



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

NAKHODKA

Note by the Director

1 Introduction

1.1 On 2 January 1997, the Russian tanker *Nakhodka* (13 733 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki Islands in the Sea of Japan. The Japanese authorities rescued 31 crew members, but the master is still missing.

1.2 The tanker broke into two sections, which resulted in a spill of about 5 000 tonnes of oil. The stern section sank soon after the incident and lies at a depth of 1 700 metres with an estimated 11 200 tonnes of cargo on board. The upturned bow section, which may have contained up to 2 800 tonnes of cargo, continued to drift towards the coast, leaking oil at a slow rate. Attempts to secure a line to the bow were unsuccessful, due to the severe weather and the lack of suitable attachment points. On 7 January, the bow section grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

2 Clean up operations

2.1 A Japanese salvage company was contracted by the shipowner to remove the remaining oil from the bow section prior to its being taken away, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over this operation on 14 January, utilising the services of two Japanese salvage companies, while simultaneously ordering the construction of a temporary causeway to the grounded bow section. This causeway is intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil, if it should prove impossible to do so from the sea. By 17 January some 700 tonnes of oil mixed with some water had been transferred from the bow section to a small coastal tanker. Since 20 January the weather conditions have prevented further oil from

being removed. Construction of the causeway has continued, and by 20 January it extended some 80 metres from the shore.

2.2 Although much of the oil which was lost when the ship broke up dispersed naturally at sea, patches of heavily emulsified oil, ranging in size from one to 100 metres in diameter, drifted towards the coast. By 20 January, several hundred tonnes of emulsion had stranded at various locations between Jizo Saki and Rokko Misaki. Tar balls of 10–50 centimetres were scattered across Toyama Wan, approaching the coast of Niigata Prefecture. The most severely affected shorelines were those in the immediate vicinity of the bow section, extending 20 kilometres to the north, and those along the north coast of the Noto peninsula. Small quantities of oil are still being released from the sunken stern section.

2.3 The 1971 Fund and the shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd ("UK Club"), engaged the International Tanker Owners Pollution Federation Ltd (ITOPF) to provide experts to monitor the clean-up operations, and these experts arrived at the site on 5 January. The Fund and the Club also engaged General Marine Surveyors & Co Ltd (GMS), a Japanese surveying company which has previously provided expertise for the Fund in Japanese oil spills and which has a considerable experience of pollution incidents in Japan. The 1971 Fund's Japanese lawyer has been monitoring the operations.

2.4 A contract was signed on behalf of the shipowner with the Japan Marine Disaster Prevention Centre (JMDPC) and its network of commercial clean-up contractors to organise the clean-up operations. In addition, the Petroleum Association of Japan provided coastal booms, skimmers, portable storage tanks and a number of trained operators. This equipment has been used to protect sensitive areas and to recover floating oil. Three crane barges were mobilised to collect viscous emulsions using their grabs.

2.5 A considerable number of vessels, including fishing boats and vessels belonging to the Maritime Safety Agency of Japan (MSA) and the Japan Self Defence Force, have been engaged in oil recovery operations, using manual and mechanical means. Dispersants have been sprayed at sea, primarily to deal with floating oil escaping from the bow section. Helicopters from MSA and from private companies have been used to apply dispersants.

2.6 Since there was a risk that the bow section would break up before the oil could be removed, ITOPF recommended that the local offshore response capability should be supplemented with equipment from the East Asia Response Ltd (EARL) stockpile in Singapore. Two recovery systems were airlifted to Osaka and then transported to Mikuni by road, arriving on 14 January. One unit was installed on a salvage tug and the other on a supply vessel. Both units were deployed offshore in an attempt to recover heavily emulsified oil off Noto peninsula.

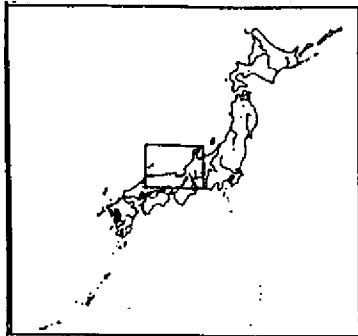
2.7 The Russian Ministry of Merchant Marine dispatched an offshore supply vessel and a salvage tug equipped with oil recovery systems, and these vessels arrived on site on 18 January.

2.8 Onshore clean-up has been carried out by manual and mechanical methods, and the bulk of the stranded oil has already been removed from polluted beaches. Several large pits have been excavated to provide temporary storage for the large volumes of oil, water and sand which have been recovered as a result of these operations.

