

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	<b>Agenda item: 3</b>		IOPC/JUN10/3/5/1	
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	1992 Fund Executive Committee		<b>92EC48</b>	●
	1992 Fund Working Group		<b>92WG6/1</b>	

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### HEBEI SPIRIT

Submitted by the Republic of Korea

<b>Summary:</b>	This document contains information on the pollution caused by the <i>Hebei Spirit</i> incident off the west coast of the Republic of Korea and the measures taken by the affected State following the incident.
<b>Action to be taken:</b>	<p><u>1992 Fund Executive Committee:</u></p> <p>The Executive Committee is invited to take note of the information provided to facilitate prompt and adequate compensation to the affected residents, and also to review and discuss the proposal requesting the Fund to make payments of 100% of the assessed amount, which is the agreement being followed by the relevant P&amp;I Club.</p>

### 1 Introduction

- 1.1 This document is submitted in order to enhance the overall understanding of Member States regarding the massive oil spill incident which took place off the coast of Taean County, South Chungcheong Province, Republic of Korea on 7 December 2007 following the collision between a barge and the M/T *Hebei Spirit*, resulting in a spill of 12 547kl of crude oil.
- 1.2 This document invites the Executive Committee to review and render a decision on the proposal of the Republic of Korea, which requests that the Fund, along with the P&I Club, make full payments of the assessed amount up to the maximum compensation limit set forth by the 1992 Fund Convention, and safety mechanisms that the Korean Government should ensure and guarantee to that end.
- 1.3 Furthermore, the Republic of Korea informs the Executive Committee that in early May 2010, its Government deposited the instrument of accession to the 2003 Supplementary Fund Protocol and accordingly, the Republic of Korea will become a Member State of the Supplementary Fund in early August 2010.

### 2 Clean-up operations

- 2.1 Heavy oil slicks covered 70km of the coastline, and oil residues and tar balls reached vast areas including a total of 101 islands.
- 2.2 Clean-up operations were carried out by more than 1.2 million volunteers, local residents, the Korea Coast Guard, the military, Korea Marine Environment Management Corporation (KOEM), and private clean-up companies. Emergency clean-up operations were finalised (more than 32 000 tonnes of contaminated residue and 4 200kl of waste oil were collected and disposed) by 10 October 2008, but additional clean-up operations had to be arranged in the first half of 2009 as more traces of oil were found, particularly tar balls in some of the islands and marine aquaculture farms.

### **3 Investigation into the incident**

- 3.1 Both parties of the collision accident objected to the first administrative judgement by the Incheon Maritime Safety Tribunal (4 September 2008) and also the 2nd judgement by the Korean Maritime Safety Tribunal (4 December 2008) pertaining to the collision and oil spill incident, and the appeal is currently pending at the Supreme Court of the Republic of Korea.
- 3.2 The final verdict of the administrative judgement on the incident will be determined by the Supreme Court's ruling.

### **4 Limitation proceedings**

- 4.1 The Seosan Branch of the Daejeon District Court decided to open the limitation proceedings filed by the shipowner on 9 February 2009. The Limitation Court requested the shipowner's legal representative to instruct the P&I Club and the Fund to proceed swiftly with the assessment of claims so that the limitation proceedings may be carried out promptly.
- 4.2 The total number of limited claims filed to the Limitation Court is approximately 126 000 (KRW 3.5 trillion), out of the total 110 000 are from the fisheries sector (about 89 000 are hand-gatherers' claims) and the remaining 16 000 from the non-fisheries sector such as tourism and for clean-up costs.
- 4.3 The Seoul Central District Court decided to open the limitation proceedings filed by the tugboats' fleet on 23 March 2009. The claimants' representatives and the Korean Government appealed that decision in late January 2010, and the case is pending in the Supreme Court.

### **5 Changes in the marine environment**

- 5.1 On 31 July 2009, the Korean Government designated and announced that the coasts and islands, of which the marine environment or the ecosystem may have been damaged or changed due to the said incident. On 2 November 2009, the Government established a special environmental restoration plan for the designated areas which will require KRW 4 800 billion by 2019.
- 5.2 Under this special plan, the Korean Government will conduct extended investigations to evaluate the changes in the marine environment and the ecosystem since the said incident, and take necessary measures for environmental restoration.

