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OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

ILIAD, KRITI SEA, KATJA

Note by the Director

1 *Iliad*
(Greece, 9 October 1993)

The Incident

1.1 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria Island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes were spilled. The Greek national contingency plan was activated, and the spill was soon brought under control.

1.2 By 22 October 1993 only sheens and traces of oil residues remained on the water surface, and the recovery at sea was terminated. The removal of oil from sandy beaches was completed by 29 October 1993. The final cleaning of sea-walls and selected areas of rocky shoreline in Pylos Bay was completed by the middle of January 1994.

1.3 Floating oil interrupted the fishing activities in Pylos Bay and along the coast for about two weeks. A fish farm at Pylos lost a small part of its stock and it appeared that the farm's normal selling pattern was interrupted. Tests on the stock showed that there was no residual contamination.

Limitation proceedings

1.4 In March 1994, the shipowner's P & I Insurers, the Newcastle Protection and Indemnity Association (the Newcastle Club) established a limitation fund amounting to Drs 1 496 533 000 (£3.2 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit liability. The Court of first instance rejected this action. The claimant appealed against that decision but the appeal was rejected.

1.5 The Court decided that the claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£6.5 million) plus Drs 378 million (£800 000) for compensation of 'moral damage'.

1.6 The Court appointed a liquidator to examine the claims in the limitation proceedings. It is expected that this examination will begin in the near future.

Claims for compensation

Ministry of Merchant Marine

1.7 The Ministry of Merchant Marine has presented a claim for the cost of the clean-up operations for Drs 17 473 010 (£36 900). This claim was settled at Drs 17 429 010 (£36 770). The settlement amount was paid by the Newcastle Club.

Clean-up contractor

1.8 A clean-up contractor has submitted a claim for Drs 130 844 700 (£276 200). The Newcastle Club has made an advance payment of US\$350 000 (£214 000) to this claimant.

1.9 This amount claimed has been calculated by the claimant on the basis of rates allegedly agreed between the contractor and the shipowner, but there is no evidence of any such agreement. Further information has been requested in respect of various items of this claim, including the rates for certain types of clean-up equipment, materials and personnel, and the cost of waste disposal. Negotiations with the claimant are continuing.

Shipowner's claim

1.10 The shipowner has submitted a claim for Drs 277 million (£585 000) for costs incurred during the clean-up operations. This amount has been paid by the Newcastle Club.

Messinia Fish Farm

1.11 A claim for Drs 993 million (£2.1 million) has been submitted by the owner of a fish farm who has alleged that he lost both production and his fish cages as a result of the incident. It has been established, however, that the fish farmer's cages are still in the water, and there is circumstantial evidence that fish continued to be produced from the farm. The farmer has also maintained that he suffered a loss of income as a result of reduced prices, although this has not been documented.

Sapienza Fish Farm

1.12 A claim for Drs 66 million (£139 000) has been presented by another fish farm which was not contaminated as a result of the incident. Oil sheens on the surface did, however, approach within one kilometre of the farm. Defensive booms were deployed, but they were removed after one week, once it was clear that oil would not reach the fish farm.

1.13 The owner of the fish farm has maintained that the booms (which have a depth of 50 cm) interfered with the water flow in the bay where the farm was located. He has further alleged that the access to the farm by farm workers was prevented because of the booms and that this caused operational difficulties which ultimately led to greater numbers of diseased fish and higher mortalities than would normally be expected. The preliminary opinion of experts employed by the Club and the 1971 Fund is that there are no grounds for these allegations. Documentary evidence to substantiate the losses claimed has been requested.

Fishermen's claims

1.14 Claims totalling Drs 40 million (£84 400) have been submitted by fishermen working from Pylos and from the outer coastline. Little documentary evidence has been provided to substantiate the alleged losses. The preliminary view of the experts engaged by the Club and the 1971 Fund is that the claimed amounts are exaggerated. Further documentary evidence has been requested.

Claims of individuals and small businesses

1.15 There are a number of claims for loss of income allegedly suffered by fishermen and a large range of small businesses, such as hotel and restaurants, as well as taxi drivers, shopkeepers and estate agents. The quality and quantity of the documentation submitted in respect of these claims vary considerably, with some claimants having submitted no documents. Other claimants have provided copies of operating licences, sworn affidavits by the claimants themselves, booking and cancellation letters, and VAT returns.

1.16 Nine claimants have provided VAT returns for 1992 and 1993, allowing a comparison to be made between the income for the months of November and December 1993 (allegedly when the damage was most severe) and that for the same months in the previous year. This comparison has shown that in four cases the claimant's income had increased from 1992 to 1993 and that it had decreased in five cases, although the losses arrived at by this comparison did not correspond with the losses claimed.

