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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE, YEO MYUNG and OSUNG N°3

Note by the Director

1 Introduction

This document sets out the developments in respect of the *Sea Prince*, *Yeo Myung* and *Osung N°3* incidents since the Executive Committee's 55th session.

2 *Sea Prince*

(Republic of Korea, 23 July 1995)

2.1 The incident

2.1.1 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.

2.1.2 Some 5 000 tonnes of oil were spilled as a result of the grounding. 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.

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

2.1.4 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).

2.1.5 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.

2.1.6 As regards the clean-up operations and the previous handling and settlement of claims, reference is made to document 71FUND/EXC.55/6.

2.2 Level of payments

2.2.1 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 payments 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).

2.2.2 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).

2.2.3 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%.

2.2.4 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 the International Tanker Owners Pollution Federation Ltd (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.

2.2.5 The Executive Committee noted the Director's view that, on the assumption set out in paragraph 2.2.4, 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 (£49 million) (document 71FUND/EXC.53/12, paragraph 3.3.9).

2.2.6 As set out below, practically all the outstanding claims in the fishery sector and all claims in the tourism sector have been settled on the basis of ITOPF's method of assessment, subject to confirmation of the settlements in respect of the claims referred to in paragraph 2.3.8. The amount of the shipowner's claim for the cost of the measures referred to in paragraph 2.2.5 has now been clarified. In view of these developments, the Director decided on 22 January 1998 that the 1971 Fund should pay all settled claims in full (to the extent that they had not already been paid), provided that the aforementioned confirmation is received.

2.3 Claims for compensation

2.3.1 The situation in respect of claims settlement as at 20 September 1997 was set out in the table reproduced in paragraph 3.6.13 of document 71FUND/EXC.55/6.

2.3.2 Nearly all claims relating to clean-up operations have been settled at approximately Won 19 700 million (£7 million)<1>. These claims have been paid in full by the shipowner and the UK Club, who have presented subrogated claims to the 1971 Fund.

2.3.3 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 was, as the rate of exchange applicable at that time, less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

2.3.4 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.

2.3.5 By the Executive Committee's 55th session, claims in the fishery and tourism sectors in Korea had been settled for a total of Won 11 980 million (£4.3 million). These claims had been paid in full by the shipowner, who had been reimbursed by the 1971 Fund for 50% of the settlement amounts.

2.3.6 Since the Executive Committee's 55th session, further claims in the fishery sector in Korea have been settled on the basis of ITOPF's method of assessment for a total of Won 1 476 million (£530 000). These claims had originally been presented for a total amount of Won 32 285 million (£11.6 million) and had been filed in court for Won 8 838 million (£3.2 million). These settled claims were paid in full by the shipowner during the period October 1997 - January 1998. The shipowner presented a subrogated claim to the 1971 Fund, and the Fund reimbursed the shipowner 50% of the settlement amounts.

2.3.7 As at 15 January 1998, claims from five fishery co-operative associations were outstanding. These claims were originally presented for a total of Won 54 432 million (£19.5 million). The experts engaged by the claimants (KIMSCO) had assessed these claims at Won 867 million (£3.1 million), whereas ITOPF's experts had assessed them at a total of Won 1 402 million (£503 000). A claim for Won 72 660 000 (£26 000) by the Pusan Fishery Co-operative Association relating to loss of income from fishing boats has not yet been assessed by ITOPF.

2.3.8 The most important of the claims outstanding on 15 January 1998 were those relating to common fishery grounds submitted by members of the Yosu Fishery Co-operative Association, which originally amounted to Won 47 842 million (£10 million). The experts engaged by the claimant (KIMSCO) had assessed these claims at Won 7 807 million (£3 million), and the claims were filed in court for that amount. ITOPF's original assessment of these claims was Won 1 141 million (£410 000), but after reassessment in January 1998 this figure was increased to Won 1 454 million (£521 000). The increase was due to an extension by 0.5 months of the period when fishing was interrupted because of the oil spill, in the light of data provided by the Marine Police. On 20 January 1998, agreement was reached to settle these claims for the amount of ITOPF's revised assessment. On 22 January 1998, a settlement was agreed with one of five village fishery associations belonging to the Keoje Fishery Association for Won 30 million (£11 000), compared with the claimed amount of Won 1 125 million (£400 000). It is expected that the settlement agreements in respect of these claims will be signed shortly.

