



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
3rd session
Agenda item 3

92FUND/EXC.3/3/Rev.1
29 April 1999
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

MILAD 1

Note by the Director

Summary:

An examination is made of whether the claimant has taken all reasonable steps to pursue all legal remedies available to him in order for his claim for £33 000 for pre-spill preventive measures to be admissible under Article 4.1(b) of the 1992 Fund Convention. Consideration is also given to whether the 1992 Fund should pursue a recourse action against the shipowner.

Action to be taken:

Decide whether the claimant has taken all reasonable steps and whether the 1992 Fund should consider pursuing a recourse action against the shipowner.

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)^{<1>} 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 Consideration at the Executive Committee's 2nd session

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

3.2 At its 2nd session, the Executive Committee decided that, in the light of the critical condition of the vessel and the prevailing wind conditions, the events in this case fell within the definition of 'incident' under Article I.8 of the 1992 Civil Liability Convention.

<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 The Committee also considered the question of whether MEMAC had taken all reasonable steps to pursue the legal remedies available to it and whether the claim by MEMAC was therefore admissible in principle under Article 4.1(b) of the 1992 Fund Convention.

3.4 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".

3.5 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 that MEMAC 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.

3.6 In a document submitted to the Executive Committee (document 92FUND/EXC.2/5), the Director expressed the opinion that, in view of the relatively low amount involved, there was 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 had taken all reasonable steps to pursue the legal remedies available to it. He therefore took the view that the claim by MEMAC was admissible in principle under the 1992 Fund Convention.

3.7 A number of delegations expressed reservations as to whether sufficient steps had been taken by MEMAC, notwithstanding that the *Milad 1* was not required to have insurance to cover liability for pollution damage under the 1992 Civil Liability Convention because she was carrying less than 2 000 tonnes of oil as cargo. Several delegations considered that, in deciding whether the claimants had taken all reasonable steps, all facts of the case should be taken into account and not only the amount of the claim.

3.8 Some delegations expressed the view that the Executive Committee should approve the claim in principle so that the claimant could be compensated without further delay. These delegations considered that the 1992 Fund should examine whether to pursue a recourse action against the shipowner, as the Fund would be in a better position to obtain the necessary information.

3.9 As the Executive Committee was not convinced that MEMAC had taken all reasonable steps to pursue the legal remedies available to it, the Director was instructed to discuss with MEMAC what courses of action might be available to it and to report any developments to the Committee at its 3rd session so as to enable the Committee to take a decision on this point. The Director was also instructed to examine whether the 1992 Fund should pursue a recourse action against the shipowner if further steps by MEMAC proved unsuccessful. It was noted that in taking that decision it would be necessary to consider whether the costs which would be incurred in any recourse action were justified in view of the low amount which could be recovered (document 92FUND/EXC.2/10, paragraph 3.4.6).

4 Further investigation by the Director

4.1 The Director has taken expert advice on the steps which MEMAC could in principle take to trace the shipowner with a view to instigating legal proceedings against him to recover the costs incurred. These steps are summarised below:

- (i) Details of vessel ownership are publicly available through Lloyd's Register of Shipping. Reported information concerning vessel movements is also sometimes available from Lloyd's Ship Index.
- (ii) If the ship still exists (ie has not been scrapped) and has a 'unique' (IMO) identification number, this may be used to track the ship's movements, even if the name and/or ownership and/or registry have changed. Either a tracking company such as Lloyd's Intelligence may be used, or, in circumstances where information as to the vessel's trading pattern is available, authorities in likely ports of call may be alerted. However, the effectiveness of any tracking service is variable, as it depends upon the reliability of the information which is passed on from local sources, and the speed at which such information is received.
- (iii) If it proves possible to trace the ship, steps may be taken to arrest her. Whether this can be achieved in any case depends upon a number of factors, which vary from one jurisdiction to another. Legal advice in the relevant jurisdiction or jurisdictions must be obtained. Even if an initial arrest can be achieved, there may be requirements for counter-security to be provided by the claiming party and the costs of maintaining an arrest can be significant.
- (iv) Even if the flag State of the ship is known and the flag State has details of the registered owner, it may still be difficult, expensive and time-consuming to establish and trace the true ownership of the company.
- (v) The use of law firms for tracing ownership is quite common. If a long or uncertain trail exists, this can be an expensive option, however, and there is no guarantee of success. One option is to use an agency which specialises in the tracing of ownership. The use of such agencies is also expensive. They are usually (although not exclusively) used when piracy, fraud or theft are suspected.

4.2 The Director has held discussions with MEMAC on the various options available. MEMAC has expressed the view that there is a serious risk that, even if the vessel still exists and the shipowner could be identified relatively easily and quickly, there would only be a limited prospect of success in recovering the expenses (or part thereof) incurred from the shipowner, and that the costs involved are likely to be very high. MEMAC has stated that for this reason it is not prepared to take any further steps to try to recover the expenses incurred from the shipowner.

4.3 As set out above, the various options referred to in paragraph 4.1 could well be expensive. In the case of the *Milad 1*, there is also a real risk that the costs involved would be disproportionate to the amount at stake. Quite apart from the issue of costs, there is considerable uncertainty in the present case as to whether the shipowner could be traced and, even if he could, as to the prospects of success of any action against him and the availability of unencumbered assets (ie free from a ship mortgage and other liens or charges) for enforcement purposes.

4.4 The Director considers that on balance, and taking account of the particular circumstances of this case, there is nothing more that MEMAC could reasonably be expected to do to trace the owner in pursuit of its claim under the 1992 Civil Liability Convention. The Director therefore takes the view that the claim by MEMAC is admissible in principle under the 1992 Fund Convention.

4.5 The Director also believes that, in view of a combination of factors, including the potentially high cost of trying to trace the owner, the limited chance of success in recovery and the relatively low amount of the claim, the 1992 Fund should not consider taking recourse action against the shipowner.

5 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 MEMAC has taken all reasonable steps to pursue the legal remedies available to it;
and
 - (c) to decide whether the 1992 Fund should consider pursuing a recourse action against the shipowner.
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