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COMPENSATION
FUND 1971

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INCIDENTS INVOLVING THE 1971 FUND

FIVE KOREAN INCIDENTS

Keumdong N°5, Sea Prince, Yeo Myung, Yuil N°1, Honam Sapphire

Note by the Director

1 Introduction

This document sets out the situation in respect of the *Keumdong N°5, Sea Prince, Yeo Myung, Yuil N°1* and *Honam Sapphire* incidents.

2 *Keumdong N°5*
(Republic of Korea, 27 September 1993)

2.1 The incident

2.1.1 The Korean barge *Keumdong N°5* (481 GRT) collided with another vessel near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil were spilled from the *Keumdong N°5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae Island.

2.1.2 The *Keumdong N°5* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).

2.2 Clean-up operations

The Korean Marine Police carried out clean-up operations at sea, using its own vessels as well as ships belonging to a Port Authority and fishing boats. Clean-up contractors were engaged for the onshore clean-up operations and a labour force of over 4 000 villagers, policemen and army personnel were employed.

2.3 Claims for compensation

2.3.1 Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£3.9 million) and were paid by the Standard Club by September 1994. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund has made advance payments to the Standard Club totalling US$6 million (£4 million) in respect of these subrogated claims.

2.3.2 The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£64 million). The Federation indicated that it would present further claims in the region of Won 90 000 million.

2.3.3 During the period July 1995 - September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£4.2 million) compared with a total amount claimed of Won 48 047 million (£33 million). These claims have been paid in full for the agreed amounts (cf paragraph 2.3.9 below).

2.3.4 The Yosu fishery co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims have been filed in court totalling Won 17 162 million (£11.9 million) for damage to the common fishery grounds. These claims relate to types of damage similar to those of the claims of the Namhae co-operative. In addition, claims have been submitted by over 900 individual fishermen belonging to this co-operative, who are fishing boat owners, set net fishing licence holders or onshore fish culture facility operators. These claims total Won 1 643 million (£1.1 million).

2.3.5 The experts engaged by the 1971 Fund and the Standard Club have assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£560 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities have not provided evidence that the alleged losses were caused by the oil spill.

2.3.6 An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£2.9 million). This claim relates to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. The co-operative has reserved its right to increase the amount later for damage not yet quantified which would allegedly be suffered after 1994. This claim has been rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

2.3.7 Claims by two other co-operatives, for Won 6 053 million (£4.2 million) and Won 411 million (£284 000), respectively, were rejected by the 1971 Fund, since it had not been shown that the alleged losses occurred as a result of oil pollution. These claims have not been pursued in court.

2.3.8 Since the total amount of the claims submitted exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided, at its 38th session held in February 1994, that the 1971 Fund's payments would, at least for the time being, be limited to 50% of the established damage suffered by each claimant (document FUND/EXC.38/9, paragraph 3.6.5).

2.3.9 In order to make it possible for the 1971 Fund to pay agreed items in full, an agreement in principle was reached between the Fund and the Kwang Yang Bay Federation in the summer of 1995 that the admissible amount of the claims of the members of all the 11 fishery co-operatives forming part of the Federation would not exceed a specified amount determined to give the 1971 Fund a safety margin against overpayment. At its 44th session, held in October 1995, the Executive Committee shared the Director's view that, once the agreement was properly signed to the satisfaction of the 1971 Fund's Korean lawyer, the Fund would be in a position to pay any established claims in full (document FUND/EXC.44/17, paragraph 3.5.4). The agreement was signed by the co-operative chairmen in July 1996, on the basis of powers of attorney issued by all the individual members.

2.3.10 A table showing the situation as at 20 September 1997 in respect of the fishery claims is set out below.

	Amount claimed (million)		Amount agreed (million)	
	Won	£	Won	£
Claims settled out of court	97 351	66	6 163	4
Claims rejected by 1971 Fund and not pursued in court (two fishery cooperatives)	6 464	5	-	-
Claims pending in court	22 965	16	-	-
	126 780	87	6 163	4

2.3.11 The claims pending in court can be summarised as follows:

Claimant	Originally claimed amounts (million Won)	Amounts claimed in court (million Won)
Yosu fishery co-operative	18 430	18 805
Arkshell fishery co-operative	25 197	4 160
Total	43 627	22 965
	(£34.1 million)	(£15.7 million)

2.3.12 The experts engaged by the 1971 Fund and the Standard Club have assessed the claims pending in court at less than Won 1 500 million (£1 million).

2.3.13 Several court hearings have been held, and the claimants have submitted some documentation in support of their claims, including a survey report relating to the Yosu co-operative's claim. The Court is expected to render its judgement towards the end of 1997 or in early 1998.

2.3.14 Recent investigations have shown that a number of fishing boats belonging to the Yosu fishery co-operative had in fact been contaminated. The cost of cleaning these boats, which formed a minor part of the co-operative's claim, has been assessed by the 1971 Fund's experts at Won 7 million (£4 800), compared with the amount claimed of Won 46 million (£31 500).

2.4 Limitation proceedings

2.4.1 The shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus interest, corresponding to Won 77 million (£53 000), in cash to the Court in December 1994. The Court prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund was distributed to the claimants, and the limitation proceedings were completed in August 1995.

2.4.2 The 1971 Fund had intended to intervene in the legal proceedings brought against the shipowner and his insurer, in accordance with Article 7.4 of the 1971 Fund Convention. Under this Article, Member States should ensure that the 1971 Fund has the right to intervene in such proceedings. Under the Korean Statute implementing the 1969 Civil Liability Convention and the 1971 Fund Convention, the 1971 Fund may intervene in limitation proceedings in accordance with Supreme Court Regulations. However, the Supreme Court had not at that time issued any Regulations concerning the Fund's right to intervene and the Fund was therefore not entitled to intervene in the limitation proceedings. The Supreme Court issued the appropriate Regulations in October 1995.

2.4.3 The 1971 Fund was not formally notified of the limitation proceedings. Any decision made by the Court in these proceedings is therefore not binding on the 1971 Fund (cf Article 7.5 of the 1971 Fund Convention).

2.4.4 As mentioned above, the claims of the Yosu fishery co-operative and Arkshell fishery co-operative have been pursued in court. It is expected that the judgement by the Court of first instance will be rendered towards the end of 1997 or early 1998 at the earliest. If appeals were to be lodged against that judgement, the judgement of the appellate court would not be expected until late in 1998.

