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COMPENSATION
FUND 1971

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Agenda item 3

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# INCIDENTS INVOLVING THE 1971 FUND

## YUIL N°1 and OSUNG N°3

Note by the Director


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| ***Summary:*** | In the *Yuil N°1* case, most of the claims for the clean-up operations and those in the fishery sector have been settled. The operations for the removal of the oil from the wreck of the *Yuil N°1* have been completed successfully. The level of the 1971 Fund's payments has therefore been increased from 60% to 100% of the established claims. The 1971 Fund has made major payments to the Korean Marine Pollution Response Corporation for the cost of the oil removal operations. With respect to the *Osung N°3*, preparatory work is well in hand and it is expected that oil removal operations will commence in the near future. |
| ***Action to be taken:*** | Decide whether the 1971 Fund should take recourse action in respect of the *Yuil N°1* incident and consider the level of payments in respect of the *Osung N°3* incident. |


## 1 Introduction

This document deals with two incidents which occurred in the Republic of Korea. The first incident, which took place on 21 September 1995, involved the Korean tanker *Yuil N°1*. The second incident, involving the Korean tanker *Osung N°3*, occurred on 3 April 1997. The document sets out the background to each case. The emphasis is on the operation to remove the oil from the wrecks of both of these vessels and on the level of the 1971 Fund's payments in respect of each of these incidents.

## 2 Background

### 2.1 *Yuil N°1*

*The incident*

2.1.1 The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea) on 21 September 1995. The tanker was refloated by a tug and a naval vessel some six hours after the grounding. While being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland. Three cargo tanks and the engine room were reported to have been breached as a result of the grounding.

2.1.2 Shorelines on the east and north coast of Koeje island, on the west coast of Kadokto and immediately to the east and west of the mainland at Pusan, as well as a number of smaller islands, were oiled as a result of the initial spill following the grounding and sinking. Some re-oiling of shorelines west of Pusan also occurred following later small releases of oil from the wreck.

2.1.3 As for the clean-up operations, reference is made to document 71FUND/EXC.55/6.

*Investigation into the cause of the incident and recourse action*

2.1.4 The Korean Maritime Accident Inquiry Agency (MAIA) carried out an investigation into the cause of the incident. The investigation revealed that the initial grounding was caused by the master of the *Yuil N°1* having chosen to navigate through a narrow and dangerous passage between two islands which resulted in the vessel grounding on a small rocky island.

2.1.5 As regards the refloating and towing operation of the *Yuil N°1*, which followed the initial grounding and subsequently led to the sinking of the *Yuil N°1*, MAIA pointed out in its investigation report that the master of the *Yuil N°1* did not check the damaged plating, the extent of the damage and how much water entered the vessel, nor did he ascertain the situation of the *Yuil N°1* and take emergency measures to minimise the risk of sinking. However, MAIA accepted that the sinking was a force majeure and decided that the action taken by the master after the grounding was inevitable. MAIA also pointed out that the captain of the naval vessel which took part in the refloating and towing operations was reckless because the *Yuil N°1* had sunk up to deck level and that towing by the method envisaged could have resulted in the naval vessel sinking. MAIA concluded that the navigating officer of the tug involved did not undertake the tow on his own initiative, and that therefore he was not to blame for the incident.

2.1.6 The hull insurer of the *Yuil N°1* took legal action in the Republic of Korea against the Korean Government and the owner of the tug in respect of negligence during the refloating and towing operation for the purpose of recovering the amount it had paid for the damage to the hull (Won 1 173 million or £803 000[<1>]). The Court of first instance rendered its judgement in August 1997, rejecting the hull insurer's action. The hull insurer has appealed against the judgement.

2.1.7 In the light of the results of the investigation into the cause of the incident, the Executive Committee decided, at its 55th session, that there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability. The Committee decided to postpone its decision as to whether the 1971 Fund should take recourse action against third parties until the Court of Appeal had rendered its judgement in respect of the action brought by the hull insurer (document 71FUND/EXC.55/19, paragraphs 3.8.7 and 3.8.8).

