



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
55th session
Agenda item 3

71FUND/EXC.55/12
10 October 1997

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

Kihnu, Spill from unknown source in Morocco, *Dae Woong*, *Shinryu Maru N°8*, *Senyo Maru*,
Kugenuma Maru, *Tsubame Maru N°31* and *Daiwa Maru N°18*.

Note by the Director

1 Introduction

This document sets out the situation in respect of the *Kihnu*, Spill from unknown source in Morocco, *Dae Woong*, *Shinryu Maru N°8*, *Senyo Maru*, *Kugenuma Maru*, *Tsubame Maru N°31* and *Daiwa Maru N°18*.

2 Kihnu (Estonia, 16 January 1993)

2.1 The Estonian tanker *Kihnu* (949 GRT) grounded close to the port of Tallinn (Estonia). It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled. The Estonian authorities carried out certain clean-up operations. The Finnish Government despatched two oil combatting vessels and a helicopter to Estonia.

2.2 In December 1995 the Finnish Government submitted a claim to the 1971 Fund for FM 713 055 (£86 000) relating to the clean-up operations. The Government took legal action against the 1971 Fund and the shipowner's P & I insurer in January 1996.

2.3 At its 49th session, the Executive Committee considered that, although this claim related to the activities undertaken within the territorial waters of a State which, at the time of the incident, was not a member of the 1971 Fund, the measures were taken to prevent or minimise pollution damage within the territory or territorial sea of Finland, a 1971 Fund Member State. The Committee decided, therefore, that these measures fell within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention (document 71FUND/EXC.49/12, paragraph 3.4.6).

2.4 As a result of discussions held in January 1997, the Finnish Government reduced its claim to FM 543 618 (£65 100), provided that an out-of-court settlement would be reached.

2.5 The Finnish Government's claim gave rise to a number of legal issues relating to the interpretation of certain provisions in the 1969 Civil Liability Convention and the 1971 Fund Convention. These issues were considered by the Executive Committee at its 52nd session (documents 71FUND/EXC.52/5 and 71FUND/EXC.52/11, paragraphs 3.4.5 - 3.4.11).

2.6 At its 52nd session, the Executive Committee noted that it appeared very unlikely that the Finnish Government would have been able to recover its costs for preventive measures from the shipowner, the bare-boat charterer or the insurer by taking legal action in Estonia or in Finland. It shared the Director's view that the Finnish Government had taken all reasonable steps to pursue the legal remedies available to recover these costs from parties other than the 1971 Fund. The Committee decided that the 1971 Fund should pay the amount agreed (FM 543 618) (£65 100) to the Finnish Government without waiting for the Finnish Court's decision against the insurer. The Committee further decided that the 1971 Fund should not pursue the Finnish Government's action against the insurer in order to recover the amount paid to the Government, since such an action was unlikely to succeed (document 71FUND/EXC.52/11, paragraphs 3.4.7 - 3.4.10).

2.7 The 1971 Fund paid the agreed amount to the Finnish Government in April 1997.

3 Spill from unknown source in Morocco (Morocco, 30 November 1994)

3.1 In March 1995 the 1971 Fund was informed of an oil spill which had occurred on 30 November 1994 in the port of Mohammédia (Morocco). The Moroccan authorities claimed compensation for clean-up costs totalling Dhr 2.6 million (£166 000). The authorities did not give any indication as to the source of the spill but stated that the oil could only have come from the sea.

3.2 The Director drew the attention of the Moroccan authorities to Article 4.1 of the 1971 Fund Convention. Under that Article, the 1971 Fund is obliged to pay compensation where the victim is unable to obtain compensation because "no liability arises under the Civil Liability Convention". One of the situations in which no liability would arise under the 1969 Civil Liability Convention is where the identity of the ship which caused the damage is not known, since in that case no shipowner can be held liable under that Convention. Article 4.2(b) of the 1971 Fund Convention provides that in such cases the 1971 Fund is not obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

3.3 The Moroccan authorities maintained that in all probability, in view of the quantity involved, the oil originated from a laden tanker. The authorities referred to a survey report in which it was stated that the results of laboratory tests, the colour of the oil and its smell showed that it was a crude oil. The 1971 Fund's experts examined the documentation presented by the Moroccan authorities. The experts expressed the opinion that the investigation carried out to determine the oil type was not adequate to establish whether the oil in question was a crude oil or a fuel oil.

