



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ADMINISTRATIVE COUNCIL  
9th session  
Agenda item 15

71FUND/AC.9/13  
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## INCIDENTS INVOLVING THE 1971 FUND

### Note by the Director

<b>Summary:</b>	A résumé of all incidents and all documents submitted under this agenda item is set out.
<b>Action to be taken:</b>	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 There have been no new incidents that have given or may give rise to claims against the 1971 Fund since the 8th session of the Administrative Council held in July 2002. There are 21 incidents that took place before the 8th session, which will be reported to the Administrative Council.

### **2 Presentation of documentation**

- 2.1 The documentation presented to the 9th session of the Administrative Council has been structured in the following way:
  - (a) incidents which the Administrative Council 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 at the time the respective documents were written. 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/AC.9/13/1

- *Aegean Sea* (Spain, 1992): In June 2001 the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and his insurer on a global solution of all outstanding issues, provided the agreement contained certain elements. The basic element was that in the light of the Court of Appeal's judgements in respect of the distribution of liabilities and the assessment of the losses, the total amount payable by the shipowner, the insurer and the 1971 Fund would be set at Pts 9 000 million (£34 million). The 1971 Fund will also pay indemnification to the shipowner/insurer pursuant to Article 5.1 of the 1971 Fund Convention of Pts 278 million (£1 million).

In July 2001 the 1971 Fund made an offer to the Spanish Government to conclude an agreement between the Spanish State, the Fund, the shipowner and his insurer on the basis of the above proposal for a global solution. It is expected the settlement agreement will be concluded before the end of December 2002.

**No action requested.**

#### 3.2 Document 71FUND/AC.9/13/2

- *Braer* (United Kingdom, 1993): All claims pursued in court but one have been dismissed, settled out of court or withdrawn from the court proceedings. The only claim being pursued is that by Shetland Sea Farms for £1.4 million. The Scottish Court of first instance held that the claim was based on false documents but allowed nevertheless the claimant to pursue the claim. Any amount awarded by a final court judgement will be paid by the Skuld Club.

In October 2001 it became possible to pay all established claims in full. Payments have been made to all claimants but one whom it has not been possible to contact.

The compensation payments total £51 938 938, of which the 1971 Fund has paid £45 725 441 and the shipowner's insurer £6 213 497.

**No action requested.**

#### 3.3 Document 71FUND/AC.9/13/3

- *Sea Prince* (Republic of Korea, 1995): Claims for compensation have been settled for a total of £27.1 million of which the 1971 Fund has paid £17.2 million and the shipowner's insurer £9.9 million.

In January 2002 the Court of first instance rendered its judgements in respect of the outstanding claims. The Court dismissed the majority of the claims, but awarded £752 000 to 31 claimants. The 1971 Fund has appealed against the judgements and deposited with the Court the amount awarded plus interest in order to stay the enforcement of the judgements. One claimant, a fishery co-operative, whose claim for lost sales commission was rejected by the first instance court, has also appealed. The Fund has submitted further evidence to the appellate Court.

**No action requested.**

#### 3.4 Document 71FUND/AC.9/13/4

- *Sea Empress* (United Kingdom, 1996): Claims for compensation have been settled for a total of £36.3 million of which the 1971 Fund has paid £29.4 million and the shipowner's insurer £6.9

million. Two claims for compensation totalling £900 000 and 16 claims in respect of legal and professional fees, most of which have not been quantified, are the subject of legal actions.

The 1971 Fund, together with the shipowner's insurer, has taken recourse action against the Milford Haven Port Authority (MHPA) to recover the amount paid by the Fund and the insurer in compensation. MHPA has submitted defence pleadings in which it denies any liability. The oil company Texaco, which owned the cargo onboard the *Sea Empress*, has also taken action against MHPA and against Milford Haven Pilotage Limited claiming compensation for lost or damaged cargo, salvage costs and economic loss.

**No action requested.**

3.5 Document 71FUND/AC.9/13/5 (92FUND/EXC.18/4)

- *Nakhodka* (Japan 1997): All claims for compensation have been settled for a total of £139 million.