2.5 Deposit in court

2.5.1 At its 50th session, the Executive Committee considered the position to be taken by the 1971 Fund in connection with a provisional judgement being rendered against the 1971 Fund. This discussion is summarised in document 71FUND/EXC.50/17, paragraphs 3.5.4 - 3.5.11.

2.5.2 The Executive Committee decided that, if a judgement were to be rendered against the 1971 Fund in the *Keumdong N°5* case and the Court were to grant provisional enforcement, the Director might make a request to the Court that the provisional enforcement should be stayed, if necessary. The Committee further decided that if such a stay would be granted only on condition that the Fund made a deposit, the Director should request that the 1971 Fund, as an intergovernmental organisation, would be allowed to make the deposit in the form of a bank guarantee instead of a cash deposit. The Committee authorised the Director as regards the *Keumdong N°5* incident to submit a request to the Court for a stay of the provisional enforcement, and to make such a cash deposit or deposit of a bank guarantee as he might find necessary to protect the interests of the 1971 Fund, in the light of the Court's position in respect of any such request (document 71FUND/EXC.50/17, paragraph 3.5.8).

3 *Sea Prince*

(Republic of Korea, 23 July 1995)

3.1 The incident

3.1.1 The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with some 85 000 tonnes of Arabian crude oil, grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area.

3.1.2 Some 5 000 tonnes of oil were spilled as a result of the grounding. During the following weeks small quantities of oil leaked from the half-submerged section of the tanker. Some of the spilt oil spread to the islands immediately north of Sorido island. Most of the oil was carried eastward by currents and some oil eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Oki.

3.1.3 The *Sea Prince* was entered in the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

3.2 Removal of vessel and remaining oil cargo

3.2.1 A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95).

3.2.2 The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column if the oil were to be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship could break up during refloating. In view of this the salvage contract under Lloyds Open Form 95 was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters.

3.3 Clean-up operations and impact on aquaculture and fisheries

3.3.1 Small areas of rocky coasts, sea wall defences and isolated pebble beaches were affected. Clean-up operations were completed in all but one area of Sorido Island by the end of October 1995. The clean-up operations in the remaining area, closest to the vessel's grounding site where the oil had penetrated deep into the pebble beach, were completed in July 1996. Buried oil was found at one location, and removal of this oil was carried out in October 1996. In August 1997, in response to pressure from the media and local authorities, the Marine Police instructed the shipowner to carry out a full survey of all areas affected by oil from the *Sea Prince*. The survey indicated the presence of oil residues at five locations, and the shipowner is proposing to undertake further clean-up. The experts engaged by the 1971 Fund and the UK Club are considering whether any further clean-up is justified from a technical point of view.

3.3.2 In addition to traditional fishery, intensive aquaculture is carried out in the area, particularly around the islands near Sorido. Floating fish cages, mussel farms and set nets were oiled to varying degrees.

3.3.3 In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fishery co-operative associations have maintained that this red tide, which caused massive damage to fisheries, resulted from the oil spill response to these two incidents, in particular the use of large quantities of dispersants. It is the view of the 1971 Fund's experts, however, that red tides are a common phenomenon in Korean waters in September and October, and that they are caused by a combination of industrial pollutants, municipal waste and ambient sea temperatures at that time of the year.

3.4 Level of payments

3.4.1 In view of the fact that the aggregate amount of the claims presented or indicated greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided, at its 44th session, that the 1971 Fund's payment should for the time being be limited to 25% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.3.3).

3.4.2 In the light of the information on the aggregate amount of the claims presented by the time of the Executive Committee's 47th session, the Committee decided to increase the 1971 Fund's payments from 25% to 50% of the established damage suffered by each claimant, subject to confirmation of a significant reduction of the total amount of the fishery related claims (document FUND/EXC.47/14, paragraph 3.6.3).

3.4.3 Since there had been a significant reduction in the total amount of the fisheries claims. The Director decided, in June 1997, to implement the Executive Committee's decision to increase the 1971 Fund's payments to 50%.

3.4.4 At its 53rd session, the Executive Committee noted that the 1971 Fund and the UK Club were holding negotiations with claimants for the purpose of arriving at out-of-court settlements of all outstanding claims on the basis of the assessment made by ITOPF, and that considerable progress had been made. It was noted that, if the method of assessment used by ITOPF were to be accepted by the claimants, the total admissible amount of all claims arising out of this incident would fall well below the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

3.4.5 The Executive Committee noted the Director's view that, on the assumption set out in paragraph 3.4.4, the 1971 Fund would be able to pay all outstanding claims for the full settlement amounts. The Committee therefore decided to authorise the Director to pay all settled claims in full (to the extent they had not already been paid), provided that all or most of the outstanding claims in the fishery and tourism sectors were settled on the basis of ITOPF's method of assessment, that any uncertainty be eliminated as to the level of the shipowner's claim relating to the cost of the measures associated with the work carried out under the contract for the removal of the ship and related operations, and that the Director was convinced that the aggregate amount of all claims arising out of this incident would fall below 60 million SDR (£51 million) (document 71FUND/EXC.53/12, paragraph 3.3.9).

3.4.6 Since there is still some uncertainty as to the total amount of the claims, the Director has not yet used the authorisation given by the Committee to pay all established claims in full.

3.5 Claims for compensation

3.5.1 A number of claims relating to clean-up operations presented by 36 entities, including the Yosu Marine Police, municipalities and the shipowner, have been settled at approximately Won 19 700 million (£13.6 million), and have been paid by the shipowner and the UK Club. Further claims in this category, totalling Won 1 040 million (£71 900), are being examined.

3.5.2 Some areas were contaminated by both the *Sea Prince* incident and the *Yeo Myung* incident which occurred less than two weeks later. The 1971 Fund and the two P & I Clubs involved agreed to split the clean-up expenses equally between these incidents, based on the recommendation of the technical experts. The clean-up operations in these areas were carried out by two contractors engaged by the owner of the *Yeo Myung*. The claims presented by these contractors were settled at Won 716 million (£559 000). The settlement amounts were paid by the owner of *Yeo Myung* and his insurer (the North of England P & I Club). The UK Club reimbursed the amount attributed to the *Sea Prince* (ie half of the settlement amounts) to the North of England Club in August 1996.

3.5.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total amount of ¥357 214 (£1 800). This claim was approved by the Director in August 1996 at the amount claimed and was paid in September 1996 by the UK Club.

