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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE and HONAM SAPPHIRE

Note by the Director

1 Introduction

This document sets out the developments in respect of the *Sea Prince* and *Honam Sapphire* incidents as regards the assessment and settlement of claims, and the progress in the limitation proceedings.

2 Sea Prince

(Republic of Korea, 23 July 1995)

2.1 Introduction

As for the incident, the clean-up operations and the impact on fisheries and aquaculture, reference is made to document 71FUND/EXC.50/8.

2.2 Consideration by the Executive Committee at its previous sessions

2.2.1 At its 44th session, the Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee considered it necessary for the 1971 Fund to exercise caution in the payment of claims. The Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident to the extent that the claims did not give rise to questions of principle which had not been decided by the Committee. The Director was not authorised to make any payments (document FUND/EXC.44/17, paragraphs 3.8.2 and 3.8.3).

2.2.2 The Executive Committee considered at its 46th session that the Director could be authorised to make partial payments of claims which had been settled. In view of the fact that the aggregate amount of the claims presented or indicated still greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, however, the Committee decided that the 1971 Fund's payment should for the time being be limited to 25% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.3.3).

2.2.3 In the light of the information on the aggregate amount of the claims presented by the time of the Executive Committee's 47th session, the Committee decided to increase the 1971 Fund's payments from 25% to 50% of the established damage suffered by each claimant, subject to confirmation of a significant reduction of the total amount of the fishery related claims (document FUND/EXC.47/14, paragraph 3.6.3). There has not yet been any such confirmation.

2.2.4 In view of the remaining uncertainty as regards the total amount of the claims, the Executive Committee decided at its 50th session to maintain the position taken at its 47th session in respect of the limits of the 1971 Fund's payments (document 71FUND/EXC.50/1, paragraph 3.7.5).

2.3 Claims for compensation

2.3.1 A number of claims relating to clean-up operations presented by 36 entities, including the Yosu Marine Police, municipalities and the shipowner, have been settled at approximately Won 19 700 million (£13.6 million), and have been paid by the shipowner and the UK Club. Further claims in this category, totalling Won 1 040 million (£71 900), are being examined.

2.3.2 As regards the areas contaminated by both the *Sea Prince* and the *Yeo Myung* incidents, the 1971 Fund and the two P & I Clubs involved agreed to split the clean-up expenses equally between the *Sea Prince* and the *Yeo Myung* incidents, based on the recommendation of the technical experts. The clean-up operations in these areas were carried out by two contractors engaged by the owner of the *Yeo Myung*. The claims presented by these contractors were settled at Won 715 309 300 (£558 620). The settlement amounts were paid by the owner of *Yeo Myung* and his insurer (the North of England P & I Club). The UK Club reimbursed the amount attributed to the *Sea Prince*, Won 357 654 650 (£279 310), to the North of England Club in August 1996.

2.3.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total amount of ¥357 214 (£1 800). This claim was approved by the Director in August 1996 at the amount claimed.

2.3.4 In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment is less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

2.3.5 In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fishery co-operative associations have maintained that this red tide, which caused massive damage to fisheries, resulted from the oil spill response to these two incidents, in particular the use of large quantities of dispersants. It is the view of the 1971 Fund's experts, however, that red tides are a common phenomenon in Korean waters in September and October, and that they are caused by a combination of industrial pollutants, municipal waste and ambient sea temperatures at that time of the year.

2.3.6 The fishermen of seven fishery co-operatives affected by the spill formed a "Countermeasure Committee" to co-ordinate the submission of their claims and to negotiate with the shipowner, the UK Club and the 1971 Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishery grounds and other fisheries, but without supporting documentation. The damage suffered was provisionally indicated at Won 75 278 million (£52 million), with an additional Won 145 396 million (£100 million) for anticipated future losses.

2.3.7 In February 1996, fishery experts engaged by the Countermeasure Committee indicated that they would revise the fishery related claims, reducing them to a total amount in the region of Won 53 800 million (£42 million).

2.3.8 In June 1996, the fishery experts engaged by the Countermeasure Committee submitted a report containing revised fishery related claims which were assessed by these experts at a total of Won 70 600 million (£49 million). However, the report was not accompanied by supporting documentary evidence. After discussions in August 1996 with the experts engaged by the UK Club and the 1971 Fund, the chairman of the Countermeasure Committee agreed to provide sales consignment data for most of the fishing sectors allegedly affected by the oil. Data relating to a number of fishery sectors in the Yosu area was provided in November 1996. Further consignment sales records relating to fishery sectors in Kyungnam Province were provided in April 1997.

2.3.9 The Pusan Fishery Co-operative Association, which does not form part of the Countermeasure Committee, submitted claims for Won 345 million (£238 000).

