



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
54th session
Agenda item 3

71FUND/EXC.54/6
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INCIDENTS INVOLVING THE 1971 FUND

OSUNG N°3

Note by the Director

1 The incident

1.1 The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground on the island of Tunggado, just south of the island of Kojedo in the Pusan area (Republic of Korea), on 3 April 1997 and sank at a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it has not been possible to assess the quantity spilt or the quantity remaining on board.

1.2 The combination of northerly winds, tidal streams and coastal currents spread the spilt oil in a south-westerly direction. Rain, fog and overcast weather conditions prevented any aerial surveillance until 6 April 1997. Extensive areas of silver oily sheens, together with broken streaks and patches of brown oil, were found over about 15 km² of sea surface around the grounding location. The oil in this area was estimated at between 50 and 200 tonnes. Small but decreasing quantities of oil continued to leak from the sunken vessel, and by 9 April 1997 only faint traces of sheen were coming to the surface.

1.3 The Korean Marine Police, assisted by local authorities and clean-up contractors appointed by the shipowner, organised and carried out clean-up operations at sea. Some 100 vessels were employed in dispersant spraying, skimming and the manual removal of oil using sorbent pads. Two marine police boats continue to monitor the area.

1.4 Although shorelines on small islands close to the grounding location were oiled, there have been no reports of mainland shores having been oiled.

1.5 Oil which may have originated from the *Osung N°3* reached the sea adjacent to Tsushima Island in Japan on 7 April 1997. The Japan Maritime Safety Agency deployed about 150 vessels to combat the oil at sea during the period 7-13 April. The oil also affected the shorelines of the northwest corner of Tsushima Island. The onshore clean-up was carried out by fishermen, members of the Self Defence Force and the fire brigades, municipal officials and volunteers. The 1971 Fund's Japanese surveyor has been monitoring the operations.

1.6 Samples of the oil have been taken from the affected area in Japan for comparison with the oil coming from the *Osung N°3*. These samples will be sent for chemical analysis.

1.7 The 1971 Fund has appointed the International Tanker Owners Pollution Federation Ltd (ITOPF) to act as the Fund's experts, together with Korea Marine & Oil Pollution Surveyors Ltd (KOMOS) in Korea and General Marine Surveyors (GMS) in Japan.

1.8 The *Osung N°3* was not entered in any P & I Club, but was insured by a commercial insurer in London for protection and indemnity up to a limit of US\$1 million (£600 000) per incident.

1.9 The limitation amount applicable to the vessel is estimated at 104 500 SDR (£88 000).

2 Impact on fisheries

Republic of Korea

2.1 On the south Korean coast, traditional fishery and intensive aquaculture are carried out throughout the area. Important fisheries are the common fishing grounds, coastal set-net fisheries and an extensive mariculture industry. Oil reached only a few small islands close to the site of the incident where only limited fishing takes place.

2.2 So far there have been no reports of damage to fisheries, but some claims are anticipated.

Japan

2.3 Tsushima Island supports seaweed cultivation, set-net fishing and a boat fishing community. Damage to these fisheries has been alleged, but so far there has been no indication of the scale of impact or of the magnitude of claims.

3 Consideration by the Executive Committee at its 53rd session

3.1 At its 53rd session, the Executive Committee noted that it was likely that a significant quantity of oil remained on board the sunken ship, that if this oil were to be released there would be a risk of the oil affecting a large number of aquaculture facilities located some seven kilometres north of the site of the sunken ship and that such a release could give rise to substantial claims for compensation.

3.2 The Director stated that, subject to any instructions which the Executive Committee might wish to give him, he intended to hold discussions with the Korean authorities concerning the most appropriate way of dealing with the oil remaining in the sunken ship, whilst not involving the 1971 Fund in carrying out such operations. He emphasised that he would make it clear that the 1971 Fund could assist the Korean authorities only with expert advice and could not become involved in the operations to inspect the ship, make repairs to prevent further escape of oil or remove any oil from the ship. He stated that he would also make it clear that the 1971 Fund could not guarantee to pay the costs of any such operations, but that these costs would have to be presented as a claim for compensation which would be subject to an assessment as to admissibility on the basis of the criteria laid down by the Assembly and Executive Committee.

