



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

71FUND/EXC.54/5
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INCIDENTS INVOLVING THE 1971 FUND

NAKHODKA

Note by the Director

1 Introduction

1.1 On 2 January 1997, the Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki Islands in the Sea of Japan.

1.2 The tanker broke into two sections, resulting in a spill of some 6 200 tonnes of oil. The stern section sank soon after the incident and now lies at a depth of 2 500 metres with an estimated 10 000 tonnes of cargo on board.

1.3 The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast, leaking oil at a slow rate. Attempts to secure a line to the bow were unsuccessful, due to the severe weather conditions and the lack of suitable attachment points. On 7 January, the bow section grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

2 Stern section

2.1 The stern section is lying at a depth of 2 500 metres, some 140 kilometres from the nearest coast. It continues to leak at a low rate, estimated by MSA at between 3 and 15 m³ per day. Observations at the surface show that under the current weather conditions the oil released dissipates within two kilometres of reaching the surface, and the released oil is not considered to be a significant threat to coastal resources.

2.2 An investigation by a deep-sea unmanned submarine has shown that the oil is leaking from two tanks which together contained some 2 480 m³. A committee set up by the Japanese Government to consider options available for preventing further release of oil from the sunken stern section has concluded that current technology does not offer any practicable methods to prevent such release. Since the release does not pose a significant threat of pollution, the Committee has not proposed any immediate action in respect of the stern section other than the continued monitoring of the oil reaching the surface.

3 Removal of oil from bow section

3.1 A Japanese salvage company was contracted by the shipowner to remove the remaining oil from the bow section prior to its being taken away, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over this operation on 14 January 1997, utilising the services of two Japanese salvage companies, while simultaneously ordering the construction of a temporary causeway to the grounded bow section. This causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil, if it should prove impossible to do so from the sea.

3.2 The operation to remove the oil from the bow section was completed on 25 February 1997. In total some 2 830m³ of oil/water mixture was removed.

3.3 The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. The causeway and crane were not used in the removal of the majority of the oil from the bow section, but only to remove the last 380m³ of oil/water mixture. The Japanese authorities intend to carry out work during the summer months to remove the causeway.

3.4 During May 1997, a Japanese salvage company engaged by the shipowner removed the bow section on to a barge and transported it to a shipyard in Hiroshima Prefecture for scrapping.

4 Clean-up operations

4.1 Although much of the oil which was lost when the ship broke up dispersed naturally at sea, patches of heavily emulsified oil, ranging in size from one to 100 metres in diameter, drifted towards the coast. Several hundred tonnes of emulsion stranded at various locations over a distance of more than 1 000 kilometres covering ten prefectures. Tar balls of 10-50 centimetres were widely scattered. The most severely affected shorelines were those in the immediate vicinity of the bow section, extending 20 kilometres to the north, and those along the north coast of the Noto peninsula.

4.2 The 1971 and 1992 Funds and the shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), engaged the International Tanker Owners Pollution Federation Ltd (ITOPF) to monitor the clean-up operations. The ITOPF experts arrived at the site on 5 January 1997. The Funds and the Club also engaged General Marine Surveyors & Co Ltd (GMS), a Japanese surveying company which has previously provided expertise for the 1971 Fund in Japanese oil spills and which has considerable experience of pollution incidents in Japan. The Japanese lawyer representing the 1971 and 1992 Funds has been monitoring the operations.

4.3 A contract was signed on behalf of the shipowner with the Japan Marine Disaster Prevention Centre (JMDPC) to organise the clean-up operations by using commercial clean-up contractors. In addition, the Petroleum Association of Japan provided coastal booms, skimmers, portable storage tanks and a number of trained operators. This equipment was used to protect sensitive areas and to recover floating oil. Several ships and tugs were mobilised to collect viscous emulsions.

4.4 A considerable number of vessels, belonging to the Maritime Safety Agency of Japan (MSA) and the Japan Self Defence Force, were engaged in oil recovery operations, using manual and mechanical means. Prefecture governments within the affected area also mobilised their own vessels and chartered others to collect oil from the sea. Helicopters from MSA and from private companies were used to spray

dispersants at sea, primarily to deal with floating oil escaping from the bow section. In addition, several hundred fishing boats from eight prefectures were mobilised to collect oil at sea.

4.5 Since there was a risk that the bow section would break up before the oil could be removed, ITOFF recommended that the local offshore response capability should be supplemented with equipment from the East Asia Response Ltd (EARL) stockpile in Singapore. Two recovery systems were provided by EARL. One unit was installed on a salvage tug and the other on a supply vessel.