2.3.9 A claim for Won 767 million (£275 000) was 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 (£102 000). At a hearing held on 10 September 1997

<1> In this document, conversion of amounts in Won to Pounds Sterling has been made on the basis of the rate of exchange on 31 December 1997, ie Won 2 789 = £1, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

the Court rendered a so-called mediation judgement, in which the claim was assessed at Won 400 million (£143 000). Any party can lodge an opposition against this judgement within two weeks of its 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. However, the claimant lodged opposition to the judgement. At a hearing held on 15 January 1998, the judge requested that the claimant should accept the mediation decision. The claimant requested that he should be given time to consider the issue further, and a new court hearing will be held on 20 February 1998.

2.3.10 The claims situation as at 22 January 1998 is shown in the tables set out below.

Claims settled out of court		
Claims category	Amount originally claimed million Won	Amount agreed million Won
Clean-up	21 544	19 700
Fishery	245 324	<2> 13 516
Tourism and agriculture	4 759	493
Total	271 627	33 769
	(£97.4 million)	(£12.1 million)

Claims pending in court		
	Amounts originally claimed million Won	Amount claimed in court million Won
Clean-up	432	767
Fishery	1 739	95
Shipowner's claim relating to removal of oil and vessel	20 900	20 900
Total	23 071	21 762
	(£8.3 million)	(£7.8 million)

2.3.11 As mentioned above, the Director has decided that the 1971 Fund should pay all settled claims in full, provided that the settlements referred to in paragraph 2.3.8 have been confirmed. Consequently, the 1971 Fund will in the near future reimburse the shipowner for the remaining 50% of his subrogated claims.

2.4 Limitation proceedings

2.4.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to approximately Won 32 000 million (£11.5 million), at the exchange rate applicable on 31 December 1997. The limitation fund has not yet been constituted, and the limitation amount in Won has therefore not yet been fixed.

2.4.2 The competent 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 (£8.5 million), fishery claims totalling Won 70 713 million

<2> Subject to confirmation of the settlements referred to in paragraph 2.3.8.

(£25 million), claims relating to tourism and agriculture totalling Won 4 589 million (£1.6 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 (£7.5 million) had been presented to the Court, ie a total of Won 120 000 million (£43 million). The maximum amount available under the 1971 Fund Convention, 60 million SDR, corresponds to approximately Won 137 000 million (£49 million), at the exchange rate applicable on 31 December 1997.

2.4.3 The UK Club and the 1971 Fund filed objections to the fishery claims and the claims relating to tourism and agriculture. The fishery co-operatives objected to the clean-up claims.

2.4.4 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.

2.4.5 At a court hearing on 18 February 1997, the administrator appointed by the Court submitted an opinion together with a list of the claims accepted by him. The administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The administrator accepted most of the amounts claimed without any significant modification, however, and did not take into account the ITOPF report referred to in paragraph 2.4.4.

2.4.6 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.

2.4.7 By 15 January 1998, ITOPF had completed assessments of over 99% 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.

2.4.8 Several court hearings have been held in recent months. It is expected that the Court will render its decision on 10 March 1998.

2.4.9 At its 55th session, the Executive Committee confirmed its previous position that the 1971 Fund should not challenge the shipowner's right to limit his liability, nor take recourse action against any third party (document 71FUND/EXC.55/19, paragraph 3.6.6).

3 *Yeo Myung*

(Republic of Korea, 3 August 1995)

3.1 The incident

3.1.1 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). Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled.

3.1.2 As regards the clean-up operations and the previous handling and settlement of claims reference is made to document 71FUND/EXC.55/6.

3.2 Claims for compensation

3.2.1 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).

3.2.2 By the Executive Committee's 55th session, claims for clean-up operations totalling Won 757 million (£523 000) had been settled at Won 661 million (£457 000). The claims were paid partly by the shipowner's P & I insurer, the North of England Protection and Indemnity Association Limited (North of England Club), partly by the 1971 Fund. A number of claims in the fishery sector and all claims in the tourism sector had also been settled and paid at Won 141 million (£50 000) and Won 269 million (£117 000), respectively.