2.3.10 Claims have been submitted for Won 46 million (£35 920) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil.

2.3.11 Claims totalling Won 4 772 million (£3.3 million) have been presented by the owners of guest houses and other tourism-related businesses on Namhae Island, Yokgi Island, Koje Island and in the Yeochon county. There is an overlap between these claims in respect of Koje Island and the corresponding claims arising from the *Yeo Myung* incident. Although very little supporting data has been provided, it is clear from a number of official information sources such as local police records and local government statistics that the areas suffered a reduction in the number of summer visitors as a result of the two spills.

2.4 Limitation proceedings

2.4.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR (£12 million).

2.4.2 The Suncheon District Court issued an order for the commencement of limitation proceedings on 31 May 1996 and appointed an administrator who should give an opinion on the various claims. The Court decided that all claims should be filed by 28 August 1996. By that date claims for clean-up operations totalling Won 23 737 million (£16.4 million), fishery claims totalling Won 70 713 million (£49 million), claims relating to tourism and agriculture totalling Won 4 589 million (£3.1 million) and a claim by the shipowner for the cost of the measures associated with the work carried out under contract for the removal of the oil and the vessel and related operations in the amount of Won 20 900 million (£14.5 million) had been presented to the Court, ie a total of Won 120 000 million (£83 million).

2.4.3 Several court hearings for the examination of the claims have been held. The UK Club and the 1971 Fund have filed objections to the fishery claims and the claims relating to tourism and agriculture. The fishery co-operatives have objected to the clean-up claims.

2.4.4 At a court hearing held on 20 January 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by ITOPF. This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimants had provided little or no supporting documentation.

2.4.5 A further court hearing was held on 18 February 1997. At that hearing, the administrator submitted an opinion together with a list of the claims accepted by him. During the hearing, the administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The administrator had accepted most of the amounts claimed without any significant modification, however, and had not taken into account the ITOPF report referred to in paragraph 2.4.4 above.

2.4.6 The judge requested the UK Club and the 1971 Fund to submit comments on the administrator's opinion. He stated that, after having received these comments, the Court will request the claimants to provide supporting documents.

2.4.7 By the end of March 1997, ITOPF had completed assessments of seven fishery sector claims in the Yosu area and all tourism and agriculture claims. These claims represent about 65% of the total

amount of all fishery and non-fishery claims submitted as a result of the incident. ITOPF's assessments were submitted by the shipowner to the Court at a hearing held on 25 March 1997. The assessments made so far by ITOPF are summarised in the table below.

	INITIAL CLAIM WON	ASSESSMENT OF CLAIMANTS' EXPERTS WON	ITOPF'S ASSESSMENT WON
Common fishery grounds	47 842 386 000	7 806 554 277	1 141 097 096
Long bag set nets	4 796 695 000	784 002 480	409 884 300
Fishing boats	3 952 765 000	1 432 929 614	553 200 640
Small lift nets	4 914 000 000	1 414 524 800	361 821 200
Anchovy drag nets	3 572 596 000	762 246 525	205 941 775
Caged fish	81 899 495 000	36 642 077 710	8 407 011 011
Set nets	<u>15 418 860 000</u>	<u>1 254 282 275</u>	<u>315 292 172</u>
SUB-TOTAL	162 396 797 000	50 096 617 681	11 394 248 194
Tourism and agriculture claims (all areas)	<u>4 758 796 910</u>	<u>Not assessed</u>	<u>492 870 633</u>
TOTAL	167 155 593 910 (£116 million)	50 096 617 681 (£37 million)	11 886 377 873 (£8.2 million)

2.4.8 Six of the seven fishery sector claims were assessed by ITOPF on the basis of consignment sales records. These records were used to determine the average productivity of each sector, from which loss of earnings due to business interruption caused by the presence of oil were calculated. The remaining fishery sector claims (caged fish) were assessed on the basis of cleaning and/or replacement costs of oiled facilities and management and fish feed costs during the business interruption period.

2.4.9 Non-fishery claims were assessed by ITOPF on the basis of loss of earnings due to the reduction in the number of summer visitors as a result of the spill. The large number and diverse nature of the claims made it impossible to assess each one individually, and the decision was therefore made to group the various types of business, many of which are temporary in nature. A break-even analysis was then undertaken for each group in order to assess monthly minimal marginal costs. The average reduction in the number of summer visitors for each area affected by the spill was determined from a number of official sources.

2.4.10 The next court hearing will be held on 29 April 1997. ITOPF's reports of the assessments referred to in paragraphs 2.4.7 - 2.4.9, together with any further assessments made on the basis of the data provided in April 1997, will be submitted at the hearing.

2.4.11 The 1971 Fund and the UK Club are carrying out negotiations with claimants for the purpose of arriving at out-of-court settlements of all outstanding claims on the basis of the assessment made by ITOPF, and considerable progress has been made. If the method of assessment used by ITOPF were to be accepted by the claimants, the total admissible amount of all claims arising out of this incident would fall well below the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Director takes the view that, on that assumption, the 1971 Fund would be able to pay all outstanding claims in full for the settlement amounts. For this reason, he proposes that the Executive Committee might wish to authorise him to pay all settled claims in full (to the extent they have not already been paid), provided that the outstanding claims are settled on the basis of ITOPF's assessment method and he is satisfied that the aggregate amount of all claims arising out of this incident will fall below 60 million SDR.

