



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
50th session  
Agenda item 3

71FUND/EXC.50/9  
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## INCIDENTS INVOLVING THE 1971 FUND

### YUIL N°1

#### Note by the Director

#### 1 The incident

1.1 The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea) on 21 September 1995. The tanker was refloated by a tug and a Navy vessel some six hours after the grounding. While being towed towards the port of Pusan, the tanker sank in 70 metres of water, 10 kilometres from the mainland.

1.2 Three cargo tanks were reported to have been breached as a result of the grounding. Unknown quantities of oil were spilled into the sea. Apart from the initial release of oil following the grounding and sinking, small quantities of oil leaked from the wreck from time to time during October, and minimal quantities have leaked from time to time thereafter.

1.3 Shorelines on the east and north coast of Koje Island, on the west coast of Kadokto and immediately to the east and west of the mainland at Pusan, as well as a number of smaller islands were oiled as a result of the initial spill. Some re-oiling of shorelines west of Pusan also occurred following later small releases of oil from the wreck.

1.4 The *Yuil N°1* was entered with the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd (the "Standard Club").

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

## **2 Clean-up operations**

2.1 Initially, the clean-up operations at sea were carried out by two skimmers and a number of fishing vessels deploying sorbent pads. The Marine Police also used ships for spraying dispersants. The operations at sea were reduced, however, when it became apparent that the oil leaking from the wreck did not constitute a serious threat to coastal resources. Booms were deployed in some coastal areas to protect laver seaweed farms and the booms were later removed when the perceived threat of further pollution had decreased.

2.2 The onshore clean-up was carried out by a number of contractors, with the assistance of some 1 750 villagers. The clean-up operations in many areas were completed by early November. In the more heavily polluted areas the onshore clean-up was terminated at the end of November, although some operations were not completed until mid January 1996.

## **3 Consideration by the Executive Committee at previous sessions on the settlement and payment of claims**

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 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 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. However, the Director was instructed not to make any payments (document FUND/EXC.44/17, paragraph 3.11.3).

3.2 In the light of the information then available on the aggregate amount of the claims, at its 46th session the Executive Committee 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.46/12, paragraph 4.5.6).

3.3 At the 47th Executive Committee, the Korean delegation requested that the level of compensation payable by the 1971 Fund be increased from 60% to 100%. The delegation stated that, if this request were accepted, the Korean Government was prepared to provide a guarantee to protect the 1971 Fund against overpayment. A number of delegations expressed the view that the 1971 Fund should be very cautious in accepting a guarantee of the type proposed by the Korean delegation. The Executive Committee decided not to accept such a guarantee. The Committee decided to maintain the limit of the 1971 Fund's payments at 60% of the established damage suffered by each claimant (document FUND/EXC.47/12, paragraphs 3.7.4 and 3.7.8 - 3.7.10).

3.4 At the 49th session of the Executive Committee, the delegation of the Republic of Korea expressed its concern regarding the delay in the payment of the expenses incurred during clean-up operations. This delegation indicated that in the *Yuil N°1* incident the claims for the clean-up operations had been settled, but that only 60% of the settled amounts had been paid. It was stated by this delegation that this delay in payment might lead to a mistrust of the Korean Government by those who participated in the clean-up operations. This delegation feared that in the event of a future oil spill, clean-up operations might therefore not be carried out as efficiently as they had been in the past. In the view of this delegation a possible solution would be to give priority to claims for clean-up costs (document FUND/EXC.49/12, paragraph 3.7.12).

3.5 The Director stated that he regretted this situation. He drew attention to the fact that under the Fund Convention all claimants had to be treated equally and no claims could be given priority. He also mentioned that when the Executive Committee decided to limit the 1971 Fund's payments to a specified percentage of the agreed amounts, this percentage had to be applied to all claims (document FUND/EXC.49/12, paragraph 3.7.13).

3.6 The Executive Committee endorsed the Director's position on this point (document FUND/EXC.49/12, paragraph 3.7.14).

#### 4 Claims for compensation

4.1 Claims relating to clean-up operations have been received from various contractors, a fishery co-operative, Pusan Marine Police and Koje City. Agreement has been reached on the quantum of the claims with most of the contractors and the other entities for a total of Won 12 245 million (£9.6 million). These settled claims have been paid either in full or partially by the Club or partially by the 1971 Fund.

4.2 The claims of the Pusan Marine Police and Koje City were settled at the amounts claimed, Won 182 million (£142 130), and Won 27 million (£21 090), respectively. The Club paid these claims in full, and the 1971 Fund reimbursed the Club 60% of these payments.