### **6 Special measures taken by the Korean Government**

#### **6.1 Measures to stabilise the local residents' hardship**

- 6.1.1 The Korean Government provided KRW 117.2 billion as emergency hardship payments to support the livelihood of the affected local residents. In order to recover the depressed local economy, the Korean Government is also carrying out a public work program costing KRW 15.3 billion. Furthermore, other financial support has been offered, such as a reduction or exemption of national/local taxes and deferment of public insurance premiums.
- 6.1.2 For the affected local fishermen, the Korean Government relieved some of the financial burden associated with the fishery loans by reducing and exempting interest accrued. In addition, the Korean Government furnished KRW 27.3 billion as a special fund to resume fishing activities, which helped to stabilise the fishermen's livelihood and normalise fishery operations.

#### **6.2 Support based on the Special Law and decisions of the Special Committee**

- 6.2.1 The 'Special Law for the Support to Residents Suffering Damages from the M/T Hebei Spirit Oil Spill Incident and Restoration of Marine Environment' was enacted on 14 March 2008. The Special Law prescribes that the Korean Government may make advance payments to claimants based on the

assessed amount of the Fund, and if the total amount approved by the Fund exceeds the maximum amount available under the 1992 Fund Convention (KRW 321.6 billion), then the Korean Government would make payments to cover that excess amount.

- 6.2.2 The Special Committee, comprising the Prime Minister as the Chairperson, decided on the details of implementation of the Special Law on 19 June 2008, the Committee established a standard rule that the level of advance payments and excess amount to be covered by the Special Law would be based on the total amount assessed by the Fund. Furthermore, for preparation against a lack of funding budget, the Ministry of Land, Transport and Maritime Affairs (MLTM) has contracted a loan agreement with a private bank that enables the Korean Government to make advance payments to the claimants first and later reimburse the bank with interest.
- 6.2.3 Also, the Special Law prescribes that a claimant, who has not received the assessment results from the Fund within six months from filing a claim, may apply for a loan to the Korean Government and the range of this loan is between KRW 1.5 to 8.5 million per person. The total number of loans executed was 920 (KRW 3 billion) as at the end of 2009, but that figure had increased rapidly to 6 557 (KRW 17 billion) as at the end of May 2010, and is expected to jump further if the Fund's assessment of fisheries claims is extended for many more days.
- 6.2.4 Pursuant to the Special Law, as at 31 May 2010, the Korean Government had made advance payments for 373 applications (KRW 31.4 billion) submitted by claimants, which were based on the full amounts assessed by the Fund.
- 6.2.5 In accordance with the decision rendered by the Special Act, at the June 2008 session of the Executive Committee, the Korean Government declared its decision to stand last in the queue (SLQ) in receiving compensation for clean up and recovery costs incurred by the central and local governments.
- 6.3 Measures to improve tainted image of the affected areas
- 6.3.1 Following the incident consumers tended to avoid purchasing fisheries products from the affected areas. As a result, a national food-tasting event was held in March 2009, which the President of the Republic of Korea and National Assembly Members attended, for the purpose of promoting the sales of fisheries products captured in the affected areas.
- 6.3.2 The central government, local governments and/or the local residents continue to host various marketing events and promotional projects to boost the local economy of the affected areas; for instance, in 2009, Sea Fishing Contest, Wetland Sports Festival, Flower Exhibition and Beach Golf Tournament. Promotional efforts will persist throughout this year as well to improve the tainted image, such as the 2010 Beach Volleyball Tournament.
- 6.3.3 Meanwhile, numerous enterprises, NGOs and various media entities are carrying out campaigns and holding promotional events to improve the local image and boost the local economy.
- 6.4 Measures for the fisheries activity
- 6.4.1 Immediately after the *Hebei Spirit* incident on 7 December 2007, the Korean Government restricted all harvest and capture of marine products from the affected areas, in order to protect the public health against any potential negative effects from sales and distribution of contaminated fisheries products. As of 18 April 2008, in consideration of the progress of the clean-up operations undertaken in the affected areas, and the results of the marine environment study and fisheries product safety test, the Korean Government lifted restrictions on capture fishery activities for the first time. Thereafter, since 3 September 2008, all types of fishery operations were resumed in all the affected waters and coasts.
- 6.4.2 In addition, in order to prevent secondary pollution, the removal of oyster cultivation facilities was started in May 2008 and completed by 24 July 2008 prior to the opening of the recreational beaches

in the summer peak season. For the activity, the Korean Government put KRW 12.61 billion.