3.4 On the basis of the opinion of its experts, the 1971 Fund informed the Moroccan authorities in December 1995 that it had not been established that the oil originated from a ship as defined in the 1971 Fund Convention (ie a laden tanker) and that for this reason the 1971 Fund could not accept the claim for compensation.

3.5 The Moroccan delegation informed the Executive Committee, at its 48th session, that the Government had set up a committee to investigate this oil spill in order to try to establish the source of the oil. For this reason, the Moroccan delegation requested that consideration of this incident should be postponed to a later session.

3.6 The Executive Committee decided to postpone consideration of this case (documents FUND/EXC.49/12, paragraph 3.6.3 and FUND/EXC.50/17, paragraph 3.13.6).

3.7 The Director has invited the Moroccan authorities to inform him of the progress of the Moroccan committee's investigations, but so far no such information has been received.

4 **Dae Woong**
(Republic of Korea, 27 June 1995)

4.1 The Korean tanker *Dae Woong* (642 GRT), laden with 1 500 tonnes of heavy fuel oil and 70 tonnes of diesel oil as cargo, ran aground off the port of Kojung some 150 kilometres south-west of Seoul, on the west coast of the Republic of Korea. Two cargo tanks were damaged, and approximately one tonne of oil spilled into the sea.

4.2 Some small islands and inlets near the site of the incident were contaminated by oil. Clean-up operations were carried out by the Marine Police and contractors applying dispersants and sorbents. Some mariculture facilities were also affected by the oil spill.

4.3 The Marine Police and a private contractor presented claims in respect of the clean-up operations for Won 31 020 762 (£24 230) and Won 14 045 640 (£10 970), respectively. The claim of the clean-up contractor was settled at Won 12 496 365 (£10 200). The Marine Police's claim was settled for the amount claimed. These claims have been paid by the 1971 Fund.

4.4 Several fishery co-operative associations have indicated that they will submit claims for compensation, but so far no such claims have been received. It should be noted that further claims will be time-barred on or shortly after 27 June 1998.

4.5 The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£65 000). The ship was not covered by any insurance or other guarantee at the time of the incident.

4.6 Although the aggregate amount of the claims settled was below the limit of the shipowner's liability, the shipowner did not pay these claims. The shipowner did not commence limitation proceedings.

4.7 An investigation by the 1971 Fund into the financial situation of the shipowner showed that the shipowner had no substantial assets. Based on the findings of this investigation, the 1971 Fund paid the settled claims in June 1996, pursuant to Article 4.1(b) of the 1971 Fund Convention.

5 **Shinryu Maru N°8**
(Japan, 4 August 1995)

5.1 While the Japanese-registered tanker *Shinryu Maru N°8* was supplying bunkers to a bulk carrier at the berth of a factory in Chita, Aichi Prefecture (Japan), the hose used for delivering the oil from the *Shinryu Maru N°8* was not properly handled. As a result, approximately half a tonne of heavy fuel oil flowed on to the decks of three vessels, contaminated the decks and hulls and spilled into the sea.

5.2 Eight contractors engaged in the clean-up operations submitted claims totalling ¥9.5 million. These claims were settled for a total amount of ¥8.6 million (£51 000) and were paid in June 1996 by the shipowner's P & I insurer, Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA). The 1971 Fund reimbursed ¥4.9 million (£31 130) to JPIA in December 1996.

5.3 The charterer of the bulk carrier presented a claim for US\$2 560 (£1 600) for the damage caused by the delay in returning the ship to its owner while the hull of the vessel was cleaned. The owner of the bulk carrier presented a claim for this cleaning operation. The charterer of the *Shinryu Maru N°8* paid this claim in full and presented a subrogated claim in an amount of \$3 103 (£1 900). This claim has been settled at the amount claimed but has not yet been paid.

