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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE

Note by the Director

Summary:	Most claims arising out of this incident have 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 clean-up and in respect of preventive measures associated with salvage operations. Although agreement has been reached between the Fund and the insurer on the admissible amounts, it has not been possible to reach agreement on the appropriate exchange rate and the appropriate currency to be used to determine the limitation amount applicable to the *Sea Prince* and therefore the amount due to the insurer. The shipowner's outstanding claims in respect of clean-up operations were settled recently. However, the shipowner is also seeking to reach an out-of-court settlement with regard to his claims for the costs of environmental studies and additional clean-up undertaken in light of the results of those studies, which had been rejected by the Court of first instance but are the subject of proceedings in the Court of Appeal.
Action to be taken:	a) to decide whether part of the cost of the environmental studies and the costs of additional clean-up are admissible in principle; and b) to give the Director such instructions as the Assembly may deem appropriate in respect of this incident.

1 Introduction

This document deals with developments in respect of the *Sea Prince* incident (Republic of Korea, 23 July 1995) that have taken place since the 2nd session of the Administrative Council held in October 2000.

2 Claims for compensation

2.1 All claims relating to clean-up operations in the Republic of Korea have been settled at Won 19 900 million (£11.3 million), except that referred to in paragraph 2.4 below. These claims have been paid in full by the shipowner and the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), who have presented subrogated claims to the 1971 Fund.

2.2 In August 1996 the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. At the rate of exchange applicable at that time, this payment represented less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

2.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total of ¥360 000 (£2 160). This claim was accepted in full by the 1971 Fund.

2.4 In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£603 000) and the other for costs totalling Won 135 million (£71 000) associated with additional clean-up undertaken by the shipowner in early 1998. The studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents.

2.5 On the basis of the information available at the time the Director took the view that the post-spill environmental studies appeared to duplicate the work of sampling and analysing seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. The Director therefore rejected the claim for the cost of these studies.

2.6 On the basis of surveys carried out by the 1971 Fund's experts prior to and during the period of the additional clean-up, these experts took the view that the additional clean-up operations were not technically justified. Although buried oil was found at most of the locations and subsequently subjected to further cleaning, the quantities were small, the oil was hard to find and the contamination was sporadic. Not all the oil samples collected matched the oils spilled from the *Sea Prince* and the *Honam Sapphire*. The experts concluded that the remaining oil did not pose any threat to fisheries and tourism nor did it represent an aesthetic problem. Furthermore, because of the difficulty of finding and getting access to the remaining oil, they considered that the clean-up would involve harsh, intrusive and seriously disruptive methods likely to cause more damage than the oil itself. In the light of the experts' opinion, the Director informed the shipowner that the 1971 Fund considered that the cost incurred for the additional clean-up did not qualify for compensation.

2.7 Most claims in the tourism sector have been settled for Won 538 million (£306 000) and paid in full.

2.8 Most of the claims in the fisheries sector have also been settled and paid in full in the total amount of Won 17 000 million (£9.4 million).

2.9 In July 1998 a Village Fishery Association and 506 individual claimants took legal actions against the 1971 Fund claiming Won 500 000 (£285) for each fisherman. The basis of each claim was not made clear by the plaintiffs, many of whom had concluded settlements of their claims before the action was commenced. In June 2000, 313 claimants withdrew their claims from the proceedings. The remaining 194 claimants, whose claims were rejected by the 1971 Fund and by the Court in charge of the limitation proceedings, increased the total amount of their claim to Won 4 000 million (£2.5 million).

2.10 The UK Club presented a claim on the basis of subrogation for US$8.3 million (£5.3 million) relating to the cost of preventive measures associated with salvage operations. The 1971 Fund approved this claim for a total of US$6.6 million (£4.2 million). However, no payment has been made to the UK Club pending agreement on the limitation amount applicable to the *Sea Prince* (see paragraph 4.1).

2.11 The UK Club also claimed on the basis of subrogation for reimbursements made to the shipowner for payments made by him mainly to Korean clean-up contractors for US$22 076 954 (£14 046 000), corresponding to Won 24 031 688 854 plus ¥357 214.

2.12 Since the 1971 Fund has made an account payment to the UK Club of £2 million, the total amount of the Club's claim in the limitation proceedings is approximately £16.2 million.

2.13 The shipowner and the UK Club have claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£5.0 million).

3 Limitation proceedings

3.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, which corresponded to Won 23 342 million (£12.4 million) at the exchange rate applicable on 9 March 2001. The limitation fund has not yet been constituted and the limitation amount in Won has therefore not yet been fixed.

3.2 In June 1998 the Court delivered its decision accepting the assessments made by the 1971 Fund's experts of the unsettled fishery and non-fishery damage claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner has lodged opposition to this decision. The shipowner has indicated that if the appeal in respect of the claim for environmental studies is successful they intend to increase the claimed amount from Won 1 140 million (£603 000) to Won 1 425 million (£761 000) to cover further studies not included in the original claim.

3.3 Outstanding issues in the limitation proceedings are the subrogated claims by the shipowner/UK Club in respect of the preventive measures associated with salvage operations and clean-up operations carried out by various contractors referred to in paragraphs 2.10 and 2.11. These claims were assessed by the Court for a total of US$27.8 million (£17.7 million) and ¥4 million (£24 000). The 1971 Fund lodged objection to the Court's decisions concerning these items on the ground that there was insufficient supporting documentation.