- 6.4.3 In order to restore the contaminated fishing grounds as early as possible, the Korean Government is working with experts from the National Fisheries Research and Development Institute (NFRDI) to survey the status of contamination in the affected areas and to draw up a restoration plan with a government budget of KRW 1 billion, under which the first and second projects were completed in 2008 and 2009 respectively, and continuative project is currently ongoing during 2010.
- 6.4.4 Furthermore, a supplementary budget of KRW 2 billion was earmarked for restoration in the affected fishing grounds, based on which environment improvement projects are carried out such as tilling and dredging of the fishing grounds. An additional budget of KRW 21.6 billion has been secured in 2010 for the same purpose. The Korean Government plans to promote a number of similar projects on a mid-to-long term basis to increase the reduced marine resources.

## **7 Collaboration with the P&I Club and the Fund**

### **7.1 Cooperation Agreement between Korean Government and P&I Club**

- 7.1.1 The Korean Government concluded with the shipowner and the P&I Club the First Cooperation Agreement on 5 January 2008, and the Second Cooperation Agreement on 1 July 2008 regarding compensation for oil pollution damage.
- 7.1.2 In accordance with this Second Cooperation Agreement, the P&I Club is making 100% payments to the claimants based on the amount assessed by the P&I Club and Fund, and as of 31 May 2010, a total of KRW 102.5 billion had been paid out.
- 7.1.3 Also, the Korean Government has made advance payments totalling KRW 31.4 billion pursuant to the Special Law, out of which KRW 27.3 billion as subrogated claims has been reimbursed by the P&I Club. At the time of issuing of this document, the total amount paid by the P&I Club and the Korean Government (advance payments) stood at KRW 106.6 billion.

### **7.2 Regular meetings with the Claims Office (*Hebei Spirit* Centre)**

- 7.2.1 The Korean Government holds regular meetings with the claims office, the *Hebei Spirit* Centre (HSC), set up by the P&I Club and the Fund, in order to discuss pending issues of compensation and share information. As of the end of May 2010, 23 meetings had taken place.
- 7.2.2 With regular attendance by the representatives of the P&I Club and the Fund, key issues of compensation and ways to facilitate the compensation process are discussed at the meetings.

### **7.3 Information Sharing to facilitate the compensation procedure**

- 7.3.1 The Korean Government developed a web-based database system to facilitate the execution of the loan and advance payment policies of the Korean Government according to the Special Law as well as to prevent double payments of compensation that may arise as the Korean Government makes advance payments. In line with arrangements made with the Fund, claims information on registration of claims, compensation and by the Korean Government's advance payments for individual claims are shared.
- 7.3.2 Collaboration with the Secretariat continues and since February 2010, the Korean Government receives electronic data on individual claimants that are a part of group claims. By the end of May 2010, detailed information had been shared for 15 000 claims, in respect of about 94 000 claimants, out of a total of 19 000 claims.

