



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
55th session  
Agenda item 3

71FUND/EXC.55/2  
15 October 1997

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## INCIDENTS INVOLVING THE 1971 FUND

### Summary of incidents

#### Note by the Director

#### **1 Introduction**

1.1 Article 26.1(b)(ii) of the 1971 Fund Convention provides that the Executive Committee shall approve settlements of claims against the 1971 Fund and take all other steps in relation to such claims envisaged in Article 18.7 of the 1971 Fund Convention.

1.2 Since the 50th session of the Executive Committee, ten incidents have occurred that have given or may give rise to claims against the 1971 Fund, namely the *Nakhodka*, *Tsubame Maru N°31*, *Nissos Amorgos*, *Daiwa Maru N°18*, *Jeong Jin N°101*, *Osung N°3*, *Diamond Grace*, *Plate Princess*, *Katja* and *Evoikos* incidents. There are also 20 incidents which took place before the 50th session which will be reported to the Committee.

#### **2 Presentation of documentation**

2.1 The documentation presented to the 55th session of the Executive Committee has been structured in the following way:

- (a) incidents which the Executive Committee is invited to consider on the basis of a separate document for each incident; and
- (b) incidents which the Executive Committee is invited to consider in groups, since the incidents in each group occurred in the same Member State or were grouped together for practical reasons.

2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made - unless otherwise indicated - on the basis of the rates of exchange on 12 September 1997. However, for

amounts representing actual payments by the 1971 Fund, the conversion has been made at the rate of exchange on the day of payment.

### 3 Summary of incidents

The situation in respect of the incidents involving the 1971 Fund can be summarised as follows:

#### 3.1 Document 71FUND/EXC.55/3

- *Haven* (Italy, 1991): At its 19th session, the Assembly instructed the Director to explore, with the Italian Government and the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), the possibility of arriving at a global settlement in the *Haven* case which, as regards the 1971 Fund, fell within the maximum amount of compensation that would be available under the 1971 Fund Convention, ie the difference between 60 million SDR and 14 million SDR, minus the amounts which the 1971 Fund had paid or might have to pay to other claimants.

The Director has considered it appropriate to report the developments in respect of the *Haven* case directly to the Assembly (cf document 71FUND/A.20/28).

The 1971 Fund has maintained in the legal proceedings in Italy that the majority of the claims arising out of the *Haven* incident became time-barred as regards the 1971 Fund on or shortly after 11 April 1994.

The shipowner/UK Club have made final settlements in respect of all claims but two and paid practically all the agreed claims in full for the settlement amounts. The remaining claims are those by the Italian Government and one contractor. There are also some claims which have recently been pursued in court.

**No action requested.**

#### 3.2 Document 71FUND/EXC.55/4

- *Aegean Sea* (Spain, 1992): The Court of Appeal in La Coruña rendered its judgement on 18 June 1997 on issues relating to criminal and civil liability and on the claims for compensation presented in the criminal proceedings. The Court upheld the position taken by the Court of first instance (in a judgement rendered on 30 April 1996) except on a number of points which are set out in document 71FUND/EXC.55/4. In the judgement, a number of claims were awarded specific amounts of compensation, whereas most of the claims were referred for quantification to the procedure for the execution of the judgement, since the evidence presented by the claimants was insufficient to substantiate the amount of the losses suffered.

Under Spanish procedural law, the Court of Appeal's judgement is not subject to appeal. Consequently, under Spanish law the judgement is enforceable in respect of the claims for which specific amounts have been awarded in compensation. However, it appears that under the 1971 Fund Convention the judgement of the Court of Appeal is not enforceable against the 1971 Fund until the Assembly or the Executive Committee has taken a decision under Article 18.7 concerning the distribution of the amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. There is still a high degree of uncertainty as to the total amount of the established claims.

