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INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary: In this document developments are considered regarding the following incidents: *Vistabella, Keumdong N°5, Iliad, Yeo Myung, Yuil N°1, Kriti Sea, Osung N°3 and Katja.*

Action to be taken: Information to be noted.

1 Vistabella

(Caribbean, 7 March 1991)

- 1.1 While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity which remained in the barge is not known.
- 1.2 The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£230 000). No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.
- 1.3 The 1971 Fund paid compensation amounting to FFr8.1 million or €1.2 million (£990 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in

St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

- 1.4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.
- 1.5 In a judgement rendered in 1996 the Court of first instance awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The Court also held that it was not competent to consider the 1971 Fund's recourse claim for damage caused in the British Virgin Islands
- 1.6 The 1971 Fund decided not to appeal against this judgement since the Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and as the amount paid by the Fund for damage outside those territories was insignificant.
- 1.7 The shipowner and the insurer appealed against the judgement.
- 1.8 The Court of Appeal rendered its judgement in March 1998. The Court held that the 1969 Civil Liability Convention applied to direct action by the 1971 Fund against the insurer and that this applied also in respect of an insurer with whom the shipowner had taken out insurance although not having been obliged to do so, since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.
- 1.9 The case was referred back to the Court of first instance. In a judgement rendered on 2 March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8 239 858 or €1.2 million (£800 000) plus interest from 22 March 1993.
- 1.10 The insurer has appealed against the judgement. The 1971 Fund filed pleadings in the Court of Appeal of Basse Terre in February 2002. It is expected that the case will be heard in December this year.

2 Keumdong N°5

(Republic of Korea, 27 September 1993)

- 2.1 On 27 September 1993 the Korean barge *Keumdong N°5* (481 GRT) collided with another vessel near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil was spilled from the *Keumdong N°5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae island.
- 2.2 The *Keumdong N°5* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).
- 2.3 Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the Standard Club by September 1994. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£41 000). The 1971 Fund has made advance payments to the Standard Club totalling US\$6 million (£4 million) in respect of the Club's subrogated claims.
- 2.4 The majority of claims from the fishing and aquaculture sectors have been settled and paid at Won 6 575 million (£3.5 million).

Legal action by Yosu Fishery Co-operative

- 2.5 The Yosu Fishery Co-operative took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court for damage to common fishing grounds totalling

Won 17 162 million (£9.2 million). In addition, claims totalling Won 1 641 million (£882 000) were submitted by over 900 individual members of this co-operative (fishing boat owners, set net fishing licence holders and onshore fish culture facility operators).

- 2.6 The experts engaged by the 1971 Fund and the Standard Club assessed the losses allegedly suffered by all the claimants of the Yosu Fishery Co-operative at Won 810 million (£435 000).
- 2.7 The Seoul District Court rendered a compulsory mediation decision in December 1998. The Court agreed with the basis of the 1971 Fund's assessments in respect of most claims, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. In the Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£35 000).
- 2.8 The position taken by the Court in the mediation decision was at variance with the policy adopted by the 1971 Fund, ie that claims for loss of income by fishermen operating without a required licence were inadmissible. The 1971 Fund therefore lodged an opposition to the Court's mediation decision.
- 2.9 In a judgement rendered in January 1999 the District Court found that the claimants had suffered damage due to the oil pollution, but rejected their calculation of their losses due to the lack of information on the income of individual fishermen, the unreliability of the evidence they presented, the unreliability of part of the testimony of the Chairman of the Yosu Fishery Co-operative and the lack of a direct causal relationship between the alleged losses of income and the incident.
- 2.10 In determining the amount of the damage the District Court awarded compensation for both loss of earnings and pain and suffering (condolence money) in respect of common fishing grounds and intertidal culture farms, for loss of earnings only in respect of fishing vessels and for pain and suffering only in respect of cage culture farms, one onshore aquarium and one onshore hatchery. The total amount awarded by the Court was Won 1 571 million (£795 000) plus interest.
- 2.11 All the claimants belonging to the Yosu Fishery Co-operative, with the exception of one village fishery association, appealed against the judgement. Their total claimed amount was indicated in the appeal at Won 13 868 million (£7.5 million).
- 2.12 At its 61st session held in April 1999, the Executive Committee examined the reasoning in the District Court's judgement. The Director was instructed to pursue appeals in respect of the questions of fact, the decision to allow compensation for pain and suffering, the apparently arbitrary methods used to determine compensation and the decision to award compensation to fishermen operating in breach of the licensing requirements (document 71FUND/EXC.61/14, paragraphs 4.4.3 - 4.4.6).
- 2.13 The 1971 Fund lodged appeals against the District Court's judgement. The Court granted provisional enforcement of the judgement. In connection with its appeals the 1971 Fund requested a stay of the provisional enforcement and, in accordance with Korean law, deposited the amount awarded to the plaintiff (Won 1 571 million (£795 000)) with the Court. The Court subsequently granted a stay of the provisional enforcement.
- 2.14 In May 2001 the Appellate Court rendered its judgement in respect of the claims by the Yosu Co-operative. The Appellate Court overturned the judgement of the District Court in respect of losses due to pain and suffering and losses in respect of unlicensed and unregistered fishing activities. The Appellate Court upheld the decision of the District Court in respect of loss of earnings due to business interruption caused by the clean-up of licensed common fishing grounds and intertidal culture farms. In the judgement the Appellate Court ordered the Fund to pay Won 142 743 033 (£77 000) plus interest.
- 2.15 In view of the fact that the 1971 Fund's position on matters of principle had been accepted, ie that compensation should not be granted for pain and suffering and for losses in respect of unlicensed and