3.5.4 In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment is less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

3.5.5 The fishermen of seven fishery co-operatives affected by the spill formed a "Countermeasure Committee" to co-ordinate the submission of their claims and to negotiate with the shipowner, the UK Club and the 1971 Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishery grounds and other fisheries, but without supporting documentation. The damage suffered was provisionally indicated at Won 75 278 million (£52 million), with an additional Won 145 396 million (£100 million) for anticipated future losses.

3.5.6 In June 1996, the fishery experts engaged by the Countermeasure Committee submitted a report containing revised fishery related claims which were assessed by these experts at a total of Won 70 600 million (£49 million). However, the report was not accompanied by supporting documentary evidence. After discussions in August 1996 with the experts engaged by the UK Club and the 1971 Fund, the chairman of the Countermeasure Committee agreed to provide sales consignment data for most of the fishing sectors allegedly affected by the oil. Data relating to a number of fishery sectors in the Yosu area was provided in November 1996. Further consignment sales records relating to a number of fishery sectors in Kyungnam Province were provided in April 1997. It is expected that records relating to some other sectors will be provided in October 1997.

3.5.7 The Pusan Fishery Co-operative Association, which does not form part of the Countermeasure Committee, submitted claims for Won 345 million (£238 000). One of these claims for Won 180 million (£124 000) was settled on the basis of ITOPF's assessment at Won 23 million (£16 000).

3.5.8 Claims have been submitted for Won 46 million (£35 920) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil. No evidence of the alleged damage has been presented.

3.5.9 Claims totalling Won 4 759 million (£3.3 million) were presented by the owners of guest houses and other tourism-related businesses on Namhae Island, Yokji Island, Koje Island and in Yeochon county. These claims have been settled on the basis of ITOPF's assessment at Won 493 million (£340 000). There is an overlap between these claims in respect of Koje Island and the corresponding claims arising from the *Yeo Myung* incident.

3.6 Limitation proceedings

3.6.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR (£12 million).

3.6.2 The Sunchon District Court issued an order for the commencement of limitation proceedings on 31 May 1996 and appointed an administrator who should give an opinion on the various claims. The Court decided that all claims should be filed by 28 August 1996. By that date claims for clean-up operations totalling Won 23 737 million (£16.4 million), fishery claims totalling Won 70 713 million (£49 million), claims

relating to tourism and agriculture totalling Won 4 589 million (£3.1 million) and a claim by the shipowner for the cost of the measures associated with the work carried out under contract for the removal of the oil and the vessel and related operations in the amount of Won 20 900 million (£14.5 million) had been presented to the Court, ie a total of Won 120 000 million (£83 million).

3.6.3 Several court hearings for the examination of the claims have been held. The UK Club and the 1971 Fund have filed objections to the fishery claims and the claims relating to tourism and agriculture. The fishery co-operatives have objected to the clean-up claims.

3.6.4 At a court hearing held on 20 January 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by ITOPF. This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimants had provided little or no supporting documentation.

3.6.5 A further court hearing was held on 18 February 1997. At that hearing, the administrator appointed by the Court to assess the claims submitted an opinion together with a list of the claims accepted by him. During the hearing, the administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The administrator had accepted most of the amounts claimed without any significant modification, however, and had not taken into account the ITOPF report referred to in paragraph 3.6.4 above.

3.6.6 The judge requested the UK Club and the 1971 Fund to submit comments on the administrator's opinion. He stated that, after having received these comments, the Court would request the claimants to provide supporting documents.

3.6.7 By 20 September 1997, ITOPF had completed assessments of a major part of the claims in the fishery sector and all tourism and agriculture claims. These claims represent about 86% of the total amount of all fishery and non-fishery claims submitted as a result of the incident. ITOPF's assessments have been submitted by the shipowner to the Court.

3.6.8 As at 20 September 1997, claims totalling Won 215 724 million (£149 million) had been assessed by ITOPF at Won 13 721 million (£9.5 million).

3.6.9 The 1971 Fund and the UK Club have carried out negotiations with claimants for the purpose of arriving at out-of-court settlements of all outstanding claims on the basis of the assessment made by ITOPF, and considerable progress has been made. During the period April - September 1997, agreements based on ITOPF's assessments were reached with most of the claimants in the fishery sectors and all claims in the tourism sector. These agreements total Won 11 979 million (£8.2 million), compared with the amounts claimed, Won 146 473 million (£100 million).

3.6.10 The settled claims referred to in paragraph 3.5.1 have been paid in full by the shipowner, who has presented subrogated claims to the 1971 Fund.

3.6.11 As at 20 September 1997, there were only a few assessed fishery claims which had not been settled. These claims, which total Won 69 251 million (£47 million), have been assessed by ITOPF at Won 1 724 million (£1.2 million). Claims totalling Won 34 319 million (£24 million) have not yet been assessed, due to lack of supporting documents.

3.6.12 Nineteen operators of cage fish aquaculture have brought legal action against the 1971 Fund for claims totalling Won 95 million (£65 000). These claims were assessed by ITOPF at Won 149 million (£102 000). The claimants have reserved the right to increase the amounts claimed. The claimants' experts have assessed the claims at Won 1 739 million (£1.2 million).

3.6.13 The claims situation as at 20 September 1997 is shown in the table set out below:

Claims settled out of court			
Claims category	Amount originally claimed million Won	Amount claimed in court million Won	Amount agreed million Won
Clean-up	21 544	-	19 919
Fishery claims	141 714	-	11 487
Tourism and agriculture	4 759	-	493
Total	168 017	0	31 899
	(£115 million)	0	(£22 million)
Claims pending in court			
Clean-up	432	-	-
Fishery claims	1 739	95	-
Shipowner's claim relating to removal of oil and vessel	20 900	20 900	-
Total	23 071	20 995	0
	(£16 million)	(£14 million)	0

3.6.14 A claim for Won 767 million (£525 000) has been presented in court by a company which operated a stockpile of clean-up equipment and material on behalf of the shipowner in connection with the *Sea Prince* and *Honam Sapphire* incidents. This claim had been assessed by the experts engaged by the 1971 Fund and the UK Club at Won 285.5 million (£195 000). At a hearing held on 10 September 1997 the Court rendered a so-called mediation judgement, in which the claim was assessed at Won 400 million (£276 000). Any party can lodge an opposition against this judgement within two weeks of it being served on the party. After further investigation by the experts engaged by the Club and the Fund, the Director and the Club decided to accept the amount assessed by the Court (ie Won 400 million) as reasonable, and did not lodge opposition. The claimant has however appealed against the judgement.