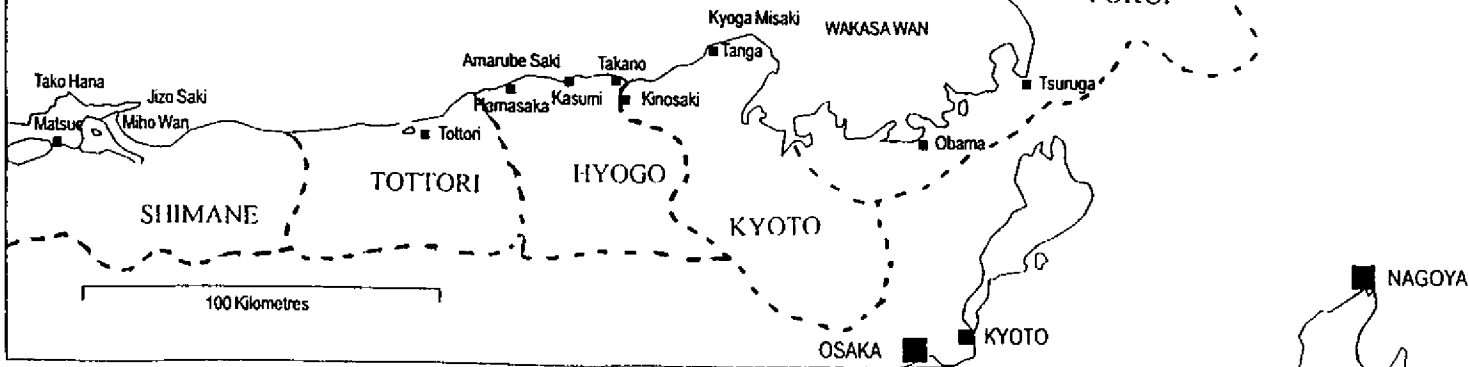
2.9 Over 8 000 people have been involved in the onshore clean-up operations in four Prefectures, while several hundred fishing boats from six Prefectures have been mobilised to collect oil at sea.

3 Impact on fishing, tourism and other industries

3.1 Much of the polluted area lies within the Quasi National Park which is an important tourist area. Tourists visit the area not only for its natural beauty, spas and temples but also to eat crabs which are caught in deep water offshore.



NAKHODKA
Stem Section



3.2 There are important mariculture activities in the affected area, mainly seaweed and oyster cultivation in sheltered bays and inlets, particularly in Wakasa Wan. Throughout the affected area there are many set nets, some of which have been contaminated.

3.3 The sea water used to supply an aquarium near Mikuni was contaminated. The owner of the aquarium therefore moved 14 dolphins to other locations in Japan.

3.4 Within Wakasa Wan there are five nuclear power stations which depend on sea water for their cooling systems. A sixth station is located north of Hakui on the Noto peninsula. The sea water intakes have been successfully protected by booms.

4 Claims for compensation

4.1 So far, no claims for compensation have been received. However, claims relating to clean-up operations and preventive measures will be submitted for significant amounts. It has been estimated that the clean-up operations carried out up to 22 January 1997 will give rise to claims in the region of ¥5 700 million (£29 million). Claims will also be made for costs relating to the removal of the oil from the grounded bow section. It is expected that fishermen will make considerable claims. Claims may also be submitted by businesses in the tourism industry. It is not possible to make any estimate of the total amount of the claims at this stage.

4.2 The Executive Committee may wish to consider whether, and, if so, to what extent, it is prepared to authorise the Director to make final settlements of claims arising out of this incident on behalf of the 1971 Fund. In several recent cases, the Director has been given such authority, to the extent that the claims do not give rise to questions of principle which have not previously been decided by the Committee.

4.3 The Committee may also wish to consider whether and, if so, to what extent the Director should be authorised to make payments.

4.4 Further information concerning the potential claims will be given in an addendum to this document.

5 Applicability of the Conventions

5.1 The 1992 Protocols entered into force in respect of Japan on 30 May 1996. The 1992 Civil Liability Convention and the 1992 Fund Convention are therefore in principle applicable to this incident.

5.2 The limitation amount applicable to the *Nakhodka* is estimated at 1 588 000 Special Drawing Rights (SDRs) (£1.7 million) under the 1969 Civil Liability Convention and 6 425 940 SDRs (£5.4 million) under the 1992 Civil Liability Convention.

5.3 The *Nakhodka* was registered in the Russian Federation, which has not ratified the 1992 Protocols but which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.

5.4 In this situation, the Director takes the view that the shipowner's right of limitation should be governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation are Parties. This is in accordance with the analysis made by the Director in document FUND/A.18/12/2 (cf paragraph 4.14), which was presented to the Assembly of the 1971 Fund at its 18th session.

5.5 In the event that the total amount of the accepted claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDRs), compensation would be available as follows:

	<u>SDRs</u>
Shipowner under the 1969 Civil Liability Convention	1 588 000
1971 Fund	58 412 000
Shipowner under the 1992 Civil Liability Convention	0
1992 Fund, in excess of 60 million SDRs	<u>75 000 000</u>
Total compensation available	135 000 000

5.6 A further complication may arise if losses have been suffered by fishermen operating outside Japanese territorial waters but within Japan's exclusive economic zone (EEZ). The 1969 and 1971 Conventions apply only to pollution damage in the territory or territorial waters of a State Party, whereas the 1992 Protocols apply also to damage in the EEZ.

5.7 It is clear that the 1992 Fund is liable for pollution damage in the EEZ. The Director is examining whether the shipowner would be liable under the 1992 Civil Liability Convention for damage in the EEZ and, if so, up to what amount. If required, the Director will submit this issue to the 1992 Fund Assembly for consideration.

6 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 give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate;
 - (c) to decide whether to authorise the Director to make final settlements of claims;
 - (d) to decide whether to authorise the Director to make payments; and
 - (e) to take a position in respect of the issues relating to the applicability of the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions referred to in paragraphs 5.4-5.7 above.
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