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INCIDENTS INVOLVING THE 1971 FUND

Certain incidents in the Republic of Korea
(SUNG IL N°1, DAE WOONG, HONAM SAPPHIRE and N°1 YUNG JUNG)

Note by the Director

1 Introduction

This document sets out developments in respect of certain incidents in the Republic of Korea since the 44th session of the Executive Committee.

2 Sung Il N°1

(Republic of Korea, 8 November 1994)

2.1 The incident

2.1.1 The coastal tanker *Sung Il 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.

2.1.2 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 (£17 180), covering civil liability for oil pollution damage.

2.2 Claims situation

2.2.1 Claims for clean-up costs totalling Won 9 707 270 (£7 580) were presented by the Ulsan Marine Police, the Ulsan Maritime and Port Authority and a private contractor. These claims were settled in December 1994 at a total amount of Won 9 206 345 (£7 630). They were paid by the shipowner.

2.2.2 Three other contractors presented claims for clean-up operations and preventive measures in the amount of Won 62 054 000 (£48 460). 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 1971 Fund.

2.2.3 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 (£371 680). These claims were settled and paid by the 1971 Fund in March 1995 for a total amount of Won 28 378 819 (£23 193).

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

2.2.5 The total amount of the settlements is Won 60 705 916 (£49 993).

2.3 Limitation of liability

2.3.1 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 Il N°1* has not commenced such proceedings.

2.3.2 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 limitation amount applicable to the *Sung Il N°1* would have been approximately Won 23 million (£17 960).

2.3.3 The Executive Committee considered, at its 49th session, whether the 1971 Fund should take recourse action against the shipowner to recover the amount which the Fund had paid in compensation, viz Won 37.8 million (£29 520). The Committee noted that an investigation carried out by the 1971 Fund's lawyer in Korea had revealed that the shipowner had no assets against which the Fund could make a recovery. The Committee therefore decided that it would not be meaningful for the 1971 Fund to take recourse action against the shipowner (document FUND/EXC.49/12, paragraph 3.7.4).

2.4 Indemnification of the shipowner

2.4.1 Pursuant to Article 5 of the 1971 Fund Convention, the 1971 Fund shall indemnify the shipowner or his insurer for a portion of his liability under the 1969 Civil Liability Convention, in the present case approximately 25% of the limitation amount applicable to the ship. The question arose whether the 1971 Fund was under an obligation to pay indemnification if the shipowner did not take the necessary steps to limit his liability.

2.4.2 At its 49th session, the Executive Committee considered that, although the 1971 Fund Convention did not contain any provision making the shipowner's right to indemnification conditional on his being entitled to limit his liability, it would be inappropriate for the 1971 Fund to indemnify the owner of the *Sung Il N°1* for a portion of the amount he had paid in compensation (document FUND/EXC.49/12, paragraph 3.7.5).

3 Dae Woong

(Republic of Korea, 27 June 1995)

3.1 The incident

3.1.1 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 spilled into the sea.

3.1.2 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.

3.2 Claims situation

3.2.1 In August 1995, the 1971 Fund received claims from the Marine Police and a private contractor in respect of the clean-up operations for Won 31 020 762 (£24 230) and Won 14 045 640 (£10 970), respectively.

3.2.2 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 1971 Fund.

3.2.3 Several fishery co-operative associations have indicated that they will submit claims for compensation, but so far no such claims have been received.

3.3 Financial security

3.3.1 The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£74 190). 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.

3.3.2 It came to light that the shipowner had 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.

3.3.3 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.

3.3.4 The 1971 Fund investigated the financial situation of the shipowner through its Korean lawyer. The investigation showed that the shipowner had no substantial assets. Based on the findings of this investigation, the 1971 Fund paid the settled claims in June 1996, pursuant to Article 4.1(b) of the 1971 Fund Convention.

3.3.5 Article VII.5 of the 1969 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.

3.3.6 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 1969 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.

3.3.7 Under Article VII.1 of the 1969 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 1969 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 1969 Civil Liability Convention.

3.3.8 At its 49th session, the Executive Committee considered this issue and shared the Director's view that the Korean authorities were not in breach of the provisions of the 1969 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 (document FUND/EXC.49/12, paragraph 3.7.6).