3.3 The Committee recalled that, in respect of the *Tanio* incident (France, 1980), the 1971 Fund had been present at the meetings between the French Government and marine engineering companies held to consider the best way of dealing with the sunken fore-section of the tanker. It was also recalled that the 1971 Fund had informed the French Government that, in its view, the proposed pumping of the oil from the wreck seemed to be a reasonable measure to prevent, or at least minimise, further pollution damage. It was further recalled that the French Government's claim for the cost of the pumping operation had not been accepted in full.

3.4 The Executive Committee endorsed the course of action proposed by the Director as set out in paragraph 3.2 above (document 71FUND/EXC.53/12, paragraph 3.8.5).

3.5 The Executive Committee authorised the Director to make final settlements 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 (document 71FUND/EXC.53/12, paragraph 3.8.7).

3.6 The Executive Committee noted that it was not possible at this stage to make any accurate estimate of the total amount of the claims arising out of this incident, in particular in view of the risk represented by the oil remaining on board the sunken ship. The Committee considered that the total amount of the claims arising out of the *Osung N°3* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and 1971 Fund Convention. The Committee maintained the position taken in respect of previous incidents that it was necessary, in such cases, to exercise caution in the payment of claims, since under Article 4.5 of the 1971 Fund Convention all claimants had to be given equal treatment. In the Committee's view it was necessary to strike a balance between the need to prevent an overpayment situation from arising and the importance of the Fund's paying compensation as promptly as possible to victims of oil pollution damage. Due to the fact that the limitation amount applicable to the *Osung N°3* was very low, the Committee considered it essential that the 1971 Fund should be able to make payments at an early stage. In view of the paucity of information available, the Committee considered that it was unable at this stage, to determine a percentage for the payments to be made by the Fund. For this reason, the Committee decided to authorise the Director to make payments up to a percentage to be fixed by him, exercising caution in the assessment of the likely total amount of the claims (document 71FUND/EXC.53/12, paragraph 3.8.8).

3.7 The Executive Committee decided that the level of payments should be reassessed by the Committee at its 54th session, in the light of the information available at that time. The Director was instructed to obtain as much information as possible on the potential claims arising out of this incident.

4 Inspection of the wreck and removal of the oil

4.1 The 1971 Fund employed an expert from a London firm of marine surveyors (Murray Fenton & Associates Ltd) to monitor operations and to liaise with the Korean authorities which were considering taking measures to inspect the wreck and to remove the oil from the wreck. The expert has visited the Republic of Korea twice and held discussions with the Korean Marine Police on these matters.

4.2 The Korean authorities carried out inspections of the wreck by remotely operated vehicle (ROV). The surveys, some of which encountered technical problems, were carried out on 11 and 12 April, and during the periods 20-30 April and 19-24 May 1997. Further surveys were suspended because the salvage vessel suffered engine failure. The surveys carried out established, however, that the wreck was in an upright position, that there was damage to a number of forward port side tanks, and that traces of oil were leaking from n°4 port cargo tank.

4.3 The 1971 Fund's expert has conveyed to the Korean Marine Police the Director's view that the oil remaining in the wreck constituted a serious pollution risk and that it was important that appropriate measures were taken to prevent further escape of the oil. The expert indicated that in his view only very limited information could be obtained through inspections by ROV. He stated that he considered it necessary to use experienced divers to determine the condition of the ship. Various methods for recovering the oil were also discussed at the meeting.

4.4 It is understood that the Korean authorities are now considering carrying out an operation to ascertain the quantity of oil in the tanks of the wreck by drilling holes in it. It is also understood that a salvage company has made a proposal to carry out such an operation.

4.5 The Korean Marine Police has issued an order to the shipowner to remove the oil and the wreck. It is understood that the cargo owner has been instructed to remove the oil. Four salvage companies have been in contact with the shipowner and expressed interest in carrying out such operations.

4.6 The 1971 Fund has received requests from the Korean authorities, from the shipowner and from the owner of the cargo that the 1971 Fund should take measures to remove the wreck or the oil or

guarantee the payment of such measures. The 1971 Fund has also received enquiries from salvage companies about the 1971 Fund's position as regards the payment of the cost of oil removal operations. In reply to these requests, the Director has explained the role of the 1971 Fund and the criteria for the admissibility of claims for compensation along the lines set out in paragraph 3.2 above.