The IOPC Funds and others took recourse actions against the owner of the *Nakhodka*, his insurer, the parent company of the shipowner and the Russian Register of Shipping. In April/May 2002 the Funds' governing bodies approved a proposal for a global settlement of all outstanding issues whereby all the compensation payments would be shared between the shipowner's insurer and the IOPC Funds on a 42:58 basis. The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims and the shipowner's insurer would pay the 20% balance. This will result in the IOPC Funds recovering approximately £27.8 million and making a saving of around £13.3 million as a result of not having to increase their payments over 80% of the settlement amounts. The Director is of the view that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits.

The joint costs incurred by the IOPC Funds and the shipowner's insurer relating to the operation of the Claims Handling Office in Kobe and to the claims handling process in general will also be apportioned between the UK Club and the IOPC Funds on a 42:58 basis. The IOPC Funds and the shipowner/UK Club will each bear their own legal costs.

In the Director's view, all costs to be borne by the Funds should be apportioned on the same basis as that adopted by the governing bodies for the distribution between the two Funds of the financial benefits of the global settlement.

**Action requested:**

- to decide on the distribution between the 1971 Fund and the 1992 Fund of the financial benefits of the global settlement; and
- to decide on the distribution between the Funds of costs incurred as a result of the incident.

3.6 Document 71FUND/AC.9/13/6

- *Nissos Amorgos* (Venezuela, 1997): Claims have been settled for a total of £12 million of which the shipowner's insurer has paid £4.5 million and the 1971 Fund has paid £2.4 million.

Legal proceedings relating to claims for compensation for very high amounts have been brought in five Venezuelan courts, including the Supreme Court. The claims include two claims by the Republic of Venezuela relating to the same items, each for £40 million, which were considered by the Fund's experts, and a panel of experts appointed by the Criminal Court of Cabimas, to have no merit. Discussions have been held with representatives of the Venezuelan Government to explore the possibilities of a withdrawal of these two claims.

In view of the uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident, the level of the 1971 Fund's payments was fixed by the Executive Committee at 40% of the loss or damage actually suffered by each claimant, but the Director was authorised to increase the level of payments to 70% when certain conditions were fulfilled. So far these conditions have not been fulfilled.

**Action requested:**

- Consider the level of the 1971 Fund's payments.

3.7 Document 71FUND/AC.9/13/7

- *Evoikos* (Singapore, 1997): The incident gave rise to claims for compensation for pollution damage in Singapore, Malaysia and Indonesia. All claims in Malaysia and all claims but one in Singapore have been settled and paid by the shipowner's insurer. The claims for damage in Indonesia, which were not pursued by the claimants, have been dismissed by the court in charge of the limitation proceedings in Singapore. The limitation amount applicable to the *Evoikos* has been determined by the Court at £7.6 million. As the admissible claims total £4.7 million, the Director considers that the 1971 Fund will not be required to make any payments of compensation nor pay any indemnification under Article 5.1 of the 1971 Fund Convention.

The shipowner and his insurer are considering whether to withdraw the proceedings against the 1971 Fund in Malaysia and the United Kingdom, which were commenced to prevent any claims against the 1971 Fund becoming time-barred. The proceedings taken by the owner and the Club against the Fund in Indonesia have been discontinued.

**No action requested**

3.8 Document 71FUND/AC.9/13/8

- *Pontoon 300* (United Arab Emirates, 1998): Claims have been settled for a total £1.2 million and the Fund has paid £900 000, corresponding to 75% of the settlement amounts. Claims totalling £39 million submitted by Umm al Quwain Municipality and the Ministry of Agriculture and Fisheries, including a claim for £37 million in respect of environmental damage, have become the subject of legal proceedings. The 1971 Fund has maintained that the Municipality and the Ministry do not have title to sue on behalf of the various parties alleged to have suffered pollution damage, that the claims by the Municipality have become time-barred, and that some of the claims are inadmissible. The Umm al Quwain Court has appointed three experts to examine the claims and has decided to consider all the pleadings relating to issues of jurisdiction, time bar and title to sue after the experts have submitted their report. The experts are expected to submit their report to the Court at a hearing to be held on 12 October 2002.