## 8 Compensational measures

### 8.1 Claimant trend

- 8.1.1 As at 31 May 2010, 2 years and 6 months after the onset of the incident, out of a total 18 868 claims (117 000 claimants) that were registered at the HSC, only 6 065 (32 %) claims had been assessed, which indicates that the assessment procedures need to be carried out more quickly.
- 8.1.2 On 10 December 2009, two years after the incident occurred, about 3 000 residents from the main affected areas assembled in front of the Government Complex and requested prompt compensation for damages inflicted. Big and small rallies are also held frequently in the affected areas.
- 8.1.3 A very unfortunate incident took place in late February in Taean County, the area most affected by the incident, where a claimant, who ran an aquaculture farm and was also serving as the representative of the Claimant's Committee of the area, took his own life. This claimant left a short note, which reads that there is no way to resolve the increasing debt nor make up for all the damages caused by the oil spill incident, and that early compensation is called for. Prior to his untimely death, there were three other residents who also committed suicide in relation to the said incident.
- 8.1.4 A recent press report in the first half of this year noted that in a neighbouring area of the incident site, 14 residents, some of whom participated in the clean-up operations following the incident, were diagnosed to have cancer; which thereby further escalated the worry and anxiety of the local residents.
- 8.1.5 The local residents are outwardly expressing that they have reached their economic and psychological stress limitations due to the prolonged wait for compensation, and are continually appealing to the Fund for prompt compensation and to the Korean Government for full support.

### 8.2 Clean-up costs

- 8.2.1 As at 31 May 2010, a total of 271 clean-up claims (KRW 193.7 billion) had been registered, out of which 190 claims had been assessed and accordingly, KRW 83.3 billion had been paid out by the P&I Club or the Korean Government.
- 8.2.2 Pursuant to the Korean Government's decision to stand SLQ for government claims, most of the payments have been made to private contractors, whose claims include labour costs and equipment rental costs of local residents.
- 8.2.3 Payments have been made for the larger portion of the private clean-up claims, but there still remain unassessed claims that include the labour costs and equipment rental costs of local residents. The Korean Government continues to request the Secretariat to progress with prompt compensation for private clean-up costs.
- 8.2.4 In reference to the private-contractor claims that have been registered by the Fund, the local government subrogated the claimants' rights and made payments in advance totalling KRW 14.4 billion, particularly for labour costs of local residents. Moreover, the Korean Government has provided emergency funding to private contractors on four different occasions totalling KRW 4.1 billion.

### 8.3 Resolving differences on fishing restriction to facilitate smooth and prompt assessment

- 8.3.1 The Korean Government and the Fund, in accordance with the decision of the 45th session of the 1992 Fund Executive Committee, held meetings to resolve differences on the reopening of fisheries such as by holding formal and informal meetings and exchanging inquiries in writing, but only confirmed that the gap between the positions taken by the two parties was too big and that they were far from reaching a resolution.

- 8.3.2 The Korean Government then focused on discussing clean-up operations, for which relatively clear evidence could be presented, in the hope that progress would be made and expanded to the other points of issue. However, differences remained even with clean-up operations, and thereby the Korean Government concluded that any further discussions on the issue would be of no practical use.
- 8.3.3 Therefore, the Korean Government has submitted a separate document (IOPC/JUN10/3/5/2) to the Executive Committee that explains the decision-making process for reopening fisheries and reasons behind the difference of views, based on the documents summarised up to the present and discussions between the two parties, and requests that the 1992 Fund Executive Committee finalise a reasonable conclusion on the fishing restriction issue.
- 8.3.4 More recently, (London, 23 April 2010 and Seoul, 25 May 2010) the Korean Government and the Secretariat have exchanged questions and held discussions, during which the Secretariat opined that, in reference to the ROK document (IOPC/JUN10/3/5/2), the re-opening of the fisheries was decided belatedly because separate standards and procedures for testing seafood safety were not established.
- 8.3.5 As regards the position taken by the Secretariat, however, the Korean Government asked how sampling procedures and standards for seafood safety alone could be separated/differentiated from those for environmental impact assessment, which includes monitoring of water quality as well as seafood safety. It also asked if there existed example cases. The Korean Government delivered contrary views to the Secretariat's opinion that it was possible to re-open fisheries while clean-up operations were ongoing in some areas. The Government is currently waiting for a written reply, which the Secretariat agreed to send after it had reviewed the matter with its experts.
- 8.4 Efficient progression with interview of hand-gatherers
- 8.4.1 Most of the claims, approximately 89 000 claims, are submitted by hand-gatherers. To enable prompt and efficient compensation for them, the Korean Government and the Fund agreed on an interview order of priority, and the Director introduced in detail the assessment guidelines and methods of hand-gatherers in document 92FUND/EXC.45/6/Add.1.
- 8.4.2 In the process of notifying the list of hand-gatherers to be interviewed, the Korean Government noticed that some of the hand-gatherers belonging to group II were omitted since firstly, some had failed to be informed of the fact that there was a deadline, and secondly, those affiliated to non-fisheries claimants' committees were mistakenly unreported by their respective affiliations.
- 8.4.3 This issue on ways to interview the omitted hand-gatherers (group II) was continuously discussed at the regular meetings between the Korean Government and the HSC. The Fund stated its position that among the registered hand-gatherer claims, interviews for categories I and II would take precedence, followed by the omitted hand-gatherers of group II, and thereafter, group III on the condition that proof of hand-gathering activities could be presented.
- 8.4.4 The Korean Government continued to deliver the Fund's position to the local authorities and relevant claimants' representatives, but the hand-gatherers remain worried and anxious that interviews may not even take place because the Fund's interview guidelines have not been sent to the field experts. During the regular meetings with the HSC, the Korean Government agreed to confirm the list of omitted hand-gatherers of group II and to notify HSC, and HSC expressed commitment to delivering that list to the experts on site and conducting interviews in order of priority.
- 8.5 Compensation for unlicensed aquaculture claims
- 8.5.1 The Fund's position on unlicensed aquaculture claims, as stated in document 92FUND/EXC.45/8 paragraph 3.4.5 and 3.4.11, is that any claim by a fisherman who is in violation of license requested by national law will not be accepted. The Executive Committee confirmed the Secretariat's view that claims submitted by unlicensed fishermen will be rejected in principle.
- 8.5.2 It should be noted that care should be taken with the claimants who are not in agreement with the

