



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
58th session
Agenda item 3

71FUND/EXC.58/12
22 April 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

DAIWA MARU N°18

Note by the Director

Summary:	Further investigations have been made concerning the circumstances of the incident.
Action to be taken:	Decide (a) whether the incident falls within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention, and (b) whether the Fund should waive the requirement to establish the limitation fund.

1 The incident

1.1 While the Japanese tanker *Daiwa Maru N°18* (186 GRT) was loading heavy fuel oil from onshore tanks at an oil refinery in Kawasaki, Kanagawa Prefecture (Japan) on 27 March 1997, some of the cargo oil leaked out from the end of a cargo hose connected to the outboard side of the ship's manifold. This hose was not in use at the time of the incident. The oil washed the deck of the *Daiwa Maru N°18* and spilled into the sea.

1.2 Subsequent investigations have shown that there was a defective valve in the ship's manifold and that the blank flange fitted to the end of the cargo hose was incorrectly secured.

1.3 Clean-up operations were carried out by contractors and by the oil refinery, which mobilised its employees. The operations were completed on 28 March 1997.

1.4 The limitation amount applicable to the *Daiwa Maru N°18* is estimated at ¥3 503 000 (£16 000).

1.5 Claims totalling ¥18 328 088 (£84 900) have been received from several contractors. The 1971 Fund's Japanese surveyors have assessed these claims as at ¥ 15 645 018 (£72 000).

1.6 No further claims are expected.

2 Applicability of the Conventions

2.1 The 1969 Civil Liability Convention and the 1971 Fund Convention apply to incidents involving ships actually carrying oil in bulk as cargo (Article 1.1 of the Civil Liability Convention). "Oil" is defined as persistent oil, whether carried on board a ship as cargo or in the bunkers of a ship actually carrying oil in bulk as cargo (Article 1.5).

2.2 When the *Daiwa Maru N°18* incident was reported to the Executive Committee at its 57th session, the question was raised whether the Conventions applied to this incident, since it was uncertain whether the spilled oil could be considered as "cargo".

2.3 The Director has therefore investigated further the circumstances of this oil spill and has obtained the following information from the 1971 Fund's surveyors. The surveyors have stated that after the oil had entered the manifold, which is a part of the cargo system of the *Daiwa Maru N°18*, but before it had entered any cargo tank, the oil leaked from the end of a hose which was connected to the manifold and lying on the deck.

2.4 The shipowner's P & I insurer, the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA), has informed the 1971 Fund that oil is generally considered as cargo once it enters the pipe of a ship through a loading arm on the port side and that the master of the ship has responsibility for the oil from that moment. JPIA has also stated that it intends to cover this incident under its P & I insurance.

2.5 The 1971 Fund's Japanese lawyer agrees with JPIA's view.

2.6 In the light of the explanations set out above, the Director takes the view that the spilled oil should be considered as cargo and that the incident therefore falls within the scope of applicability of the 1969 Civil Liability Convention and the 1971 Fund Convention.

3 Establishment of limitation fund

3.1 JPIA has requested that the 1971 Fund should in this case waive the requirement to establish the limitation fund.

3.2 The Executive Committee has decided that the 1971 Fund normally requires the establishment of the limitation fund in order to be able to pay compensation, and that this requirement can be waived only in exceptional cases. In several cases in Japan the Committee has waived the requirement, however, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amounts under the 1969 Civil Liability Convention in those cases. The Committee has taken into account that, under the Memorandum of Understanding signed on 25 November 1985 by JPIA and the 1971 Fund, JPIA undertakes to repay in full any amount paid by the 1971 Fund in compensation if it is held by the competent court that the shipowner is not entitled to limit his liability under the 1969 Civil Liability Convention. In these cases, the Committee has agreed that the 1971 Fund could, as an exception, pay compensation without the limitation fund having been established (document FUND/EXC. 49/12, paragraph 3.9.2).

3.3 If the Executive Committee were to decide that the incident falls within the scope of application of the Conventions, the Director would support JPIA's request and propose that the requirement to establish the limitation fund should be waived in the *Daiwa Maru N°18* case.

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

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to decide whether the incident falls within the scope of application of the Conventions; and
 - (c) if the issue under (b) is decided in the affirmative, to take a decision on the Director's proposal that the requirement to establish the limitation fund should be waived in respect of the *Daiwa Maru N°18* incident.
-