The Court of Appeal upheld the judgement of the Court of first instance as regards the civil liabilities of the parties concerned. The issues relating to the distribution of liability and recourse are legally complex. The Director considers it appropriate to allow more time for discussion between the

Spanish State and the 1971 Fund because of the importance of these issues in the *Aegean Sea* case, both as regards questions of principle and in monetary terms.

**Action requested:**

- Instructions concerning the issue of possible recourse.
- Instructions in respect of the procedures for the execution of judgement.
- Instructions concerning the payment of claims for which the Courts have awarded a specific amount.

3.3 Document 71FUND/EXC.55/5

- *Braer* (United Kingdom, 1993): Claims became time-barred on or shortly after 5 January 1996. The 1971 Fund has paid approximately £41 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £5.2 million have been agreed. Claims amounting to some £80 million were pursued in the Court of Session in Edinburgh. A number of these claims have been settled, reduced or withdrawn, leaving claims totalling some £50 million pending in court. The total amount of the claims presented exceeds the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, viz 60 million SDR (£50 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided, at its 44th session, to suspend any further payments of compensation. Only limited progress has been made in the court proceedings.

**No action requested**

3.4 Documents 71FUND/EXC.55/6 and 71FUND/EXC.55/6/Add.1

- *Keumdong N°5* (Republic of Korea, 1993): All claims relating to the clean-up operations have been settled and paid for a total amount of £3.9 million. Certain claims by fishermen have been agreed and paid for some £4.2 million. Further claims in this category, amounting to £15.7 million, are pending in court.

**No action requested**

- *Sea Prince* (Republic of Korea, 1995): The *Sea Prince* grounded with approximately 85 000 tonnes of crude oil on board. Claims relating to clean-up operations, fishery, tourism and agriculture settled so far total approximately £22 million. Further claims for a total of some £14 million are pending in court. The 1971 Fund's payments are limited to 50% of the established damage suffered by each claimant.

**Action requested:**

- Instructions in respect of whether to challenge the shipowner's right to limit his liability or take recourse action against any third party.
- *Yeo Myung* (Republic of Korea, 1995): The *Yeo Myung* collided with a tug, spilling some 40 tonnes of oil along a stretch of coast which was being cleaned following the *Sea Prince* incident. The oil affected mariculture facilities. Claims relating to clean-up have so far been agreed for £457 000. Claims in the fisheries and tourism sectors have been settled at a total amount of £280 000. Further claims relating to clean-up, fishery damage and tourism, totalling £4.8 million, are pending in court.

**Action requested:**

- Instructions in respect of whether the 1971 Fund should take recourse action against the other ship involved in the incident.

- *Yuil N°1* (Republic of Korea, 1995): The *Yuil N°1* grounded and then sank off Pusan, resulting in the spillage of heavy fuel oil. The sunken ship contains a significant quantity of oil. Claims for clean-up operations and fishery damage have been agreed for a total of some £10.7 million. Further claims for clean-up and fishery damage amounting to some £42 million are pending in court. The Korean authorities are considering removing the wreck of the *Yuil N°1*. The 1971 Fund's payments are limited to 60% of the established damage suffered by each claimant.

**Action requested:**

- Instructions in respect of whether to challenge the shipowner's right to limit his liability or take recourse action against any third party.
- *Honam Sapphire* (Republic of Korea, 1995): During berthing manoeuvres at an oil terminal, the fully laden *Honam Sapphire* struck a fender, puncturing a wing tank. An unknown quantity of crude oil escaped from the damaged tank. The spilt oil drifted south and contaminated shorelines up to 30 kilometres away. So far claims for clean-up operations have been agreed for a total of £4 million, and claims for fishery damage have been agreed for £200 000. Claims relating mainly to fishery damage totalling £12 million are pending in court.

**No action requested**

3.5 Documents 71FUND/EXC.55/7, 71FUND/EXC.55/7/Add/1 and 71FUND/EXC.55/7/1

- *Sea Empress* (United Kingdom, 1996): The *Sea Empress* ran aground near the entrance to Milford Haven harbour. The ship was carrying a cargo of approximately 130 000 tonnes of crude oil. It is estimated that a total of some 72 000 tonnes of oil were spilled.

