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OIL POLLUTION
COMPENSATION
FUND 1971

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Agenda item 3

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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 naval 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 1995, 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").

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 Claims for compensation

3.1 So far, claims have been agreed for a total of Won 15 523 million (£10.7 million), out of which Won 12 284 million (£8.5 million) relates to clean-up operations and Won 3 239 million (£2.2 million) to fisheries claims. Payments made so far total Won 10 417 million (£8.7 million), out of which the 1971 Fund's payments total Won 8 763 million (£7.3 million).

3.2 Clean-up claims for a total amount of Won 280 million (£194 000) and fishery related claims for a total amount of Won 60 740 million (£42 million) have not been settled yet.

3.3 A detailed presentation of the claims and the settlements is contained in paragraphs 4.1 - 4.12 of document 71FUND/EXC.50/9.

4 Limitation proceedings

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

4.2 The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£195 200).

4.3 By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£47 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fisheries and clean-up claims for a total amount of Won 10 000 million (£7.8 million). The clean-up contractors and fishery associations, who have so far received only 60% of the agreed amounts filed claims for the balance, totalling Won 4 700 million (£3.7 million) and Won 29 million (£22 650) respectively.

4.4 At the court hearings, the Standard Club and the 1971 Fund filed objections to the fishery claims and the fishermen submitted objections to all the clean-up claims.

4.5 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 an administrator appointed by the Court. A party who is dissatisfied with the Court's decision may bring an action challenging it, and this action will be heard by the same Court.

4.6 At a court hearing held on 8 October 1996, the administrator 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. It is expected that the Court will render its decision in the near future.

4.7 The Fund's Korean lawyer has expressed the view that it is likely that the Court will follow the administrator's proposal.

5 Considerations at the Executive Committee's 50th session

5.1 In view of the remaining uncertainty concerning the total amount of the established claims, the Executive Committee, at its 50th session, decided to maintain the limit of the 1971 Fund's payments at 60% of the established damage suffered by each claimant (document 71FUND/EXC.50/17, paragraph 3.4.2).

5.2 The Executive Committee noted the developments in the limitation proceedings and instructed the Director to challenge any court decision, if the Court's assessment of the claims was not based on appropriate evidence.

5.3 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.

5.4 The Korean delegation emphasised that solutions should be found within the compensation system to solve this problem since it was not acceptable that Governments should feel obliged to intervene to mitigate financial hardship. This delegation referred to a document on emergency payments in cases of financial hardship presented by the United Kingdom delegation to the 19th session of the 1971 Fund Assembly (document 71FUND/A.19/27).

5.5 The Korean delegation stated that the Korean Government was considering paying the balance of 40% to claimants in the *Yuil N°1* case who were suffering financial hardship. For this reason, this delegation requested confirmation that, if the Government made such payments, the Government would subrogate their claims against the Fund.

5.6 The Executive Committee endorsed a statement by the Director that if the Korean Government were to pay claimants the balance of 40% of the amounts accepted by the 1971 Fund, the Government would acquire by subrogation the claimants' rights against the Fund (document 71FUND/EXC.50/17, paragraph 3.9.8).

6 Payment by National Federation of Fishery Associations

6.1 In January 1997, the National Federation of Fisheries Co-operatives (NFFC) paid the remaining 40% of most of the established claims for clean-up operations.

6.2 As a result, NFFC has acquired by subrogation these claims against the 1971 Fund for the amounts paid.

7 Investigation into the cause of the incident and recourse action

7.1 The Korean Maritime Accident Inquiry Agency (MAIA) made an investigation into the cause of the incident. This investigation revealed that the initial grounding was caused by the master of the *Yuil N°1* having chosen to navigate through a narrow and dangerous passage between two islands which resulted in the vessel grounding on a small rocky island.

7.2 As regards the refloating and towing operation of the *Yuil N°1*, which followed the initial grounding and subsequently led to the sinking of the *Yuil N°1*, the findings established by MAIA can be summarised as follows.

When the naval vessel arrived at the grounding site of the *Yuil N°1*, the tanker was sinking with about 90% of the engine room space filled with sea water. The engine room and one cargo tank had been punctured. The Captain of the naval vessel started to act as if he was in command of the rescue operation without communicating with the Marine Police which was in charge of the rescue operation and was also on site. In view of the extent of the spread of oil, the Captain of the naval vessel recommended to the master that the *Yuil N°1* should be refloated, in the expectation that she would not sink when secured to the naval vessel after her refloating. The master of the *Yuil N°1* pointed out the danger that the *Yuil N°1* might sink after refloating, but eventually agreed to the proposal of the Captain of the naval vessel to refloat the ship. The tug, at the request of the master of the *Yuil N°1*, undertook to refloat the tanker by pulling her from the rock where she was aground. The tug easily succeeded in the refloating operation. The *Yuil N°1* was then secured alongside the naval vessel by several mooring lines, and the naval vessel and the tug started to tow the *Yuil N°1*. By this time, the *Yuil N°1* was submerged to the fore and aft deck level. The naval vessel towed the *Yuil N°1* for 20 minutes, but abandoned this operation when the *Yuil N°1* contacted heavily the naval vessel and the aft mooring line parted. The tug continued the towing operation for a further ten minutes until the *Yuil N°1* started to submerge further. The *Yuil N°1* sank four hours later in approximately 75 metres of water.

7.3 In its investigation report, MAIA points out that the master of the *Yuil N°1* did not check the damaged plating, the extent of the damage and how much water entered the vessel, nor did he ascertain the situation of the *Yuil N°1* and take emergency measures to minimise the risk of sinking. However, MAIA accepted that the sinking was a force majeure and decided that the action taken by the master after the grounding was inevitable. MAIA also pointed out that the Captain of the naval vessel was reckless because the *Yuil N°1* had sunk up to deck level and that towing by the method envisaged could have resulted in the naval vessel sinking. MAIA concluded that the navigating officer of the tug did not undertake the tow on his own initiative, and that therefore he was not to blame for the incident.

7.4 The hull insurer of the *Yuil N°1* has taken legal action in the Republic of Korea against the owner of the tug which took part in the refloating and towing operation and against the Korean Government, for the purpose of recovering the amount it had paid for the damage to the hull. In its pleadings to the Court the hull insurer has made the following points:

- (1) Both the tug and the naval ship were negligent in that they did not carefully check the status of the broken parts of the *Yuil N°1* and did not move the oil on board the *Yuil N°1*, before they attempted to refloat the *Yuil N°1*.
- (2) The tug was of the type used for the berthing or unberthing in the inner port and was not suitable for salvage of the *Yuil N°1*. Notwithstanding this, the tug attempted to tow the *Yuil N°1*. In addition, the tug's master and engineer were not on board the tug during the towing operation.
- (3) The Captain of the naval vessel was reckless in instructing the tug to refloat the *Yuil N°1*, without seriously considering the potential risk of the *Yuil N°1* sinking.
- (4) Thus the tug owner and the Korean Government, as employers of the tug and the naval vessel, respectively, and therefore joint tortfeasors, should be jointly and severally liable for the damage to the hull of the *Yuil N°1*.

7.5 It is expected that the Court of first instance will render its judgement in the Spring of 1997. The Director is monitoring the developments of this court case.

8 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 in respect of this incident as the Committee may deem appropriate.
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