The 1971 Fund is continuing its recourse action in the Court of Cassation against the owner of the tug *Falcon 1* which was towing the *Pontoon 300* when the incident occurred. A court hearing will be held on 29 September 2002 and it is expected that the Court of Cassation will render its judgement soon thereafter.

**No action requested**

3.9 Document 71FUND/AC.9/13/9 (92FUND/EXC.18/6)

- *Al Jaziah 1* (United Arab Emirates, 2000): The governing bodies of the 1992 and 1971 Funds decided that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. Claims totalling

£893 000 in respect of clean-up operations have been provisionally assessed at £400 000. Claims in respect of preventive measures have been settled at £385 000.

Evidence disclosed in criminal proceedings against the master and crew of the *Al Jaziah 1* indicated that the vessel was not seaworthy and that this led to the vessel sinking. In the Director's view there are reasonably good prospects of the IOPC Funds obtaining a favourable judgement against the shipowner in a recourse action. However, the Director has been advised that it is uncertain whether the defendant will have sufficient assets to enable the Fund to recover any substantial amounts. The Director is therefore of the opinion that the IOPC Funds should not take recourse action against the shipowner.

**Action requested:**

- To decide whether the IOPC Funds should pursue recourse action against the registered owner of the *Al Jaziah 1* and the owner of that entity at the time of the incident.

3.10 Document 71FUND/AC.9/13/10

- *Alambra* (Estonia, 2000): The Maltese tanker *Alambra* spilled oil in the Port of Muuga, Tallinn in September 2000. Claims totalling £2.1 million in respect of the costs of clean-up operations and economic losses have been presented to the shipowner as well as a claim by the Estonian State for £1.8 million, which has the character of a fine or charge. A number of claimants have commenced legal actions against the shipowner and his insurer, two of whom have notified the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. The question has arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention have been correctly implemented into Estonian law.

The claims for compensation filed in court fall well below the limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention and also below the amount at which the 1971 Fund may be called upon to pay indemnification to the shipowner. For this reason, the Director took the view that it was very unlikely that the 1971 Fund would be called upon to pay compensation or indemnification, that the constitutional issue referred to above was mainly of academic interest and that the Fund needed not take an active part in the ongoing proceedings.

In the proceedings, the shipowner's insurer has recently alleged that the shipowner had deliberately failed to maintain the *Alambra* properly and that, therefore, the insurer is not liable for the pollution damage resulting from the incident.

**Action requested:**

- To consider the position to be taken by the 1971 Fund in regard of:
  - (a) the insurer's allegation that he is not liable for the pollution damage and
  - (b) the applicability of the Conventions under Estonian domestic law.

3.11 Document 71FUND/AC.9/13/11 (92FUND/EXC.18/9)

- *Natuna Sea* (Indonesia 2000): The oil spilled from the *Natuna Sea* affected Singapore, Malaysia and Indonesia. Claims for pollution damage in Malaysia (Party to the 1969 Civil Liability Convention and the 1971 Fund Convention) have been settled within the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention and the 1971 Fund will not be called upon to make any payments in respect of this incident. Claims for pollution damage in Singapore (Party to the 1992 Civil Liability Convention and the 1992 Fund Convention) and Indonesia (Party to the 1992 Civil Liability Convention) total £29 million, which exceeds the limit (£19 million) applicable to the vessel under the 1992 Civil Liability Convention. The 1992 Fund may therefore be required to make payments for pollution damage in Singapore.

**No action requested.**

3.12 Document 71FUND/AC.9/13/12 (92FUND/EXC.18/11)

- *Zeinab* (United Arab Emirates, 2001): The governing bodies decided that both the 1971 and the 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. This incident is, as regards the 1971 Fund, covered by insurance, subject to a deductible of £220 325. Claims in respect of costs of clean-up and preventive measures have been settled for £592 000 by both Funds and further claims totalling £700 000 are being assessed. The total amount paid in compensation by the 1971 Fund exceeds the deductible.

Further claims in respect of clean-up operations are expected.

