



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
24th session
Agenda item 19

71FUND/A.24/16/12
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INCIDENTS INVOLVING THE 1971 FUND

EVOIKOS

Note by the Director

Summary:	Claims for compensation have been presented in Singapore, Malaysia and Indonesia. The shipowner's insurer has paid the Malaysian claims. Most claims from Singapore have been assessed and offers for settlement have been made in respect of these claims. Provisional payments have been made in respect of claims by the public authorities in Singapore. The shipowner has commenced limitation proceedings. The shipowner and his insurer have commenced proceedings against the 1971 Fund in Indonesia, Malaysia and United Kingdom to prevent any claims against the 1971 Fund becoming time barred.
Action to be taken:	Decide whether the Director should be authorised to make payments of compensation.

1 Introduction

- 1.1 The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore on 15 October 1997. The *Evoikos*, which carried approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of heavy fuel oil was subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil.
- 1.2 At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Protocols, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Protocols thereto.

2 Impact of the spill

The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Malacca Strait. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

3 Response and clean-up operations

Singapore

- 3.1 The Maritime and Port Authority of Singapore (MPA) took charge of the clean-up operations, which initially focused on dispersant spraying at sea, and was followed by the containment and recovery of the floating oil. Clean-up equipment owned by East Asia Response Ltd (EARL) and the Petroleum Association of Japan (PAJ) was deployed as well as local industry and commercially available response resources.

Malaysia

- 3.2 After the first few days, natural weathering processes had rendered the oil no longer amenable to chemical dispersants. The oil slicks were nearly solid and had spread over a wide area in the Malacca Strait, making at-sea recovery operations impractical. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to make it possible to take preventive measures to protect sensitive resources along the coast in the Malacca Strait if required. The clean-up was carried out by the Malaysian Department of the Environment with support from the Marine Department. District authorities within the Province of Selangor organised manual removal of oil and oily material from sandy shores. Oiled mangroves were left to recover naturally.
- 3.3 Many fish farms are located along the Malaysian coast, and measures were taken to protect those threatened by the oil. Fish farmers were encouraged to surround their fish cages with protective barriers against floating oil, using locally available resources. Only very small spots of weathered oil reached the farms in a few locations.
- 3.4 Many prawn farms along the Strait rely on intakes of fresh water for their operations. On advice from the Malaysian Fisheries Department, measures were taken by the owners of the farms to monitor the intakes to prevent any oil being drawn into the facilities. Some fishermen sustained an oiling of their boats, nets and ropes.

Indonesia

- 3.5 There is no information on any clean-up operations in Indonesia. However it is alleged that mangroves and shorelines were polluted.

4 Claims for compensation

Singapore

- 4.1 Claims relating to clean-up operations and preventive measures have been submitted by the Maritime and Port Authority of Singapore (MPA) for a total amount of S\$4.5 million (£1.7 million) but the claims were later reduced to S\$3.1 million (£1.2 million). Contractors appointed by MPA have presented claims for a total of S\$12.8 million (£4.8 million). The shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), has made a provisional payment to the MPA of S\$500 000 (£190 000). The MPA commenced proceedings against the shipowner for oil pollution damage under section 3(1) of the Merchant Shipping (Oil Pollution) Act. The UK Club has informed the Director that these claims will be settled shortly.

- 4.2 The UK Club has settled claims by clean-up contractors appointed by the Club on behalf of the shipowner amounting to some S\$4 million (£1.5 million).
- 4.3 The UK Club has received a claim from another contractor for clean-up operations for US\$5 308 000 (£2 million). The UK Club has informed the Director that these claims will be settled shortly.
- 4.4 Claims for property damage total S\$1.8 million (£670 000). These include claims for the cleaning of a number of ships' hulls that were contaminated by oil escaping from the *Evoikos*. Two companies involved in the development of an island submitted claims totaling S\$948 000 (£365 000) for the cost of clean-up operations on the island. Three claims for the cleaning of ships' hull had been settled and paid by the UK Club at US\$ 67 000 (£47 800).
- 4.5 The shipowner and the UK Club have indicated that they might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for compensation under the 1971 Fund Convention. In addition, claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention. The Executive Committee has taken the view that it was premature for the Committee to take any position on these issues.

Malaysia

- 4.6 Claims for clean-up costs total RM 1 736 684 (£ 305 943). The UK Club has settled these claims at RM 1 424 197 (£ 250 894). Fisheries claims total RM 1 805 962 (£ 318 147). The UK Club settled these claims at RM 1 172 260 (£ 206 511). There are no further claims.
- 4.7 The shipowner and the UK Club commenced proceedings against the 1971 Fund on 13 October 2000 in Malaysia. This action was stayed in July 2001 by mutual consent.

Indonesia

- 4.8 The Indonesian authorities have submitted a claim to the shipowner and the UK Club for US\$3.4 million (£2.1 million). The claim, which is not supported by detailed documentation, relates to pollution of mangroves (US\$2 million), pollution of sand (US\$1.2 million), fishermen's loss of income (US\$11 000) and the cost of clean-up operations (US\$152 000). The Indonesian authorities have been invited by the UK Club to provide further documentation. This claim has been presented in the limitation proceedings in Singapore.
- 4.9 In view of the paucity of information available in respect of the claims by the Indonesian authorities, the 1971 Fund has not been able to express any opinion on the admissibility of the claim. However, 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.
- 4.10 The shipowner and the UK Club commenced proceedings against the 1971 Fund in Jakarta on 13 October 2000. In these proceedings, they have claimed £50 000 each from the Fund. The Fund's lawyers have confirmed that by commencing the proceedings the shipowner and the UK Club have prevented their claims from becoming time-barred. The Fund's lawyers are attempting to stay the Indonesian proceedings by mutual consent until the shipowner and the UK Club have dealt with the Indonesian authorities' claims.

5 Legal proceedings in the United Kingdom

In October 2000, the shipowner and the UK Club commenced legal proceedings against the 1971 Fund in London to prevent any claims against the 1971 Fund from becoming time-barred. In the

Director's view, these legal proceedings were not necessary as legal proceedings were subsequently taken in Malaysia and Indonesia.

6 Payments by the 1971 Fund

- 6.1 In view of the uncertainty as to the total amount of the claims, the Administrative Council confirmed, at its 2nd session held in October 2000, its decisions at previous sessions that the Director was not authorised to make any payments of claims for the time being (document 71FUND/ AC.2/A.23/22, paragraph 17.10.2).
- 6.2 Since the total amount of established claims remains uncertain, the Director is still of the opinion that it would be premature for the 1971 Fund to make payments at this stage.

7 Criminal proceedings

Following the collision criminal charges were brought against the masters of both ships. The master of the *Evoikos* was sentenced to three months' imprisonment and fines totalling S\$60 000 (£22 000). The master of the *Orapin Global* was sentenced to two months' imprisonment and a fine of S\$11 000 (£4 000).

8 Limitation proceedings

The shipowner has commenced limitation proceedings with the competent Singapore court. The court has determined the limitation amount applicable to the *Evoikos* at 8 846 948 SDR (£7.5 million).

9 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to consider whether to authorise the Director to make payments; and
 - (c) to give the Director such other instructions as the Assembly may deem appropriate in respect of this incident.
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