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<1> In this document, conversion of amounts in Won to Pounds Sterling has been made on the basis of the rate of exchange on 28 September 1998, ie Won 2 360 = £1, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

2.1.8 In a judgement rendered in July 1998, the Court of Appeal endorsed the position of the Court of first instance that there was no negligence on the part of the tug or the naval vessel during the refloating and towing operations, and therefore rejected the hull insurer's actions. The hull insurer has not appealed against the judgement.

2.1.9 In view of the Court of Appeal's judgement, the Director considers that there are no grounds on which the 1971 Fund could take a successful recourse action against third parties. The Executive Committee is invited to take a position on this issue.

2.2 *Osung N°3*

*The incident*

2.2.1 The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground on the island of Tunggado, just south of the island of Kojedo 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 or the quantity remaining on board.

2.2.2 The spilt oil spread over about 15 km² around the grounding location. The oil in this area was estimated at between 50 and 200 tonnes. Small but diminishing quantities of oil continued to leak from the sunken vessel, and by 9 April 1997 only faint traces of sheen were coming to the surface.

2.2.3 The Korean Marine Police, assisted by local authorities and clean-up contractors appointed by the shipowner, organised and carried out clean-up operations at sea. Some 100 vessels were employed in dispersant spraying, skimming and the manual removal of oil using sorbent pads. The clean-up at sea was terminated on 12 April 1997.

2.2.4 Although the shores of small islands close to the grounding location were oiled, there were no reports of the mainland coast having been polluted.

2.2.5 Oil which may have originated from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997. The Japan Maritime Safety Agency deployed about 150 vessels to combat the oil at sea during the period 7 - 21 April. The oil also affected the shorelines of the northwest corner of Tsushima island. The onshore clean-up was carried out by fishermen, members of the Self Defence Force and the fire brigades, municipal officials and volunteers.

2.2.6 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 were fully consistent with the oil in Japan having been spilled from the *Osung N°3*.

*Investigation into the cause of the incident*

2.2.7 In a judgement rendered on 24 June 1997, the competent Korean Criminal Court held that the master of the *Osung N°3* had navigated the vessel through a prohibited area in order to save time and had failed to exercise due care in the navigation of the ship. The Court therefore sentenced him to one year's imprisonment.

2.2.8 At its 55th session, the Executive Committee decided that, in the light of the findings of the Criminal Court, there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability, nor refuse to pay indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/EXC.55/19, paragraph 3.13.9).

## 3 Removal of oil from wrecks

### 3.1 Background

*Yuil N°1*

3.1.1 In November 1995 the Marine Police ordered the owner of the *Yuil N°1* to remove the oil or the wreck. On the basis of studies carried out by experts employed by the shipowner, the shipowner maintained that it would be unnecessary and unwise to remove the oil or the wreck.

3.1.2 In 1997, the Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Yuil N°1*. The report concluded that it was unlikely that the wreck would become buried in the mud or that the oil remaining in the tanks would solidify. It also stated that some tanks still contained oil, that corrosion to damaged shell plating would cause release of oil from the wreck within ten years, and that the removal of the remaining oil should therefore be carried out as soon as possible. The report acknowledged that a variety of factors made removal of the oil and the wreck difficult, but stated that such operations would succeed if they were carried out at the appropriate time and using proper equipment. It was concluded that the removal of the oil should precede the wreck removal, since such a procedure would reduce the risk of oil spillage. It was foreseen that the operation to remove the oil and the wreck would take about four months and would cost about Won 9 000 million (£6.2 million).

*Osung N°3*

3.1.3 At its 53rd session, the Executive Committee noted that it was likely that a significant quantity of oil remained on board the sunken *Osung N°3*, that if this oil were to be released there would be a risk of the oil affecting a large number of aquaculture facilities located some seven kilometres north of the site of the sunken ship and that such a release could give rise to substantial claims for compensation.

