



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
55th session
Agenda item 3

71FUND/EXC.55/10
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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 to 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 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 diminishing 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. The clean-up at sea was terminated on 13 April 1997.

1.4 Although the shore of small islands close to the grounding location were oiled, there have been no reports of mainland coast having been polluted.

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 in Japan were taken for comparison with the oil coming from the *Osung N°3*. These samples were sent for chemical analysis. In the view of the 1971 Fund's experts, the results of the analyses are fully consistent with the oil in Japan having been spilled from the *Osung N°3*.

1.7 The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US\$1 million (£600 000) per incident.

1.8 The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£90 000).

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 limited fishing takes place, and the impact is believed to have been minimal.

Japan

2.2 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 clear indication of the scale of impact.

3 Inspection of the wreck and removal of the oil and related issues

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 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 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).

3.4 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.

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

3.6 The 1971 Fund's expert 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.

3.7 The Korean Marine Police issued an order to the shipowner to remove the oil and the wreck. It is understood that the cargo owner was instructed to remove the oil.

3.8 The 1971 Fund 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 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 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.

3.9 In a communication to the Director, the Ministry of Maritime Affairs and Fisheries 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.

3.10 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.

3.11 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 this provision that it 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.

3.12 At its 54th session, the Executive Committee endorsed the position taken by the Director with regard to the granting of credit facilities to the Korean Government or to any other authority in respect of this case (document 71FUND/EXC.54/10, paragraph 3.5.12).

3.13 It is understood that the Korean authorities are considering carrying out an operation to determine the quantity of oil in the tanks of the wreck by drilling holes in the hull. It is also understood that several salvage companies have been in contact with the Korean authorities and the shipowner, and expressed interest in carrying out operations to remove the oil and the wreck.

4 Claims for compensation

4.1 As regards Korea, claims for compensation have been presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. These claims, totalling Won 1 300 million (£890 000), are being examined by the 1971 Fund's experts.

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

4.3 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. The 1971 Fund's Japanese experts estimate that the Japanese claims may total ¥1 300 million (£6.7 million).

5 Level of the 1971 Fund's payments

5.1 At its 53rd session, 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).

5.2 At its 54th session, the Executive Committee noted that there was only limited information available as to the cost of the clean-up operations in the Republic of Korea, and that claims might be submitted by the Korean fishery and mariculture sectors. It was noted that it was not possible to make an estimate of the cost of operations which might be undertaken to prevent further release of oil or for wreck removal. The Committee also noted that there was no information as to the cost of the clean-up operations in Japan, nor as to potential fishery claims in Japan.

5.3 In view of the great uncertainty resulting from the fact that a significant quantity of oil remained in the wreck, representing a serious pollution risk, the Executive Committee shared the Director's view that it was not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. The Committee considered that it was necessary to strike a balance between the need to exercise caution in the payment of claims and the importance of the 1971 Fund's being able to make payments at an early stage, noting that the limitation amount applicable to the *Osung N°3* was very low. The Committee therefore decided that, for the time being, the Director was authorised to make payments of 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 was made (document 71FUND/EXC.54/10, paragraph 3.5.7).

5.4 The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Committee's next session (document 71FUND/EXC.54/10, paragraph 3.5.8).

5.5 There is still 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 an estimate of the cost of operations which might be undertaken to prevent further release of oil or for removal of the oil remaining in the wreck. There is only limited information as to the cost of the clean-up operations in Japan and the potential fishery claims in Japan.

5.6 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 still not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. He is therefore not able to recommend increasing the level of the 1971 Fund's payments.

6 Limitation proceedings

The shipowner has applied to the competent court for the commencement of limitation proceedings.

7 Investigation into the cause of the incident

7.1 In a judgement of 24 June 1997, the competent Korean criminal court imposed a prison sentence of one year on the master of the *Osung N°3*. The court held as follows:

- i) Tankers are prohibited from navigating in the area where the incident occurred, since many vessels in the past have grounded or sunk due to many submerged rocks being scattered in that area. The master navigated the vessel through the prohibited area in order to save time, believing that no incident would occur since he had navigated in that area without any problems many times.
- ii) Since there were north-easterly winds of 17.7 meters/sec (corresponding to gale force 8), waves of three metres height and poor visibility, the master should have navigated the vessel carefully by closely monitoring the radar, supplementing the look-outs and frequently checking the vessel's position. However, the master failed to exercise due care in the navigation of the ship and mistook an island which appeared on the radar for a vessel which was navigating ahead of the *Osung N°3*.

7.2 In view of the findings of the criminal court, the Director considers that there are no grounds for the 1971 Fund's opposing the shipowner's right to limit his liability, nor to refuse indemnification under Article 5.1 of the 1971 Fund Convention.

8 Applicability of the Conventions

8.1 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 £50 million).

8.2 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 is therefore to be determined in accordance with these Conventions, ie 135 million SDR (£112 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.

8.3 The Director will submit to the Assembly of the 1992 Fund for consideration whether, pending payments by the 1971 Fund of the balance of the Japanese claims (ie beyond the 25% payment limit fixed by the Executive Committee), the 1992 Fund should pay this balance and subrogate these claims against the 1971 Fund (document 92FUND/A.2/15).

9 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 make a decision on the level of the 1971 Fund's payments (paragraph 5); and
 - (c) 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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