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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 TWO INCIDENTS IN THE REPUBLIC OF KOREA

N°1 Yung Jung and Jeong Jin N°101

Note by the Director

1 Introduction

This document sets out the situation in respect of the *N°1 Yung Jung* and *Jeong Jin N°101* incidents.

2 *N°1 Yung Jung* (*Republic of Korea, 15 August 1996*)

2.1 The incident

2.1.1 While the Korean sea-going barge *N°1 Yung Jung* (GRT 560), laden with 200 tonnes of marine diesel oil and 1 600 tonnes of medium fuel oil, took shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea) on 15 August 1996, the barge grounded on a submerged rock which did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled in to the sea. A dozen ships which were in the vicinity of the grounding site and various port facilities such as piers and embankments, as well as nearby rocky shores were contaminated.

2.1.2 Clean-up operations were carried out by three contractors engaged by the shipowner, and were completed by 14 September 1996.

2.1.3 The wreck of *N°1 Yung Jung* was removed and the remaining oil was transhipped to another vessel.

2.1.4 The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US\$1 million (£621 000) per incident.

2.2 Claims for compensation

2.2.1 At its 50th session, the Executive Committee authorised the Director to make final settlements of all claims arising out of this incident, to the extent that the claims did not give rise to any questions of principle which had not previously been decided by the Committee (document 71FUND/EXC.50/17, paragraph 3.10).

2.2.2 Claims relating to clean-up operations totalling Won 871 million (£595 000) have been presented by the shipowner, the Pusan Marine Police and four clean-up contractors. These claims were settled at a total amount of Won 690 million (£472 000). The shipowner paid the settlement amounts in respect of five of the claims, totalling Won 665 million (£448 000). The remaining claim, that by the shipowner, has not been paid by the 1971 Fund, pending the commencement of limitation proceedings.

2.2.3 A salvage company presented a claim for Won 77 542 500 (£53 000) for inspections of the bottom of the ship and videotaping carried out by divers. In the Director's view, these operations had a dual purpose, ie they were undertaken partly for the re-floating of the vessel and partly to prevent or minimise pollution damage. After negotiations, the claimant, the shipowner and the 1971 Fund reached agreement that the claim should be settled at Won 20 000 000 (£13 700) and that 50% would be paid under the 1969 Civil Liability Convention and the 1971 Fund Convention and 50% outside the Conventions.

2.2.4 The owners of 25 seafood restaurants have submitted claims totalling Won 13 375 000 (£9 100). A fishery co-operative has submitted a claim for loss of income for Won 105 290 000 (£72 000). A claim has been submitted relating to operations to tranship the cargo and effect temporary repairs to the hull, for Won 70 882 350 (£48 500). These claims are being examined by the 1971 Fund's surveyor.

2.3 Limitation of liability

2.3.1 The limitation amount applicable to the *N°1 Yung Jung* is estimated at Won 88 365 090 (£60 500).

2.3.2 The shipowner commenced limitation proceedings in August 1997. The shipowner's insurer has presented a letter of guarantee for the limitation amount to the Court.

2.4 Investigation into the cause of the incident

2.4.1 In the case of barges of this type, the Korean authorities do not carry out an investigation into the cause of the incident.

2.4.2 In criminal proceedings, the master of the *N°1 Yung Jung* was sentenced to prison for six months for having caused oil pollution by negligence. The sentence was suspended for one year.

2.4.3 In the light of advice received from the 1971 Fund's Korean lawyer, the Director takes the view that there are no grounds for the 1971 Fund to oppose the shipowner's right to limit his liability, nor to refuse indemnification under Article 5.1 of the 1971 Fund Convention.

3 *Jeong Jin N°101* (Republic of Korea, 1 April 1997)

3.1 The incident

3.1.1 On 1 April 1997, the Korean barge *Jeong Jin N°101* (896 GRT) was loading heavy fuel oil at an oil terminal in the port of Pusan (Republic of Korea). Approximately 124 tonnes of oil is believed to have overflowed from one of the tanks of the *Jeong Jin N°101* and spilled into the sea. Clean-up operations were commenced immediately by the operator of the oil terminal. The spilt oil nevertheless contaminated various parts of the port. The clean-up operations were completed by the end of April 1997.

3.1.2 The *Jeong Jin N°101* was not covered by any insurance for liability under the 1969 Civil Liability Convention. However, the shipowner had a bank guarantee issued by a Korean bank for Won 143 million (£97 800), to cover his civil liability for oil pollution damage in respect of this ship.

3.1.3 The limitation amount applicable to *Jeong Jin N°101* is estimated at Won 148 117 000 (£101 300).

3.1.4 The shipowner is expected to commence limitation proceedings shortly.

3.2 Consideration by the Executive Committee at previous sessions

3.2.1 At the Executive Committee's 53rd session, some delegations expressed concern as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident. The Director was instructed to investigate the sequence of events leading up to the spill. He was also instructed to examine whether the incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention, in the light of the position taken by the 1971 Fund in previous cases, eg the *Kugenuma Maru* incident (document 71FUND/EXC.53/12, paragraph 3.10.3).

3.2.2 At its 54th session, the Executive Committee noted the information provided by the 1971 Fund's Korean lawyer who had investigated the events leading to the spill. It was noted from this investigation that the oil had entered into hold N°2 and then overflowed from the hatch of that hold. The Committee shared the Director's view that, since the oil had entered the hold, it should be considered as fulfilling the criterion of being carried on board as cargo. The Committee considered therefore that this incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention. The Committee authorised the Director to settle and pay 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.54/10, paragraphs 3.3.4 and 3.3.5).

3.2.3 Some delegations reiterated their concern about the large quantity of oil which had been spilled and questioned whether the oil terminal was at least partly liable for the incident. The Director was therefore instructed to investigate whether there were any grounds for the 1971 Fund to take recourse action against the oil terminal (document 71FUND/EXC.54/10, paragraph 3.3.6).

3.2.4 The 1971 Fund's Korean lawyer has investigated further the involvement of the oil terminal and has provided the following information:

An employee of the terminal goes on board the barge and checks the capacity of the barge and the condition of the holds prior to the commencement of loading. This was done in the *Jeong Jin N°101* case. It is general practice in Korea that once the loading begins it is the sole responsibility of the barge crew to load the oil properly. The staff of the terminal have no obligation in respect of the loading except to check the manifold for any leaks. There were no problems with the manifold in this case.

3.2.5 In view of this additional information, the Director considers that there are no grounds for the 1971 Fund to take recourse action against the oil terminal.

3.3 Claims for compensation

3.3.1 So far eight claims relating to clean-up operations, totalling Won 564 931 071 (£386 500), have been submitted. The experts engaged by the 1971 Fund have assessed these claims at Won 417 816 111 (£286 000). Negotiations with the claimants are in progress.

3.3.2 No claims have been received from the fishery or tourism sectors.

3.3.3 According to the 1971 Fund's Korean surveyor, it is unlikely that there will be any further claims.

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;
 - (b) to decide whether, in the *N°1 Yung Jung* incident, the 1971 Fund should oppose the shipowner's right of limitation or his right to indemnification;
 - (c) to decide whether, in the *Jeong Jin N°101* incident, the 1971 Fund should take recourse action against the refinery; and
 - (d) to give the Director such instructions as it may deem appropriate in respect of these incidents.
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