Claims have been approved for a total of £12 182 192. The 1971 Fund's payments are limited to 75% of the established damage suffered by each claimant. Payments have been made to 566 claimants totalling £9 207 995. Of this amount, £6 838 382 has been paid by the Skuld Club and £2 369 613 by the 1971 Fund. Cheques for a further £104 932 are awaiting collection by the claimants. Payments of up to 100% of the approved amounts have been made by the Club in a number of cases where the amount of compensation was small or where the claimant has been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

Reports on investigations into the cause of the incident have been published by the Marine Accident Investigation Branch of the United Kingdom Department of Transport and by the Republic of Liberia. The Director is examining these reports.

**Action requested:**

- Instructions concerning the handling of claims.
- Instructions concerning the level of payment of claims.

3.6 Documents 71FUND/EXC.55/8 and 71FUND/EXC.55/8/Add.1

- *Nakhodka* (Japan, 1997): The *Nakhodka* broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. Claims totalling £162 million are being examined. Further claims are expected. It should be noted that compensation is available also from the 1992 Fund in respect of claims arising out of this incident.

**Action requested:**

- To review the level of the 1971 Fund's payment of claims.

3.7 Documents 71FUND/EXC.55/9 and 71FUND/EXC.55/9/Add.1

- *Nissos Amorgos* (Venezuela, 1997): The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela. The tanker sustained damage to three cargo tanks, and an estimated 3 600 tonnes of crude oil was subsequently spilled.

The shipowner's P & I insurer (the Gard Club) and the 1971 Fund have established a Claims Agency at Maracaibo. As at 19 September 1997, claims for compensation totalling Bolivars (Bs) 3 835 million (£4 788 000) had been presented to the Claims Agency. So far 62 claims have been approved for a total of Bs1 102 million (£1 376 000). The Gard Club has made payments totalling Bs 1 088 million (£1 358 000).

Claims have also been presented in court by the Republic of Venezuela for US\$20 million (£12.4 million) by FETRAPESCA (a fishermen's union) for US\$130 million (£81 million), by fish and shellfish processors for US\$100 million (£61 million) and by a local fishermen's union for \$10 million (£6.2 million). The figures have been indicated as provisional. There is thus great uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident. In view of the uncertainty, the Executive Committee decided at its 54th session that it was premature to take any decision authorising the Director to make payments.

The Director has engaged a technical expert to investigate the cause of the incident on behalf of the 1971 Fund, so as to enable the 1971 Fund to intervene in future legal proceedings, if appropriate.

**Action requested:**

- Instructions concerning the handling of claims.
- Instructions concerning the level of payment of claims.
- Instructions concerning other aspects of the incident.

3.8 Documents 71FUND/EXC.55/10 and 71FUND/EXC.55/10/Add.1

- *Osung N°3* (Republic of Korea, 1997): The *Osung N°3* was carrying 1 700 tonnes of oil when it ran aground and sank, spilling an unknown quantity of the oil, which affected both the Republic of Korea and Japan. It has not been possible to assess the quantity of oil remaining on board. Claims for clean-up totalling £890 000 have been received from claimants in Korea and these claims are being examined. There may be further claims in Korea from the fishery and mariculture sectors. The Korean authorities are considering removing the oil and the wreck. It is not possible to make any estimate of the cost of operations which might be undertaken to prevent further release of oil or for wreck removal. Claims will be submitted in Japan and may total £6.7 million. In view of the uncertainty as to the total amount of the claims, the 1971 Fund's payments are limited to 25% of the established damage suffered by each claimant.

**Action requested:**

- To decide on the level of the 1971 Fund's payments.

