



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
40th session
Agenda item 3

FUND/EXC.40/7
5 September 1994

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

KEUMDONG N°5

Note by the Director

1 The Incident

1.1 On 27 September 1993, the Korean barge KEUMDONG N°5 (481 GRT) collided with the Chinese freighter BI JIA SHAN near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil were spilled from the KEUMDONG N°5. This oil quickly spread over a wide area due to strong tidal currents. The oil affected mainly the north-west coast of Namhae Island, where there are many fisheries and important mariculture resources.

1.2 The balance of the cargo was transhipped and the KEUMDONG N°5 was towed to a nearby repair yard. During slipping at the shipyard, a further quantity of approximately 50 tonnes of heavy fuel oil escaped from the ruptured tanks. Most of this oil was contained by a boom, but some escaped and caused light pollution to shores in the vicinity.

2 Clean-up Operations

2.1 The Korean Marine Police carried out clean-up operations at sea by the application of dispersants and sorbents, using its own vessels as well as ships belonging to the Yosu Port Authority and fishing boats.

2.2 For the shoreline clean-up operations, four major clean-up contractors were engaged and a labour force of over 4 000 villagers, policemen and army personnel were employed. The clean-up activities involved the use of dispersants and the manual cleaning of contaminated rocks. The clean-up operations were completed in early January 1994.

2.3 The disposal of oily waste proved difficult because of the quantities involved and the limited access to many of the clean-up sites. After collection, the waste was transported by barge to Incheon for incineration and landfill.

3 Claims for Compensation

3.1 At its 37th session, the Executive Committee authorised the Director to make final settlements of all claims relating to clean-up operations and preventive measures as well as all claims in respect of losses suffered by fishermen, except to the extent that the latter claims related to future losses. The Committee instructed the Director that, if claims gave rise to questions of principle which had not previously been decided by the Committee, he should refer such questions to the Committee for decision (document FUND/EXC.37/3, paragraph 4.4.2).

3.2 Claims relating to the cost of clean-up operations were presented by the Korean Marine Police and Navy, the local marine police force, Yosu Port Authority, Namhae County and some private contractors. All of these claims have been settled at an aggregate amount of Won 5 587 815 812 (£4.5 million) and have been paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd, Standard Club) during the period November 1993 - September 1994.

3.3 It is unlikely that there will be any further claims relating to clean-up operations.

3.4 The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation have been submitted by Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing eleven fisheries co-operatives with some 6 000 members in all. The total amount of the claims presented so far has provisionally been indicated at Won 93 132 425 000 (£75 million). The claims are being examined by the IOPC Fund's surveyors. The Kwang Yang Bay Federation has indicated that it will submit further claims in the region of Won 90 000 million (£73 million).

3.5 In February and April 1994, meetings were held in London between representatives of the Kwang Yang Bay Federation and the Director at which the Director explained the IOPC Fund's procedure for claims handling and the criteria applied by the Fund for the admissibility of claims.

3.6 In March 1994, on the instructions of the IOPC Fund and the Standard Club, an expert from the International Tanker Owners Pollution Federation Limited (ITOPF), together with two UK-based fishery experts, visited Korea for the purpose of carrying out field investigations into fishery and aquaculture resources allegedly affected by the spill, as part of the assessment of the claims submitted by the Kwang Yang Bay Federation. Three Korean scientists joined these experts in the investigations. The IOPC Fund experts have presented a report containing a detailed written analysis of the claims presented by the fishery interests. This report has been made available to the firm of London solicitors representing the claimants.

3.7 A meeting will be held in London in mid-September 1994 between the IOPC Fund, the Standard Club and the above-mentioned solicitors for a discussion of the various fishery claims. The Executive Committee will be informed of the results of the meeting.

3.8 The Director informed the Executive Committee at its 38th session that, as the total amount of the claims submitted exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, he had decided that the IOPC Fund's payments would, at least for the time being, be limited to 50% of the established damage suffered by each claimant. The Committee endorsed the Director's decision and instructed him to consider whether this percentage should be adjusted, in the light of developments (document FUND/EXC.38/9, paragraph 3.6.5). At its 39th session, having taken note of the developments, the Committee instructed the Director to exercise caution in making payments, in order to ensure equal treatment of claimants, in accordance with Article 4.5 of the Fund Convention (document FUND/EXC.39/8, paragraph 3.5.3).

4 Limitation Proceedings

4.1 The limitation amount applicable to the KEUMDONG N°5 is estimated at Won 75.5 million (£61 000).

4.2 The total amount paid by the Standard Club, Won 5 588 815 812 (£4.5 million), by far exceeds the limitation amount. The Standard Club will present a claim in subrogation to the IOPC Fund for the excess. The IOPC Fund has made advance payments to the Standard Club totalling US\$ 6 million (£4 017 126) in respect of the subrogated claim.

4.3 In March 1994, the shipowner made an application to the competent district court that limitation proceedings should be opened. In April 1994, the court decided that it would accept a Club letter of guarantee as limitation fund, and such a letter was deposited by the Standard Club in June 1994. The court rendered its decision to commence the limitation proceedings on 20 July 1994. The claimants are required to report their claims to the court by 17 September 1994.

5 Investigation into the Cause of the Incident

5.1 The Korean Maritime Accident Inquiry Agency carried out an investigation into the cause of the incident. The conclusion was that the incident was caused by navigational errors on the part of both vessels.

5.2 The Director examined, through a Korean lawyer, whether it could be considered that there was any fault or privity on the part of the owner of the KEUMDONG N°5 which would deprive him of the right to limit his liability. The investigation showed that there was no such fault or privity on the part of this ship.

6 Auction Proceedings

6.1 The owner of KEUMDONG N°5 has arrested the BI JIA SHAN to secure claims relating to damage caused by the collision, and proceedings have commenced for the sale of the BI JIA SHAN at auction. It appears that the value of the ship is approximately £450 000.

6.2 At its 39th session, the Executive Committee was informed of various options available to the IOPC Fund and the likely costs involved (FUND/EXC.39/6/Add.1).

6.3 The Standard Club has decided that it will not join the auction proceedings.

6.4 As decided by the Executive Committee at its 39th session (document FUND/EXC.39/8, paragraph 3.5.5), the IOPC Fund has joined in the limitation proceedings for the purpose of recovering part of the claim paid to the claimants. So far the ship has not been sold, since the minimum price fixed by the Court (at present Won 1 151 315 000 or £930 000) has not been obtained.

6.5 The Executive Committee decided at its 39th session that the IOPC Fund should not seek to arrest the BI JAI SHAN on the basis of a pre-judgement attachment in order to obtain security for the Fund's future recourse claims relating to compensation to be paid to the fishery interests.

7 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in the present document; and
 - (b) give the Director such instructions as it may deem appropriate in respect of the handling of claims arising out of this incident.
-