4.3 The total payments made by the Club to the clean-up contractors amount to Won 627 million (£0.5 million). The 1971 Fund reimbursed the Club in December 1995 amounts corresponding to 60% of its payments.

4.4 After the reimbursements from the 1971 Fund, the balance of the Club's payments for the clean-up claims referred to in paragraphs 4.1 and 4.2 total Won 314 million (£245 220). The Fund's payments for these claims total Won 7 120 million (£5.6 million), including the reimbursements. The amount of Won 4 814 million (£3.8 million) is outstanding, which represents approximately 40% of the agreed amounts.

4.5 The oil affected areas where there is intensive fishing and mariculture. KOMOS and ITOFF carried out surveys of some stretches of coastline and mariculture facilities which had allegedly been affected by the oil. Further surveys were carried out in the Pusan area from 30 October to 4 November 1995 jointly by KOMOS, ITOFF and experts employed by the claimants.

4.6 A co-operative of owners of set nets on Koje island claimed compensation for its members for a total of Won 1 385 million (£1.0 million) for the costs of cleaning their nets and for loss of income during varying periods of up to 20 days when fishing was interrupted. The claims, which were accepted for Won 1 167 million (£911 370), were paid in full by the Standard Club in November 1995.

4.7 On 25 October 1995 agreement on the method for calculating the losses was reached with representatives of eleven local fisheries associations on Koje island. A final settlement of the claims presented by ten of these associations whose claims totalled Won 1 643 million (£1.3 million) was concluded on 25 November 1995, for a total amount of Won 1 400 million (£1.1 million). These claims relate to cleaning costs and loss of earnings for fishing boat owners, loss of earnings for set net owners, loss of earnings in respect of class N°1 common fishery grounds and farms for cultivation of sea squirt and short necked clams. A major part of the settlement amount for these claims was paid by the Standard Club in December 1995 and the balance in January 1996. An agreement was reached in August 1996 with the remaining local fisheries association in this area for an amount of Won 290 million (£226 480). This claim has been paid in full by the Standard Club.

4.8 A laver cultivation farm in the Naktongp'o region claimed Won 62 million (£48 420) for the cost of cleaning and replacing contaminated equipment. This claim, which was accepted in full, was paid by the Standard Club in November 1995.

4.9 The 1971 Fund has reimbursed the Standard Club an amount of Won 1 577 million (£1.2 million) in respect of most of the claims referred to in paragraphs 4.4 - 4.8, corresponding to 60% of the established amount of each claim.

4.10 Claims for the cleaning of facilities by the owners of oyster and mussel farms on the north-west coast of Koje island have been agreed for Won 73 million (£61 870). The 1971 Fund paid 60% of this amount (Won 44 million or £37 120) to the claimants.

4.11 So far, claims have been agreed for a total of Won 15 236 million (£12 million), out of which Won 12 245 million (£9.6 million) relates to clean-up operations and Won 2 990 million (£2.3 million) to fisheries claims. Payments made so far total Won 10 392 million (£8.1 million), out of which the 1971 Fund's payments total Won 8 738 million (£6.8 million).

4.12 Clean-up claims for a total amount of Won 240 million (£187 430) and fishery related claims for a total amount of Won 60 740 million (£47.4 million) have not been settled yet.

## **5 Wreck removal and related issues**

5.1 The shipowner employed a specialist British company to conduct a survey using a remotely operated submarine vehicle to establish the condition of the wreck.

5.2 In November 1995 the Marine Police ordered the shipowner to remove the oil or the wreck. On the basis of studies carried out by experts employed by the shipowner, the owner has maintained that it would be unnecessary and unwise to remove the oil or the wreck. The shipowner has argued that there was a minimal release of oil and that there was no risk of any significant release of oil if the wreck is left where it was since the wreck was slowly being covered by mud which would help to prevent further significant releases of oil. The owner has also stated that if an oil removal or wreck removal operation were to be carried out, there would be a significant risk that oil would escape causing further pollution. This issue is being considered by the Korean authorities, but no final decision has been taken.

5.3 In a letter to the 1971 Fund dated 24 January 1996, the Korean Government stated that there was growing concern about the possibility of an oil spill from the wreck which could cause pollution in the nearby coastal area and which could severely affect the livelihood of the local people. The Government mentioned that Korean experts were of the opinion that there was a need to carry out further investigation of the wreck using deep sea divers in order to acquire more accurate and detailed information on the condition of the wreck for removal. The Government therefore asked whether the 1971 Fund was prepared to carry out further investigation of the condition of the wreck and further asked whether, in the event that the 1971 Fund was not prepared to carry out such an investigation, the Fund would compensate the Korean Government its cost for carrying out this investigation as preventive measures against possible oil pollution. Finally, the Government asked whether the Fund would fund the costs incurred by the Government for removing the sunken tanker and its cargo. The Government mentioned that a firing range of the Korean Navy was situated in the vicinity of the wreck, and that this could contribute to a greater risk of oil pollution.

