



INCIDENTS INVOLVING THE 1971 FUND

Note by the Director

Summary:	A résumé of all incidents and all documents submitted under this agenda item is set out.
Action to be taken:	Information to be noted.

1 **Introduction**

- 1.1 Article 26.1(b)(ii) of the 1971 Fund Convention provides that the Executive Committee shall approve settlements of claims against the 1971 Fund and take all other steps in relation to such claims envisaged in Article 18.7 of the 1971 Fund Convention.
- 1.2 Only two incidents (*Al Jaziah I*, United Arab Emirates and *Natuna Sea*, Indonesia) have occurred which have given or may give rise to claims against the 1971 Fund since the 62nd session of the Executive Committee. In addition, there are 21 incidents which took place before the 62nd session which will be reported to the Assembly.

2 **Presentation of documentation**

- 2.1 The documentation presented to the 23rd session of the Assembly has been structured in the following way:
- (a) incidents which the Assembly is invited to consider on the basis of a separate document for each incident; and
- (b) incidents which have been grouped together for practical reasons.
- 2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made - unless otherwise indicated - on the basis of the rates of exchange on 15 September 2000. However, for amounts representing actual payments by the 1971 Fund, the conversion has been made at the rate of exchange on the day of payment.

3 Summary of incidents

The situation in respect of the incidents involving the 1971 Fund can be summarised as follows:

3.1 Document 71FUND/A.23/14/1

- *Aegean Sea* (Spain, 1992): As instructed by the Executive Committee the Director has held discussions with the Spanish Government with the objective of reaching a global agreement, which would settle all outstanding issues. Significant progress has been made towards that objective. Discussions have been held concerning the admissible quantum of all claims (except those for which the amount of compensation has been fixed by the Courts). A provisional agreement on the admissible quantum of the established claims has been reached.

There exist differences of opinion between the Spanish State and the 1971 Fund on two legal issues, namely the distribution of liabilities between the State and the Fund and the question of whether the actions brought by a number of claimants in the civil courts are time-barred. The Director has held discussions with the Spanish Government on these issues and it is believed that an agreement to resolve these differences of opinion between the Spanish State and the Fund could be reached.

No action requested.

3.2 Document 71FUND/A.23/14/2

Braer (United Kingdom, 1993): The total amount of the claims in court, originally £80 million, now stands at £7.6 million, after a number of claims have been dismissed, settled out of court, withdrawn from the court proceedings or reduced in amounts. In May 2000 the 1971 Fund resumed payments of compensation, which had been suspended since October 1995, by paying 40% of the claims which had been approved but not paid. These payments totalled £2 million. The total payments of claims stands at £47 million.

No action requested.

3.3 Document 71FUND/A.23/14/3

- *Keumdong N°5* (Republic of Korea, 1993): The 1971 Fund appealed against the first instance Court's decisions in respect of a number of fishery claims. The Court of Appeal rendered a mediation decision in respect of claims submitted by an arkshell fishery co-operative. The Director decided not to lodge an opposition to that decision. The only remaining claims are those submitted by claimants belonging to the Yosu Fishery Co-operative, which are pending in the Court of Appeal.

No action requested.

3.4 Document 71FUND/A.23/14/4

- *Sea Prince* (Republic of Korea, 1995): Most tourism claims and fishery claims have been settled out of court and paid in full. One Village Fishery Association and 506 other claimants have taken legal action against the 1971 Fund. Most claims for clean-up have also been settled and paid in full but some outstanding issues remain. The shipowner's insurer has requested reimbursement from the 1971 Fund for payments made in respect of preventive measures associated with salvage operations. The shipowner is requesting reimbursement for clean-up claims. The Director has been unable to reach agreement with the shipowner's insurer.

No action requested

3.5 Document 71FUND/A.23/14/5

- *Sea Empress* (United Kingdom, 1996): Payments have been made to 798 claimants totalling £29.5 million. Legal proceedings have been commenced in respect of the majority of claims where agreement had not been reached prior to the expiry of the three-year time bar period. Progress has been made in reaching out-of-court settlements in respect of a number of these claims.

In accordance with the Executive Committee's instructions, the Director together with the 1971 Fund's legal advisers is currently preparing a recourse action against the Milford Haven Port Authority.