3.6.15 The date for the next court hearing has not yet been fixed.

3.7 Investigation into the cause of the incident

3.7.1 The 1971 Fund, through its Korean lawyer, followed the investigation of the Korean Marine Inquiry Agency into the cause of the incident. The Fund also examined the judgement by the Court of first instance in the criminal proceedings against the master of the *Sea Prince*.

3.7.2 The *Sea Prince* grounded off Sorido Island during a typhoon, having lost control under heavy swell and wind while on her way from the anchorage in Yosu Bay to take refuge in the open sea. It appears that the incident was caused by a navigational error on the part of the master of the *Sea Prince* and the unusual movement of the typhoon contributed to the incident. At its 49th session, the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right of limitation (document FUND/EXC.49/12, paragraph 3.7.8).

3.7.3 The Director has investigated, through the 1971 Fund's Korean lawyer, the possibility of taking recourse action against any person who contributed to the incident. The investigation revealed that the master communicated with the charterer of the ship about taking refuge action, but no third party - including the staff of the oil terminal where the *Sea Prince* was berthed before taking refuge - influenced the master's decision to take refuge, which led to the *Sea Prince* incident. In the Director's view, there was no evidence that any person other than the master contributed to the incident. For this reason, the Director expresses the view that the 1971 Fund has no possibility of taking recourse action in this case.

3.7.4 The Executive Committee decided, at its 49th and 50th sessions, that the 1971 Fund should not challenge the shipowner's right to limit his liability, that the shipowner was entitled to indemnification under

Article 5 of the 1971 Fund Convention and that the 1971 Fund should not take recourse action against any third party (documents FUND/EXC.49/12, paragraphs 3.7.9 and 3.7.10 and 71FUND/EXC.50/17, paragraph 3.7.9).

3.7.5 At the Executive Committee's 53rd session, one delegation drew the attention of the Committee to the fact that the master of the *Sea Prince* had recently been given a prison sentence as a result of the incident. This delegation stated that, for this reason, notwithstanding the decisions of the Executive Committee at its 49th and 50th sessions, the involvement of the shipowner in the decision making process leading to the action taken by the master prior to the grounding should be investigated further.

3.7.6 The Executive Committee instructed the Director to investigate further the possibility of challenging the shipowner's right to limit his liability and of the Fund's taking recourse action against any third party. It was noted that this investigation would not affect the payment of compensation by the 1971 Fund (document 71FUND/EXC.53/12, paragraph 3.3.6).

3.7.7 The Director's further investigation has revealed that the master appealed against the prison sentence referred to in paragraph 3.7.5 but later withdrew his appeal. The master has served the term of his prison sentence.

3.7.8 It should be noted that there is a difference between the 1969 Civil Liability Convention and the implementing Korean legislation in respect of the criteria for depriving the shipowner of his right to limit his liability. The Convention provides that the shipowner loses this right if the incident occurred as a result of the owner's actual fault or privity (Article V.2). Under Korean legislation, the shipowner is not entitled to limit his liability if the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, which was the criterion laid down in the 1992 Civil Liability Convention. The Committee noted, at its 49th session, the advice received from the 1971 Fund's Korean lawyer that the Korean courts would apply the Korean statute rather than the text of the Convention, which would make it more difficult to breach the shipowner's right of limitation.

3.7.9 In the light of the considerations set out in paragraphs 3.7.2, 3.7.3, 3.7.7 and 3.7.8, the Director maintains the view that the 1971 Fund should not challenge the shipowner's right to limit his liability, nor take recourse action against any third party.

4 *Yeo Myung*

(Republic of Korea, 3 August 1995)

4.1 The incident

4.1.1 The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul Island, near Koje Island (Republic of Korea).

4.1.2 Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled. The oil drifted in a north-easterly direction and stranded at a number of locations on Koje Island from 4 to 8 August 1995. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July 1995, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koje Island were not affected by the spill.

4.1.3 The *Yeo Myung* was entered in the North of England Protection and Indemnity Association Limited (North of England P & I Club).

4.2 Clean-up operations and impact on aquaculture, fishery and tourism

4.2.1 The Marine Police initiated clean-up at sea. Shoreline clean-up was initially organised by the local authorities. After a week the clean-up was taken over by a specialised contractor, which continued to use local labour drawn from the inhabitants of the villages affected by the spill. As a result of the clean-up operations, large quantities of oily waste were collected and disposed of.

4.2.2 In addition to traditional fishing, aquaculture activities are carried out in the area affected by the *Yeo Myung* incident, although not to the same extent as in the area around Sorido, where the *Sea Prince* grounded. At the time of the *Yeo Myung* incident, surveys of the fishery damage resulting from the *Sea Prince* incident had not been undertaken in the Koje area. Consequently, the surveyors acting in respect of the two incidents conducted joint surveys in this area.

4.2.3 As regards the issue of red tide, reference is made to paragraph 3.3.3 above.

4.3 Claims for compensation

4.3.1 On the basis of the assessment made by the 1971 Fund's experts, the Executive Committee, at its 46th session, endorsed the Director's decision that the established claims could be paid in full by the 1971 Fund (document FUND/EXC.46/12, paragraph 4.4.2).

4.3.2 As mentioned above in relation to the *Sea Prince* incident, the 1971 Fund and the two P & I Clubs involved agreed in respect of the areas contaminated by both incidents to split the clean-up expenses equally between the two incidents. These claims were paid by the North of England Club in December 1995 and January 1996. The insurer of the *Sea Prince*, the UK Club, reimbursed 50% of the expenses which were attributed to the *Sea Prince* incident to the North of England Club in August 1996.

4.3.3 Claims for clean-up operations totalling Won 757 million (£523 000) have been settled at Won 661 million (£457 000). The claims have been paid partly by the North of England Club, partly by the 1971 Fund.

4.3.4 The Koje fishery co-operative has stated that it will present claims for losses in the fishery and mariculture sector caused by the *Yeo Myung* incident for an amount which has provisionally been indicated in the region of Won 4 500 million (£3 million). This co-operative has also indicated that it will claim for anticipated future losses amounting to about Won 15 300 million (£11 million).

4.3.5 In May 1996, the members of the Koje fishery co-operative presented a report prepared by its experts containing revised claims for damage to facilities, business interruption and mortality of fish, totalling Won 3 323 million (£2.3 million), including future losses. However, that report does not contain sufficient evidence to substantiate the alleged losses. The surveyors of the Club and the Fund are investigating these claims. As at 20 September 1997, claims filed by Koje fishery co-operatives totalling Won 13 612 million (£9.4 million) had been assessed by ITOPF at Won 352 million (£243 000). Agreements based upon ITOPF's assessments have been reached for Won 141 million (£97 000), compared with the amount claimed of Won 5 924 million (£4.1 million).