unregistered fishing activities, the Director decided that the Fund should not appeal against the decision by the Appellate Court in respect of the claims by Yosu FCU. Although the individual members of the Yosu FCU did not appeal against the decision, 36 village fishery associations appealed to the Korean Supreme Court.

- 2.16 The amount claimed in the appeal by the fishing associations is Won 2 756 million (£1.5 million). The Supreme Court has not yet rendered its judgement.

3 Iliad

(*Greece, 9 October 1993*)

- 3.1 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.
- 3.2 In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 or €4.4 million (£2.8 million) with the competent court by the deposit of a bank guarantee.
- 3.3 The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million or €9 million (£5.7 million) plus Drs 378 million or €1.1 million (£703 000) for compensation of 'moral damage'.
- 3.4 The Court appointed a liquidator to examine the claims in the limitation proceedings. The liquidator has not yet reported his findings to the court.

- 3.5 The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£1.9 million), also interrupted the time bar period in respect of the claims by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

4 Yeo Myung

(*Republic of Korea, 3 August 1995*)

- 4.1 The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul island, near Koeje island (Republic of Korea). Two of the tanker's cargo tanks were breached and about 40 tonnes of oil was spilled which necessitated clean-up operations.
- 4.2 Claims relating to clean-up, fishery and tourism for a total of Won 24 483 million (£13 million) have been settled at a total of Won 1 554 million (£990 000). These claims have been paid in full.
- 4.3 The only outstanding claim is within the fisheries sector. The amount claimed is Won 335 million (£180 000), whereas the claim has been assessed by the 1971 Fund's experts at Won 459 000 (£247).
- 4.4 The shipowner commenced limitation proceedings at the competent District Court. The limitation fund was established by the shipowner's P & I insurer by payment of the limitation amount of Won 21 million (£9 200) to the Court.

4.5 In September 1999 the Court held a hearing at which the 1971 Fund filed its subrogated claims against the shipowner's limitation fund. At the Court's request the 1971 Fund has submitted a copy of the Fund's experts' assessment report.

4.6 There has been no progress in the limitation proceedings during the last three years.

5 Yuil N°1

(*Republic of Korea, 21 September 1995*)

5.1 The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.

5.2 Operations to recover the oil from the *Yuil N°1* were carried out from 24 June to 31 August 1998 under a contract between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. Some 670 m³ of oil was recovered. Claims in respect of these operations were settled at a total of Won 6 824 million (£3.2 million) and were paid in full by the 1971 Fund.

5.3 All clean-up claims arising out of this incident have been settled at a total of Won 12 393 million (£8.5 million). The shipowner's insurer paid some of these claims in full, and the 1971 Fund reimbursed 60% of these payments to the insurer. The 1971 Fund will reimburse the balance (40%) of these payments minus the shipowner's limitation amount after that amount has been established in Won.

5.4 Fishery claims totalling Won 14 399 million (£7.7 million) have been filed in court. These claims have been assessed by the Fund's experts at Won 449 million (£241 000) but have not yet been settled.

5.5 The owner of the *Yuil N°1* commenced limitation proceedings at the Pusan District Court in April 1996. The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£134 000).

5.6 Fishery co-operatives presented claims totalling Won 60 000 million (£32 million) to the Pusan District Court. At a court hearing held in October 1996, an administrator appointed by the Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable. In November 1997 the Court decided to adopt this proposal.

5.7 The 1971 Fund lodged opposition to the Pusan District Court's decision. There has been no development in the limitation proceedings.