1.17 It has become evident that most claimants complete annual VAT returns and have done so for the years 1992, 1993 and 1994. Lawyers acting for some of these claimants have indicated a reluctance to ask their clients to produce this documentation, and they have stated that they have no intention of submitting such documentation to the Court. The Director considers, however, that this documentation is vital to allow an assessment of these claims.

Moral damages

1.18 A number of claimants have submitted claims for various amounts in respect of moral damages totalling Drs 378 million (£800 000). The claimants have submitted only sworn affidavits in support of this item of their claims, which in the claimants' view substantiates their loss.

1.19 A Court of first instance in Volos (Greece) has, in a judgement rendered in 1982, accepted a claim for compensation for moral damage because the plaintiff was prevented from swimming in the sea which was polluted by sewage from a factory owned by the defendant. In respect of the *Irene Serenade* incident which occurred in 1980 (also in Pylos), the liquidator appointed by the Court to assess the claims approved claims for moral damage, although these claims were not considered by a court as negotiated settlements were concluded.

1.20 Under Article 932 of the Greek Civil Code, the court has the discretion to award moral damages to the victim of an illegal act in addition to the sums for physical damage or economic loss. This type of compensation is awarded especially in the case of personal injury or where damage to reputation has been suffered. The amount of compensation payable is assessed by the court taking into consideration the financial situation of the parties, the gravity of the fault of the defendant, the circumstances in which the illegal act was committed, and the results of such an act.

1.21 The Assembly and the Executive Committee have taken the position that only a claimant who has suffered a quantifiable economic loss is entitled to compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Director takes the view that the claims for moral damages are inadmissible.

Time-bar

1.22 Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996.

1.23 With the exception of the Messinia fish farm, the shipowner and the Newcastle Club, the claimants have failed to take action against the 1971 Fund or notify the Fund formally of the action brought against the shipowner and his insurer.

2 *Kriti Sea*
(Greece, 9 August 1996)

The Incident

2.1 The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach to the west, south and east of this terminal were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

2.2 Clean-up operations were undertaken by the staff of the terminal and by contractors engaged by the shipowner, the Ministry of Merchant Marine and the local authorities. The clean-up operations at sea were continued to 17 August, and the shoreline clean-up was largely completed by the end of the month.

2.3 The ship is entered in the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club).

2.4 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.7 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

2.5 Claims totalling Drs 5 509 million (£11.6 million) have been notified to the shipowner and the UK Club and to the administrator appointed by the Court to examine claims against the limitation fund. The administrator is expected to start his examination of the claims in the near future.

3 *Katja*
(France, 7 August 1997)

The Incident

3.1 The Bahamas-registered *Katja* (52 079 GT) struck a quay while manoeuvring into a berth at the Port of Le Havre (France). The contact with the quay caused a hole in the port fuel oil tank, and 190 tonnes of heavy fuel oil was spilled. Booms were placed around the berth, but oil escaped from the port and affected beaches both to the north and to the south of Le Havre. Approximately 15 km of quay and other structures within the port were contaminated. Oil entered a marina at the entrance to the port, and many pleasure boats were polluted. Oil was also found in the area of the port where a new harbour for inshore fishing boats is being constructed.

3.2 Clean-up operations within the port area were arranged by the Port autonome du Havre and the operators of various berths. The operations were undertaken by local contractors. It is expected that this work will be completed during October 1997.

3.3 The cleaning of the beaches was organised by the local authorities using local contractors, the Fire Brigade and the Army. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. All beaches were reopened and bathing restrictions lifted in time for a long weekend holiday from 15 to 17 August.

3.4 Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom. While commercial fishing was not disrupted, a ban was placed on recreational fishing, including the collection of shellfish and shrimps. It is understood, however, that the ban is unlikely to have had any economic consequences as the catches are not sold commercially.

3.5 The *Katja* is entered in Assuranceföreningen Skuld (Skuld Club).

3.6 At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount in respect of the vessel is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr 48 million (£4.7 million).

Claims for Compensation

3.7 Claim forms were prepared jointly by the Skuld Club and the 1971 Fund. These forms, together with information to potential claimants, have been distributed by the Skuld Club's correspondent in Le Havre, who has been given the task of receiving claims for compensation.

3.8 Claim forms have been requested by fishermen, owners of polluted boats in the Marina, the Port Authority and commercial operators in the port area.

3.9 Claims are also expected in respect of the clean-up operations.

3.10 While some claimants have indicated provisional claim amounts, very few quantified claims have been received.

3.11 An interim payment of FFr 917 172 (£95 700) has been made by the Skuld Club in respect of costs incurred for clean-up of an area of the Port of Le Havre.

3.12 It is not possible at this stage to make an estimate of the total amount of the claims. It is unlikely that the claims will exceed the limitation applicable to the *Katja*.

4 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions in respect of the incidents dealt with in this document as the Committee may deem appropriate.
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