4.3.6 In addition to the claims referred to in paragraph 4.3.5, the owners of set nets and fish farms presented claims separately for Won 644 million (£445 000) for losses already suffered and for an additional Won 1 618 million (£1.1 million) for anticipated future losses. These claims have been assessed by ITOPF at Won 35.5 million (£24 500), but this assessment has not yet been accepted by the claimants.

4.3.7 Local businesses in the tourism sector along the affected beaches on Koje island have presented claims for some Won 2 592 million (£1.7 million) relating to loss of income. Most of these claimants also filed claims in respect of the *Sea Prince* incident. ITOPF assessed the claims in respect of the *Yeo Myung* at Won 269 million (£186 000), and the claims were recently settled at the amounts assessed by ITOPF.

4.3.8 The claims situation as at 20 September 1997 in respect of fishery and tourism claims is shown in the table set out below.

Claims category	Amount originally claimed million Won	Amount assessed by ITOPF million Won	Amount agreed million Won
Fishery claims	5 010	212	-
Fishery claims	8 602	141	141
Fishery claims	2 262	35	-
Fishery claims	2 974	To be assessed	-
Tourism	2 592	269	269
Total	21 440 (£15 million)	657 (£450 000)	410 (£280 000)

4.4 Limitation proceedings and investigation into the cause of the incident

4.4.1 The shipowner commenced limitation proceedings at the competent district court. The limitation fund was established by the North of England P & I Club by payment of the limitation amount of Won 21 million (£15 000) to the Court.

4.4.2 In August 1996, 13 groups of claimants, including the shipowner, lodged claims in the Court relating to clean-up operations, fishery activities and businesses in the tourism sector for a total amount of Won 6 994 million (£4.8 million). The date for the court hearing has not yet been fixed.

4.4.3 The investigation of the Marine Accident Inquiry Agency into the cause of the incident revealed that the incident was caused by a navigational error on the part of the masters of both vessels involved in the collision. The investigation did not give any indication that the incident was caused by the actual fault or privity of the owner of the *Yeo Myung*.

4.4.4 At its 50th session the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right to limit his liability nor oppose a request by the shipowner for indemnification under Article 5 of the 1971 Fund Convention (document FUND/EXC.50/17, paragraph 3.8.2).

4.4.5 In the light of the findings of the Marine Accident Inquiry Agency, the 1971 Fund's lawyer takes the view that the liability for the collision should be apportioned equally between the two vessels. The Fund's lawyer has investigated the financial situation of the owner of the other vessel involved in the collision (a tug). From this investigation it appears that the owner of the tug has no assets against which a judgement in a recourse action could be enforced. For this reason, the Director considers that the 1971 Fund should not take recourse action against the tug owner.

5 Yuil N°1

(Republic of Korea, 21 September 1995)

5.1 The incident

5.1.1 The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated by a tug and a naval vessel some six hours after the grounding. While being towed towards the port of Pusan, the tanker sank in 70 metres of water, 10 kilometres from the mainland.

5.1.2 Three cargo tanks were reported to have been breached as a result of the grounding. Apart from the initial release of oil following the grounding and sinking, small quantities of oil leaked from the wreck from time to time during October 1995 and minimal quantities have leaked from time to time thereafter.

5.1.3 Shorelines on the east and north coast of Koje island, on the west coast of Kadokto and immediately to the east and west of the mainland at Pusan, as well as a number of smaller islands were oiled as a result

of the initial spill. Some re-oiling of shorelines west of Pusan also occurred following later small releases of oil from the wreck.

5.1.4 The *Yuil N°1* was entered in the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club).

5.2 Clean-up operations

5.2.1 Initially, the clean-up operations at sea were carried out by using two oil recovery vessels and a number of fishing vessels. The Marine Police also used ships for spraying dispersants. Booms were deployed in some coastal areas to protect laver seaweed farms.

5.2.2 The onshore clean-up was carried out by a number of contractors, with the assistance of some 1 750 villagers. The clean-up operations in many areas were completed by early November 1995. In the more heavily polluted areas the onshore clean-up was terminated at the end of November, although some operations were not completed until mid January 1996.

5.3 Level of payments

5.3.1 At its 44th session, in view of the uncertainty concerning the total amount of the claims, the Executive Committee decided that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.5.6).

5.3.2 At the Committee's 47th session, the delegation of the Republic of Korea requested that the level of compensation payable by the 1971 Fund be increased from 60% to 100%. The delegation stated that, if this request were accepted, the Korean Government was prepared to provide a guarantee to protect the 1971 Fund against overpayment. A number of delegations expressed the view that the 1971 Fund should be very cautious in accepting a guarantee of the type proposed by the Korean delegation. The Executive Committee decided not to accept such a guarantee. The Committee decided to maintain the limit of the 1971 Fund's payments at 60% of the established damage suffered by each claimant (document FUND/EXC.47/12, paragraphs 3.7.4 and 3.7.8-3.7.10). At its 50th session, the Executive Committee decided again to maintain the 60% limit of the 1971 Fund's payments (document 71FUND/EXC.50/17, paragraph 3.4.2).

5.3.3 At the 49th session of the Executive Committee, the delegation of the Republic of Korea expressed its concern regarding the delay in the payment of the expenses incurred during clean-up operations. This delegation indicated that in the *Yuil N°1* incident the claims for the clean-up operations had been settled, but that only 60% of the settled amounts had been paid. It was stated by this delegation that this delay in payment might lead to a mistrust of the Korean Government by those who participated in the clean-up operations. This delegation feared that in the event of a future oil spill, clean-up operations might therefore not be carried out as efficiently as they had been in the past. In the view of this delegation a possible solution would be to give priority to claims for clean-up costs (document FUND/EXC.49/12, paragraph 3.7.12).

5.3.4 The Director stated that he regretted this situation. He drew attention to the fact that under the Fund Convention all claimants had to be treated equally and no claims could be given priority. He also mentioned that when the Executive Committee decided to limit the 1971 Fund's payments to a specified percentage of the agreed amounts, this percentage had to be applied to all claims. The Executive Committee endorsed the Director's position on this point (document FUND/EXC.49/12, paragraphs 3.7.13 and 3.7.14).

