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INCIDENTS INVOLVING THE IOPC FUND CERTAIN INCIDENTS IN THE REPUBLIC OF KOREA

Note by the Director

1 Introduction

This document sets out recent developments in respect of certain incidents in the Republic of Korea.

2 Keumdong N°5

(Republic of Korea, 27 September 1993)

2.1 The incident

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*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae Island, where there are many fisheries and important mariculture resources.

2.2 Claims situation

2.2.1 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).

2.2.2 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).

2.2.3 Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 587 million (£4.6 million) and were paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd, Standard Club) by September 1994. It is unlikely that there will be any further claims relating to clean-up operations. The IOPC Fund has made advance payments to the Standard Club totalling US\$6 million (£4 017 126) in respect of these subrogated claims.

2.2.4 In September 1994, a shipping company presented a claim for US\$25 970 (£16 760) for cleaning its contaminated vessel and for loss of hire during the cleaning operation. This claim was settled at Won 14 206 046 (£11 800) and was paid by the Standard Club in February 1996.

2.2.5 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 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£76.3 million). The claims have been examined by the IOPC Fund's surveyors. The Kwang Yang Bay Federation had indicated that it would submit further claims in the region of Won 90 000 million (£73.7 million).

2.2.6 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 (£915 000), compared with the claimed amount of Won 6 463 million (£5.3 million). These agreements have not been formalised.

2.2.7 In December 1995 agreement was reached with the Namhae fishery co-operative which had presented the largest group of claims (Won 18 428 million or £15.1 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 2.3 below).

2.2.8 Negotiations have reached an advanced stage in respect of another two fishery co-operatives, namely the Hadong and Sachon co-operatives, which have presented claims totalling Won 6 237 686 000 (£5.1 million) and Won 959 279 000 (£786 000), respectively.

2.2.9 Yosu fishery co-operative left the Kwang Yang Bay Federation and took legal action against the IOPC Fund in May 1996. Thirty-six branches belonging to this co-operative presented claims in court totalling Won 4 254 220 066 (£3.5 million) as regards damage to the common fishery grounds. They have indicated, however, that the damage suffered actually totalled Won 15 324 716 000 (£12.6 million), and have reserved their right to increase the claimed amount in the court. Over 900 individual fishermen belonging to this co-operative, who are owners of fishing boats or licence holders of set net fishing and the operator of an on-shore fish culture storage tank, filed claims totalling Won 455 975 843 (£373 000). They have also indicated that the damage suffered totalled Won 1 642 812 080 (£1.3 million) and have reserved their right to increase the claimed amount in the court.

2.2.10 The first hearing of the Yosu fishery co-operative's claims was held at the Seoul District Court on 21 May 1996. The claimants did not present any evidence to support their claims, but undertook to present such evidence at a later hearing.

2.2.11 Discussions are being held with several other co-operatives which have not taken legal action concerning the admissible quantum of their claims. The claims of these remaining co-operatives total Won 47 572 520 985 (£39 million).

2.2.12 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 fishery 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. This agreement has not yet been signed by the chairmen of the eleven co-operatives.

2.2.13 At its 44th session, the Executive Committee shared the Director's view that, once the agreement referred to in paragraph 2.2.12 had been 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).

2.2.14 At its 47th session, a number of delegations stated that the IOPC Fund should exercise caution in agreeing to make full payments against guarantees of this type. The Committee noted that, although it had accepted this procedure in respect of the *Keumdong N°5* incident, procedures of this type should be used only in very particular situations and on condition that any guarantee provided would give the IOPC Fund security against overpayments (document FUND/EXC.47/14, paragraph 3.4.6).

2.3 Limitation proceedings

2.3.1 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 interest, corresponding to Won 77 million (£64 200), in cash to the Court in December 1994. The Korean Court established 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.

2.3.2 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.

2.3.3 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).

3 Sung II N°1

(Republic of Korea, 8 November 1994)

3.1 The incident

3.1.1 The coastal tanker *Sung II N°1* (150 GRT), registered in the Republic of Korea, ran aground in the harbour of Onsan, spilling some 18 tonnes of her cargo of heavy fuel oil. Clean-up operations were carried out by the Ulsan Marine Police, the shipowner and private contractors. Some four kilometres of coastline were affected by the oil. The clean-up operations were completed on 18 November 1994.

3.1.2 The ship was not covered by any liability insurance. However, the shipowner had obtained a bank guarantee from a Korean Bank for Won 22 million (£18 000), covering civil liability for oil pollution damage.

