



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 3

71FUND/EXC.59/12
16 October 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

EVOIKOS

Note by the Director

Summary:	Claims have been presented from Singapore and Malaysia. The shipowner has commenced limitation proceedings.
Action to be taken:	Decision as to whether the Director should be authorised to make payments.

1 Introduction

1.1 The Cypriot tanker *Evoikos* (80 823 GRT), carrying approximately 130 000 tonnes of heavy fuel oil, collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore on 15 October 1997. The *Evoikos* suffered damage to three cargo tanks, and an estimated 29 000 tonnes of heavy fuel oil was subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil.

1.2 The *Evoikos* is entered in the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), and the *Orapin Global* in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

1.3 At the time of the incident Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention^{<1>}, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Protocols thereto.

^{<1>} Singapore became Party to the 1992 Civil Liability Convention on 18 September 1998 and will become Party to the 1992 Fund Convention on 31 December 1998.

2 Impact of the spill

2.1 The spilt oil initially affected the waters of Singapore. About a dozen of the southern islands of Singapore were contaminated by oil. Three of these islands are occupied by oil industry installations, four islands are administered jointly by the Ministry of Environment and the Ministry of Defence, one is a recreational island, one is a nature reserve and one supports a lighthouse.

2.2 By 19 October 1997 oil slicks had drifted into Malaysian and Indonesian waters of the Malacca Straits. For several weeks, the oil drifted in a generally northwesterly direction up the Malacca Straits, influenced by tidal streams and local currents. On 23 December 1997, oil came ashore in places along a 40 kilometre stretch of the Malaysian coast in the Province of Selangor. The oil affected a number of areas along the coast, including several short sandy beaches, a one kilometre stretch of rocks, a concrete breakwater and two separate areas of mangrove, one kilometre and two kilometres in length, respectively. In one area, some oil had penetrated into the mangrove vegetation but otherwise only mudbanks at the edge of the mangrove stands were affected.

2.3 On 20 November 1997, the Belize registered general cargo ship *An Tai* sank at her berth in Port Klang spilling an unknown quantity of fuel oil which flowed into the Malacca Strait. Pollution of the coast was reported on 12 December 1997 from slicks which had moved directly northwards from the sinking site. Some oil from the *An Tai* subsequently became mixed with slicks further out in the Straits originating from the *Evoikos*. Samples of oil have been taken during the clean-up operations to identify the source of the oil at various locations.

3 Response and clean-up operations

3.1 Singapore

3.1.1 The Maritime and Port Authority of Singapore (MPA) took charge of the clean-up operations and initially focused on dispersant spraying at sea. However, the dispersant had little effect after two days and efforts were then made to contain and recover the floating oil. Clean-up equipment owned by East Asia Response Ltd (EARL) and the Petroleum Association of Japan (PAJ) was deployed.

3.1.2 The shipowner and the UK Club also engaged various other contractors to assist in the clean-up operations.

3.2 Malaysia

3.2.1 By the time oil had reached the Malacca Straits, it was no longer amenable to dispersants and slicks were rapidly becoming nearly solid and spreading over a wide area, rendering at-sea recovery operations ineffectual. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to make it possible to take preventive measures if required.

3.2.2 Onshore clean-up operations have been co-ordinated by the Malaysian Department of Environment with support from the Marine Department. District authorities within the Province of Selangor have organised the manual removal of oil and oily material from sandy shores, and arrangements are being made to clear the rocky and concrete breakwater area. The mangrove areas are being left to recover naturally.

3.3 Indonesia

There is no information on any pollution damage in Indonesia.

4 Impact on fishing and tourism in Malaysia

4.1 Many fish farms are located along the Malaysian coast, and measures were taken to protect those threatened by the oil. Fish farmers were encouraged to use locally available materials, including plastic sheeting weighted with bricks, to surround the fish cages, so forming a protective barrier against floating oil.

4.2 One farmer has reported that some of his nets and cages were contaminated, although the oil was later removed during the routine cleaning and maintenance of the farm. This farmer has also stated that some fish in the farm died as a result of the contamination, however, no evidence has so far been produced to support a claim for compensation by this fish farmer.