5.3.5 At the Committee's 50th session, the delegation of the Republic of Korea reiterated its concern regarding the delay in the payment of the expenses incurred during clean-up operations. The Korean delegation emphasised that solutions should be found within the compensation system to solve this problem since it was not acceptable that Governments should feel obliged to intervene to mitigate financial hardship. This delegation referred to a document on emergency payments in cases of financial hardship presented by the United Kingdom delegation to the 19th session of the Assembly (document 71FUND/A.19/27). The Korean delegation stated that the Korean Government was considering paying the balance of 40% to claimants in the *Yuil N°1* case who were suffering financial hardship. For this reason, this delegation requested confirmation that, if the Government made such payments, the Government would subrogate their claims against the Fund.

5.3.6 The Executive Committee endorsed a statement by the Director that if the Korean Government were to pay claimants the balance of 40% of the amounts accepted by the 1971 Fund, the Government would

acquire by subrogation the claimants' rights against the Fund (document 71FUND/EXC.50/17, paragraph 3.9.8).

5.4 Claims for compensation

5.4.1 Claims relating to clean-up operations have been received from various contractors, a fishery co-operative, Pusan Marine Police and Koje City. Agreement has been reached on the quantum of the claims with most of the contractors and the other entities for a total of Won 12 284 million (£8.5 million). The Standard Club paid some of these claims in full, and the 1971 Fund reimbursed the Club 60% of these payments. The balance of the Club's payments for the clean-up claims totals Won 314 million (£245 000). The Fund's payments for these claims total Won 7 142 million (£5.6 million), including the reimbursements.

5.4.2 A co-operative of owners of set nets on Koje island claimed compensation for its members for a total of Won 1 385 million for the cost of cleaning their nets and for loss of income during varying periods of up to 20 days when fishing was interrupted. The claims, which were accepted for Won 1 167 million (£911 370), were paid in full by the Standard Club in November 1995.

5.4.3 Agreement on the method for calculating the losses was reached with representatives of 11 local fishery associations on Koje island. In November 1995, a final settlement was concluded in respect of the claims presented by ten of these associations whose claims totalled Won 1 643 million (£1.1 million) for a total amount of Won 1 400 million (£970 000). These claims related to cleaning costs and loss of earnings for fishing boat owners, loss of earnings for set net owners, loss of earnings in respect of common fishery grounds and in respect of farms for the cultivation of sea squirt and short-necked clams. An agreement was reached in August 1996 with the remaining local fishery association in this area for an amount of Won 290 million (£200 000). A laver cultivation farm in the Naktongp'o region claimed Won 62 million (£42 000) for the cost of cleaning and replacing contaminated equipment. This claim was accepted in full.

5.4.4 The claims in the fishery sector referred to in paragraph 5.4.3 were paid in full by the Standard Club for the amounts agreed. The 1971 Fund reimbursed the Standard Club an amount of Won 1 577 million (£1.2 million) in respect of most of these claims, corresponding to 60% of the established amount of each claim.

5.4.5 Claims for the cleaning of facilities by the owners of oyster and mussel farms on the north-west coast of Koje island were agreed for Won 73 million (£50 500). The 1971 Fund paid 60% of this amount (Won 44 million or £37 100) to the claimants.

5.4.6 So far, claims have been agreed for a total of Won 15 380 million (£10.7 million), out of which Won 12 388 million (£8.5 million) relates to clean-up operations and Won 2 992 million (£2.0 million) to fishery claims. Payments made total Won 10 417 million (£8.7 million), out of which the 1971 Fund's payments total Won 8 763 million (£7.3 million).

5.4.7 Clean-up claims for a total amount of Won 25 million (£17 000) and fishery related claims for a total amount of Won 60 740 million (£42 million) have not yet been settled.

5.4.8 The claims situation as at 20 September 1997 is shown in the table set out below.

Claims category	Amount claimed million Won	Amount assessed million Won	Amount agreed million Won
Agreed fishery claims	86 404	4 362	3 253
Agreed clean-up claims	12 564	12 393	12 393
Outstanding fishery claims	60 892	-	-
Outstanding clean-up claims	25	-	-
Total	159 885 (£110 million)	16 755 (£111 million)	15 646 (£111 million)

5.5 Wreck removal and related issues

5.5.1 In November 1995 the Marine Police ordered the shipowner to remove the oil or the wreck. On the basis of studies carried out by experts employed by the shipowner, the owner maintained that it would be unnecessary and unwise to remove the oil or the wreck. The shipowner argued that there was a minimal release of oil and that there was no risk of any significant release of oil if the wreck were left where it was since the wreck was slowly being covered by mud which would help to prevent further significant releases of oil. The owner also stated that if an oil removal or wreck removal operation were to be carried out, there would be a significant risk that oil would escape causing further pollution.

5.5.2 In a letter to the 1971 Fund dated 24 January 1996, the Korean Government stated that there was growing concern about the possibility of an oil spill from the wreck which could cause pollution in the nearby coastal area and which could severely affect the livelihood of the local people. The Government mentioned that Korean experts were of the opinion that there was a need to carry out further investigation of the wreck using deep sea divers in order to acquire more accurate and detailed information on the condition of the wreck for removal. The Government therefore asked whether the 1971 Fund was prepared to carry out further investigation of the condition of the wreck and also asked whether, in the event that the 1971 Fund was not prepared to carry out such an investigation, the Fund would compensate the Korean Government for the cost of carrying out this investigation as a preventive measure against possible oil pollution. Finally, the Government asked whether the 1971 Fund would fund the costs incurred by the Government for removing the sunken tanker and its cargo.

5.5.3 At its 47th session, the Executive Committee discussed this issue and took the view that it was not the task of the 1971 Fund itself to carry out clean-up operations or preventive measures, nor to undertake studies in these fields, and that the 1971 Fund should therefore not undertake the investigation requested. The Committee took the view that it would be for the Committee to decide, on an objective basis and in the light of all the circumstances of the case, whether the cost of any investigation or of any operation carried out by the Korean Government in respect of the removal of the oil or the wreck would be admissible for compensation (document FUND/EXC.47/14, paragraph 3.7.7).

5.5.4 The Korean delegation stated that the Korean Government wished to find a solution to the wreck removal issue. The delegation mentioned that an *ad hoc* committee composed of several interested Government authorities had been set up to take anti-pollution measures and that a final decision would be taken after all aspects had been duly considered, including the position taken by the Executive Committee. The delegation stated that the Korean Government would like to have a more detailed discussion with the 1971 Fund after the Government's decision had been taken. The 1971 Fund has not yet been informed of any decision taken by the Korean Government on this issue.

