



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
58th session
Agenda item 3

71FUND/EXC.58/4
20 April 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE and YEO MYUNG

Note by the Director

Summary:	Further claims in the <i>Sea Prince</i> and <i>Yeo Myung</i> incidents have been settled and paid.
Action to be taken:	Information to be noted.

1 *Sea Prince*
(Republic of Korea, 23 July 1995)

1.1 The incident

1.1.1 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.

1.1.2 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.

1.1.3 A Japanese salvage company was engaged by the shipowner to salvage the ship and the remaining cargo, under a salvage contract (Lloyd's Open Form 95). 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 Lloyd's 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.

1.2 Level of payments

1.2.1 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).

1.2.2 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). 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%.

1.2.3 At its 53rd session, the Executive Committee noted that the 1971 Fund and the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (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. 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 was 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 (£48 million) (document 71FUND/EXC.53/12, paragraph 3.3.9).

1.2.4 By the beginning of March 1998, nearly all the outstanding claims in the fishery sector and all claims in the tourism sector had been settled on the basis of ITOPF's method of assessment, and the amount of the shipowner's claim for the cost of the measures referred to in paragraph 1.2.3 had been clarified. In view of these developments, the Director decided in March 1998 that the 1971 Fund should pay all settled claims in full (to the extent that they had not already been paid).

1.3 Claims for compensation

1.3.1 Nearly all claims relating to clean-up operations have been settled at approximately Won 19 700 million (£8.4 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.

1.3.2 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, at the rate of exchange applicable at that

<1> In this document, conversion of amounts in Won to Pounds Sterling has been made on the basis of the rate of exchange on 14 April 1998, ie Won 2 356 = £1, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

time, less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

1.3.3 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.

1.3.4 By the Executive Committee's 57th 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.

1.3.5 The most important of the claims outstanding at the time of the Executive Committee's 57th session 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 (£20 million). In January 1998, agreement had been reached to settle these claims for the amount of ITOPF's revised assessment. A settlement had also been agreed with one of five village fishery associations belonging to the Keoje Fishery Association for Won 30 million (£13 000), compared with the claimed amount of Won 1 125 million (£480 000). At the time of the 57th session, it was expected that the settlement agreements in respect of most of these claims would be signed shortly, and most of these agreements have now been signed.

1.3.6 As at 15 April 1998, the most important claims outstanding in the fishery sector were those relating to common fishery grounds and set net fishing submitted by members of the Keoje Fishery Co-operative Association for a total of Won 3 218 million (£1.4 million). These claims have been assessed by ITOPF at Won 117 million (£50 000).

1.3.7 A claim for Won 767 million (£326 000) 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 (£121 000). 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 (£170 000). Any party could 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 UK 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 also accept the mediation decision, which he did in February 1998.

1.3.8 The shipowner has presented a 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. This claim totals Won 20 900 (£8.9 million). The shipowner has not yet presented sufficient documentation in support of this claim to enable the 1971 Fund to assess it.

1.3.9 The claims situation as at 15 April 1998 is shown in the tables set out below.

Claims settled		
Claims category	Amount originally claimed million Won	Amount assessed by Fund's experts million Won
Clean-up	21 544	19 700
Fishery	245 324	13 516
Tourism and agriculture	4 759	493
Total	271 627 (£115 million)	33 709 (£14.3 million)

Claims pending in court		
	Amounts originally claimed million Won	Amount claimed in court million Won
Fishery	1 739	95
Shipowner's claim relating to removal of oil and vessel	20 900	20 900
Total	22 639 (£9.6 million)	20 995 (£8.9 million)

1.4 Limitation proceedings

1.4.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to approximately Won 26 000 million (£11 million), at the exchange rate applicable on 14 April 1998. The limitation fund has not yet been constituted, and the limitation amount in Won has therefore not yet been fixed.

1.4.2 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 (£10.1 million), fishery claims totalling Won 70 713 million (£30 million), claims relating to tourism and agriculture totalling Won 4 589 million (£1.9 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 (£8.9 million) had been presented to the Court, ie a total of Won 120 000 million (£51 million). The maximum amount available under the 1971 Fund Convention, 60 million SDR, corresponds to approximately Won 113 000 million (£48 million), at the exchange rate applicable on 14 April 1998.

1.4.3 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.

1.4.4 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.

1.4.5 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 1.4.4. 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.

1.4.6 It is expected that the Court will render its decision on the quantum of the claims in May 1998. As regards the claims for which settlement agreements have been reached, it is expected that the Court will accept the settlement amounts.

1.4.7 If the parties involved were to make objections to the Court's decision, it is likely that the opposition proceedings in the Court of first instance will take several years.

2 Yeo Myung
(Republic of Korea, 3 August 1995)

2.1 The incident

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.

2.2 Claims for compensation

2.2.1 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).

2.2.2 By the Executive Committee's 57th session, claims for clean-up operations totalling Won 761 million (£526 000) 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.

2.2.3 Since the Committee's 57th session, further claims in the fishery sector have been settled and paid at Won 244 million (£104 000).

2.2.4 As at 15 April 1998, claims were outstanding in the fishery sector for Won 3 583 million (£1.5 million). These claims have been assessed by ITOPF at Won 121 million (£52 000).

2.2.5 The claims situation as at 15 April 1998 is shown in the tables set out below.

Claims settled			
Claims category	Amount originally claimed million Won	Amount assessed by Fund's experts million Won	Amount agreed million Won
Fishery	17 327	381	381
Tourism	2 592	269	269
Clean-up	760	684	684
Total	20 679 (£8.8 million)	1 334 (£570 000)	1 334 (£570 000)

Claims pending		
Claims category	Amounts originally claimed million Won	Amount assessed by Fund's experts million Won
Fishery	3 583	121
Total	3 583 (£1.5 million)	121 (£51 000)

2.3 Limitation proceedings

2.3.1 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 (£9 000) to the Court.

2.3.2 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 (£3 million). The first court hearing was held in March 1997, and the proceedings were adjourned until the assessment of damages is finalised.

2.3.3 As regards the claims for which settlements have been reached, it is expected that the Court will accept the settlement amounts.

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

3 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* and *Yeo Myung* incidents.
-