3.1.4 In 1997, the Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Osung N°3*. In the report it was estimated that the wreck of the *Osung N°3* contained about 1 400 tonnes of oil in her tanks, which was not likely to solidify. It was concluded that oil might escape from the wreck because of further deterioration of the damaged ship, or as a result of a ship or fishing gear coming into contact with the submerged wreck, or if the wreck were to be disturbed by a passing typhoon. Given the risk of further spillage and the potential impact on nearby fishing grounds, extensive mariculture facilities and tourist beaches, it was concluded in the report that an oil removal operation should be carried out as soon as possible to reduce the pollution risk, since 60% to 80% of the oil could be recovered. It was further concluded that the wreck itself should also be removed, with a view to eliminating completely the risk of further pollution.

### 3.2 Removal operations

*Preparations*

3.2.1 At the request of the Korean Government, an expert from a London firm of marine surveyors engaged by the 1971 Fund visited the Republic of Korea several times during the period February - March 1998 for discussions covering the most appropriate method to be used for removing the oil from the *Yuil N°1* and the *Osung N°3*, and these discussions were, in the 1971 Fund's view, very constructive. The Director visited the Republic of Korea in March 1998 and held useful discussions with the Korean authorities on this matter.

3.2.2 The Director informed the Korean authorities that the 1971 Fund agreed that the oil should be removed from the wrecks of the *Yuil N°1* and the *Osung N°3* as soon as possible, and that this was particularly important as regards the *Osung N°3* which, in the Fund's view, presented the most serious pollution risk. He also stated that every effort should be made to ensure that the oil removal operations

in respect of both wrecks were carried out during the period April - June 1998 when the weather could be expected to be favourable.

3.2.3 In response to an invitation by the Korean authorities, several companies submitted tenders to carry out the operations, and the 1971 Fund's opinion was sought on these tenders.

3.2.4 In his discussions with the Korean authorities, the Director emphasised that the 1971 Fund could not take part in the decisions as to what method should be used and which contractor should be engaged. He stated that it was for the Korean authorities alone to take such decisions and to take the responsibility for the terms of the contract with the company or companies engaged to carry out the oil removal, and that the 1971 Fund could only present its views. He made it clear that no expert engaged by the 1971 Fund had the authority to make any commitment on behalf of the Fund, and that any such experts acted therefore solely in an advisory capacity to the 1971 Fund. He made the point that the 1971 Fund did not act as a guarantor of payment of the cost of any operations or activities. He also stated that claims for the cost of such operations and activities would be examined in the same manner as any other claim. The Director drew attention to the fact that the question as to whether and, if so, to what extent, the cost of any operations to remove the oil from the wrecks of the *Yuil N°1* and the *Osung N°3* was admissible for compensation would have to be decided on the basis of the criteria laid down in the 1969 Civil Liability Convention and the 1971 Fund Convention (and the Korean legislation implementing these Conventions) and as adopted by the Assembly of the 1971 Fund, ie that the operations were reasonable from an objective technical point of view and that the relationship between the costs and the benefits derived or expected was reasonable.

3.2.5 In April 1998, the Korean authorities held negotiations with a potential contractor for the purpose of entering into a contract for the removal of the oil from the wrecks of both ships. At the request of the Korean authorities, the Director and the 1971 Fund's technical expert provided advice on legal and technical issues during these negotiations. Unfortunately, these negotiations did not result in a contract being concluded.

3.2.6 After lengthy negotiations a contract was concluded on 13 May 1998 between Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company (Smit Tak BV) for the removal of the oil from both ships. Under the contract the oil would first be removed from the *Yuil N°1*, and the company would immediately thereafter proceed to the removal of the oil from the *Osung N°3*.

3.2.7 Due to the fact that the wrecks were located at a depth of 70 metres, the contract was based on the operation being carried out using a sophisticated remote operated drilling and pumping system with remote operated vehicles assisting to drill holes in the oil tanks, connect valves, pump and hoses and to pump the oil to the surface. On completion of the pumping of the oil, each tank was to be washed with water heated to a minimum of 50°C. The recovered oil and the washing water was to be stored in a barge and then pumped ashore to a slop reception facility. Smit Tak would be responsible for all underwater operations and KMPRC for the operation of the necessary barges, tugs and oil spill recovery vessels and a shore base.