4.6 In response to a request for assistance by the Japanese Government, the Russian Ministry of Merchant Marine dispatched an offshore supply vessel, two tugs equipped with oil recovery systems and a barge. Two of these vessels arrived on site on 18 January and the others followed later. The vessels were used to supplement MSA's offshore clean-up response.

4.7 Onshore clean-up was carried out by manual and mechanical methods, and the bulk of the stranded oil had been removed from polluted beaches by mid February. Several large pits were excavated to provide temporary storage for the large volumes of oil, water and sand which were recovered as a result of these operations.

4.8 Some 500 000 man days were used in the onshore clean-up operations in the five prefectures which were most severely affected. About half of the work was carried out by volunteers from all over Japan. The remainder of the workforce comprised fishermen, local residents, municipal workers, fire brigades and the Self Defence Force.

4.9 Operations are now concentrated on final clean-up. Further cleaning is required to remove oil traces from the shore in fishing and amenity areas. Sieving techniques are being used on sandy shorelines to remove tar balls, while a variety of techniques are being used to clean oil stained rocks and man-made structures. In various locations a viscous oil emulsion will have to be removed from the base of tetrapods used along the affected shoreline as sea defences.

4.10 Clean-up operations both at sea and on the shoreline have generated considerable quantities of oily waste. Much of the collected waste was contained in over 100 000 drums, but some material was stored in bulk. The total quantity of waste is estimated at 40 000 tonnes. This waste has been transported to disposal facilities throughout Japan by ship, rail and road. In addition, an estimated 14 000 tonnes of lightly oiled sand is to be buried at local industrial land fill sites. Tenders have been invited for the reinstatement of sites used for the temporary storage of recovered liquid oil.

4.11 By 30 May 1997 all prefectures affected by the spill had made public declarations that the clean-up operation in the respective prefecture had been completed.

5 Impact on fishing, tourism and other industries

5.1 Several national parks are located within the affected area, and tourism is an important industry. Tourists visit this coast throughout the year, not only for its natural beauty, spas and temples, but also to eat crabs which are caught in deep water off-shore.

5.2 There are important mariculture activities in the affected area, including oyster, fish and seaweed cultivation in sheltered bays and inlets. Throughout the affected area there are many large complex set nets, some of which have been contaminated. Where practicable, booms were used extensively throughout the affected area to protect mariculture facilities and nets, and their deployment was largely successful.

5.3 On rocky shores throughout the affected area naturally occurring seaweed is harvested for human consumption, both commercially and for domestic use. One such seaweed, *iwa nori*, grows on concrete platforms constructed amongst rocky outcrops and is usually harvested from December to February. Following the spill, harvesting of this seaweed was abandoned for the season.

5.4 The sea water used to supply an aquarium near Mikuni was contaminated. The owner of the aquarium therefore moved 14 dolphins to other locations in Japan. The dolphins were later returned to the aquarium.

5.5 In the affected area there are seven nuclear power stations and several oil fired stations which depend on sea water for their cooling systems. The sea water intakes were successfully protected by booms.

6 Claims handling

6.1 The 1971 and 1992 Funds, the shipowner and the UK Club have established jointly a Claims Handling Office in Kobe, managed by GMS. The claims handling is being monitored by the Funds' Japanese lawyer.

6.2 At regular intervals the staff of the Claims Handling Office visit the ten prefectures which comprise the affected area, so as to enable claimants and their representatives to discuss the claims with the staff.

6.3 The technical examination of the claims is being carried out by the staff of the Claims Handling Office in close co-operation with the staff of ITOFF. Experts will be engaged for the assessment of claims in certain specialised fields, as required.

7 Claims for compensation

7.1 A claim has been received from JMDPC for the participation in clean-up operations of members of the National Fishery Federation, representing nine fishery co-operative associations with some 68 000 members. The claim totals ¥2 312 043 456 (£12.1 million)^{<1>} and relates to the fishermen's involvement in the clean-up operations for the period up to the end of February 1997. After a preliminary examination of this claim, the Director made a provisional payment on 30 April 1997 of ¥541 018 169 (£2.8 million), representing 60% of the minimum amount assessed by the experts engaged by the IOPC Funds and the UK Club.

7.2 A claim by a contractor participating in the clean-up operation was settled at ¥15 462 270 (£81 000). A payment of 60% of the settlement amount, ¥9 277 362 (£48 600) was made by the 1971 Fund on 9 May 1997.