No action requested

3.6 Document 71FUND/A.23/14/6

N°1 Yung Jung (Republic of Korea, 1997): The question has arisen whether the 1971 Fund is entitled to recover from the Republic of Korea the amounts paid by the Fund in compensation and indemnification as a result of the *N°1 Yung Jung* incident. A claim to this effect has been dismissed by the Korean Government Compensation Committee.

Action requested:

- Decision as to whether the 1971 Fund should pursue an action against the Republic of Korea to recover the amounts paid by the Fund in compensation or indemnification.

3.7 Document 71FUND/A.23/14/7

- *Nakhodka* (Japan 1997): The *Nakhodka* broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. Claims totalling ¥35 128 million have been received by the Claims Handling Office in Kobe. Most claims have been settled. The total compensation payments to claimants amount to ¥13 804 million. Payments are currently restricted to 70% of the damage suffered by each claimant.

No action requested

3.8 Document 71FUND/A.23/14/8

- *Nissos Amorgos* (Venezuela, 1997): Legal proceedings relating to claims for compensation have been brought in five Venezuelan courts, including the Supreme Court. A number of smaller claims have been settled and paid. Further claims are time-barred. Discussions are being held with groups of major claimants. A claim has been presented by six shrimp processors and 2 000 fishermen who maintain that a downturn in catches of shrimps in 1998 was caused by the oil spill. A decision is required in respect of this claim. The Director has taken the view that negligence by the Republic of Venezuela was a substantial cause of the incident. A criminal court held, however, that the master of the *Nissos Amorgos* was liable for the damage arising as a result of the incident. The master appealed against the judgement. A recent decision by the Court of Appeal appears to have made the judgement null and void.

Action requested:

- Consider the admissibility of the claim presented by the six shrimp processors and 2 000 fishermen.
- Review the level of the 1971 Fund's payments.

3.9 Document 71FUND/A.23/14/9

Evoikos (Singapore, 1997): Claims have been presented in Singapore, Malaysia and Indonesia. Most claims from Malaysia and Singapore have been assessed and offers for settlement have been made in respect of these claims. The shipowner's insurer has made provisional payments in respect of the claims by public authorities in Malaysia and Singapore. The supporting documentation presented in respect of the claim by the Indonesian authorities is insufficient to enable the Fund to express an opinion on this claim, but the Director has expressed the view that it appears that the amounts claimed under the items relating to pollution of mangroves and pollution of sand are based on abstract calculations and that these items are therefore inadmissible. The limitation amount applicable to the *Evoikos* has been determined by the competent court in Singapore at £7.5 million.

Action requested:

- Decision as to whether the Director should be authorised to make payments.

3.10 Document 71FUND/A.23/14/10

- *Pontoon 300* (United Arab Emirates, 1998): Twelve claims totalling £40.4 million have been submitted. Eleven of these claims totalling £1.4 million related to clean-up operations and have been settled at £1.2 million. The remaining claim for £39 million was presented in May 2000 by the Municipality of Umm al Quwain on behalf of fishermen, tourist hotel owners, private property owners, a marine research centre and the municipality itself. These claims are for economic losses, property damage, clean-up and environmental damage. Further documentation is required before the alleged losses can be assessed. Payment by the 1971 Fund is limited to 75% of the loss or damage actually suffered by each claimant.

Action requested:

- Decision in respect of the level of the 1971 Fund's payment of claims

3.11 Document 71FUND/A.23/14/11

- *Al Jaziah 1* (United Arab Emirates, 2000): On 24 January 2000 the *Al Jaziah 1*, carrying fuel oil, sank off Abu Dhabi resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. The United Arab Emirates is a Party to both the 1971 Fund Convention and the 1992 Fund Convention. Claims totalling £1.3 million have been presented to the IOPC Funds. These claims are being examined. Further claims are expected.

Action requested:

- Decision in respect of the application of the 1971 and 1992 Fund Conventions to the incident and the distribution of liabilities between the 1971 Fund and the 1992 Fund.

3.12 Document 71FUND/A.23/14/12

- *Vistabella* (Caribbean, 1991): All claims have been settled and paid. The 1971 Fund is involved in legal proceedings for the purpose of recovering from the shipowner and his insurer the amount of compensation paid by the Fund.