3.2 Claims situation

3.2.1 Claims for clean-up costs presented by the Ulsan Marine Police, Ulsan Maritime and Port Authority and a private contractor, totalling Won 9 707 270 (£8 050), were settled in December 1994 at a total amount of Won 9 206 345 (£7 630). These claims were paid by the shipowner.

3.2.2 Three other contractors presented claims for clean-up operations and preventive measures in the amount of Won 62 054 000 (£51 440). These claims were settled at Won 23 120 752 (£19 170). Two of these claims were paid by the shipowner. The third claim was paid partly by the shipowner, partly by the IOPC Fund.

3.2.3 The incident affected fishing activities and the aquaculture industry in the area. Three fishery co-operative associations and the owners of seafood restaurants submitted claims for compensation, totalling Won 475 938 550 (£394 500). These claims were settled and paid by the IOPC Fund in March 1995 for a total amount of Won 28 378 819 (£23 193).

3.2.4 It is unlikely that there will be any further claims resulting from this incident.

3.2.5 Indemnification of the shipowner (Won 5 750 000 or £4 800) has not yet been paid.

3.3 Limitation of liability

3.3.1 Under Korean Legislation, in order to be entitled to limit his liability a shipowner is required to commence limitation proceedings within six months of the date when he has received claims which together exceed the limitation amount. The period for commencing limitation proceedings expired in May 1995. The owner of *Sung II N°1* has not commenced such proceedings.

3.3.2 Since the shipowner did not commence limitation proceedings before the expiry of the above-mentioned time period, he has lost the right to limit his liability under Korean law. The question arises, therefore, whether the IOPC Fund should take recourse action against the shipowner to recover the amount which the Fund has paid in compensation, Won 37 780 112 (£42 363).

3.3.3 The limitation amount applicable to the *Sung II N°1* would have been approximately Won 23 million (£18 900).

3.3.4 The Director has carried out an investigation of the financial position of the shipowner through the IOPC Fund's lawyer in Korea. The investigation revealed that the shipowner has no assets from which the IOPC Fund could make recovery.

3.3.5 In view of the financial position of the shipowner and the small amount involved, the Director considers that it would not be meaningful for the IOPC Fund to take recourse action against the shipowner.

3.4 Indemnification of the shipowner

3.4.1 Pursuant to Article 5 of the 1971 Fund Convention, the IOPC Fund shall indemnify the shipowner or his insurer for a portion of his liability under the Civil Liability Convention, in the present case approximately 25% of the limitation amount applicable to the ship. The question arises whether the IOPC Fund is under an obligation to pay indemnification if the shipowner does not take the necessary steps to limit his liability.

3.4.2 The Fund Convention does not contain any provision making the shipowner's right to indemnification conditional on his being entitled to limit his liability. The Director considers, nevertheless, that it would be inappropriate for the IOPC Fund to indemnify a shipowner for a portion of the amount he has paid in compensation, if the shipowner has lost the right of limitation.

3.4.3 For these reasons, the Director proposes that the IOPC Fund should not pay any indemnification to the shipowner in the *Sung II N°1* case.

3.4.4 If, however, the Executive Committee were to decide that there is in principle no obstacle to the IOPC Fund's paying indemnification to the shipowner in the present case, the Director would like to carry out a further investigation into the cause of the incident.

3.4.5 The IOPC Fund may be exonerated, wholly or partially, from its obligation to pay indemnification if the Fund proves that, as a result of the actual fault or privity of the owner, the ship did not comply with the requirements of certain international instruments, inter alia the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto, and as amended by certain decisions by the Maritime Safety Committee of IMO, and that the incident or damage was wholly or partially caused by such non-compliance (Article 5.3 of the Fund Convention).

3.4.6 An investigation into the cause of the incident was carried out by the competent Marine Court. The cause of the incident was also addressed in criminal proceedings against the master in the competent District Court.

3.4.7 The investigation showed that the incident was caused by a navigational error committed by the master. It also showed that the ship carried only a small scale sea chart of the route and did not have any large scale chart of the port of Ulsan which encompasses Onsan port showing details of the port such as buoys and submerged rocks. The investigation established that the absence of a large scale sea chart on board contributed to the grounding.

3.4.8 Reference is made to Chapter V, Regulation 20 of SOLAS 74/78 which reads:

"All ships shall carry adequate and up-to date charts, sailing directions, lists of lights, notices to mariners, tide tables and all other nautical publications necessary for the intended voyage."

3.4.9 The Director takes the view that the absence of a large scale sea chart on board constitutes non-compliance with SOLAS 74/78, and that this non-compliance contributed to the incident. Since in the Director's opinion it is the shipowner's duty to ensure that the ship carries adequate charts, the absence of this chart should be considered as constituting an actual fault or privity of the shipowner. The Director proposes therefore that the IOPC Fund should also for this reason not pay indemnification to the shipowner in this case.

