



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
47th session
Agenda item 3

FUND/EXC.47/5
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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 sets out the developments which have taken place since the Executive Committee's 44th session.

2 Claims for compensation

2.1 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).

2.2 At its 38th session, the Executive Committee endorsed the Director's decision to limit the IOPC Fund's payments, at least for the time being, to 50% of the established damage suffered by each claimant. The Committee 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 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).

2.3 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 million (£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. It is unlikely that there will be any further claims relating to clean-up operations.

2.4 In September 1994, a shipping company presented a claim for US\$25 970 (£163 00) for cleaning its contaminated vessel and for loss of hire during the cleaning operation. This claim has been settled at Won 14 206 046 (£11 800) in February 1996.

2.5 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 million (£77 million). The claims have been 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).

2.6 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.

2.7 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, were agreed for a total of Won 1 117 million (£930 000 million), compared with the claimed amount of Won 6 463 million (£5.4 million).

2.8 In December 1995 agreement was reached with the fishery co-operative which had presented the largest group of claims (Won 18 428 million or £15.3 million). These claims were settled at Won 4 360 million (£3.6 million). In February 1996 the IOPC Fund paid to these claimants Won 2 150 million (£1.8 million), representing 50% of the settlement amounts minus the amounts that the claimants had previously received from the shipowner's limitation fund (cf paragraph 3.2 below).

2.9 Discussions are being held with several other co-operatives concerning the admissible quantum of their claims.

2.10 In order to make it possible for the IOPC Fund to pay agreed items in full, an agreement in principle was reached between the Fund and the Kwang Yang Bay Federation in the summer of 1995 that the admissible amount of the claims of the members of all the eleven fisheries co-operatives forming part of the Federation would not exceed Won 60 000 million (£49.8 million). This sum was determined by reducing the amount of 60 million SDR (Won 68 994 million) by the total amount paid up to July 1995 (Won 5 588 million) 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. Some technical problems relating to this guarantee have been discussed between the IOPC Fund's Korean lawyer and the lawyer representing the Federation. At its 44th session the Executive Committee shared the Director's view that, once the agreement was 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 (document FUND/EXC.44/17, paragraph 3.5.4). This agreement has not yet been signed by the Chairmen of the eleven co-operatives.

3 Limitation proceedings

3.1 The total amount paid by the Standard Club, Won 5 588 million (£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 these subrogated claims.

3.2 In March 1994, the shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus the interest, corresponding to Won 77 million (£64 200), in cash to the Court in December 1994. The Korean Court prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund was distributed to the claimants, and the limitation proceedings were completed on 25 August 1995.

3.3 The IOPC Fund had 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. 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 had not at that time 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. The Supreme Court issued the necessary Regulations in October 1995.

3.4 The IOPC Fund was not notified of the limitation proceedings. The IOPC Fund's lawyer has advised the Director that any decision made by the Court in these proceedings is therefore not binding on the Fund (cf Article 7.5 of the Fund Convention).

4 Auction proceedings

4.1 The owner of *Keumdong N°5* has arrested the *Bi Jia Shan* to secure claims relating to damage caused by the collision, and proceedings were commenced for the sale of the *Bi Jia Shan* at auction.

4.2 Following the Executive Committee's decision at its 39th session (document FUND/EXC.39/8, paragraph 3.5.5), the IOPC Fund joined in the limitation proceedings for the purpose of recovering part of the amounts paid to the claimants. The ship was sold in October 1995, but the price obtained did not even cover the cost of the sale and, for this reason, the IOPC Fund will not make any recovery.

5 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.
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