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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE and YEO MYUNG

Note by the Director

1 Introduction

This document sets out the developments in respect of the *Sea Prince* and *Yeo Myung* incidents.

2 Sea Prince

(Republic of Korea, 23 July 1995)

2.1 The incident

2.1.1 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 (Republic of Korea). Explosions and fire damaged the engine room and accommodation area.

2.1.2 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 spilt 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.

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

2.2 Clean-up operations and impact on aquaculture and fisheries

2.2.1 The International Tanker Owners Pollution Federation Ltd (ITOPF) was engaged jointly by the 1971 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 (Korea Marine & Oil Pollution Surveyors Co Ltd (KOMOS) and Hyopsung Surveyors & Adjusters Corporation) 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.

2.2.2 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. 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.

2.2.3 Clean-up operations were completed in all but one area of Sorido Island by the end of October 1995. 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, were completed in July 1996. Buried oil has been found at one location on Keumo Island, and removal of this oil is expected to start later in the autumn of 1996.

2.2.4 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.

2.2.5 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 1971 Fund. Samples of fish, shellfish and seaweed were taken for chemical analysis and taint testing.

2.2.6 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.

2.2.7 Taste testings of samples were proposed by the experts of the UK Club and the 1971 Fund. The claimants have so far refused to carry out these tests.

2.3 Consideration by the Executive Committee at its previous sessions

2.3.1 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 1971 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).

2.3.2 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 1971 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).

2.3.3 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 1971 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.

2.4 Claims for compensation

2.4.1 A number of claims relating to clean-up operations presented by 36 entities, including the Yosu Marine Police, municipalities and the shipowner, have been settled at approximately Won18.4 million (£14.4 million) and these claims were paid by the shipowner and the UK Club. Further claims in this category, totalling Won1 536 million, (£1.2 million), are being examined.

2.4.2 As regards the areas contaminated by both the *Sea Prince* and the *Yeo Myung* incidents, the 1971 Fund and the two P & I Clubs involved agreed to split the clean-up expenses equally between the *Sea Prince* and the *Yeo Myung* incidents, based on the recommendation of the technical experts. The clean-up operations in these areas were carried out by two contractors engaged by the owner of the *Yeo Myung*. The claims presented by these contractors were settled at Won715 309 300 (£558 620). The settlement amounts were paid by the owner of *Yeo Myung* and his insurer (the North of England P & I Club). The UK Club reimbursed the amount attributed to the *Sea Prince*, Won 357 654 650 (£279 310), to the North of England Club in August 1996.

2.4.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of Oki island in a total amount of ¥357 214 (£2 100). This claim has been approved by the Director in August 1996 at the amount claimed.

2.4.4 In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment is less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

2.4.5 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 1971 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.

2.4.6 The fishermen belonging to seven fishery co-operatives 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 1971 Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishery grounds and other fisheries, but without supporting documentation. The damage suffered was provisionally indicated at Won 75 278 million (£59 million), with an additional Won 145 396 million (£114 million) for anticipated future losses.

2.4.7 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 (£42 million).

2.4.8 In June 1996, the fishery experts engaged by the Countermeasure Committee submitted a report containing revised fishery related claims which were assessed by these experts at a total amount of Won 70 600 million (£55 million). The report was, however, not accompanied by supporting documentary

evidence. After discussions in August 1996 with the experts engaged by the UK Club and the 1971 Fund, the chairman representing the Countermeasure Committee agreed to provide sales consignment data for most of the fishing sectors allegedly affected by the oil, but this data has not yet been provided.

2.4.9 Pusan Fishery Co-operative Association, which does not form part of the Countermeasure Committee, submitted fishery related claims for Won 345 million (£269 430).

2.4.10 Claims have been submitted for Won 46 million (£35 920) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil.

2.4.11 Claims totalling Won 4 772 million (£3.7 million) have been presented by the owners of guest houses and other tourism-related businesses on Namhae island, on Yokgi island, on Koje Island and in the 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 the corresponding claims arising from the *Yeo Myung* incident.