3.2.8 The contract between KMPRC and Smit Tak was based on a daily rate of US$65 500 (£39 000). It was estimated that the removal of the oil from both vessels would require a total of 77 working days. The total costs of the operations under the contract were estimated at US$5 859 000 (£3.5 million), plus the cost of storage and removal of the recovered oil. In addition, KMPRC would incur significant costs.

*Removal from Yuil N°1*

3.2.9 The operation to recover the oil from the *Yuil N°1* commenced on 24 June 1998. Initially, a number of technical difficulties arose, but once they were overcome the oil removal proceeded smoothly, and the operations were completed on 31 August 1998 when all 11 tanks had been emptied and washed and the recovered oil had been discharged from a barge which had been used as a storage

facility. Some 670 $m^3$ of oil was recovered from the tanks of the *Yuil N°1*. During the operation, on one occasion an insignificant quantity of oil was released.

3.2.10 An independent surveyor from a London based firm was engaged by KMPRC to certify that all the tanks had been pumped clear of cargo and bunker oil and that each tank had thereafter been washed as set out in paragraph 3.2.7 until it was established that the return washing water was free of oil and oily residues.

3.2.11 The experts engaged by the 1971 Fund attended throughout the operation as observers. Upon completion of the operations these experts issued a certificate stating that in their view no significant quantity of pollutants remained in the tanks.

*Removal from Osung N°3*

3.2.12 KMPRC and Smit Tak moved the operations to the site of the *Osung N°3* on 2 September 1998.

3.2.13 Initial inspections revealed that the current was much stronger than anticipated (up to 3.8 knots), and as a result the visibility at the seabed adjacent to the wreck was only about 1.5 metres. For this reason, the underwater operations had to be limited to 13 hours per day instead of the anticipated 20 hours per day which was achieved during the *Yuil N°1* operation.

3.2.14 The wreck was found to be covered in debris, seaweed and shellfish. Operations to remove the debris were carried out, but fresh debris became entangled with the wreck. Further inspections showed that the tank hatches and tank cleaning opening covers were not properly secured. The method for the removal of the oil had therefore to be modified to prevent the escape of oil if the covers were accidentally dislodged during the operation. Pipes are being made which are to be inserted into the oil tanks to facilitate the pumping.

3.2.15 The operations were interrupted by typhoons from 18 to 26 September and again from 29 September to 2 October 1998.

3.2.16 Subject to the weather conditions, it is expected that the pumping of the oil will commence in early October 1998 and that the operations will be completed during the first half of November 1998.

## 4 Level of payments

### 4.1 *Yuil N°1*

4.1.1 At its 44th session, in view of the uncertainty concerning the total amount of the claims arising out of the *Yuil N°1* incident, the Executive Committee decided that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.5.6). This decision was confirmed at the Committee's 47th session (document FUND/EXC.47/14, paragraph 3.7.10).

4.1.2 At the Executive Committee's 58th session, the Korean delegation informed the Committee that for the time being the operations would be limited to the removal of the oil and that the issue of whether the wrecks should be removed would be considered at a later stage. That delegation stated that the Korean Government would be prepared to make an undertaking to the effect that, if and to the extent that a claim by the Korean Government for the cost of the removal of the wreck of either vessel were to result in the total amount of the established claims arising out of either incident exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue that claim, in its entirety or in part, against the 1971 Fund (document 71FUND/EXC.58/15, paragraph 4.1.3).