4 Honam Sapphire

(Republic of Korea, 17 November 1995)

4.1 The incident

4.1.1 During berthing manoeuvres at the oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing her N°2 port wing tank. An unknown quantity of Arabian heavy crude oil escaped from the damaged tank. The spilled oil drifted south and contaminated shorelines up to 30 kilometres away, with a further slight impact on an island 50 kilometres from the incident site.

4.1.2 The *Honam Sapphire* was entered in the United Kingdom Steam Ship Assurance Association Ltd (UK Club).

4.1.3 The shipowner, the UK Club and the 1971 Fund engaged Korea Marine & Oil Pollution Surveyors Co Ltd (KOMOS), Hyopsung Shipping Corporation and the International Tanker Owners Pollution Federation Ltd (ITOPF) to act as their surveyors.

4.2 Clean-up operations and impact on mariculture and fisheries

4.2.1 The offshore clean-up operation was led by the Marine Police. Some 35 Marine Police vessels and numerous fishing boats and other craft were engaged in applying dispersants and sorbent materials. Two helicopters were also used for spraying dispersants. By 23 November 1995, no more oil remained at sea.

4.2.2 The shoreline impact was comparatively light. On-shore clean-up using manual methods started on 21 November. The on-shore clean-up was completed in many areas by early January 1996, whereas in the most heavily polluted areas these operations continued until March 1996. Over 1 500 people worked at about 30 different sites under the co-ordination of four clean-up contractors. A fifth contractor was appointed to dispose of collected oily waste at an incineration plant and approved landfill site.

4.2.3 Several floating fish farms and on-shore hatcheries, set nets and common intertidal fishing areas were affected by the oil.

4.2.4 Some of the areas affected by the oil from the *Honam Sapphire* were also oiled following the *Keumdong N°5* and *Sea Prince* incidents.

4.3 Consideration at the previous meetings of the Executive Committee

4.3.1 At its 46th 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 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee considered it necessary for the 1971 Fund to exercise caution in the payment of claims. The Executive 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 previously been decided by the Committee. The Director was not authorised at that stage to make any payments (document FUND/EXC.46/12, paragraphs 4.6.2 and 4.6.3).

4.3.2 In the light of the information on the aggregate amount of the claims, the Executive Committee, at its 47th session, authorised the Director to make payments of claims which were settled. In view of the remaining uncertainty concerning the total amount of the claims, however, the Committee decided that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant (document FUND/EXC.47/14, paragraph 3.8.3).

4.4 Claims for compensation

4.4.1 Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 175 million (£7.2 million). Some claims belonging to this category have been agreed for a total amount of Won 4 047 million (£3.2 million) and paid by the shipowner and the UK Club in full. The other claims in this category are being examined, and further claims are expected.

4.4.2 Claims for fishery damage have been submitted by several fishery co-operatives in the area affected by the spill, totalling Won 49 039 million (£38.3 million).

4.4.3 Field surveys of the N°1 common fishery ground were carried out jointly by KOMOS and experts employed by the claimants in the Yosu area from 12 to 22 December 1995 and, with ITOFF's involvement, from 8 to 12 January 1996.

4.4.4 Nine operators of set net fishery in the Dolsan island area presented claims for damage to facilities and loss of income during the period when fishing was interrupted as a result of the incident, totalling Won 172 862 200 (£135 000). These claims were settled at Won 105 713 552 (£82 560) and were paid by the shipowner in April 1996.

4.4.5 Claims presented by the Namhae fishery co-operative, totalling Won 635 160 396 (£496 030), relate to five types of fishing carried out by the members of the co-operative. Claims have thus been submitted by operators of gape nets for loss of income during the clean-up operations, by operators of fyke nets for damage to facilities and loss of income, by 123 fishing boat operators for loss of income and boat cleaning costs, by licence holders of the N°1 common fishery grounds for loss of income during the period when fishing was interrupted, and by a cage culture farmer for mortality of caged fish, damage to the facility and additional costs incurred.

4.4.6 The assessment made by the experts engaged by the UK Club and the 1971 Fund of the claims referred to in paragraph 4.4.5 was based on the actual interruption of business while the clean-up operations were carried out. The claim relating to the alleged mortality of caged fish was not accepted, since there was no evidence that such mortality had occurred as a result of the oil pollution or the clean-up operations.

4.4.7 The claims presented by the Namhae co-operative were settled at an aggregate amount of Won 202 943 778 (£158 490) and were paid by the shipowner in July 1996. The table set out below contains a breakdown of these claims.

