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ANY OTHER BUSINESS

AL JAZIAH 1 INCIDENT

Note by the Director

Summary:	The <i>Al Jaziah 1</i> , carrying fuel oil, sank off Abu Dhabi (United Arab Emirates), resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. 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* (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 The vessel held a certificate of provisional registration issued by the Registry of Honduras, expiring 12 November 2000. It has been alleged 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 also 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 they were not effective. 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 on various islands much of which was completed within two weeks.
- 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 430 tonnes of oil had been removed from the sunken vessel. Approximately 70 tonnes of oil was reported to have remained on board as clingage and unpumpable material.
- 1.8 The sunken vessel was refloated by the salvors on 11 February 2000 and taken into the Abu Dhabi Freeport.

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. 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 At its 6th session, the Executive Committee considered briefly whether the 1969 Civil Liability Convention, the 1971 Fund Convention, the 1992 Civil Liability Convention and the 1992 Fund Convention applied to this incident. The Committee instructed the Director to consider this issue further (document 92FUND/EXC.6/5, paragraph 4.1.4).
- 3.3 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 that 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 that 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.
- 3.4 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 that 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. In April 2000 the Director visited the Undersecretary of the Ministry of Foreign Affairs of the Emirates and discussed this issue with leading officials.
- 3.5 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.
- 3.6 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.

- 3.7 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.
- 3.8 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. It appears therefore, that both sets of Conventions apply under the domestic law of the Emirates.
- 3.9 Since in the Director's view both sets of Conventions would apply the question would arise as to how the liability for oil pollution damage arising out of this incident should then be apportioned between the two Funds.
- 3.10 As mentioned above, the *Al Jaziah 1* held a provisional certificate of registration issued by the Registry of Honduras, which is a Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. It appears, therefore, that 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).

4 Definition of 'ship'

- 4.1 The *Al Jaziah 1* is reportedly some 40 years old, and it is believed that it was built in the Netherlands. The vessel had a rudder and propeller. The wheelhouse was without any navigation aids, such as echo sounder, radar and compass. The design of the vessel was of the type approved by the Dutch Small Ship Inspectorate as an 'inland waters motor tankship'. At the time of the incident the vessel was operating in open seas unmodified in any material way from the original design, a characteristic feature of which is a very low forecastle. It is not known whether the vessel had 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 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 *Al Jaziah 1* had a hull insurance with the Saudi Arabian Insurance Company LTD.EC. which covered trading in 'the Persian Gulf, Gulf of Oman, Indian Ocean, East African Coast and Red Sea'. The policy expired on 30 April 1999. According to the policy, the *Al Jaziah 1* was built in

1970. It has been reported that the *Al Jaziah 1* had frequently been used by the Abu Dhabi National Oil Company to transport fuel oil in the region.

- 4.4 The *Al Jaziah 1* was actually carrying oil in bulk as cargo at the time of the incident, and it could therefore be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 4.5 The *Al Jaziah 1* was obviously capable of carrying oil in bulk as cargo, and had been frequently used for carrying fuel oil in the region. It would therefore be difficult to argue that it was not a ship for the purpose of the 1992 Convention.
- 4.6 The further question is whether the *Al Jaziah 1* could be considered 'sea-going'. The IOPC Funds' legal adviser in the United Arab Emirates has informed the Director that there is no statute, doctrine or jurisprudence in the Emirates giving any guidance as to the interpretation of the concept of 'sea-going'.
- 4.7 The Director has therefore sought legal advice as to the position of English law on this point. There appears to be some uncertainty in this regard. Although the English Courts have not had occasion to interpret the term 'sea-going' in the context of the 1971 and 1992 Fund Conventions, the term is used frequently in English shipping legislation. In a case from 1871, the Court held that, where a ship actually went 20 or 30 miles out to sea and stayed out for many hours, it was impossible to say it was not a sea-going vessel^{<1>}. In another case from 1893 the Court held that 'a sea-going ship means a ship which does go to sea'^{<2>}. In a more recent decision in 1993 the Commercial Court held that the concept covered all vessels intended to travel on the sea. The judge found that the term included not only ships in the traditional sense of the word but also hovercraft, hydrofoils, barges and lighters used at sea, as well as floating apparatus which could not move under its own power, eg oil exploration and extraction installations which are moved about on water^{<3>}.
- 4.8 The *Al Jaziah 1* was used at sea frequently to transport fuel oil in the region. The hull insurance policy covered trading in a fairly wide region where there were no significant inland waterways. In the light of these considerations the Director takes the view that the English Courts would probably consider the *Al Jaziah 1* a sea-going ship and that it is likely that the Court of the United Arab Emirates would take the same position. The Director proposes therefore that the *Al Jaziah 1* should be considered a sea-going ship for the purpose of the 1992 Conventions.
- 4.9 The 1971 Fund Assembly/Administrative Council will be invited to consider the applicability of the 1969 Civil Liability Convention and the 1971 Fund Convention to this incident at the October 2000 session.

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 1992 Fund Convention to the incident;
- (c) to consider whether the *Al Jaziah 1* falls within the definition of 'ship' laid down in the 1992 Conventions; and
- (d) to give the Director such instructions in respect of this incident as it may deem appropriate.

<1> Ex Parte Ferguson [1871] L.R. 6 Q.B. 280

<2> Salt Union Limited v Wood [1893] 1 Q.B. 370

<3> John Robert Charman and others v WOC Offshore B.V. [1993] 1, Lloyd's Report