5.5.5 During October and November 1996, the Marine Police carried out an underwater survey of the wreck to assess whether there was any risk of further release of oil. No leakage of oil was observed during the period of the survey. The 1971 Fund has not yet been informed of the results of this survey.

5.6 Payment by National Federation of Fishery Associations

5.6.1 In January 1997, the National Federation of Fisheries Co-operatives (NFFC) paid the remaining 40% of most of the established claims for clean-up operations. As a result, NFFC acquired by subrogation the balance of these claims against the 1971 Fund for the amounts paid.

5.6.2 At the Executive Committee's 52nd session, the delegation of the Republic of Korea noted that the NFFC had paid the remaining 40% of the clean-up claims in order to avoid further delay in the payment of those claims. The delegation stated that the 1971 Fund should reimburse NFFC for the amount paid for these claims, together with due interest.

5.6.3 The Director stated that, in his view, it would not be possible for the 1971 Fund to reimburse the NFFC for its subrogated claim, which represented the balance of the established clean-up claims, while the Fund's payments were limited to 60% of the established claims as decided by the Executive Committee, since all claimants had to be given equal treatment (document 71FUND/EXC.52/11, paragraph 3.5.4).

5.7 Investigation into the cause of the incident and recourse action

5.7.1 The Korean Maritime Accident Inquiry Agency (MAIA) made an investigation into the cause of the incident. This investigation revealed that the initial grounding was caused by the master of the *Yuil N°1*

having chosen to navigate through a narrow and dangerous passage between two islands which resulted in the vessel grounding on a small rocky island.

5.7.2 As regards the refloating and towing operation of the *Yuil N°1*, which followed the initial grounding and subsequently led to the sinking of the *Yuil N°1*, the findings established by MAIA can be summarised as follows.

> When the naval vessel arrived at the grounding site of the *Yuil N°1*, the tanker was sinking with about 90% of the engine room space filled with sea water. The engine room and one cargo tank had been punctured. The Captain of the naval vessel started to act as if he was in command of the rescue operation without communicating with the Marine Police which was in charge of the rescue operation and was also on site. In view of the extent of the spread of oil, the Captain of the naval vessel recommended to the master that the *Yuil N°1* should be refloated, in the expectation that she would not sink when secured to the naval vessel after her refloating. The master of the *Yuil N°1* pointed out the danger that the *Yuil N°1* might sink after refloating, but eventually agreed to the proposal of the Captain of the naval vessel to refloat the ship. The tug, at the request of the master of the *Yuil N°1*, undertook to refloat the tanker by pulling her from the rock where she was aground. The tug easily succeeded in the refloating operation. The *Yuil N°1* was then secured alongside the naval vessel by several mooring lines, and the naval vessel and the tug started to tow the *Yuil N°1*. By this time, the *Yuil N°1* was submerged to the fore and aft deck level. The naval vessel towed the *Yuil N°1* for 20 minutes, but abandoned this operation when the *Yuil N°1* contacted heavily the naval vessel and the aft mooring line parted. The tug continued the towing operation for a further ten minutes until the *Yuil N°1* started to submerge further. The *Yuil N°1* sank four hours later in approximately 75 metres of water.

5.7.3 In its investigation report, MAIA points out that the master of the *Yuil N°1* did not check the damaged plating, the extent of the damage and how much water entered the vessel, nor did he ascertain the situation of the *Yuil N°1* and take emergency measures to minimise the risk of sinking. However, MAIA accepted that the sinking was a force majeure and decided that the action taken by the master after the grounding was inevitable. MAIA also pointed out that the Captain of the naval vessel was reckless because the *Yuil N°1* had sunk up to deck level and that towing by the method envisaged could have resulted in the naval vessel sinking. MAIA concluded that the navigating officer of the tug did not undertake the tow on his own initiative, and that therefore he was not to blame for the incident.

5.7.4 The hull insurer of the *Yuil N°1* has taken legal action in the Republic of Korea against the owner of the tug which took part in the refloating and towing operation and against the Korean Government, for the purpose of recovering the amount it had paid for the damage to the hull (Won 1 173 million or £803 000). In its pleadings to the Court the hull insurer has made the following points:

(1) Both the tug and the naval ship were negligent in that they did not carefully check the status of the broken parts of the *Yuil N°1* and did not move the oil on board the *Yuil N°1*, before they attempted to refloat the *Yuil N°1*.

(2) The tug was of the type used for the berthing or deberthing in the inner port and was not suitable for salvage of the *Yuil N°1*. Notwithstanding this, the tug attempted to tow the *Yuil N°1*. In addition, the tug's master and engineer were not on board the tug during the towing operation.

(3) The Captain of the naval vessel was reckless in instructing the tug to refloat the *Yuil N°1*, without seriously considering the potential risk of the *Yuil N°1* sinking.

(4) Thus the tug owner and the Korean Government, as employers of the tug and the naval vessel, respectively, and therefore joint tortfeasors, should be jointly and severally liable for the damage to the hull of the *Yuil N°1*.

5.7.5 The Court of first instance rendered its judgement on 27 August 1997. The Court rejected the hull insurer's action for the following reasons:

The *Yuil N°1* was not firmly grounded on the sunken rock, but sank gradually. It was anticipated that the damage caused by the leakage of the oil that was on board would be enormous if the opening on the bottom of the ship were enlarged by the ship's hitting the sunken rock. Furthermore, it was difficult for the parties concerned to confirm exactly the extent of the opening because the weather was bad at that time. Even if the barge for the transhipment of the oil had arrived on site, it could not have come alongside the *Yuil N°1*. In the circumstances, the master of the naval vessel and the officer of the tug had obtained the consent of the master of the *Yuil N°1*, who had a better knowledge of the structure and status of the *Yuil N°1* than anyone else, regarding the refloating and towing operations. It is difficult therefore to place any fault on the master of the naval vessel and the officer of the tug.

5.7.6 The hull insurer has appealed against the judgement.

5.7.7 In the light of the results of the investigation into the cause of the incident, the Director considers that there is no ground for the 1971 Fund's opposing the shipowner's right to limit his liability.

5.7.8 The Director proposes that the 1971 Fund should postpone its decision as to whether it should take recourse action against third parties until the Court of Appeal has rendered its judgement in the action brought by the hull insurer.

5.8 Limitation proceedings

5.8.1 The shipowner commenced limitation proceedings at the Pusan District Court in April 1996.

5.8.2 The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£173 000).

5.8.3 By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£41 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fishery and clean-up claims to the Court for a total amount of Won 10 000 million (£6.9 million). The clean-up contractors and fishery associations who have so far received only 60% of the agreed amounts filed claims for the balance, totalling Won 4 700 million (£3.2 million) and Won 29 million (£2 000), respectively.