4 Recent developments

4.1 Determination of the limitation amount applicable to the *Sea Prince*

4.1.1 At the 1st session of the Administrative Council, acting on behalf of the 5th extraordinary session of the Assembly, dealing with items on the agenda of the 63rd session of the Executive Committee, it was reported that the shipowner had requested payment by the 1971 Fund in respect of clean-up costs that had not been reimbursed by the UK Club. The Administrative Council noted that the 1971 Fund could not make any payments in this regard before the limitation amount in Won applicable to the *Sea Prince* had been determined.

4.1.2 In view of the considerable time that would elapse before the limitation amount would be determined by the Court, as an exception the Administrative Council authorised the Director to agree with the shipowner/insurer on the exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince* and to determine the amount of indemnification payable by the Fund under Article 5.1 of the 1971 Fund Convention (document 71FUND/AC.1/EXC.63/11, paragraph 3.3.5).

4.1.3 In May 2000 the 1971 Fund presented detailed proposals on the limitation and indemnification amounts to the shipowner/UK Club, but it has not been possible to reach agreement on these issues. Further proposals were put forward by the 1971 Fund in February 2001 and discussions with the shipowner/UK Club are continuing.

4.2 Reimbursement of amounts paid by the shipowner

4.2.1 In February 2000 representatives of the 1971 Fund and the UK Club met with the shipowner in the Republic of Korea for the purpose of verifying all payments made by the shipowner in respect of clean-up operations and to reconcile those payments with the amounts approved by the 1971 Fund and the reimbursements made by the UK Club to the shipowner.

4.2.2 The UK Club has maintained that the total amount it has reimbursed the shipowner exceeds the shipowner's limitation amount under the 1969 Civil Liability Convention. The UK Club has therefore requested that the 1971 Fund should reimburse the shipowner directly for the amounts that the shipowner has paid but not been reimbursed by the Club.

4.2.3 The shipowner has requested reimbursement of Won 3 501 million (£2.1 million). In July 2000 the 1971 Fund approved the claim in the amount of Won 3 135 million and agreed to reimburse the shipowner this amount and to pay interest at the legal rate. However, the shipowner did not accept the amount offered. In March 2001 representatives of the 1971 Fund met again with the shipowner in the Republic of Korea. The shipowner's claim was settled at Won 3 281 million (£1.7 million) plus interest of Won 913 million (£483 000) calculated on the basis of the applicable legal rate.

4.3 Claims for the costs of environmental studies and additional clean-up measures

4.3.1 During the meetings between the shipowner and the 1971 Fund in March 2001, the shipowner provided further documentation regarding the claim in respect of the costs of environmental studies referred to in paragraph 2.4 above.

4.3.2 The documentation indicated that some of the studies, which were undertaken by the Seoul National University and the Korea Oceanographic Research and Development Institute, were aimed at providing baseline data for the restoration of the environment and included shoreline surveys to locate buried oil in beach sediments, monitoring subsequent clean-up operations and investigations into the medium and long-term impact of the spill on inshore fisheries and mariculture. The shoreline surveys identified a number of locations where significant deposits of buried oil remained, and as a consequence, the decision was taken by the authorities to order further clean-up to remove the oil. The studies on the impact of the spill on fisheries and aquaculture, which were carried out on a number of different species of fish, shellfish and seaweeds, indicated that the spill had not resulted in any long-term damage to these resources.

4.3.3 Other studies covered by the original claim included the laboratory toxicity testing of crude oil of the type spilled by the *Sea Prince* to different species of fish and shellfish and a review of clean-up techniques used in different countries.

4.3.4 In light of this additional information, and notwithstanding the fact that the Court in charge of the limitation proceedings rejected the claim in respect of environmental studies, the Director considers that the studies referred to in paragraph 4.3.2 related to damage falling within the definition of *pollution damage* as laid down in the Conventions as interpreted by the 1971 Fund governing bodies and did not duplicate the work of sampling and analysing seawater, sediments and marine products undertaken by the experts appointed by the UK Club and the 1971 Fund to assist with the assessment of claims for alleged damage to fisheries. The Director is therefore of the view that costs associated with these studies funded by the shipowner are admissible in principle.

4.3.5 On the other hand the Director considers that the studies referred to in paragraph 4.3.3 did not relate to pollution damage and duplicated work already undertaken and published in scientific literature. He therefore takes the view that the costs of these studies are not admissible.

4.3.6 As regards the additional clean-up undertaken to remove the buried oil from a number of shorelines referred to in paragraph 2.6 above, the experts from ITOPF considered that on the basis of earlier shoreline surveys further clean-up was not justified. However, the Fund's Korean expert who monitored the operations took the contrary view and reported that the quantity of oil removed as a result of this clean-up was considerably greater than had been expected on the basis of the initial surveys. In view of the environmental sensitivity of the polluted area, its importance as a major centre for inshore fisheries and mariculture and the quantities of buried oil subsequently found in the area, the Director has reconsidered his position and is now of the view that the claim for the costs of the additional clean-up should be considered admissible in principle.

4.3.7 The Director proposes therefore that, notwithstanding the fact that the claims referred to in paragraphs 4.3.3 and 4.3.6 have been rejected by the Court in charge of the limitation proceedings, the Assembly should authorise him to settle these claims.

5 Action to be taken by the Assembly

The Assembly is invited:

(a) to take note of the information contained in this document;

(b) to decide whether claims in respect of some of the environmental studies and the claim for the costs of additional clean-up incurred by the shipowner are admissible in principle and, if so, whether to authorise the Director to settle these claims; and

(c) to give the Director such other instructions as the Assembly may deem appropriate in respect of this incident.