4.1.3 At its 58th session the Executive Committee considered that if, in the view of the 1971 Fund's experts, the removal of the oil from the *Yuil N°1* were successfully completed without any significant release of oil, and only a minor quantity of oil remained in the wreck, there would no longer be any risk of the total amount of the claims exceeding 60 million SDR. The Committee therefore decided to authorise the Director to increase the payments in respect of the *Yuil N°1* incident to 100% of the established claims, once the Director was satisfied that these conditions had been fulfilled and that the amount laid down in the contract to remove the oil would not create any risk of the total amount of the claims exceeding 60 million SDR, provided that the Korean Government had given an undertaking as set out in paragraph 4.1.2 above (document 71FUND/EXC.58/15, paragraph 3.5.11).

4.1.4 On 15 September 1998 the 1971 Fund received an undertaking from the Government of the Republic of Korea signed by the Minister of Marine Affairs and Fisheries which reads:

> "The Government of the Republic of Korea undertakes not to pursue nor to cause any person to pursue any claim against the owner of the *Yuil N°1*, his insurer or the International Oil Pollution Compensation Fund for the cost of removal of the wreck of the *Yuil N°1*, if and to the extent that such a claim were to result in the total amount of the established claims arising out of the *Yuil N°1* incident exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million Special Drawing Rights".

4.1.5 Having received the undertaking by the Korean Government, the Director re-assessed the level of the 1971 Fund's payments in respect of the *Yuil N°1* incident in the light of the opinions expressed by the independent surveyor and the 1971 Fund's experts. He considered that it had been established that the removal of the oil from the *Yuil N°1* had been completed without any significant release of oil and that there remained only a minor quantity of oil in the vessel and that therefore the conditions for an increase in the level of the payments laid down by the Executive Committee were fulfilled. For this reason, the Director decided, on 21 September 1998, pursuant to the authority given to him by the Executive Committee, to increase the 1971 Fund's payments from 60% to 100% of each established claim arising out of the *Yuil N°1* incident.

4.2 *Osung N°3*

4.2.1 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 considered at its 54th session 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 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 (document 71FUND/EXC.54/10, paragraph 3.5.7). The Committee decided at its 55th and 57th sessions to maintain the 25% limit of the 1971 Fund's payments (documents 71FUND/EXC.55/19, paragraph 3.13.7 and 71FUND/EXC.57/15, paragraph 3.6.6).

4.2.2 At its 58th session, the Executive Committee considered that if, in the view of the 1971 Fund's experts, the removal of the oil from the *Osung N°3* were completed successfully without any significant release of oil, and only a minor quantity of oil remained in the wreck, the risk of further pollution would be eliminated and there would no longer be a risk of claims for high amounts. The Committee therefore decided to authorise the Director to increase the limit of the 1971 Fund's payments to 75% of the established claims, once the Director was satisfied that these conditions had been fulfilled and that the amounts laid down in the contract to remove the oil would not create any risk of the total amount of the claims exceeding 60 million SDR, provided that the Korean Government had given an undertaking as set out in paragraph 4.1.2 above (document 71FUND/EXC.58/15, paragraph 3.5.12).

4.2.3 The developments have not resulted in the conditions for an increase in the level of payments in respect of the *Osung N°3* incident being fulfilled. The 1971 Fund's payments remain therefore at 25% of the established claims.

4.2.4 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 £48 million).

4.2.5 Japan, however, was Party to the 1992 Conventions at the time of the incident. The maximum amount available for damage in Japan is therefore to be determined in accordance with those Conventions, ie 135 million SDR (£109 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.

4.2.6 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 that 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).

## 5 Claims for compensation

### 5.1 Oil removal operations

5.1.1 KMPRC has so far submitted three claims for compensation. These relate to the amounts paid to Smit Tak under the contract and to the costs incurred by KMPRC for its involvement in the operations in terms of personnel, barges, tugs, other craft, engineering services and general support.

5.1.2 At an early stage KMPRC held discussions with the Legal Counsel, who visited Korea twice during the pumping operations, and the 1971 Fund's technical experts concerning the presentation of its claims and the documentation required. As a result the claims were very well presented, and the supporting documents were in general sufficient to enable the 1971 Fund to examine the claims rapidly.