5.4 In his response, the Director stated that it was not the task of the 1971 Fund to carry out itself clean-up operations or measures to prevent or minimise pollution damage, nor to undertake studies in these fields, and that for this reason the 1971 Fund would not be able to undertake the investigation referred to in the letter from the Korean Government. He referred to the fact that under the Civil Liability Convention and the Fund Convention, the 1971 Fund paid compensation for reasonable measures taken after an incident had occurred to prevent or minimise oil pollution damage, and that the question of reasonableness was to be considered on an objective basis, in the light of all circumstances of the case. It would in his view be for the Executive Committee to decide whether or not, in the light of all facts, the cost of any investigation or of any operation carried out by the Korean Government in respect of the removal of the wreck would be admissible. The Director also stated that the 1971 Fund would have to reserve its position as to whether any damage, costs and expenses caused by oil pollution resulting from the Korean Navy's firing practice would be admissible under the Conventions. He expressed the view that it would be for the Korean authorities to take the necessary steps in order to avoid causing pollution damage.

5.5 At the 47th session, the Executive Committee discussed this issue and shared the view of the Director that it was not the task of the 1971 Fund to carry out clean-up operations or preventive measures itself, nor to undertake studies in these fields. The Committee endorsed the Director's position that the 1971 Fund should not undertake the investigation requested. It was agreed that it would be for the

Committee to decide, on an objective basis and in the light of all the circumstances of the case, whether the cost of any investigation or of any operation carried out by the Korean Government in respect of the removal of the oil or the wreck would be admissible for compensation (document FUND/EXC.47/14, paragraph 3.7.7).

5.6 The Korean delegation stated that the Korean Government wished to find a solution to the wreck removal issue and the question of guarantees against overpayment. The delegation mentioned that an ad hoc Committee composed of several interested Government authorities had been set up to take anti-pollution measures and that a final decision would be taken after all aspects had been duly considered, including the position taken by the Executive Committee. The delegation stated that the Korean Government would like to have a more detailed discussion with the 1971 Fund after the Government's decision had been taken. The 1971 Fund has not yet been informed that such a decision has been taken by the Korean Government.

5.7 The surveyor of the 1971 Fund has been informed that the Marine Police plans to carry out an underwater survey of the wreck to assess whether there is any risk of further release of oil.

## 6 Level of payments

In view of the remaining uncertainty concerning the total amount of the established claims, the Director takes the view that the limit of the 1971 Fund's payments to 60% of the established damage by each claimant laid down by the Executive Committee should be maintained.

## 7 Limitation proceedings

7.1 The shipowner commenced limitation proceedings at the Pusan District Court in April 1996.

7.2 The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£195 240).

7.3 By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£46.9 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fisheries and clean-up claims to the Court for a total amount of Won 10 000 million (£7.8 million). The clean-up contractors who have so far received only 60% of the agreed amounts filed claims for the balance, totalling Won 4 700 million (£3.7 million). The fishery association which received 60% of the agreed amount filed a claim for the balance, Won 29 million (£22 650).

7.4 The first court hearing took place on 18 June 1996. The Club and the 1971 Fund filed objections to the fishery claims.

7.5 In the limitation proceedings, the Korean Court does not fully review the merits of the claims. Instead, it renders a decision based on the documents submitted by the claimants and the opinion of the administrator appointed by the Court. A party who is dissatisfied with the decision may bring an action challenging this decision, and this action will be heard by the same Court.

7.6 The second court hearing was held on 27 August 1996. At that session, the lawyer representing the fishermen objected to all the clean-up claims. A third hearing took place on 8 October 1996. At that session, the administrator appointed by the Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fisheries claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable. The Court will render its decision in due course.

7.7 The Fund's Korean lawyer has expressed the view that it is likely that the Court will follow the administrator's proposal. The Director proposes that the 1971 Fund should challenge any decision by the Court, if the assessment of the claims is not based on acceptable evidence.

**8 Investigation into the cause of the incident and recourse action**

8.1 The Korean Maritime Accident Inquiry Agency (MAIA) made an investigation into the cause of the incident.

8.2 MAIA's report on the investigation was made available to the 1971 Fund in September 1996. The Director is studying this report with the assistance of the Fund's lawyers and technical experts.

**9 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 concerning the handling of the claims arising out of this incident as the Committee may deem appropriate.
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