3.2.3 Since the Committee's 55th session, further claims in the fishery sector have been settled and paid at Won 211 million (£76 000).

3.2.4 As at 20 January 1998, claims are outstanding in the fishery sector for Won 4 785 million (£1.7 million). These claims have been assessed by ITOPF at Won 113 million (£40 000).

3.2.5 On 22 January 1998, a settlement was agreed with one of five village fishery associations belonging to the Keoje Fishery Association for Won 30 million (£11 000), compared with the claims amount of Won 1 125 million (£40 000). It is expected that the settlement agreement in respect of this claim will be signed shortly.

3.2.6 The claims situation as at 22 January 1998 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	117
Fishery claims	8 602	141	141
Fishery claims	2 262	35	10
Fishery claims	2 974	115	115
Tourism	2 592	269	269
Clean-up	760	684	684
Total	22 200 (£8 million)	1 456 (£520 000)	1 336 (£480 000)

3.3 Limitation proceedings

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

3.3.2 The Court has decided to hold its next hearing when translations of ITOPF's assessments have been submitted.

3.3.3 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).

3.3.4 As its 55th session, the Executive Committee decided that the 1971 Fund should not take recourse action against the tug owner (document 71FUND/EXC.55/19, paragraph 3.7.4).

4 *Osung N°3*

4.1 The incident

4.1.1 The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground on the island of Tunggado in the Pusan area (Republic of Korea), on 3 April 1997 and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it has not been possible to assess the quantity spilt.

4.1.2 Oil which may have originated from the *Osung N°3* reached the sea adjacent to Tsushima Island in Japan on 7 April 1997.

4.1.3 Samples of the oil in Japan were taken for comparison with the oil coming from the *Osung N°3*. These samples were sent for chemical analysis. In the view of the 1971 Fund's experts, the results of the analyses are fully consistent with the oil in Japan having been spilled from the *Osung N°3*.

4.1.4 The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£608 000) per incident.

4.1.5 The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£85 000).

4.1.6 As regards the clean-up operations in the Republic of Korea and Japan and the impact on fisheries, reference is made to document 71FUND/EXC.55/10.

4.2 Inspection of the wreck and removal of the oil and related issues

4.2.1 As regards the consideration at previous sessions of the Executive Committee of issues relating to the inspection of the wreck and removal of the oil, reference is made to documents 71FUND/EXC.55/10, paragraph 3 and 71FUND/EXC.55/19, paragraphs 3.13.10 - 3.13.15.

4.2.2 It is understood that the Korean authorities are considering carrying out an operation to determine the quantity of oil in the tanks of the wreck by drilling holes in the hull. It is also understood that several salvage companies have been in contact with the Korean authorities and the shipowner, and expressed interest in carrying out operations to remove the oil and the wreck. The 1971 Fund has not received any information of any developments in respect of these planned operations.

4.3 Claims for compensation

4.3.1 As regards Korea, claims for compensation have been presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. These claims, totalling Won 1 300 million (£466 000), are being examined by the 1971 Fund's experts.

4.3.2 It is possible that there will be further claims from the Korean fishery and mariculture sectors.

4.3.3 Claims, totalling ¥659 million (£3.1 million), have been submitted for clean-up operations carried out in Japan. A claim has been presented by a Japanese fishery co-operative association for ¥275 million (£1.3 million) for loss of income caused by the oil spill. These claims are being examined by the 1971 Fund's experts.

4.3.4 A further claim for some ¥60 million (£280 000) by the Japanese Self Defence Force for clean-up operations is expected.

4.4 Level of the 1971 Fund's payments

4.4.1 At its 53rd 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 questions of principle which had not previously been decided by the Committee (document 71FUND/EXC.53/12, paragraph 3.8.7).

4.4.2 At its 54th and 55th sessions, the Executive Committee noted that there was only limited information available as to the cost of the clean-up operations in the Republic of Korea, and that claims might be submitted by the Korean fishery and mariculture sectors. It was noted that it was not possible to make an estimate of the cost of operations which might be undertaken to prevent further release of oil or for wreck removal.

