



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
6th session
Agenda item 4

92FUND/EXC.6/3
10 February 2000
Original: ENGLISH

ANY OTHER BUSINESS

AL JAZIAH 1 INCIDENT

Note by the Director

Summary: The *Al Jaziah 1*, carrying intermediate fuel oil, sank off Abu Dhabi (United Arab Emirates), resulting in the escape of 100 - 200 tonnes of such oil and pollution of coastal areas. Some 550 tonnes of oil remaining on board has been removed. The United Arab Emirates is a Party to both the 1971 Fund Convention and the 1992 Fund Convention.

Action to be taken: Consider the application of the 1971 and 1992 Fund Conventions to this incident.

1 The incident

- 1.1 On 24 January 2000 the tanker *Al Jaziah 1* (allegedly of 681 GRT) laden with intermediate 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 has been alleged that the vessel was registered in Honduras and that it was owned by a company in Abu Dhabi and Dubai. It appears that the vessel was not entered with any classification society. It also appears that there was no liability insurance covering the vessel.
- 1.3 It is 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 oiled.
- 1.4 At the IOPC Funds' request a representative of the International Tanker Owners Pollution Federation Ltd (ITOPF) went to Abu Dhabi to follow the clean-up operations, liaise with the competent authorities and advise the authorities and bodies involved on the practical aspects of any clean-up. The Funds also appointed a local surveyor to assist ITOPF and to monitor the salvage operations.

- 1.5 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 the 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 chemicals had little effect. Some defensive booming of sensitive areas was undertaken, including the seawater intake to two nearby power stations.
- 1.6 Local authorities mobilised teams of labourers to undertake onshore clean-up.
- 1.7 The Federal Environment Agency 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 550 tonnes of oil had been removed from the sunken vessel. The quantity of oil remaining on board is not known.
- 1.8 Preparations are being made to raise the sunken vessel to eliminate the threat of further pollution.

2 Claims for compensation

Claims for compensation are expected in respect of the cost of clean-up at sea and on shore as well as the cost of the oil removal operations. Some fish traps have been oiled, and claims for the cleaning costs are expected. It is not possible at this stage to make an estimate of the total amount of the claims.

3 Applicability of the 1971 and the 1992 Fund Conventions

- 3.1 The United Arab Emirates is a Party to both the 1971 Fund Convention (since March 1984) and the 1992 Fund Convention (since November 1998), having not denounced the former when acceding to the latter.
- 3.2 The 1992 Fund Convention provided a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention when the total quantity of contributing oil received in States which were Parties to the 1992 Protocol to the Fund Convention (or which had deposited instruments of accession in respect of that Protocol) reached 750 million tonnes. This condition was fulfilled on 15 May 1997. There is no corresponding provision in respect of States which have deposited instruments of accession after that date. It appears, however, that it was not intended that States should continue to be Parties to both the 1971 Fund Convention and the 1992 Fund Convention after that time.
- 3.3 The United Arab Emirates deposited its instrument of ratification of the 1992 Fund Convention on 19 November 1997, ie after 15 May 1997. It was therefore under no formal treaty obligation to denounce the 1971 Fund Convention. The Director has made several contacts with representatives of the United Arab Emirates, however, drawing their attention to the problems which could arise if the United Arab Emirates remained a Party to the 1971 Fund Convention and explaining the importance of the Emirates' denouncing that Convention as soon as possible.
- 3.4 The simultaneous application of the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention in respect of incidents occurring during the transitional period up to 15 May 1998 was governed by Article 36bis of the 1992 Fund Convention. The 1992 Fund would pay compensation only if and to the extent that the claimant had been unable to obtain full compensation under the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention in that order.
- 3.5 There are no corresponding provisions regarding the applicability of these four instruments after the expiry of the transitional period. The issue would therefore, in the Director's view, have to be

resolved on the basis of the general rules of treaty law. It appears that the 1969 Vienna Convention on the Law of Treaties does not give any guidance in this respect ^{<1>}.

- 3.6 Since the United Arab Emirates is a Party to both the 1969/1971 Conventions and the 1992 Conventions, the Director takes the view that from a treaty law point of view both sets of Conventions would apply to pollution damage in the United Arab Emirates.
- 3.7 It is necessary however to consider also the relevant legislation of the United Arab Emirates. The 1969 Civil Liability Convention and the 1971 Fund Convention were incorporated into the law of the Emirates by Federal Decree N°46 of 1983. This statute has not been repealed and appears therefore to be in force. The 1992 Conventions have been implemented into national law by Federal Decree N°82 of 1997.
- 3.8 As mentioned above, it has been alleged that the *Al Jaziah I* was registered in Honduras, which is a Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. If the ship was registered in Honduras, the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's liability (cf Article 30.4(b) of the Vienna Convention).
- 3.9 The Director considers that the issue of the application of the four treaties to this incident should be studied further.
- 3.10 The Executive Committee of the 1971 Fund will be invited to consider the issue of the applicability of the Conventions from a treaty law point of view at its 63rd session, to be held in April 2000.

4 Definition of 'ship'

- 4.1 The *Al Jaziah I* is reportedly some 40 years old. It appears that it was originally built as a water tanker plying the European river/canal system. It is not known whether the vessel has been converted for carriage of oil. The question arises as to whether the vessel falls within the definition of 'ship' under either or both of the 1969/1971 Conventions and the 1992 Conventions.
- 4.2 The definitions of 'ship' set out in Article I.1 of the 1969 Civil Liability Convention and of the 1992 Civil Liability Conventions read:

1969 Civil Liability Convention

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.

1992 Civil Liability Convention

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such

<1> Article 30.4 of the Vienna Convention, which deals with the application of successive treaties relating to the same subject matter, reads:

When the parties to the later treaty do not include all the parties to the earlier one:

- (a) as between States parties to both treaties the same rule applies as in paragraph 3;
- (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

These definitions are incorporated in the 1971 and 1992 Fund Conventions, respectively.

- 4.3 The Director has contacted the Honduras registry requesting particulars of the *Al Jaziah I*.
- 4.4 The Director considers that, without further information about the vessel, it is not possible at this stage to decide whether the vessel falls under the definition of 'ship' in either or both of the 1969/1971 Conventions and the 1992 Conventions.

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 consider the application of the 1971 and 1992 Fund Conventions to the incident from a treaty law point of view;
- (c) to consider whether the *Al Jaziah I* falls within the definition of 'ship'; and
- (d) to give the Director such instructions in respect of this incident as it may deem appropriate.
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