4.7 In a communication to the Director, the Ministry of Maritime Affairs and Fisheries has referred to Articles 4.7 and 4.8 of the 1971 Fund Convention which deal with credit facilities. These provisions read:

4.7 The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

4.8 The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

4.8 The criteria for the extension of credit facilities are laid down in Internal Regulations 10.1 and 10.2 which read:

10.1 On the application of a Member State which is in imminent danger of substantial pollution damage arising from a particular incident, the Director may, if he estimates that the 1971 Fund will be called upon to pay compensation under the 1971 Fund Convention in respect of that incident, provide that State with reasonable credit facilities to enable it to initiate or continue with the taking of adequate preventive measures.

10.2 Subject to conditions specified by the Assembly regarding, *inter alia*, the data and supporting justifications to be provided by a State requesting credit facilities, the Director shall determine whether in the light of all the circumstances of the case the provision of credit facilities by the 1971 Fund in respect of a particular incident is justified.

4.9 In his reply to the Ministry of Maritime Affairs and Fisheries, the Director stated that the dispatch of the 1971 Fund's expert to Korea had *inter alia* the purpose of assisting the Korean authorities. He also stated that if the Korean authorities were to request suggestions of appropriate contractors to carry out any operations suggested by the Korean authorities, the 1971 Fund would be prepared to respond to this request. As for the reference to Article 4.8, the Director stated that it was clear from the legislative history of Article 4.8 that this provision was inserted in the Convention for the purpose of assisting developing countries. He mentioned that this was also clearly understood by the Assembly of the 1971 Fund, which had adopted the Internal Regulations in question. The Director stated that, for this reason, he did not feel authorised to grant credit facilities to the Government of the Republic of Korea or to any other Korean authority in respect of the *Osung N°3* case.

5 Claims for compensation

5.1 As regards Korea, claims for compensation have been presented by a number of contractors and public authorities for participation in the clean-up operations and the inspection of the sunken vessel. These claims, totalling Won 728 million (£503 000), are being examined by the 1971 Fund's experts.

5.2 It is possible that there will be claims from the Korean fishery and mariculture sectors.

5.3 Claims will be submitted for clean-up operations carried out in Japan. Claims will also be presented by a number of Japanese fishery co-operative associations for loss of income caused by the oil spill.

6 Level of the 1971 Fund's payments

6.1 There is so far only limited information available as to the cost of the clean-up operations in Korea. As mentioned above, it is possible that claims will be submitted by the Korean fishery and mariculture sectors. It is not possible to make any estimate of the cost of operations which may be undertaken to prevent further release of oil or for wreck removal. There is no information as to the cost of clean-up operations in Japan, nor as to the potential fishery claims in Japan.

6.2 In view of the great uncertainty resulting from the fact that there is a significant quantity of oil remaining in the wreck which represents a serious pollution risk, the Director feels that it is not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. In this situation it is, in the Director's view, necessary to strike a balance between the need to exercise caution in payment of claims and the importance of the 1971 Fund being able to make payments at an early stage, noting that the limitation amount applicable to the *Osung N°3* is very low. He takes the view that he would not be able to recommend at this stage payments of more than 25% of the damage or loss actually suffered by each claimant, as assessed by the experts of the 1971 Fund at the time the payment is made.

7 Applicability of the Conventions

7.1 At the time of the *Osung N°3* incident, the Republic of Korea was not Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. The amount available for compensation for damage caused in Korea is therefore to be determined pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £51 million).

7.2 As regards damage in Japan, the situation is different. At the time of the incident, Japan was Party to the 1992 Conventions, and the maximum amount available for damage in Japan will be determined in accordance with these Conventions, ie 135 million SDR (£114 million), including any payments made to Korean and Japanese claimants under the 1969 Civil Liability Convention and the 1971 Fund Convention. If the total amount of the claims arising out of the incident for damage in Korea and Japan were to exceed 60 million SDR and payment under the 1971 Fund Convention had to be pro rated, the Japanese claimants would be entitled to additional compensation under the 1992 Fund Convention. Since the *Osung N°3* was registered in the Republic of Korea, the limit of the shipowner's liability would be that laid down in the 1969 Civil Liability Convention.

8 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 take note of the Director's position in respect of the granting of credit facilities (paragraph 4.9);
 - (c) to make a decision on the level of the 1971 Fund's payments (paragraph 6); and
 - (d) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
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