4.4.3 In view of the great uncertainty resulting from the fact that a significant quantity of oil remained in the wreck, representing a serious pollution risk, the Executive Committee shared the Director's view that it was not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. The Committee considered that it was necessary to strike a balance between the need to exercise caution in the payment of claims and the importance of the 1971 Fund's being able to make payments at an early stage, noting that the limitation amount applicable to the *Osung N°3* was very low. The Committee therefore decided that, for the time being, the Director was authorised to make payments of 25% of the damage or loss actually suffered by each claimant, as assessed by the experts of the 1971 Fund at the time the payment was made (documents 71FUND/EXC.54/10, paragraph 3.5.7 and 71FUND/EXC.55/19, paragraphs 3.13.7).

4.4.4 In view of the great uncertainty resulting from the fact that there is a significant quantity of oil remaining in the wreck which represents a serious pollution risk, the Executive Committee decided, at its 55th session, to maintain the level of the limit of the 1971 Fund's payment at 25% of the amount of the damage actually suffered by the respective claimants (document 71FUND/EXC.55/19, paragraph 13.7).

4.4.5 It is still not possible to make an estimate of the cost of operations which might be undertaken to prevent further release of oil or for removal of the oil remaining in the wreck. In the light of this situation, the Director is not able to recommend an increase in the level of the 1971 Fund's payments.

4.5 Applicability of the Conventions

4.5.1 At the time of the *Osung N°3* incident, the Republic of Korea was not Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. The amount available for compensation for damage caused in Korea is therefore to be determined pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £49 million).

4.5.2 As regards damage in Japan, the situation is different. At the time of the incident, Japan was Party to the 1992 Conventions, and the maximum amount available for damage in Japan is therefore to be determined in accordance with these Conventions, ie 135 million SDR (£110 million), including any payments made to Korean and Japanese claimants under the 1969 Civil Liability Convention and the 1971 Fund Convention. If the total amount of the claims arising out of the incident for damage in Korea and Japan were to exceed 60 million SDR and payment under the 1971 Fund Convention had to be pro rated, the Japanese claimants would be entitled to additional compensation under the 1992 Fund Convention. Since the *Osung N°3* was registered in the Republic of Korea, the limit of the shipowner's liability would be that laid down in the 1969 Civil Liability Convention.

4.5.3 At its 2nd session, held in October 1997, the Assembly of the 1992 Fund considered whether it should pay claimants in Japan the balance of 75%, and then present subrogated claims against the 1971 Fund if and when the 1971 Fund's payments are increased beyond the 25% limit. The Assembly decided that it would be appropriate for the 1992 Fund to intervene at this stage, as a State for which the 1992 Fund Convention had entered into force had thereby ensured that victims of oil pollution damage in that State had the benefit of a higher maximum amount of compensation than that provided

by the 1971 Fund Convention. The Assembly therefore authorised the Director to pay the balance of the established claims relating to damage to Japan (document 92FUND/A.2/29, paragraph 17.3.6).

4.5.4 The Assembly of the 1992 Fund instructed the Director to study the legal situation of the 1992 Fund's subrogation right in respect of the sums paid by the 1992 Fund to claimants in Japan in the event that the limit of the 1971 Fund was not exceeded (document 92FUND/A.2/29, paragraph 17.3.7).

4.5.5 After consultation with the 1971 Fund's Japanese and Korean lawyers, the Director concluded that the question of subrogation would be governed by the law of the Republic of Korea. The text of the settlement agreements will contain a subrogation clause drafted in consultation between the Korean and Japanese lawyers.

4.6 Limitation proceedings in the Republic of Korea

4.6.1 The shipowner has commenced limitation proceedings in the Republic of Korea. The court has decided that claims will have to be presented by 23 January 1998.

4.6.2 At its 55th session, the Executive Committee shared the Director's view that there were no grounds for the 1971 Fund's opposing the shipowner's right to limit his liability, nor for refusing indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/EXC.55/19, paragraph 3.13.9).

4.6.3 In this context reference is made to Article V.7 of the 1969 Civil Liability Convention which reads:

> Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

4.6.4 The 1971 Fund and the 1992 Fund will notify the Court by 23 January 1998 that they will have to pay compensation to claimants having suffered damage in Japan and have indicated provisionally those claims at a total of ¥1 003 million (£360 000).

5 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) give the Director such instructions as it may deem appropriate in respect of the *Sea Prince*, *Yeo Myung* and *Osung N°3* incidents.