4 Dae Woong

(Republic of Korea, 27 June 1995)

4.1 The incident

4.1.1 The Korean tanker *Dae Woong* (642 GRT), laden with 1 500 tonnes of heavy fuel oil and 70 tonnes of diesel oil as cargo, ran aground off the port of Kojung some 150 kilometres south-west of Seoul (Republic of Korea). Two cargo tanks were damaged, and approximately one tonne of oil was spilled into the sea.

4.1.2 Some small islands and inlets near the site of the incident were contaminated by oil. Clean-up operations were carried out by the Marine Police and contractors applying dispersants and sorbents. The clean-up operations were completed on 1 July 1995. Some mariculture facilities were also affected by the oil spill.

4.2 Claims situation

4.2.1 In August 1995, the IOPC Fund received claims from the Marine Police and a private contractor in respect of the clean-up operations for Won 31 020 762 (£25 720) and Won 14 045 640 (£11 640), respectively.

4.2.2 In May 1996, the claim of the clean-up contractor was settled at Won 12 496 365 (£10 200). The Marine Police's claim was settled for the amount claimed. These claims have been paid by the IOPC Fund.

4.2.3 Several fishery co-operative associations have indicated that they will submit claims for compensation.

4.3 Financial security

4.3.1 The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£78 750). The ship was not entered with any P & I Club but had a financial security issued by a Korean bank corresponding to the limitation amount.

4.3.2 It has come to light that the shipowner revoked the bank guarantee by returning the original thereof to the bank two days after he had received the certificate of insurance cover. It is understood that the bank guarantee did not contain any provisions about cancellation. In this situation, the shipowner and the bank were entitled under Korean law to terminate the guarantee by agreement. As a consequence, the ship was not covered by any insurance or other guarantee at the time of the incident.

4.3.3 Although the aggregate amount of the claims so far settled is below the limit of the shipowner's liability, the shipowner has not paid these claims. The shipowner has not commenced limitation proceedings.

4.3.4 The IOPC Fund has investigated the financial situation of the shipowner through its Korean lawyer. The investigation has shown that the shipowner has no substantial assets. Based on the findings of this investigation, the IOPC Fund paid the settled claims in June 1996, pursuant to Article 4.1 (b) of the Fund Convention.

4.3.5 Article VII.5 of the Civil Liability Convention provides that the insurance or other financial security shall not satisfy the requirements of Article VII if it can cease, for reasons other than the expiry of the validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authority which issued the certificate, unless the certificate has been surrendered to this authority or a new certificate has been issued within this period.

4.3.6 The Pusan District Maritime and Port Administration issued a certificate, dated 28 February 1995, on a form worded in accordance with the model set out in the Annex to the Civil Liability Convention. In the certificate it is stated: "This is to certify that there is in force in respect of this ship a policy of insurance or other financial security satisfying the requirements of Article VII of the Civil Liability Convention" According to the certificate, the duration of the security and the validity of the certificate was for the period 27 February 1995 to 27 February 1996.

4.3.7 Under Article V.1 of the Civil Liability Convention, the requirement to have insurance or other financial security applies only to ships carrying more than 2 000 tonnes of oil in bulk as cargo. However, the Korean legislation implementing the Civil Liability Convention requires that a Korean ship shall have insurance if it carries more than 200 tonnes of oil in bulk as cargo. The ship was therefore required under Korean law to have a certificate of insurance for the voyage in question, whereas there was no such obligation under the Civil Liability Convention. For this reason, the Director takes the view that the Korean authorities were not in breach of the provisions of the Civil Liability Convention as regards the voyage in question for having issued a certificate without ensuring that the guarantee could not be revoked before the expiry of the three-month period laid down in the Convention.

5 Sea Prince

(Republic of Korea, 23 July 1995)

5.1 The incident

5.1.1 The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with over 80 000 tonnes of Arabian crude oil, grounded off Sorido Island near Yosu. Explosions and fire damaged the engine room and accommodation area.

5.1.2 It is believed that some 700 tonnes of bunker fuel were spilled, together with a small unknown quantity of crude oil from cargo tanks damaged as a result of the grounding. During the following weeks small quantities of oil leaked from the half submerged section of the tanker. Some of the spilled oil spread to the islands immediately north of Sorido Island. Most of the oil was carried eastward by currents and eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Tsushima and the vicinity of the islands of Oki.