Fund's position, stated in document IOPC/OCT09/3/8/1, paragraph 5.3.5 that claims submitted by fishermen without legal license or approval will be rejected in principle, and the case would be filed in court.

- 8.5.3 The Korean Government sought legal counsel and was advised that even without license on aquaculture farms, compensation could be made for property damages and for loss of sales, and compensation should be made case by case depending on the degree of blameworthiness for violating the law.
- 8.5.4 The legal experts explained that according to the Supreme Court of the Republic of Korea, illegal earnings are not to be compensated, but earnings from legally banned activities do not necessarily constitute illegal earnings and that the following points should be considered when determining the illegality of earnings made:
- (1) purpose of relevant law, particularly purpose of the Fisheries Act in case of fisheries aquaculture farms;
  - (2) effective agreement to sell the fish caught;
  - (3) the degree of ethical blameworthiness for earnings made from illegal activities; and
  - (4) degree of illegality.
- 8.5.5 The Fund took a similar position in the case of the *Sea Prince* incident, another oil spill incident that occurred in the Republic of Korea in 1995 (document 71FUND/EXC.58/4/Add.1)
- 8.5.6 Therefore, with due consideration of the Court's view, the Korean Government deems that the unlicensed aquaculture claims, in principle, should not be rejected, but reviewed and compensated on a case by case basis.
- 8.5.7 Furthermore, the Korean Government requests that the Secretariat present its precise position through an official document with more details on the criteria of compensation for unlicensed aquaculture claims. This will help to settle in advance claimants' unjustified expectation and enable the claimants to proceed with the next step, if needed, such as taking the case to court, and thereby render quick decisions of action.
- 8.6 Presentation of prompt and adequate assessment results
- 8.6.1 A claim number was given to the Nammyeon Fisheries Cooperative's claim in November 2008, then a site survey was carried out and completed, and no additional request for supplementary documents was made by the Fund (site reviewer). It is our understanding that this particular claim is held by the Fund to undergo a final internal review. However, assessment results have not been provided still nor an acceptable explanation of the delay, and so the victims remain very anxious.
- 8.6.2 According to the data received through HSC, as at 31 March 2010, only five out of the 915 capture fisheries claims (the actual number of claimants is estimated at some 99 000) had been assessed (in fact three claims had been rejected thereafter): not a single claim compensated. It is a similar situation with the 5 139 aquaculture claims, out of which 568 claims were assessed and 372 claims rejected: only 164 claims were compensated.
- 8.6.3 The Korean Government requests that the Fund promptly proceeds with the assessment of fisheries claims and notifies the assessment results to the claimants as soon as possible.