2.4.12 The claims dealt with paragraphs 2.4.6 - 2.4.11 are being investigated by the surveyors engaged by the UK Club and the 1971 Fund.

2.4.13 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 contract for the removal of the oil and vessel and related operations (cf document FUND/EXC.47/2, paragraph 2.1-2.6).

2.4.14 After consultation with the 1971 Fund's experts, the Director estimates that the total amount of the claims may reach the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 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 2.3.2 and 2.3.3 above, limiting the 1971 Fund's payments, namely that the payments should be limited to 25% of the established damage suffered by each claimant and that the Director may increase the payments to 50% of the established damage, subject to confirmation that there is a significant reduction of the total amount of the fishery claims.

2.5 Limitation proceedings

2.5.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR (£13 million).

2.5.2 The Suncheon District Court issued an order for the commencement of limitation proceedings on 31 May 1996. The Suncheon Court decided that all claims should be filed by 28 August 1996. By that date clean-up claims totalling Won44 586 million (£34.8 million), fishery claims totalling Won70 713 million (£55.2 million) and non-fishery claims totalling Won4 589 million (£3.6 million) had been presented to the Court.

2.5.3 The shipowner and the UK Club have filed subrogated claims for clean-up operations and claims for the shipowner's own clean-up costs for a total amount of Won20 800 million (£16.2 million). The 1971 Fund has filed claims subrogated from the UK Club in the amount of £2 million. The shipowner has filed a claim for the cost of the measures associated with the work carried out under contract for removal of the oil and the vessel and related operations (cf paragraph 2.4.13 above) in the amount of US\$24.8 million (£15.9 million).

2.5.4 The first court hearing for the examination of the claims was held on 23 September 1996. At the hearing, the UK Club and the 1971 Fund filed objections to the fishery claims and the claims relating to tourism and agriculture. The fishery co-operatives objected to the clean-up claims. Next hearing is scheduled for 21 October 1996.

2.5.5 After the hearing on 23 September 1996, the lawyer representing the fishery co-operatives made a proposal that all parties should conclude a non-binding agreement as regards the quantum of claims for the purpose of distributing the shipowner's limitation fund.

2.5.6 The Director considers that such an agreement would prejudice the position of the 1971 Fund. Under Article 7.6 of the 1971 Fund Convention, if the 1971 Fund has intervened in proceedings relating to an action for compensation against the shipowner or his insurer, the judgement rendered in these proceedings will become binding upon the Fund as regards the facts and findings. The Director considers that there is a great likelihood that the Court would render a decision based on such a non-binding agreement between the parties. For this reason the Director has instructed the Fund's Korean lawyer that the 1971 Fund should not accept the proposal to conclude such a non-binding agreement.

2.5.7 It is expected that the Court will render its preliminary decision on the quantum of the claims in March 1997. If the parties involved were to make objections to the preliminary decision of the Court, it is likely that the opposition proceedings in the Court of first instance will take several years.

2.5.8 When the final judgement is rendered by the Court of first instance, the 1971 Fund will face the same issues of provisional enforcement and obligation to make a deposit as is dealt with in the document on *Keumdong N°5* incident (document 71FUND/EXC.50/6, paragraph 4.3).

2.6 Investigation into the cause of the incident

2.6.1 The 1971 Fund has followed the investigation of the Korean 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*.

2.6.2 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. In the view of the Director, this incident was caused by a navigational error by the master of the *Sea Prince* and the unusual movement of the typhoon contributed to the incident. At its 49th session, the Executive Committee took note of the Director's view and decided not to challenge the shipowner's right of limitation. As regards the shipowner's right to indemnification under Article 5.1 of the Fund Convention, the Executive Committee noted that, on the basis of the investigation of the Marine Accident Inquiry Agency, there was no indication that the ship did not comply with the requirements laid down in Article 5.3 of that Convention. The Committee therefore considered that the 1971 Fund would not be relieved of its obligation to indemnify the shipowner (document FUND/EXC.49/12, paragraphs 3.7.9 and 3.7.10).