6 Kriti Sea

(*Greece, 9 August 1996*)

6.1 The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

6.2 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million or €6.6 million (£4.1 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

6.3 The shipowner and his P & I insurer and the administrator appointed by the Court to examine claims against the limitation fund were notified of claims totalling Drs 4 054 million or €1.9 million (£7.5 million). The administrator reported on his examination of the claims in March 1999. The total amount of the claims accepted by the administrator was Drs 1 153 million or €3.4 million (£2 million).

- 6.4 The experts engaged by the shipowner's insurer and the 1971 Fund did not agree with a number of the assessments carried out by the administrator. Objections were lodged in court by the shipowner, the shipowner's insurer and the 1971 Fund in respect of those claims. A number of claimants also filed objections against the decision of the administrator, and the amounts set out in the appeals totalled Drs 2 680 million or €7.9 million (£5 million). Upon hearing these objections, the Court accepted claims amounting to Drs 1 153 million or €3.4 million (£2.1 million). A number of claimants whose claims were either rejected or not accepted in full by the Court lodged appeals. The appeals were heard by the Court of Appeal on 18 September 2002, and it is expected that the judgement will be rendered in early 2003.
- 6.5 In order to prevent their rights becoming time-barred the shipowner and his insurer served a writ on the 1971 Fund in August 1999 in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification under Article 5.1 of the 1971 Fund Convention for Drs 556 million or €1.6 million (£1 million). However, no decision can be made by the Court on these claims until the judgement of the Court of Appeal in respect of the claims referred to in paragraph 6.4 above has been rendered as that judgement will determine whether or not the total amount of established claims will exceed the total amount payable by the shipowner/his insurer, taking into account also the amount payable by the 1971 Fund in respect of indemnification.

7 Osung N°3

(*Republic of Korea, 3 April 1997*)

- 7.1 The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground in the Pusan area 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 was not possible to assess the quantity spilt or the quantity remaining on board. Oil originating from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997.
- 7.2 Operations to remove the oil from the *Osung N°3* were carried out from 2 September to 9 November 1998 under a contract between Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. It had been estimated that the wreck had some 1 400 tonnes of oil in its tanks, but only 27 m³ was recovered.
- 7.3 Claims in respect of the oil removal operations, clean-up costs and fishery related losses in the Republic of Korea and Japan arising from this incident have been settled at Won 7 674 million (£3.8 million) and ¥851 million (£3.9 million).
- 7.4 The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US\$1 million (£714 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is Won 153 million (£87 600). The limitation fund was established on 27 February 2001.
- 7.5 The indemnification of the shipowner, Won 38 million (£20 500), was paid to the insurer in November 2001.

8 Katja

(France, 7 August 1997)

- 8.1 The Bahamas registered tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the Port of Le Havre (France). The contact with the quay caused a hole in a fuel oil tank, and 190 tonnes of heavy fuel oil was spilled. Booms were placed around the berth, but oil escaped from the port and affected beaches both to the north and to the south of Le Havre. Approximately 15 kilometres of quay and other structures within the port were contaminated. Oil entered a marina at the entrance to the port and many pleasure boats were polluted. Oil was also found in the area of the port where a new harbour for inshore fishing boats was being constructed.
- 8.2 Clean-up operations within the port area were arranged by the port authority and the operators of various berths. The cleaning of the beaches was organised by the local authorities. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. Some shrimp fishermen from Le Havre were prevented from storing their catch in the port.
- 8.3 At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount applicable to the *Katja* is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr48 million or €7.3 million (£4.6 million).
- 8.4 A claim presented by the French Government for clean-up costs was settled in July 2000 at FFr1 356 075 or €206 700 (£127 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of FFr15.1 million or €2.3 million (£1.4 million).
- 8.5 Legal actions have been taken against the shipowner, his P & I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling FFr9 million or €1.4 million (£888 000). Of these four claims FFr7 million or €1.07 million (£677 000) are outstanding. The largest of these claims is a claim for the cost of clean-up operations incurred by the Port Autonome du Havre (PAH) totalling FFr6 543 000 or €97 000 (£632 000).
- 8.6 Further claims became time-barred on or shortly after 7 August 2000.
- 8.7 It is practically certain that all claims will be settled for an amount lower than the limitation amount applicable to the *Katja* under the 1969 Civil Liability Convention. It is unlikely, therefore, that the 1971 Fund will be called upon to make any payments in this case.
- 8.8 The shipowner and his insurer filed proceedings against the PAH on 29 July 2002. The grounds for the action were that a) the port had sent the *Katja* to an unsuitable berth and had thereby been, wholly or partially, responsible for the incident and b) the port's inadequate counter-pollution response to the incident had increased the extent of the pollution damage caused. As the 1971 Fund is unlikely to be called upon to make payments in this case, the Director took the view that it was not necessary for the 1971 Fund to intervene in these proceedings.

9 Action to be taken by the Administrative Council

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