3.9 Document 71FUND/EXC.55/11

- *Iliad* (Greece, 1993): Claims for compensation totalling some £7.3 million have been lodged in the competent Greek court following the *Iliad* incident. Claims against the 1971 Fund became time-barred on or shortly after 9 October 1996. Only one claimant, the shipowner and the P & I Club have taken action against the 1971 Fund in accordance with Article 6.1 of the 1971 Fund Convention or notified the Fund of an action taken in accordance with Article 7.6.

**No action requested**

- *Kriti Sea* (Greece, 1996): The *Kriti Sea* spilled 20-50 tonnes of crude oil while discharging her cargo at an oil terminal in the port of Agioi Theodori. Clean-up operations were completed within a month. The shipowner and the P & I Club have been notified of claims totalling £11.6 million.

**No action requested**

- *Katja* (France, 7 August 1997): The *Katja* struck a quay in the Port of Le Havre, and 190 tonnes of heavy fuel oil was spilled. Clean-up operations were arranged by the Port authority and an operator of a berth and the operations were carried out by local contractors. Very few quantified claims have been received. Claims are expected from the public authorities, clean-up contractors, fishermen and boat owners.

**No action requested**3.10 Documents 71FUND/EXC.55/12 and 71FUND/EXC.55/12/Add.1

- *Vistabella* (Caribbean, 1991): All claims have been settled and paid. The 1971 Fund is involved in legal proceedings for the purpose of recovering from the shipowner and his insurer the amount of compensation paid by the Fund.

**No action requested**

- *Kihnu* (Estonia, 1993): The Estonian tanker *Kihnu* grounded close to the port of Tallin (Estonia). It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled as a result of the grounding. The Finnish Environment Agency submitted a claim to the 1971 Fund for the cost of measures taken by the Finnish authorities in Estonian territorial waters, maintaining that there was a risk that the oil would be taken by winds and currents to the coast of Finland. The Committee decided at its 49th session that the measures taken by the Finnish authorities in principle fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention.

As a result of discussions held in January 1997, the Finnish Government's claim was settled at FM 543 618 (£65 100). The 1971 Fund paid that amount to the Finnish Government in April 1997.

**No action requested**

- Spill from unknown source in Morocco (Morocco, 1994): The Director has informed the Moroccan authorities that it has not been shown that the spill originated from a ship carrying oil in bulk as cargo and that therefore the claim for compensation cannot be accepted (cf Article 4.2(b) of the 1971 Fund Convention). The Moroccan authorities have set up a committee to investigate the oil spill in order to try to establish the source of the oil. The Director has invited the Moroccan authorities to inform him of the progress of the Moroccan committee's investigations.

**No action requested**

- *Dae Woong* (Republic of Korea, 1995): Claims for clean-up costs have been settled and paid for a total of Won 43 million (£34 430). It is possible that claims for fishery damage will be submitted.

**No action requested**

- *Shinryu Maru* (Japan, 1995): All claims have been settled and all but one have been paid. No further claims are expected. Indemnification of the shipowner was paid in December 1996.

**No action requested**

- *Senyo Maru* (Japan, 1995): All claims have been settled and paid. Indemnification of the shipowner was paid in September 1997. The 1971 Fund's payments of compensation total £1.9 million. The Fund initiated recourse action against the other ship involved in the collision, and an agreement was reached on an apportionment of liability at 1/3 : 2/3 in favour of the *Senyo Maru*. The 1971 Fund will receive ¥280 million (£1.4 million) on 21 October 1997, representing the Fund's recovery under the agreement.

**No action requested**

- *Kugenuma Maru* (Japan, 1996): While the *Kugenuma Maru* was loading heavy fuel oil at an oil terminal, some 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. Claims for the cost of clean-up operations have been settled and paid. Indemnification of the shipowner was paid in March 1997.

**No action requested**

- *Tsubame Maru N°31* (Japan, 1997): While the *Tsubame Maru N°31* was being loaded with heavy oil, the crew failed to close the inlet valve of the tank in time, resulting in an overflow of oil into the sea. Clean-up claims totalling £41 000 are being examined. No further claims are expected.