## 8.7 Tourism claims and compensation

- 8.7.1 As at 31 May 2010, 7 639 tourism claims (KRW 188.1 billion) were registered, out of which 1 319 have been assessed by the Fund and payments of KRW 13.8 billion have been made. However, 2 470 claims (63% of approved claims) were rejected by the P&I Club and the Fund.
- 8.7.2 The claimants sincerely welcomed the decision at the October 2009 session of the 1992 Fund Executive Committee, which approved the Director's intention to test-apply the methodology on small non-fisheries claimants earning less than KRW 24 million per year, and are expecting proper payments to be made via such procedures .
- 8.7.3 The affected areas including Taean County and Boryeong City are popular tourist sites because of their beautiful natural landscape and proximity to the metropolitan area. Unfortunately, the scale of tourists has not yet returned to the pre-incident level, but the Fund has unilaterally defined a set period to be applied for compensation. This worries the claimants, who continue to present their view that experts should survey the existence of loss for each individual claim to enable proper compensation, rather than assessing all claims by a set date or period. As such, the Korean Government requests the Secretariat to review the reasonableness and necessity of the claimants' view, and is fully ready to provide information such as statistics and analytical data upon request.
- 8.7.4 For reference, the Korean Government has submitted the Income Estimation Method for Tourism Claims with Few or No Supporting Documents (document IOPC/JUN10/5/3) in relation to the assessment process for the numerous small claims with no supporting documents, which will be discussed at the 1st meeting of the 1992 Fund sixth intersessional Working Group. The Korean Government plans to actively participate in the Working Group and invites Member States to take note of this document.

## 9 Suggestions for the 1992 Fund Executive Committee

### 9.1 Full payment of the assessed amount by the Fund

- 9.1.1 As explained in paragraphs 6.2 and 7.1, based on the Cooperation Agreement with the Korean Government, the P&I Club is making full payments, not the amount by level of payment, currently 35%, set by the Fund, but the amount approved by the Fund. The P&I Club paid a total of KRW 102.5 billion (56.33 million SDR; 1 SDR = KRW 1 819.61 as at 28 May 2010), which is 63 % of the shipowner's limitation of 89.77 million SDR.
- 9.1.2 The Korean Government has submitted a further document (IOPC/APR10/5/2) to the 1st meeting of the 1992 Fund sixth intersessional Working Group, which introduces the Special Law of the Republic of Korea, the measures taken by the Korean Government to facilitate prompt and adequate compensation for damages caused by the said incident, and cooperation with the P&I Club to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC.
- 9.1.3 The Korean Government recognises the principle set out in the 1992 Fund Convention to make equal payments to all claimants, but requests the Executive Committee Members and Member States discuss and review this proposal (full payment of assessed amount by the Fund) for the following purposes:
1. Many victims will be able to receive full payments immediately after the Fund completes the assessment, which will help the victims to regain their livelihood more quickly;
  2. It will be greatly helpful to prevent potential confusion related to the compensation process, particularly when the payment rate changes at a later time and complicates settlement between the claimants and the Fund;
  3. When the payment rate is applied, many victims will choose to apply for advance payments



from the Korean Government based on the Special Law, which is full payment of the assessed amount. Accordingly, the Korean Government will become financially burdened and loaded with more administrative tasks. By making full payments, the Fund will be sharing the added burden, and furthermore, lessen the workload created by the Korean Government's subrogated claims and reimbursement procedures, so that more favourable conditions are established for the Fund to make more prompt and reasonable payments; and

4. Possible legal disputes may be reduced or eliminated. If the Fund applies the payment rate, and a claimant applies for an advance payment (full payment) from the Korean Government, that may lead to a legal dispute over the additional compensation.

## **10     Action to be taken**

### 1992 Fund Executive Committee

The Executive Committee is invited:

- (a) to take note of the information provided to facilitate prompt compensation; and
  - (b) to review and discuss the proposal of the Korean Government as regards full payments of the assessed amount by the Fund, as set out in section 9.
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