2.6.3 The Director was instructed by the Executive Committee to investigate whether the 1971 Fund could recover any amount paid by it from any person who had contributed to the incident.

2.6.4 The Director has investigated, through the 1971 Fund's Korean lawyer, the possibility of taking recourse action against any person who contributed to the incident. The investigation revealed that the master communicated with the charterer of the ship about taking refuge action, but no third party - including the staff of the oil terminal where the *Sea Prince* was berthed before taking refuge - influenced the master's decision to take refuge, which led to the *Sea Prince* incident. In the Director's view, there is no evidence that any person other than the master contributed to the incident. For this reason, the Director considers that the 1971 Fund has no possibility of taking recourse action in this case.

3 Yeo Myung

3.1 The incident

3.1.1 On 3 August 1995, the Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul Island, near Koje Island (Republic of Korea).

3.1.2 Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled. The oil drifted in a north-easterly direction and stranded at a number of locations on Koje Island from 4 to 8 August. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koje Island were not affected by the spill.

3.1.3 The *Yeo Myung* was entered with the North of England Protection and Indemnity Association Limited (The North of England P & I Club) for pollution risks.

3.2 Clean-up operations and impact on aquaculture, fishery and tourism

3.2.1 A Korean firm of surveyors (National Marine Surveyors and Consultants, NASCO) was appointed by the 1971 Fund and the North of England P & I Club to monitor clean-up operations and to conduct investigations into potential damage to fisheries, mariculture and tourism. The International Tanker Owners Pollution Federation Ltd (ITOPF), which had a representative on site in connection with the *Sea Prince* incident, also provided assistance.

3.2.2 In response to the spill, the Marine Police initiated clean-up operations at sea using dispersants and sorbents. Shoreline clean-up was initially organised by officials from the Koje City Hall using local labour. On 9 August the Marine Police and the Koje City Hall handed over the clean-up to a specialised contractor, which continued to use local labour drawn from the inhabitants of the villages affected by the spill. As a result of the clean-up operations, large quantities of oily waste have been collected and disposed of.

3.2.3 In addition to traditional fishery, mariculture is carried out in the area affected by the *Yeo Myung* incident, although not to the same extent as in the area around Sorido, where the *Sea Prince* grounded. At the time of the *Yeo Myung* incident, surveys of the fishery damage resulting from the *Sea Prince* incident had not been undertaken in the Koje area. Consequently, the surveyors acting in respect of the two incidents conducted joint surveys in this area.

3.3 Consideration by the Executive Committee at the previous sessions

3.3.1 At its 44th session, the Executive Committee authorised the Director to make final settlement of all claims arising out of this incident, to the extent that the claims did not give rise to question of principle which had not previously been decided by the Committee (document FUND/EXC.44/17, paragraph 3.9.2).

3.3.2 On the basis of the assessment made by the 1971 Fund's experts, the Executive Committee, at its 46th session, agreed with the Director that it was unlikely that the total amount of the established claims arising out of this incident would exceed Won3 000 million (£2.3 million) and therefore endorsed his decision that the established claims could be paid in full by the 1971 Fund (document FUND/EXC.46/12, paragraph 4.4.2).

3.4 Claims for compensation

3.4.1 Claims totalling Won1 140 million (£890 280) have been received from twelve entities including the Marine Police, Koje City, a local fire station and a port authority for the cost of clean-up operations and waste disposal.

3.4.2 The claims by two contractors which had carried out operations relating to both the *Sea Prince* and the *Yeo Myung* incidents have been settled at a total amount of Won715 309 300 (£558 620). As mentioned above in relation to the *Sea Prince* incident (paragraph 2.4.2), the 1971 Fund and the two P & I Clubs involved agreed in respect of the areas contaminated by both incidents to split the clean-up expenses equally between the two incidents. These claims were paid by the North of England Club in December 1995 and in January 1996. The UK Club reimbursed 50% of the expenses which were attributed to the *Sea Prince* incident to the North of England Club in August 1996.