**No action requested**

- *Daiwa Maru N°18* (Japan, 1997): While the *Daiwa Maru N°18* was loading heavy fuel oil, some oil leaked from a crack in the rubber hose and spilled into the sea. Clean-up claims totalling £92 000 are being examined.

**No action requested**

### 3.11 Document 71FUND/EXC.55/13

- *N°1 Yung Jung* (Republic of Korea, 1996): While taking shelter from an approaching typhoon, the *N°1 Yung Jung* grounded on a submerged uncharted rock, spilling 28 tonnes of medium fuel oil. Clean-up claims totalling £472 000 have been settled. Claims relating to transshipment of the cargo, fishery, restaurants, and repairs to the hull are being examined.

**Action requested:**

- Instructions as to whether the 1971 Fund should oppose the shipowner's right of limitation or his right to indemnification.

- *Jeong Jin N°101* (Republic of Korea, 1997): While the *Jeong Jin N°101* was loading heavy fuel oil at an oil terminal, some 124 tonnes overflowed from one of the tanks and spilled into the sea. Clean-up claims totalling £386 500 are being examined. It is unlikely there will be any further claims.

**Action requested:**

- Instructions as to whether the 1971 Fund should take recourse action against the oil refinery.

3.12 Document 71FUND/EXC.55/14

- *Irving Whale* (Canada, 1970): The barge *Irving Whale* sank in 1970, while being towed by a tug. Heavy fuel oil was released from the barge and oil has continued to seep from the barge over the years. Following an environmental assessment, the barge was refloated in 1996. A small quantity of oil was released during the refloating operation. The cost of the refloating and clean-up operations amounted to some £19 million. The Canadian Government has taken legal action against the owners and operators of the *Irving Whale* claiming compensation for these costs, and has notified the 1971 Fund of the legal action.

**Action requested:**

- To decide whether the claim by the Canadian Government falls within the scope of application of the 1971 Fund Convention.

3.13 Document 71FUND/EXC.55/15

- *Plate Princess* (Venezuela, 1997): On 27 May 1997, the Maltese tanker *Plate Princess* (30 423 GRT) berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). While the ship was loading a cargo of 44 250 tonnes of Lagoteco crude oil, some 3.2 tonnes were reportedly spilled. It appears unlikely that the established claims will exceed the limitation amount applicable to the shipowner.

A fishermen's trade union (FETRAPESCA) presented a claim in the Criminal Court of first instance in Cabimas on behalf of 1692 fishing boat owners for an estimated amount of US\$19.5 million (£12 million). FETRAPESCA presented a further claim against the shipowner and the master of the *Plate Princess* for an estimated amount of US\$10 million (£6.2 million) before the Civil Court of Caracas. Another fishermen's union also presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess*, in this case for an estimated amount of US\$20 million (£12.4 million) plus legal costs. The 1971 Fund has not been notified of these actions.

**Action requested:**

- Instructions regarding the handling of claims.

3.14 Document 71FUND/EXC.55/16

- *Diamond Grace* (Japan, 1997): The Panamanian tanker *Diamond Grace*, carrying 257 000 tonnes of crude oil, grounded in Tokyo Bay (Japan). Initial estimates of the quantity of oil spilled were in the region of 15 000 tonnes, but the estimate was revised to 15 000 tonnes. Thirty claims for compensation totalling £2.7 million have been received. Further claims are expected. It is possible that the total amount of the claims will not exceed the shipowner's limitation amount.

3.15 Document 71FUND/EXC.55/18

- *Evoikos* (Singapore, 1997): On 15 October 1997, the Cypriot tanker collided with the Thai tanker *Orapin Global* in the Strait of Singapore. It is estimated that some 29 000 tonnes of heavy fuel oil was spilled from the *Evoikos*. It is not yet possible to establish whether this incident will affect any 1971 Fund Member State.

**No action requested**

4 **Action to be taken the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.