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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

FUND/EXC.44/6
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INCIDENTS INVOLVING THE IOPC FUND

KEUMDONG N°5

Note by the Director

1 Introduction

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.

1.3 The present document recapitulates the clean-up operations and summarises the settlement of claims which were made before the Executive Committee's 40th session. It also sets out the developments which have taken place since that session.

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 taken by barge 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, the Navy, Yosu Marine and Port Authority, Namhae and Hadong County and some private contractors. All of these claims have been settled at an aggregate amount of Won 5 587 815 812 (£4.6 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 In September 1994, a shipping company presented a claim for US\$25 970 (£16 300) for cleaning its allegedly contaminated vessel and for loss of hire during the cleaning operation. This claim is being discussed with the claimant.

3.5 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 (£77 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 (£75 million).

3.6 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.

3.7 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 United Kingdom-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.

3.8 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).

3.9 Since the Executive Committee's 40th session, several meetings have been held between the Director and the above-mentioned firm of London solicitors. These meetings have resulted in considerable progress being made on some points.

3.10 In July 1995, agreements were reached on the admissible amount in respect of a number of items of the claims presented by Kwang Yang Bay Federation. These items, which relate to damage to equipment and loss of earnings, have thus been agreed for a total of Won 1 273 961 731 (£1 056 400), compared with the claimed amount of Won 5 696 269 000 (£4.7 million).

3.11 As stated above, the total amount of the claims arising out of this incident exceeds the maximum amount available under the Civil Liability Convention and the Fund Convention. In order to make it possible for the IOPC Fund to pay agreed items in full, an agreement in principle has been reached between the IOPC Fund and the Kwang Yang Bay Federation that the admissible amount of the claims of the members of all the eleven fisheries co-operatives forming part of the Federation will not exceed Won 60 000 million (£49.8 million). This sum has been arrived at by reducing the amount of 60 million SDR (Won 68 994 025 800) by the total amount paid so far (Won 5 587 815 812) and by making a further reduction to give the IOPC Fund a certain safety margin. This agreement should be signed by the Chairmen of the above-mentioned eleven co-operatives, on the basis of powers of attorney issued by all the individual members, some 2 500 fishermen. The technical problems relating to this guarantee is at present discussed between the IOPC Fund's Korean lawyer and the lawyer representing the Federation.

3.12 The Director takes the view that once the agreement referred to in paragraph 3.11 is properly signed to the satisfaction of the IOPC Fund's Korean lawyer, the Fund would be in a position to pay any established claims in full.

3.13 At an early stage, the IOPC Fund requested that the fisheries co-operatives made available documents substantiating the alleged losses. The co-operatives refused to make any documents available for inspection. However, in September 1995 an agreement in principle was reached that the co-operatives would make available sales records for inspection by the IOPC Fund's Korean lawyer and its Korean surveyors. It is expected that this inspection will take place in the near future.

4 Claims handling and related issues

4.1 The claims have first been examined by the IOPC Fund's local surveyors, Korea Marine & Oil Pollution Surveyors Co Ltd (KOMOS). The KOMOS staff have many years experience of dealing with claims arising out of oil pollution incidents. KOMOS surveyors have held discussions with the claimants to obtain more documentation and further information. The claims assessment has been made in co-operation between KOMOS and ITOPF experts, taking into account the views of the other experts referred to in paragraph 3.7.

4.2 During the handling of claims arising out of the *Keumdong N°5* incident, significant divergences of opinion as to the admissibility of the claims in respect of fishery damage have arisen between the claimants and the IOPC Fund's experts and surveyors, including the KOMOS staff. The strong dissatisfaction of the fishermen has been focused on Captain S K Kim, managing director of KOMOS.

4.3 On Friday 4 August 1995, at about 10 pm local time (3 pm London time), Captain S K Kim held discussions with some 12 representatives of the fishermen having presented claims in respect of the *Keumdong N°5* incident. These discussions, which took place in the lobby of the hotel in Yosu where Captain Kim was staying, ended with some fishermen dragging Captain Kim out of the hotel. He was thrown into a car and was driven away. It was later found out that he had been taken to the Yosu office of the local fishery co-operative. The Korean police were called to the hotel. When Captain

Kim's whereabouts had been established, the police went to the fishery co-operative's office, and Captain Kim was released after having being held for some three hours. Captain Kim had been bruised but was not seriously injured. The following day the police took a statement from Captain Kim on the events.

4.4 The Legal Officer informed the Ambassador of the Republic of Korea in London in the afternoon of 4 August of the attack on Captain Kim. The Director immediately informed the Chairman of the Assembly and the Chairman of the Executive Committee of the attack.

4.5 On Monday 7 August 1995, after consultation with the Chairman of the Assembly and the Chairman of the Executive Committee, the Director sent a letter to the Korean Ambassador in London on this issue. In this letter, the Director stated that it was recognised that the attack on Captain Kim was carried out by individuals and that the Korean authorities had no knowledge whatsoever thereof. The Director also stated that the IOPC Fund trusted that the Government of the Republic of Korea would take all measures required in order to ensure that all surveyors and other experts employed by the Fund would be able to carry out their task in full safety, without any risk of physical violence, threat or intimidation. In his letter, the Director requested that the competent Korean authorities should investigate the attack on Captain Kim and that those who took part in this criminal act should be prosecuted and brought to justice. So far no information has been made available concerning the progress of any such investigation.

5 Limitation proceedings

5.1 The total amount paid by the Standard Club, Won 5 587 815 812 (£4.6 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 such subrogated claim.

5.2 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 were required to report their claims to the court by 17 September 1994. The Standard Club paid the limitation amount plus the interest, corresponding to Won 77 417 210 (£64 200), in cash to the Court in December 1994.

5.3 The Korean Court has prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund has been distributed to the claimants, and the limitation proceedings were completed on 25 August 1995.

5.4 The IOPC Fund intended to intervene in the legal proceedings brought against the shipowner and his insurer, in accordance with Article 7.4 of the Fund Convention. Under this Article, each Contracting State should ensure that the IOPC Fund has the right to intervene in such proceedings.

5.5 Under the Korean Statute implementing the *Civil Liability Convention* and the Fund Convention, the IOPC Fund may intervene in limitation proceedings in accordance with Supreme Court Regulations. The Supreme Court has not issued any Regulations concerning the Fund's right to intervene. The IOPC Fund's Korean lawyer informed the Director that, in these circumstances, the Fund was not entitled to intervene in the limitation proceedings. It is understood that the Supreme Court will issue the necessary Regulations in the near future.

5.6 It should be noted that the IOPC Fund was not notified of the limitation proceedings. The IOPC Fund's lawyer has advised the Director that, for this reason, any decision made by the Court in these proceedings is not binding on the IOPC Fund (cf. Article 7.5 of the Fund Convention).

6 Investigation into the cause of the incident

6.1 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.

6.2 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.

7 Auction proceedings

7.1 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.

7.2 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).

7.3 The Standard Club decided that it would not join the auction proceedings.

7.4 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 471 578 600 or £390 000) has not been obtained.

7.5 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.

8 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 or other issues relating to this incident.
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