7.3 Nine claims from contractors engaged in clean-up operations under the JMDPC umbrella have been submitted for ¥980 388 652 (£5.1 million). Six prefectures have submitted claims for costs incurred in the clean-up operations which together amount to some ¥3 900 million (£20.4 million).

7.4 The Government of Japan has made funds available to JMDPC which has enabled it to make loans to those who have participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds.

7.5 A claim in the tourism sector for ¥6 661 879 (£34 800) has been submitted in respect of contamination of an aquarium located on the shoreline close to the grounding position of the bow section.

7.6 The claims are being examined by the experts engaged by the UK Club and the 1971/1992 Funds.

7.7 A claim by the Russian authorities for the cost of the participation of two of the vessels referred to in paragraph 4.6 under contract with the shipowner was settled at US\$ 325 000 (£196 000). This claim will be paid shortly by the shipowner.

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In this document, conversion of the Yen has been made on the basis of the rate of exchange as at 2 June 1997, ie ¥190.643: £1.

7.8 A claim by EARL for the provision of the recovery systems referred to in paragraph 4.5 was settled at US\$542 593 (£328 800). This claim will be paid shortly by the shipowner.

7.9 So far, only a limited number of claims for compensation have been received. It is clear, however, that the claims relating to clean-up operations and preventive measures will be significant, and so will the claims for the cost of the disposal of collected oily waste. The shipowner is expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded. Claims will also be presented by the shipowner for costs relating to the removal of the oil from the grounded bow section, and for costs prior to and during the bow lifting operations. Claims may be submitted for the costs incurred by the Japanese authorities in the construction of the causeway leading to the bow section. Claims are expected for additional costs incurred by MSA for aerial surveillance and offshore clean-up operations, and by the Self Defence Force for aerial surveillance, offshore clean-up operations and assistance in the removal of oil from the shoreline. Claims will be presented for loss of income in the fishing and aquaculture industries. Claims will also be presented by businesses in the tourism industry in the area.

8 Consideration by the Executive Committee at its 52nd and 53rd sessions

8.1 Applicability of the Conventions

8.1.1 The 1992 Protocols entered into force in respect of Japan on 30 May 1996. The 1992 Civil Liability Convention and the 1992 Fund Convention are therefore in principle applicable to this incident.

8.1.2 The limitation amount applicable to the *Nakhodka* is estimated at 1 588 000 Special Drawing Rights (SDR) (£1.4 million) under the 1969 Civil Liability Convention and 6 425 940 SDR (£5.5 million) under the 1992 Civil Liability Convention.

8.1.3 The *Nakhodka* was registered in the Russian Federation, which has not ratified the 1992 Protocols but which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention. At its 52nd session, the Executive Committee endorsed the Director's view that, as a result, the shipowner's right of limitation should be governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation were Parties on the date of the incident. The Committee confirmed that, in the event that the total amount of the accepted claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), compensation would be available as follows (document 71FUND/EXC.52/11, paragraph 3.7.5):

	<u>SDR</u>
Shipowner under the 1969 Civil Liability Convention	1 588 000
1971 Fund	58 412 000
Shipowner under the 1992 Civil Liability Convention	0
1992 Fund, in excess of 60 million SDR	<u>75 000 000</u>
Total compensation available	135 000 000

8.2 Director's authority to settle claims

8.2.1 At its 52nd session, the Executive Committee authorised the Director to make final settlements on behalf of the 1971 Fund 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 (document 71FUND/EXC.52/11, paragraph 3.7.7).

8.2.2 The Committee expressed the view that the 1971 Fund and the 1992 Fund should endeavour to ensure consistency in respect of the admissibility of claims for compensation, in accordance with 1971 Fund Resolution N°9 and 1992 Fund Resolution N°3 (document 71FUND/EXC.52/11, paragraph 3.7.8).

8.3 Level of payments

8.3.1 At its 53rd session, the Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately ¥10 100 million or £52 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR (approximately ¥22 700 million or £116 million).

8.3.2 It was emphasised by a number of delegations that the 1971 Fund and 1992 Fund should endeavour to ensure consistency in respect of not only the admissibility of claims but also the handling of a case involving both Organisations. Many delegations, including seven delegations of States which were also Members of the 1992 Fund, were of the view that the level of payments should be the same for the 1971 Fund as for the 1992 Fund.

8.3.3 The Committee noted that, as regards the 1992 Fund, any decisions in respect of the admissibility or payment of claims could be taken only by the 1992 Fund Assembly, except to the extent that the Director was authorised under the 1992 Fund's Internal Regulations to make final settlements of claims and decide on payments.