2.4.12 It will be recalled that the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right to limit his liability, that the shipowner was entitled to indemnification under Article 5 of the 1971 Fund Convention and that the 1971 Fund should not take recourse action against any third party (documents FUND/EXC.49/12, paragraphs 3.7.9 and 3.7.10 and 71FUND/EXC.50/17, paragraph 3.7.9).

3 **Honam Sapphire**
(Republic of Korea, 17 November 1995)

3.1 Introduction

With respect to the incident, the clean-up operations and the impact on fisheries and aquaculture, reference is made to document 71FUND/EXC.50/10.

3.2 Consideration at previous sessions of the Executive Committee

3.2.1 At its 46th session, the Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee considered it necessary for the 1971 Fund to exercise caution in the payment of claims. The Executive Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. The Director was not authorised at that stage to make any payments (document FUND/EXC.46/12, paragraphs 5.6.2 and 5.6.3).

3.2.2 In the light of the information available at the time of the Executive Committee's 47th session on the aggregate amount of the claims, the Committee authorised the Director to make payments of claims which were settled. In view of the remaining uncertainty concerning the total amount of the claims, however, the Committee decided that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant (document FUND/EXC.47/14, paragraph 3.8.3).

3.2.3 At its 50th session, the Executive Committee endorsed the Director's opinion that the 1971 Fund should not challenge the shipowner's right to limit his liability (document 71FUND/EXC.50/17, paragraph 3.10.3).

3.3 Claims for compensation

3.3.1 Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 700 million (£6.7 million). Some claims in this category have been agreed for a total amount of Won 5 800 million (£4 million) and have been paid by the shipowner and the UK Club in full. The remaining claims in this category are being examined.

3.3.2 Claims for fishery damage have been submitted by several fishery co-operatives in the area affected by the spill, totalling Won 49 039 million (£34 million).

3.3.3 Of the claims referred to in paragraph 3.3.2, two groups of claims have been settled. Nine set net fishery operators in the Dolsan island area presented claims for damage to facilities and loss of income during the period when fishing was interrupted as a result of the incident, totalling Won 172 862 200 (£135 000). These claims were settled at Won 105 713 552 (£82 560) and were paid by the shipowner in April 1996. Claims presented by the Namhae fishery co-operative, totalling Won 635 160 396 (£496 030), related to various types of fishing carried out by the members of the co-operative. The claims presented by the Namhae co-operative were settled at an aggregate amount of Won 202 943 778 (£158 490) and were paid by the shipowner in July 1996.

3.3.4 The settlements reached so far total Won 6 100 million (£4.2 million). Claims totalling Won 53 360 million (£37 million) are being examined.

3.3.5 The 1971 Fund has not yet made any payments of compensation, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire*.

3.4 Limitation proceedings

3.4.1 The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£12 million).

3.4.2 The shipowner commenced limitation proceedings in September 1996.

3.4.3 In the limitation proceedings, claims totalling Won 17 243 748 000 (£14 million) have been presented by the various parties involved. These claims include the shipowner's claim for his own clean-up costs, and his subrogated claims for payments made to clean-up operators and for fishery damage, for a total amount of Won 9 384 156 000 (£6.5 million). There are also claims for fishery damage submitted by several fishery co-operatives of Won 7 394 447 000 (£5.1 million) and miscellaneous claims for Won 465 145 000 (£323 000).

3.4.4 At a court hearing held on 18 February 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by ITOPF. This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimant had provided little or no supporting documentation.

3.4.5 The 1971 Fund's experts had hoped to assess the claims of the fishery co-operatives arising out of the *Honam Sapphire* incident in a way similar to that used in the *Sea Prince* case, namely using commission sales data. However, for several fishery sectors little or no such data has been submitted. For this reason, assessments, at least for some sectors, will have to be based on national fishery statistics.

3.4.6 The next court hearing will be held on 29 April 1997, and the shipowner will then present any assessments completed by ITOPF at that time.

3.4.7 The claims submitted in the limitation proceedings are substantially lower than the amounts originally claimed. After consultation with the 1971 Fund's experts, the Director takes the view that it is extremely unlikely that the established amount of all the claims arising out of this incident will exceed the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Executive Committee might therefore wish to authorise the Director to pay in full any settled claim, to the extent that the shipowner's limit is exceeded.

3.4.8 It will be recalled that the Executive Committee decided, at its 50th session, that the 1971 Fund should not challenge the shipowner's right to limit his liability (document 71FUND/EXC.50.17, paragraph 3.10.3).

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 give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of these incidents; and
 - (c) to consider the Director's proposal on the level of the 1971 Fund's payment of the claims arising out of these two incidents (paragraphs 2.4.11 and 3.4.7, respectively).
-