5.1.3 The *Sea Prince* was entered with the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club).

5.2 Clean-up operations and impact on aquaculture and fisheries

5.2.1 The International Tanker Owners Pollution Federation Ltd (ITOPF) was engaged jointly by the IOPC Fund and the UK Club to follow the clean-up operations and give technical advice to those carrying out these operations. Two Korean firms of surveyors were also appointed to monitor these operations and to conduct investigations into the possible impact on fishery and aquaculture resources as well as on other resources.

5.2.2 The shoreline impact of the oil was mostly light to moderate, with predominantly small stretches of rocky coasts, sea wall defences and isolated pebble beaches being affected. Contractors were engaged to carry out clean-up operations and waste disposal. The villagers took part in the cleaning of beaches using manual methods. Some 2 000 people were involved in this work which was largely completed by the end of August 1995.

5.2.3 Clean-up operations were completed in all but one area of Sorido Island by the end of October 1995. It is expected that the clean-up operations in the remaining area, closest to the vessel's grounding site where the oil had penetrated deep into the pebble beach, will be completed by July 1996.

5.2.4 In addition to traditional fishery, intensive aquaculture is carried out in the area, particularly around the islands near Sorido. Floating fish cages, mussel farms and set nets were oiled to varying degrees, and the operators of these facilities cleaned them, with assistance from villagers.

5.2.5 Joint surveys to record the oil pollution damage to aquaculture facilities in the affected area were carried out with the involvement of various local fishing representatives, marine scientists working with ITOPF and local surveyors. Experts from Centre de documentation de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE) also participated in the surveys on behalf of the shipowner/Club and the IOPC Fund. Samples of fish, shellfish and seaweed were taken for chemical analysis and taint testing.

5.2.6 Chemical analyses of marine products taken from polluted and non-polluted areas were undertaken in the United Kingdom. Most of the samples taken from the polluted areas showed low levels of petroleum hydrocarbons, comparable to those found in samples taken from the non-polluted areas. Samples of mussels and clams taken from the polluted area showed high levels of petroleum hydrocarbons. However, the fingerprints of the oils indicated that the *Sea Prince* was not the source of the contamination.

5.2.7 Taste testings of samples were proposed by the experts of the UK Club and the IOPC Fund. The claimants have so far refused to carry out these tests.

5.3 Consideration by the Executive Committee at its 44th, 46th and 47th sessions

5.3.1 At its 44th session, the Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims. The Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident to the extent that the claims did not give rise to questions of principle which had not been decided by the Committee. The Director was not authorised to make any payments (document FUND/EXC.44/17, paragraphs 3.8.2 and 3.8.3).

5.3.2 The Executive Committee considered at its 46th session that the Director could be authorised to make partial payments of claims which had been settled. In view of the fact that the aggregate amount of the claims presented or indicated still greatly exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, however, the Committee decided that the IOPC Fund's payment should for the time being be limited to 25% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.3.3).

5.3.3 In the light of the information on the aggregate amount of the claims presented, the Executive Committee decided, at its 47th session, to increase the IOPC Fund's payments from 25% to 50% of the established damage suffered by each claimant, subject to confirmation of a significant reduction of the total amount of the fishery related claims (document FUND/EXC.47/14, paragraph 3.6.3). There has not yet been any such confirmation.

5.4 Claims for compensation

5.4.1 A number of claims relating to clean-up operations have been settled at Won 18 347 million (£15.1 million). The shipowner and the UK Club have made payments for these claims totalling Won 16 972 (£13.9 million). A number of claims in this category, totalling Won 1 344 million (£1.1 million) are being examined. Further claims are expected, estimated at Won 600 million (£491 800).

5.4.2 In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fishery co-operative associations have maintained that this red tide, which caused massive damage to fisheries, resulted from the oil spill response to these two incidents, in particular the use of large quantities of dispersants. It is the view of the IOPC Fund's experts, however, that red tides

are a common phenomenon in Korean waters in September and October, and that they are caused by a combination of industrial pollutants, municipal waste and ambient sea temperatures at that time of the year.

5.4.3 The fishermen in most of the villages affected by the spill formed a "Countermeasure Committee" to co-ordinate the submission of their claims and to negotiate with the shipowner, the UK Club and the IOPC Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishing grounds and other fisheries, but without supporting documentation. The damage suffered was provisionally indicated at Won 75 278 million (£63 million), with an additional Won 145 396 million (£121 million) for anticipated future losses.

5.4.4 In February 1996, fishery experts engaged by the Countermeasure Committee indicated that they would revise the fishery related claims which would be reduced to a total amount in the region of Won 53 800 million (£44 million).

5.4.5 In June 1996, the fishery experts engaged by the Countermeasure Committee submitted a report containing revised fishery related claims which were reduced to a total amount of Won 70 600 million (£58 million).