5.4 The limitation amount applicable to *Shinryu Maru N°8* is ¥3 967 138 (£20 000).

5.5 In view of the disproportionately high legal costs which would be incurred in establishing the limitation fund compared with the low limitation amount under the 1969 Civil Liability Convention in this case, the Executive Committee decided, at its 44th session, that the requirement to establish the limitation fund should be waived in respect of the *Shinryu Maru N°8* case, so that the 1971 Fund could, exceptionally, pay compensation and indemnification without the limitation fund having been established (document 71FUND/EXC.44/17, paragraph 3.13.2).

5.6 No more claims are expected in respect of this incident.

5.7 Indemnification of the shipowner, ¥984 327 (£5 180), was paid in December 1996.

6 *Senyo Maru*
(Japan, 3 September 1995)

6.1 The Japanese tanker *Senyo Maru* (895 GRT), carrying 2 000 tonnes of heavy fuel oil, collided with the Panamanian bulk carrier *Batis* (23 277 GRT) off Ube, Yamaguchi Prefecture (Japan). One of the tanker's cargo tanks was damaged, and some 94 tonnes of heavy fuel oil were spilled.

6.2 Both vessels were entered in the JPIA.

6.3 The clean-up operations at sea were carried out by the Japan Maritime Safety Agency, the Japan Marine Disaster Prevention Center and various contractors employed by the owner of the *Senyo Maru*. Some 360 vessels participated in these operations, including some 250 fishing boats. The oil spread over a very large area, at one time a single slick extended over some 300km². A major part of the spilt oil polluted some four kilometres of beaches, some of which were heavily contaminated. Over 400 villagers and fishermen participated in the onshore clean-up. Some 2 500m³ of oily waste were collected and disposed of.

6.4 Claims totalling ¥413 million (£2.5 million) for clean-up operations and fishery damage were presented by the Japanese authorities, a number of contractors and fishery co-operatives. These claims were settled at total amount of ¥388 million (£2.4 million) and paid by May 1996, ie within eight months of the incident.

6.5 The investigation into the cause of the incident was carried out by the competent Marine Court which rendered its decision on 26 February 1997. The Court found that the collision between the *Batis* and the *Senyo Maru* was in part caused by poor visibility due to heavy rain and in part due to the fact that neither vessel sounded fog signals nor reduced speed once they had come into close-quarters.

6.6 In the Director's view the incident was caused by errors on the part of both vessels. For this reason he considered that there were no grounds on which the 1971 Fund could oppose the right of limitation of either shipowner.

6.7 The limitation amount applicable to the *Senyo Maru* is ¥20 203 325 (£104 000).

6.8 On 10 September 1997, the 1971 Fund paid indemnification of ¥5 012 855 (£26 184) to the insurer of the *Senyo Maru*.

6.9 The 1971 Fund took steps to initiate recourse action against the *Batis*. On 22 September 1997 an agreement was reached between the parties on an apportionment of liability at 1/3 : 2/3 in favour of the *Senyo Maru*.

6.10 The owner of the *Batis* will pay ¥279 973 101 (£1 443 000) to the 1971 Fund on 21 October 1997, representing the Fund's recovery under the agreement referred to in paragraph 6.9.

6.11 The final calculation of the total damage and the respective shares of liability for the 1971 Fund and the shipowner is as follows:

	Total ¥	Shipowner's share ¥	1971 Fund's share ¥
Compensation	387 726 200	20 203 325	367 522 875
Surveyors' fees	33 235 776	1 777 382	31 458 394
Lawyers' fees	16 869 508	903 980	15 965 528
Indemnification	-	-5 012 855	5 012 855
less recovered by recourse	-291 887 656	-11 914 555	-279 973 101
Total	145 943 828	5 957 277	139 986 551

7 Kugenuma Maru (Japan, 6 March 1996)

7.1 While the Japanese tanker *Kugenuma Maru* (57 GRT) was loading some 120 tonnes of heavy fuel oil at an oil terminal in Kawasaki, Kanagawa (Japan), 0.3 tonnes of oil overflowed from the cargo tank and spilled into the sea due to the mishandling of the valve used for loading.