<u>Group of claims</u>	<u>Amount claimed</u> Won	<u>Amount agreed</u> Won
Operators of gape nets	10 791 396	10 791 396
Operators of fyke nets	90 045 000	10 629 324
Fishing boat operators	60 095 000	59 000 131
Licence holders in respect of Class 1 Co-operative fishery grounds	364 379 000	94 930 100
Farmers of cage culture	<u>109 850 000</u>	<u>27 592 827</u>
Total	<u>635 160 396</u> (£496 030)	<u>202 943 778</u> (£158 490)

4.4.8 The settlements reached so far total Won 4 356 million (£3.4 million). Claims totalling Won 53 360 million (£42 million) are being examined.

4.4.9 The 1971 Fund has not yet made payments for compensation, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire*.

4.5 Limitation proceedings

4.5.1 The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£13 million).

4.5.2 The shipowner commenced limitation proceedings in September 1996.

4.6 Investigation into the cause of the incident

4.6.1 The Director has followed the investigation of the Korean Marine Enquiry Agency into the cause of the incident through its Korean lawyer.

4.6.2 The investigation concluded that the incident was caused by an error on the part of the pilot during berthing manoeuvres resulting from his misjudgement of the currents around the berth and the use of tug boats. The investigation showed that the pilot was not sufficiently experienced in manoeuvres of this type and that he, at the time of the berthing, was very tired due to his having worked for very long hours. It also showed that the master's error in navigation and his failure to carry out emergency anchoring contributed to the incident.

4.6.3 According to the investigation carried out by the Marine Accident Enquiry Agency, the *Honam Sapphire* was well maintained and in a good condition. The investigation also showed that the *Honam Sapphire* was manned with competent officers and crew.

4.6.4 In the Director's view, the investigation did not give any indication that the incident occurred as a result of the actual fault or privity of the owner of the *Honam Sapphire*. For this reason, the Director takes the view that the 1971 Fund should not challenge the shipowner's right to limit his liability.

5 N°1 Yung Jung

(Republic of Korea, 15 August 1996)

5.1 The incident

5.1.1 While the Korean sea-going bunkering barge *N°1 Yung Jung* (GRT 560), laden with 200 tonnes of marine diesel oil and 1 600 tonnes of medium fuel oil, took shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea), the barge grounded on a submerged rock which did not appear on the chart.

5.1.2 As a result, approximately 28 tonnes of medium fuel oil spilled in to the sea. A dozen ships which were in the vicinity of the grounding site and various port facilities such as piers and embankments, as well as nearby rocky shores were contaminated.

5.1.3 Clean-up operations were carried out by three contractors engaged by the shipowner. The clean-up operations were completed by 14 September 1996.

5.1.4 The wreck of *N°1 Yung Jung* was removed and the remaining oil was transferred to another vessel.

5.1.5 The *N°1 Yung Jung* was not entered in any P & I Club, but was insured by a marine insurer in Hong Kong for protection and indemnity up to a limit of US\$1 million (£639 800) per incident, with a deductible of US\$10 000 (£6 400).

5.2 Claims situation

5.2.1 Claims for the cost of the clean-up operations totalling Won 431 million (£337 000) have been presented by the above-mentioned three contractors and by the Pusan Marine Police and the Pusan Maritime & Port Authority. Further claims for clean-up operations are expected.

5.2.2 The owners of the contaminated vessels have presented claims totalling Won 565 000 (£440).

5.2.3 Claims totalling Won 175 million (£137 000) in respect of the operations to salve the wreck of *N°1 Yung Jung* and remove the remaining cargo have been presented by the local contractors and by the owner of the *N°1 Yung Jung* respectively.

5.2.4 The claims mentioned above are being examined by the 1971 Fund's surveyor.

5.2.5 It is expected that this incident will give rise to fishery claims, but no such claims have been received so far.

5.3 Limitation of liability

5.3.1 The limitation amount applicable to the *N°1 Yung Jung* is estimated at Won 88 365 090 (£69 010).

5.3.2 The shipowner has not yet commenced limitation proceedings.

5.4 Investigation into the cause of the incident

The Korean authorities are carrying out an investigation into the cause of the incident. The Director is following this investigation through the 1971 Fund's lawyer.

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) give the Director such other instructions as it may deem appropriate in respect of the incidents dealt with in this document; and
 - (c) consider whether to authorise the Director to settle the claims arising out of the *N°1 Yung Jung* incident to the extent that the Committee deems appropriate.
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