5.4.6 Pusan Fishery Co-operative Association, which does not form part of the Countermeasure Committee, submitted fishery related claims for Won 345 million (£282 800).

5.4.7 Claims have been submitted for Won 46 million (£37 700) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil. These claims are being investigated.

5.4.8 Claims totalling Won 4 772 million (£3.9 million) have been presented by hoteliers and others engaged in tourism-related activities on Namhae island, Koje Island and Yeochon county. Supporting documentation has not yet been provided. It appears that there is an overlap between these claims in respect of Koje Island and corresponding claims arising from the *Yeo Myung* incident.

5.4.9 The UK Club and the owner of the *Sea Prince* have reserved their position with regard to claims for the cost of the measures associated with the work carried out under the contract for the removal of the oil and vessel and related operations.

5.4.10 After consultation with the IOPC Fund's experts, the Director estimates that the total amount of the claims may reach the maximum amount of compensation available under the Civil Liability Convention and the Fund Convention. In view of the remaining uncertainty as regards the total amount of the claims, the Director considers that it would be prudent to maintain the Executive Committee's decision, referred to in paragraphs 5.3.2 and 5.3.3 above, limiting the IOPC Fund's payments.

5.5 Limitation proceedings

5.5.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR (£14 million).

5.5.2 The shipowner commenced limitation proceedings in February 1996.

5.6 Investigation into the cause of the incident

5.6.1 The IOPC Fund has followed the investigation of the Korean local Marine Enquiry Agency into the cause of the incident through its Korean lawyer. The Fund has also examined the judgement by the court of first instance in the criminal proceedings against the master of the *Sea Prince*.

5.6.2 The *Sea Prince* grounded off Sorido Island during a typhoon, having lost control under heavy swell and wind while on her way from the anchorage in Yosu Bay to take refuge in the open sea. Under Korean law, it is the master who should take the decision as to when and where to take refuge to avoid a typhoon.

5.6.3 In the view of the Director, this incident was caused by a navigational error of the master of the *Sea Prince* and the unusual movement of the typhoon contributed to the incident. The cause of the incident can be summarised as follows:

- (a) The master's delay in his decision to take refuge contributed to the incident. The master was too optimistic in his belief that the typhoon would get weaker and turn its course eastwards as it got closer to land. Had the master decided to take refuge in the open sea earlier, the tanker could have avoided encountering the centre of the typhoon.
- (b) The master committed an error in navigation in that he repeatedly changed the course of the vessel to portside, failing to realise that it would only result in the vessel being pushed more and more to starboard towards the island, in the vicinity of which she eventually grounded due to the influence of the swell.

5.6.4 According to the investigation of the local Marine Enquiry Agency, the engine and the equipment of the *Sea Prince* were in good order and were operating properly without any problems. The *Sea Prince* was properly manned with competent officers and crew. As regards the shipowner's right to indemnification under Article 5.1 of the Fund Convention, there is no indication that the ship did not comply with the requirements laid down in Article 5.3 of the Fund Convention.

5.6.5 For the reasons mentioned above, the Director considers that the IOPC Fund should not challenge the shipowner's right of limitation, nor refuse to pay indemnification to the shipowner.

5.6.6 It should be noted that there is a difference between the 1969 Civil Liability Convention and the implementing Korean legislation in respect of the criteria for depriving the shipowner of his right to limit his liability. The 1969 Convention provides that the shipowner loses this right if the incident occurred as a result of the owner's actual fault or privity (Article V.2). Under Korean legislation, the shipowner is not entitled to limit his liability if the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, which is the criterion laid down in the 1992 Civil Liability Convention. The IOPC Fund's Korean lawyer has advised the Director that the Korean courts would apply the Korean statute rather than the text of the Convention, which would make it more difficult to breach the shipowner's right of limitation.

6 Action to be taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) as regards the *Sung II N°1* incident (paragraph 3), decide whether the IOPC Fund should:
 - (i) take action against the shipowner to recover the amount paid by the Fund in compensation; and
 - (ii) refuse to pay indemnification to the shipowner;
 - (c) as regards the *Dae Woong* incident (paragraph 4), give the Director such instructions concerning the bank guarantee as it considers appropriate;
 - (d) as regards the *Sea Prince* incident (paragraph 5), decide whether the IOPC Fund should challenge the shipowner's right to limit his liability and whether the IOPC Fund should be relieved of its obligation to indemnify the shipowner under Article 5 of the Fund Convention; and
 - (e) give the Director such other instructions as it may deem appropriate in respect of the incidents dealt with in this document.
-