**No action requested**

3.13 Document 71FUND/AC.9/13/13

- *Singapura Timur* (Malaysia, 2001): Claims in respect of clean-up and preventive measures have been settled by the shipowner's insurer for £102 000, which exceeds the limitation amount (£82 000) applicable to the *Singapura Timur* under the 1969 Civil Liability Convention. The 1971 Fund will therefore be liable for any further claims for compensation, although this liability is covered by the insurance purchased by the 1971 Fund less a deductible of 250 000 SDR which, subject to approval by the Administrative Council, corresponds to £221 283. A contractor has been engaged by the Malaysian authorities to remove the remaining bunker fuel from the wreck and to undertake a study to assess the environmental risk posed by the cargo of bitumen remaining onboard. It is expected that this operation will commence in October 2002.

Discussions are taking place between the shipowner's insurer and the 1971 Fund as regards a recourse action in this incident.

**Action requested:**

- To decide the method of conversion for the deductible under the insurance policy.

3.14 Document 71FUND/AC.9/13/14

- *Vistabella* (Caribbean, 1991): The 1971 Fund has paid compensation amounting to £990 000 to the French Government in respect of clean-up operations and £14 250 to private claimants and to the authorities of the British Virgin Islands. The *Vistabella* was not entered in any P & I Club but was insured for third party liabilities. The insurer has argued that the insurance did not cover this incident.

The 1971 Fund brought legal action against the owner of the *Vistabella* and his insurer. The court in Guadeloupe awarded the 1971 Fund the amount paid by it in the French territories, but the insurer has appealed against the judgement.

**No action requested.**

- *Keumdong N°5 (Republic of Korea, 1993)*: Claims totalling £6.0 million in respect of clean-up costs and pollution damage to fisheries and aquaculture have been settled by the shipowner's insurer and the 1971 Fund.

Thirty-six fishery associations whose claims were assessed by the Appellate Court for a total of £77 000 have appealed to the Korean Supreme Court. The amount claimed in the appeal is £1.5 million. The Supreme Court has not yet rendered its judgement.

**No action requested.**

- *Iliad* (Greece, 1993): Claims totalling £6.4 million are being examined by a liquidator appointed by the Court in charge of the limitation proceedings.

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement for any compensation payments in excess of the shipowner's limitation amount and to indemnification from becoming time-barred. The owner of a fish farm claiming £1.9 million has taken legal action against the 1971 Fund.

**No action requested.**

- *Yeo Myung* (Republic of Korea, 1995): There is one outstanding fishery claim for £180 000, which has been assessed at £247. The shipowner's insurer has paid the limitation amount (£9 200) applicable to the *Yeo Myung* into court. The 1971 Fund has filed a subrogated claim against the shipowner's limitation fund.

**No action requested.**

- *Yuil N°1* (Republic of Korea, 1995): All clean-up claims have been settled at a total of £8.5 million. The Fund has paid £3.2 million for claims in respect of the operations to recover the oil from the wreck. Fishery claims totalling £7.7 million have been filed in court. These claims have been assessed by the Fund's experts at £241 000.

**No action requested.**

- *Kriti Sea* (Greece, 1996): Claims totalling £7.5 million were lodged against the limitation fund of £4.1 million. An administrator appointed by the Court assessed the claims at £2.0 million. Objections were lodged in court by the shipowner, his insurer, the 1971 Fund and some of the claimants. The Court subsequently awarded £2.1 million, but a number of claimants lodged further appeals. A judgement is expected in early 2003. The shipowner and his insurer took legal action against 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. No decision can be made by the Court on these claims until it the total amount of established claims is determined.

**No action requested.**

- *Osung N°3* (Korea, 1997):

All claims in respect of the oil removal operations, clean-up costs and fishery related losses in the Republic of Korea and Japan have been settled at £7.7 million.

**No action requested.**

- *Katja* (France, 1997): Claim relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of £1.5 million.

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 £888 000. It is unlikely that the 1971 Fund will be called upon to make any payments in this case.

**No action requested.**

#### **4 Action to be taken by the Assembly**

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

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