3.4.3 In September 1995, after consultation with the Director, the North of England P & I Club made an advance payment of Won 120 million (£101 840) to one of the contractors referred to in paragraph 3.4.2.

3.4.4 The claims of the Marine Police and Koje City were settled for the amount claimed and paid by the North of England Club, a total amount of Won209 022 147 (£163 240) in May 1996.

3.4.5 The 1971 Fund has reimbursed the North of England Club in respect of the Club's subrogated clean-up claims for a total of Won560 945 437 (£438 070).

3.4.6 Claims of the local fire brigade and the port authority, totalling Won3 350 000 (£2 620), are being examined by the 1971 Fund's and the Club's surveyors. The claims of five operators totalling Won170 million (£132 760) for clean-up operations mainly in the Pusan area were settled at Won73 252 984 (£57 210) and were paid by the 1971 Fund in August 1996. A claim of one operator amounting to Won28 292 000 (£22 090) for offshore clean-up operations off Koje was rejected, because there was no evidence that these operations were carried out.

3.4.7 The Koje fishery co-operative has stated that it will present claims for losses in the fishery and mariculture sector caused by the *Yeo Myung* incident for an amount which has provisionally been indicated in the region of Won 4 500 million (£3.5 million). This co-operative has also indicated that it will claim for anticipated future losses amounting to about Won 15 300 million (£12 million).

3.4.8 In May 1996, the fishermen belonging to the Koje fishery co-operative presented a report prepared by its surveyor containing revised claims for facility damage, business interruption and mortality of fish and aquaculture activities totalling Won3 323 million (£2.6 million), including future losses. However, that report does not contain sufficient evidence to substantiate the alleged losses. The surveyors of the Club and the Fund are investigating these claims.

3.4.9 In addition, the owners of set nets and fish farms have presented claims separately for Won644 million (£502 930) for losses already suffered and for an additional Won1 618 million (£1.3 million) for anticipated future losses. In August 1996, the claimed amounts were reduced to Won429 million (£335 030) for set nets and Won669 million (£522 460) for fish farms, excluding future losses. These claims are being investigated by the surveyors of the Club and the 1971 Fund.

3.4.10 Local businesses in the tourist sector along the affected beaches on Koje island have presented claims for some Won 3 080 million (£2.4 million) relating to loss of income. It appears that there is an overlap between these claims and the corresponding claims arising from out of the *Sea Prince* incident (cf paragraph 2.4.11 above).

3.4.11 In September 1995, there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fisheries 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 1971 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.

3.5 Limitation proceedings and investigation into the cause of the incident

3.5.1 The shipowner commenced limitation proceedings at the Changwon District Court in January 1996. The limitation fund was established by the North of England P & I Club in February 1996 by payment of the limitation amount of Won21 465 434 (£16 760) to the Court.

3.5.2 In August 1996, thirteen groups of claimants, including the shipowner, lodged claims as regards clean-up operations, fishery activities and businesses in the tourism sector for a total amount of Won6 994 million (£5.5 million).

3.5.3 The first court hearing will be held on 14 October 1996.

3.5.4 The Director has followed the investigation of the Marine Accident Inquiry Agency into the cause of the incident through the 1971 Fund's Korean lawyer. The investigation revealed that the incident was caused by a navigational error of the masters on the part of both vessels involved in the collision in the restricted visibility due to dense fog. The investigation did not give any indication that the incident was caused by the actual fault or privity of the owner of the *Yeo Myung* or the non-compliance with the instruments listed in Article 5.3(a) of the 1971 Fund Convention.

3.5.5 In view of the findings of the investigation, the Director takes the view that the 1971 Fund should not challenge the shipowner's right to limit his liability, nor oppose a request by the shipowner for indemnification under Article 5.1 of the 1971 Fund Convention.

3.5.6 The Director is taking the necessary steps to initiate recourse action against the owner of the colliding ship with a view to recovering part of the expenses incurred by the 1971 Fund. The Director is taking legal advice as to whether it would be in the 1971 Fund's interest to apply to the Court for attachment of the assets of that shipowner.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
 - (b) give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident.
-