



INTERNATIONAL
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COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE and YEO MYUNG

Note by the Director

Summary:	Claims have been submitted in respect of the <i>Sea Prince</i> incident by six village fishery associations which did not have valid licences at the time of the incidents.
Action to be taken:	Decide whether these claims are admissible for compensation.

Introduction

1 Claims totalling Won 850 million (£363 000) have been received in respect of the *Sea Prince* incident from six Village Fishery Associations (VFAs) whose members have been fishing in common fishery grounds without holding a valid licences, although such a licence is required under the applicable Korean statute (the Fishery Act).

2 The question as to whether claims from unlicensed fishermen are admissible for compensation was considered by the Executive Committee at its 54th session in the context of the *Nissos Amorgos* incident. The Committee decided that compensation should not be payable in the *Nissos Amorgos* case to fishermen who, although required under Venezuelan law, did not hold a valid licence. It was further decided that compensation should be payable to fishermen who were not subject to licence requirements under Venezuelan law, provided that the claimant showed that he had suffered an economic loss as a result of the incident (document 71FUND/EXC.54/10, paragraph 3.1.32).

Five VFAs involved in boundary disputes

3 At the time of the incident five VFAs were involved in boundary disputes. It is the policy of the competent local authorities not to issue licences if the area of operation cannot be defined. These VFAs were therefore operating without licences.

4 As regards four of these VFAs, the disputes were between neighbouring VFAs and have not yet been resolved. The Chief of the local authority (County Council) has confirmed in writing that the authorities intend to grant licences to these VFAs as soon as the boundary disputes are resolved. The Chief has stated that the members of these VFAs have been engaged in fishing in the common fishery grounds in question for a long period of time without being prosecuted by the authorities for illegal fishing.

5 The boundary dispute involving the fifth of these VFA's was resolved and a licence was granted with effect from 13 March 1996, ie after the incident.

Expired licence of one VFA

6 The sixth VFA had a licence which expired on 28 September 1994, ie before the incident. It is understood that the Chief of this VFA did not renew the licence since he mistakenly believed that there was no legal requirement to have a licence.

Position of the Korean Supreme Court

7 The 1971 Fund's Korean lawyer has informed the 1971 Fund that the position of the Korean Supreme Court is that illegal income cannot form a basis for a claim for compensation. However, the Supreme Court has held that income obtained by an act prohibited by law does not necessarily constitute illegal income. In considering whether an income is illegal, the Supreme Court has taken into account the following factors:

- (a) the purpose of the relevant law, ie in this case the Fishery Act;
- (b) the validity of the contracts for the sale of the catches;
- (c) the degree of ethical blameworthiness on the part of the claimant's obtaining income as a result of an illegal act;
- (d) the degree of illegality.

8 The 1971 Fund's lawyer has made the following observations on these four factors.

- (a) The main purpose of the Fishery Act is to protect the holders of licences by imposing sanctions on unlicensed fishermen. Under the Fishery Act only a Fishery Association of villages located close to the common fishery ground can be granted a licence. The areas in question are isolated and no outsiders go there to fish. The unlicensed VFAs do not therefore contravene the main purpose of the Fishery Act because there is no other VFA to protect.
- (b) The sales contracts for the catches made by these VFAs are accepted as valid by other fishermen and by the authorities.

- (c) Most of the members of the six VFAs are earning low incomes from fishing. They do not have equipment such as fishing boats or fish cages, but simply handpick the marine products.
- (d) It may be argued that the purpose of the Act is to punish those who try to abuse the system by fishing without a licence thereby taking profits from fishermen who hold valid licences.

Director's considerations

9 The 1971 Fund's Korean lawyer has expressed the view that it is most likely that the Korean Courts would hold that the claims of these six VFAs are admissible, having considered the four factors set out in paragraph 7 above.

10 The five VFAs involved in boundary disputes were unable to obtain licences until the disputes were settled. Since it is clear that licences will be granted when these disputes are resolved, the Director takes the view that the claims of the members of these five VFAs should be considered as admissible in principle.

11 Concerning the sixth VFA referred to in paragraph 6, the lack of valid licence was due to an oversight by the Chief of the VFA. As it is clear that a licence would have been granted if an application had been made, the Director considers that also the claims by the members of this VFA should be considered admissible in principle.

Action to be taken by the Executive Committee

- 12 The Executive Committee is invited to:
- (a) take note of the information contained in this document; and
 - (b) decide as to whether the claims of the six VFAs are admissible for compensation.
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