No action requested.

- *Iliad* (Greece, 1993): Claims for compensation totalling some £6.3 million have been lodged in the competent Greek court. Claims against the 1971 Fund became time-barred on or shortly after 9 October 1996. With the exception of an owner of a fish farm, the shipowner and the P&I insurer, the claimants have failed to take legal action against the 1971 Fund.

No action requested.

- *Yeo Myung* (Republic of Korea, 1995): All claims, with the exception of one fishery claim for £213 000, have been settled at a total of £990 000.

No action requested.

- *Yuil N°1* (Republic of Korea, 1995): Fishery and clean-up claims, as well as claims for the cost of the operations to remove the oil from the sunken vessel, have been settled at £14.5 million. Further fisheries claims totalling £9.1 million are pending in court.

No action requested.

- *Kriti Sea* (Greece, 1996): Claims totalling £7.3 million have been notified to the shipowner and his P & I insurer and to the administrator appointed by the Court to examine claims against the shipowner's limitation fund. The total amount of the claims accepted by the administrator was £2 million, well below the limitation amount applicable to the *Kriti Sea* of £4.1 million. Appeals against the decision of the administrator have been lodged by the shipowner/insurer and the 1971 Fund. Some claimants have also lodged appeals and the amounts set out in the appeals are for a total of £4.6 million. The shipowner/insurer have taken legal action against the 1971 Fund in respect of claims in excess of the shipowner's limitation fund as well as for indemnification.

No action requested.

- *Osung N°3* (Republic of Korea, 1997): All claims in the Republic of Korea have been settled at £3.8 million. All but one claim in Japan have been settled for £5.2 million. Legal action has been taken against the 1971 Fund by the Japanese Self Defence Forces in respect of their claim for costs incurred during the clean-up operations.

No action requested.

- *Plate Princess* (Venezuela, 1997): Claims totalling some £33.5 million have been presented by two fishermen's trade unions in both the Criminal Court of first instance in Cabimas and the Civil Court in Caracas. The 1971 Fund has not been notified of these actions. There has been no progress in the court proceedings. Claims against the 1971 Fund became time-barred on or shortly after 27 May 2000.

No action requested.

- *Diamond Grace* (Japan, 1997): Claims totalling £14 million were presented. All these claims have been settled for a total of £9 million. The total amount of the claims falls below the limitation amount (£12.8 million). The 1971 Fund will therefore not be called upon to make any payments in respect of this incident.

No action requested.

- *Katja* (France, 1997): Claims for compensation in respect of clean-up, damage to property and loss of income have been presented totalling £2.6 million. The limitation amount applicable to the *Katja* is estimated at £4.5 million. It is not expected that the 1971 Fund will be called upon to make any payments in this case.

No action requested.

- *Kyungnam N°1* (Republic of Korea, 1997): Thirty-one claims totalling £620 000 have been submitted. Twenty-eight of these claims have been settled at £148 000. Three claims totalling £54 000 which have been assessed at nil by the 1971 Fund's experts are pending. It is not expected that these claims will be pursued in court. Claims will be time-barred on or shortly after 7 November 2000. No further claims are expected.

No action requested.

- *Maritza Sayalero* (Venezuela, 1998): While discharging cargo the tanker *Maritza Sayalero* spilled an estimated 262 tonnes of medium diesel oil. A nearby town presented a claim for compensation for an estimated £10.3 million against the terminal operator, the shipowner and his P & I insurer before the Supreme Court in Caracas. The town requested the Court to notify the 1971 Fund of the proceedings. The Fund has not yet been notified. The Executive Committee decided that the incident fell outside the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention because the oil involved was non-persistent and was not being carried by the *Maritza Sayalero* at the time of the spill.

No action requested.

3.13 Document 71FUND/A.23/14/13

- *Natuna Sea* (Indonesia 2000): The grounding of the *Natuna Sea* in the Singapore Strait resulted in a spill of some 7 000 tonnes of crude oil. The oil has affected Singapore, Malaysia and Indonesia. It is not possible to predict the level of claims for compensation at this stage.

Action requested:

- Decision as to whether to authorise the Director to settle claims for compensation arising out of this incident.

4 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.
