable steps to pursue the legal remedies available to it. He therefore takes the view that the claim by MEMAC is admissible in principle under the 1992 Fund Convention.

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;
  - (b) to decide whether there was a grave and imminent threat of pollution damage in the territory or territorial sea of Bahrain; and
  - (c) to decide whether MEMAC has taken all reasonable steps to pursue the legal remedies available to it.
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