8.3.4 The Executive Committee recalled that, in previous cases, it had taken the position that it was necessary to exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of the particular incident would exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, since under Article 4.5 of the 1971 Fund Convention all claimants had to be given equal treatment. It was also recalled that the Committee had expressed the view that it was necessary to strike a balance between the importance of the 1971 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

8.3.5 At its 52nd session, the Executive Committee decided to authorise the Director to make payments on behalf of the 1971 Fund in respect of claims arising from the *Nakhodka* incident. However, in view of the uncertainty as to the level of the total amount of the claims, the Committee decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made. It was also decided that this percentage should be reviewed at the Executive Committee's 53rd session, to be held in April 1997, in the light of further information as to the likely level of the claims and taking into account the position to be taken by the 1992 Fund Assembly (document 71FUND/EXC.52/11, paragraph 3.7.14).

8.3.6 In the light of the remaining uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Executive Committee decided, at its 53rd session, to maintain the percentage fixed by the Committee at its 52nd session (document 71FUND/EXC.53/12, paragraph 3.6.5). The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Committee's next session.

8.3.7 At its 3rd extraordinary session, held in April 1997, the Assembly endorsed the Director's view that the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation (document 71FUND/A/ES.3/7, paragraph 4.5).

9 Consideration by the 1992 Fund Assembly at its 2nd extraordinary session

9.1 At its 2nd extraordinary session, the Assembly of the 1992 Fund authorised the Director to make final settlements on behalf of the 1992 Fund 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 Assembly (document 92FUND/A/ES.2/6, paragraph 3.1.8).

9.2 In reply to a question, the Director stated that in his view the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation.

9.3 Since both the 1971 and 1992 Fund Conventions applied in the *Nakhodka* case, the Assembly considered that the level of the 1992 Fund's payments should be determined by taking into account the amounts available under both Fund Conventions. It was considered that, in order to avoid an over-payment situation for either the 1971 Fund or the 1992 Fund (or for both), a co-ordinated approach should be taken in respect of the payments by the two Organisations.

9.4 The Assembly of the 1992 Fund decided to authorise the Director to make payments on behalf of the 1992 Fund in respect of claims arising from the *Nakhodka* incident. However, in view of the uncertainty as to the level of the total amount of the claims, the Assembly decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made (document 92FUND/A/ES.2/6, paragraph 3.1.16).

10 Review of the level of payments

In the light of the continuing uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Director is unable to recommend an increase of the percentage fixed by the Executive Committee at its 52nd session.

11 Investigation into the cause of the incident

11.1 The Japanese and Russian authorities have decided to co-operate in the investigation into the cause of the incident.

11.2 The 1971 and 1992 Funds are following the investigation through their Japanese lawyer, with the assistance of technical experts.

12 Purchase of Japanese Yen

12.1 At its 52nd session, the Executive Committee considered whether, in view of the estimated level of claims arising out of the *Nakhodka* incident, the 1971 Fund should at that stage purchase Japanese Yen to be used for the payment of these claims. It was recalled that Financial Regulation 10.4 allowed the Director to hold assets in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future. It was also noted that, under Internal Regulation 3.4, contributors in Japan could be required to pay their contributions to the 1971 Fund in Japanese Yen.

12.2 Noting that the Pound was at that time very strong in the currency market, whereas the Yen was comparatively weak, the Executive Committee agreed with the Director that it was appropriate for the 1971 Fund to purchase Yen in the following few weeks, in order to protect the 1971 Fund against a strengthening of the Yen vis-à-vis the Pound. It was stressed, however, that since the 1971 Fund was neither a financial institution nor an investment bank, Yen should be purchased only to provide funds for the payment of claims in the *Nakhodka* case, and not for general investment purposes. It was recommended that the Director should seek appropriate expert advice on the matter (document 71FUND/EXC.52/11, paragraph 3.7.21).

12.3 After having consulted the 1971 Fund's Investment Advisory Body and the Organisation's bankers, the 1971 Fund purchased Yen as follows:

Amount in Yen (¥)	Cost	Rate ¥:£	Date
1 962 700 000	£10 million	¥196.27	5 March 1997
1 015 000 000	£5 million	¥203.00	2 April 1997
<u>619 800 000</u>	<u>£3 million</u>	¥206.60	1 May 1997
3 597 500 000	£18 million		

12.4 As at 2 June 1997, the exchange rate was ¥190.643 = £1. The purchase of ¥3 597 500 000 at that rate would have cost £18 870 350.

13 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to review the level of the 1971 Fund's payment of claims; and
 - (c) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
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