4.3 Some fishermen have complained to the Malaysian Fisheries Department that their fishing boats and nets have been contaminated, and these allegations are being investigated.

4.4 Many prawn farms rely on intakes of fresh water for their operations. Measures were taken by the owners of the farms, upon advice from the Malaysian Fisheries Department, to monitor the intakes to prevent any oil being drawn into the facilities. There have so far been no reports that the prawn farms have been affected.

4.5 There are no indications that the tourism industry has been affected.

5 Claims for compensation

5.1 MPA has stated that the cost of its clean-up operations in Singapore amounts to S\$13 million (£4.6 million). A breakdown of these costs has been submitted to the shipowner/UK Club.

5.2 The UK Club, on behalf of the shipowner, contracted a number of clean-up operators whose claims amount to S\$3.7 million (£1.3 million). Another claim for clean-up expenses has been submitted by SEMCO for S\$2.2 million (£764 000). Claims for property damage for S\$7.3 million (£2.6 million) have been notified to the shipowner/UK Club by shipowners and terminal operators.

5.3 As regards Malaysia, claims for clean-up costs have been submitted by the Department of the Environment and the regional Marine Departments for a total of RM1.8 million (£276 000). The Malaysian Fisheries Department has submitted a claim for RM471 492 (£72 000).

5.4 Other claims have been notified by the Malaysian Government, on behalf of third parties, for a total of RM5 854 (£900), details of which will be submitted in the near future.

5.5 It is not possible at this stage to make any estimate of the total amount of claims which may be submitted as a result of the incident. The claims notified to date from both Singapore and Malaysia amount to S\$26.2 million (£9.1 million) and RM2.3 million (£356 000), respectively.

5.6 The Director mentioned at the Executive Committee's 56th session that the shipowner and the UK Club might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for compensation under the 1971 Fund Convention. It was noted that the shipowner and the UK Club had referred to the position taken by the Executive Committee in respect of the *Kihnu* incident (document 71FUND/EXC.49/12, paragraph 3.4.6). It was further noted that claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention. The Executive Committee took the view that it was premature for the Committee to take any position on these issues (document 71FUND/EXC.56/2, paragraphs 4.4.4 and 4.4.5).

5.7 At its 56th session, the Executive Committee authorised the Director to make final settlement 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, provided that the claims related to pollution damage suffered in a 1971 Fund Member State or to measures taken to prevent or minimise pollution damage in such a State (document 71FUND/EXC.56/2, paragraph 4.4.6).

5.8 In view of the uncertainty as to the total amount of the claims, the Committee decided at its 56th session that the Director was not authorised to make any payments for the time being (document 71FUND/EXC.56/2, paragraph 4.4.7). The Committee confirmed this decision at its 57th session (document 71FUND/EXC.57/15, paragraph 3.10.7).

5.9 Since the total amount of the claims remains uncertain, the Director is still of the opinion that it would be premature for the 1971 Fund to make any payments at this stage.

6 Criminal proceedings

Following the collision criminal charges were brought against the masters of both ships. The master of the *Evoikos* was sentenced to three months' imprisonment and ordered to pay fines totalling S\$60 000 (£21 000) for breach of duty under the collision regulations. The master of the *Orapin Global* was sentenced to two months' imprisonment and a fine of S\$11 000 (£4 000) was imposed for negligent navigation and failure to proceed at a safe speed.

7 Limitation proceedings

7.1 The shipowner has commenced limitation proceedings in the competent Singapore court.

7.2 The limitation amount applicable to the *Evoikos* is estimated at 8 846 759.67 SDR (£7.4 million).

8 Investigation into the cause of the incident

The Singapore and Cypriot authorities are investigating the cause of the incident. The Director is following these investigations.

9 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 take a decision as to whether the Director should be authorised to make payments; and
 - (c) to give the Director such instructions in respect of this incident as it may deem appropriate.
-