



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
50th session  
Agenda item 3

71FUND/EXC.50/7  
16 September 1996

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### SEKI

Note by the Director

#### 1 Introduction

At its 49th session, the Executive Committee considered the situation in respect of the claims arising out of the *Seki* incident which occurred on 30 March 1994 off the port of Fujairah (United Arab Emirates), on the basis of a document prepared by the Director (document 71FUND/EXC.49/6).

#### 2 Claims for compensation

2.1 The Government of Fujairah had notified the Court of Fujairah of 30 claims amounting to Dhr 163 million (£28.6 million). The Government had, however, submitted only 19 claims totalling Dhr 98.3 million (£17.2 million) to the shipowner's P & I insurer, the Britannia Steam Ship Insurance Association Ltd (the Britannia P & I Club), plus a claim for environmental damage for US\$15 983 610 (£10 million). These claims included one submitted by the Government of Fujairah on behalf of 743 fishermen for Dhr 36.9 million (£6.5 million). The Britannia P & I Club and the IOPC Fund had been given notice of a further 16 claims (ie 36 claims in all), although some of these claims have not yet been quantified.

2.2 The Britannia P & I Club made payments to the Government of Fujairah totalling Dhr 36.4 million (£6.5 million), including payments of Dhr 13.7 million (£2.4 million) in respect of the fishery claims. Most of these payments were made after consultation with the Director.

2.3 The claim for environmental damage was considered by the Executive Committee at its 48th session. The Committee referred to the 1971 Fund Resolution N°3 and to the policy of the 1971 Fund which had been laid down by the Assembly, namely that damage to the environment *per se* was not admissible whereas reasonable costs for reinstatement actually incurred or to be incurred qualified for compensation. The Committee endorsed the Director's view that the claim for environmental damage presented by the Government of Fujairah to the Britannia P & I Club was not admissible under the Civil Liability Convention

and the Fund Convention since it was calculated on the basis of a theoretical model (document FUND/EXC.49/6, paragraph 4.2.4).

2.4 The Government of Oman submitted a claim for OR100 564 (£168 000) for the cost of surveillance activities, and for costs incurred in placing dispersant-spraying aircraft on standby and in the provision of offshore recovery equipment to the Government of Fujairah. The claim included an item for OR27 000 (£45 200) for fishery damage along the affected coastline of the Musandam peninsula. This claim was settled and paid by the Britannia P & I Club in November 1994 at OR92 279 (£154 400), after consultation with the Director.

2.5 A detailed description of the claims situation was given in document 71FUND/EXC.49/6.

### **3 Limitation proceedings**

The limitation amount applicable to the *Seki* is 14 million SDR (approximately £13.3 million). The Britannia P & I Club established a limitation fund in the Court of Fujairah by means of a letter of undertaking.

### **4 Special deposit made by the shipowner**

4.1 Through its agent (World-Wide Shipping Agency Limited), the owner of the *Seki* entered into a Memorandum of Agreement with the Government of Fujairah on 20 June 1994. Pursuant to this Memorandum, the owner deposited US\$19.6 million (£12.6 million) with a bank in the United Arab Emirates. Claims presented by the Government could be paid from this deposit even if they had been rejected by the Britannia P & I Club or the IOPC Fund. If such a payment were to be made for a rejected claim, the shipowner could take legal action in respect of that claim against the Club and the IOPC Fund in the competent court in the United Arab Emirates. Under the Memorandum, the Government of Fujairah was obliged to refund to the shipowner the amount received towards any part of a claim not upheld by the court.

4.2 Having been informed of the on-going discussions concerning the conclusion of such a Memorandum, the Director informed the shipowner of the IOPC Fund's concern, since the Memorandum would create a system of payments at variance with the Civil Liability Convention and the Fund Convention and would in fact result in the establishment of two limitation funds. He also pointed out that under Article III.4 of the Civil Liability Convention no claims for compensation should be made against the shipowner otherwise than in accordance with the Convention, and that the intention of the international legislator had been to channel all claims against the shipowner within the Convention.

4.3 In a letter dated 24 June 1994, the Director made it clear to the authorities of the United Arab Emirates that this Memorandum constituted a private arrangement and would not affect the legal position of the IOPC Fund. He also stated in that letter that the IOPC Fund was not bound by any agreement in respect of a claim unless that claim had been approved explicitly by the Fund or had been established by a final judgement rendered by a competent court in legal proceedings brought under Article IX of the Civil Liability Convention or Article 7.1 of the Fund Convention. A copy of this letter was forwarded to the owner of the *Seki*.

4.4 The Director was informed on 25 March 1996 that the Government of Fujairah had drawn upon the deposit made by World-Wide Shipping Agency Ltd in respect of the claim relating to environmental damage for a total of US\$15 983 610 (£10 million), which corresponds to the amount claimed (cf paragraph 2.1 above).

4.5 In view of this development, the Director reminded the Government of Fujairah on 27 March 1996 of the IOPC Fund's position in respect of claims for environmental damage.

**5 Settlement between the Government of Fujairah and the Shipowner**

5.1 In July 1996 the Director was informed that a global settlement had been reached between the shipowner and the Government of Fujairah covering all the claims for compensation arising out of the *Seki* incident. The Director has no knowledge of the terms of this settlement, nor of the amounts involved, since the settlement agreement contains a confidentiality clause.

5.2 At the Director's request, the Government of Fujairah confirmed that a settlement agreement had been reached in respect of the *Seki*'s share of the liabilities arising out of the incident and that the Government had agreed to withdraw all legal proceedings against the owner of the *Seki*, his insurer and the IOPC Fund. The Government added that it was not in a position to give any guarantee to indemnify the IOPC Fund if claims were to be made against the Fund, since the IOPC Fund had refused to be party to any global settlement.

5.3 The Director considers that in view of this development the *Seki* case is closed as regards the IOPC Fund.

5.4 The Director has informed the Government of Fujairah that the above-mentioned settlement was without any effect as regards the IOPC Fund's position in respect of the admissibility of the various claims or of the acceptability of the quantum of these claims.

**6 Action to be taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.

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