5.8.4 At the court hearings the Club and the 1971 Fund filed objections to the fishery claims and the fishermen submitted objections to all the clean-up claims.

5.8.5 At a court hearing held in October 1996, the administrator appointed by the Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable. It is expected that the Court will render its decision in October 1997.

5.8.6 At its 50th session, the Executive Committee instructed the Director to challenge any court decision, if the Court's assessment of the claims is not based on appropriate evidence (document 71FUND/EXC.50/17, paragraph 3.9.4).

6 *Honam Sapphire*

(Republic of Korea, 17 November 1995)

6.1 The incident

6.1.1 During berthing manoeuvres at the oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing her N°2 port wing tank. An unknown quantity of Arabian heavy crude oil escaped from the damaged tank. The spilt oil drifted south and contaminated shorelines up to 30 kilometres away, with a further slight impact on an island 50 kilometres from the incident site.

6.1.2 The *Honam Sapphire* was entered in the United Kingdom Steam Ship Assurance Association Ltd (UK Club).

6.2 Clean-up operations and impact on mariculture and fisheries

6.2.1 The offshore clean-up operation was led by the Marine Police. Some 35 Marine Police vessels and numerous fishing boats and other craft were engaged in applying dispersants and sorbent materials. Two helicopters were also used for spraying dispersants. By 23 November 1995, no more oil remained at sea.

6.2.2 The shoreline impact was comparatively light. On-shore clean-up using manual methods started on 21 November 1995. The on-shore clean-up was completed in many areas by early January 1996, whereas in the most heavily polluted areas these operations continued until March 1996. Over 1 500 people worked at about 30 different sites under the co-ordination of four clean-up contractors. A fifth contractor was appointed to dispose of collected oily waste at an incineration plant and approved landfill site.

6.2.3 Several floating fish farms and on-shore hatcheries, set nets and common intertidal fishing areas were affected by the oil.

6.2.4 There has been a request that further clean-up should be carried out on two beaches. The technical justification of such clean-up is being considered by the experts of the UK Club and the 1971 Fund.

6.3 Level of the 1971 Fund's payments

6.3.1 At its 47th session, the Executive Committee decided, in view of the remaining uncertainty concerning the total amount of the claims, that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant (document FUND/EXC.47/14, paragraph 3.8.3).

6.3.2 At its 53rd session, the Executive Committee noted that the claims submitted in the limitation proceedings were substantially lower than the amounts originally claimed, and that the Director was of the view, after consultation with the 1971 Fund's experts, that it was extremely unlikely that the amount of all the established claims arising out of this incident would exceed the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Committee therefore authorised the Director to pay in full any settled claim, to the extent that the shipowner's limit was exceeded (document 71FUND/EXC.53/12, paragraph 3.4.7).

6.4 Claims for compensation

6.4.1 Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 700 million (£6.7 million). Some claims in this category have been agreed for a total amount of Won 5 800 million (£4 million) and the settlement amounts have been paid in full by the shipowner and the UK Club. The remaining claims in this category are being examined.

6.4.2 Claims for fishery damage have been submitted by several fishery co-operatives in the area affected by the spill, totalling Won 49 039 million (£34 million).

6.4.3 Of the claims referred to in paragraph 6.4.2, two groups of claims have been settled. Nine set net fishery operators in the Dolsan island area presented claims for damage to facilities and loss of income during the period when fishing was interrupted as a result of the incident, totalling Won 173 million (£120 000). These claims were settled at Won 106 million (£73 000) and were paid by the shipowner in April 1996. Claims presented by the Namhae fishery co-operative, totalling Won 635 million (£438 000), related to various types of fishing carried out by the members of the co-operative. These claims were settled at an aggregate amount of Won 203 million (£140 000) and were paid by the shipowner in July 1996.

6.4.4 The assessment made by the experts engaged by the UK Club and the 1971 Fund of the claims presented by the Namhae fishery co-operative was based on the actual interruption of business while the clean-up operations were carried out. The claims relating to the alleged mortality of caged fish were not accepted, since there was no evidence that such mortality had occurred as a result of the oil pollution or the clean-up operations.

6.4.5 The settlements reached so far total Won 6 100 million (£4.2 million). Claims totalling Won 53 360 million (£37 million) are being examined.

6.4.6 The 1971 Fund has not yet made any payments of compensation, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire*.

6.5 Limitation proceedings

6.5.1 The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£12 million).

6.5.2 The shipowner commenced limitation proceedings in September 1996.

6.5.3 In the limitation proceedings, claims totalling Won 17 244 million (£12 million) have been presented by the various parties involved. These claims include the shipowner's claim for his own clean-up costs, and his subrogated claims for payments made to clean-up operators and for fishery damage, for a total amount of Won 9 384 million (£6.5 million). There are also claims for fishery damage submitted by several fishery co-operatives of Won 7 394 million (£5.1 million) and miscellaneous claims for Won 465 million (£323 000).

6.5.4 At a court hearing held on 18 February 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by ITOPF. This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimant had provided little or no supporting documentation.

6.5.5 The 1971 Fund's and UK Club's experts had hoped to assess the claims of the fishery co-operatives arising out of the *Honam Sapphire* incident in a way similar to that used in the *Sea Prince* case, namely using commission sales data. However, for several fishery sectors little or no such data has been submitted. For this reason, assessments, at least for some sectors, will have to be based on national fishery statistics.

6.5.6 The date of the next court hearing will take place on 14 October 1997.

6.5.7 It will be recalled that the Executive Committee decided, at its 50th session, that the 1971 Fund should not challenge the shipowner's right to limit his liability (document 71FUND/EXC.50.17, paragraph 3.10.3).

7 Action to be taken by the Executive Committee

The Executive Committee is invited to:

(a) take note of the information contained in this document; and

(b) as regards the *Sea Prince* incident, to decide whether the 1971 Fund should challenge the shipowner's right to limit his liability or take recourse action against any third party (paragraph 3.7.9 above);

(c) as regards the *Yeo Myung* incident, to decide whether the 1971 Fund should take recourse action against the other ship involved in the incident (paragraph 4.4.5);

(d) as regards the *Yuil N°1* incident, to decide whether the 1971 Fund should challenge the shipowner's right to limit his liability or take recourse action against any third party (paragraphs 5.7.7 and 5.7.8); and

(e) give the Director such instructions as it may deem appropriate in respect of the incidents dealt with in this document.