7.2 Claims in respect of clean-up operations were submitted for a total amount of ¥2 025 013 (£10 200). These claims were settled at ¥1 981 403 (£9 990) and were paid by the shipowner's P & I insurer (JPIA) in January 1997.

7.3 The limitation amount of the *Kugenuma Maru* is ¥1 197 267 (£6 170).

7.4 In view of the disproportionately high legal costs which would be incurred in establishing the limitation fund in respect of this incident compared with the low limitation amount under the 1969 Civil Liability Convention in this case, the Executive Committee decided, at its 49th session, that the requirement to establish the limitation fund should be waived in the *Kugenuma Maru* case, so that the 1971 Fund could, as an exception, pay compensation and indemnification without the limitation fund having been established (document FUND/ EXC.49/12, paragraph 3.9.2).

7.5 In March 1997 the 1971 Fund paid its share of the compensation and the surveyors' fees of ¥784 136 (£3 917) and ¥77 171 (£386), respectively, and paid indemnification to the shipowner in the amount of ¥297 066 (£1 518).

7.6 The final calculation of the total damage and the respective shares of liability and fees for the 1971 Fund and the shipowner is as follows.

	Total £	Shipowner's share ¥	1971 Fund's share ¥
Compensation	1 981 403	1 197 267	784 136
Surveyors' fees	195 000	117 829	77 171
Indemnification		-297 066	297 066
Total	2 176 403	1 018 030	1 158 373

8 Tsubame Maru N°31
(Japan, 25 January 1997)

8.1 Whilst the Japanese coastal tanker *Tsubame Maru N°31* (89 GRT) was being loaded with heavy oil as cargo in the port of Otaru, Hokkaido (Japan), the crew of that ship failed to close in time the inlet valve of the tank into which the oil was being loaded. As a consequence, some of the cargo oil overflowed from the tank and spilled into the sea.

8.2 Clean-up operations were carried out by companies in the vicinity of the site, mobilising their employees and using boats under the supervision of the Marine Safety Agency. The operations were completed on 28 January 1997.

8.3 The 1971 Fund has monitored the clean-up operations through its Japanese surveyors.

8.4 The *Tsubame Maru N°31* is entered with the JPIA.

8.5 The limitation amount applicable to the *Tsubame Maru N°31* is estimated at ¥1 801 465 (£9 300).

8.6 As of 30 September 1997, seven claims for clean-up operations totalling ¥8 011 474 (£41 000) had been submitted. These claims are being examined.

8.7 No further claims are expected.

9 Daiwa Maru N°18
(Japan, 27 March 1997)

9.1 While the Japanese tanker *Daiwa Maru N°18* (186 GRT) was loading heavy fuel oil to onshore tanks at an oil refinery in Kawasaki, Kanagawa Prefecture (Japan), some cargo oil leaked from a crack in the rubber hose which connected the loading pipeline of the *Daiwa Maru N°18* to the shore facility. The oil washed the deck of the *Daiwa Maru N°18* and spilled into the sea.

9.2 Clean-up operations were carried out by contractors and by the oil refinery, which mobilised its employees. The operations were completed on 28 March 1997. The 1971 Fund monitored the operations through its Japanese surveyors.

9.3 The *Daiwa Maru N°18* is entered with JPIA.

9.4 The limitation amount applicable to the *Daiwa Maru N°18* is estimated at ¥3 372 368 (£17 400).

9.5 Claims totalling ¥17 893 000 (£92 000) have been received from several contractors. The claims are being examined by the 1971 Fund's Japanese surveyors.

10 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 as it may deem appropriate in respect of the incidents dealt with in this document.
-