5.1.3 The items which have not been approved relate mainly to the cost of KMPRC's personnel and general overheads. The claimed amount was for many items reduced by an estimated residual value of the equipment in question. An adjustment will be made (upwards or downwards) when the operations have been completed and the residual value or resale value is known.

5.1.4 The costs relating to both the *Yuil N°1* and the *Osung N°3* operations have been apportioned provisionally on a 50:50 basis between the two cases. This apportionment will be adjusted once both operations have been completed and the duration of the respective operations is known.

5.1.5 On 20 July 1998 KMPRC submitted a first claim for compensation totalling Won 2 427 million (£1.2 million) which included both costs relating to only the *Yuil N°1* operation and costs relating to both operations. The claim was approved for Won 1 300 million (£627 000), out of which Won 1 106 million

(£533 000) related to the *Yuil N°1* only and Won 195 million (£94 000) to both vessels. On 25 August 1998, the 1971 Fund paid Won 722 million (£348 000).

5.1.6 A second claim was submitted by KMPRC on 24 August 1998. This claim, which included only costs relating to the *Yuil N°1* operation, totalled Won 1 434 million (£691 000). The claim was approved for the amount claimed, and 60% of this amount, viz Won 861 million (£415 000), was paid on 5 September 1998.

5.1.7 A third claim by KMPRC for Won 2 568 million (£1.1 million) was submitted on 14 September 1998. The claim included costs relating only to the *Yuil N°1* operation and costs relating to both operations. This claim was approved for Won 2 341 million (£992 000). An amount of Won 2 258 million (£975 000) was paid on 24 September 1998, representing 100% of the approved cost for the *Yuil N°1* (the Director having increased the percentage; cf paragraph 4.1.5) and 50% of the costs relating to both operations.

5.1.8 On 24 September 1998 the 1971 Fund also paid KMPRC the balance of 40% in respect of the first and second claims, ie Won 481 million (£208 000) and Won 574 million (£248 000).

5.1.9 Having re-examined the pending items of KMPRC's first claim in the light of further information and supporting documents, the 1971 Fund approved an additional amount of Won 391 million (£169 000). On 24 September 1998, the 1971 Fund paid Won 210 million (£91 000), representing 100% of the approved costs relating to only the *Yuil N°1* and 50% of the approved cost relating to both operations.

5.1.10 Further claims relating to the *Yuil N°1* operations will be presented. These claims will relate to the cost of KMPRC's personnel involved in the operations, engineering services supplied by some local contractors, the storage and disposal of the recovered oil and the charges for some support staff. These claims are expected to be in the region of Won 3 000 million (£1.3 million).

5.1.11 Since no oil has yet been recovered from the *Osung N°3*, no payments have been made in respect of the items attributable to the *Osung N°3* incident. As mentioned in paragraph 5.1.4 above, the items which relate to both operations have been provisionally apportioned on a 50:50 basis between the two cases, but only the *Yuil N°1*'s share has been paid.

5.2 *Yuil N°1*: other claims

5.2.1 Claims relating to clean-up operations were received from various contractors, a fishery co-operative, Pusan Marine Police and Koeje City. Agreement has been reached on the quantum of the claims with most of the contractors and the other entities for a total of Won 12 383 million (£8.5 million). The shipowner's insurer, the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club), has paid some of these claims in full, and the 1971 Fund has reimbursed 60% of these payments to the Club. The Fund's payments for these claims total Won 7 142 million (£5.6 million).

5.2.2 So far, claims have been agreed for a total of Won 16 024 million (£5.8 million), out of which Won 12 393 million (£4.5 million) relates to clean-up operations and Won 3 631 million (£1.3 million) to fishery claims. Payments made amount to Won 11 943 million (£4.3 million), out of which the 1971 Fund's payments total Won 10 015 million (£3.6 million).

5.2.3 Fishing claims totalling Won 25 031 million (£9.0 million), which have been assessed by the Fund's experts at Won 272 million (£98 000), have not yet been settled. Clean-up claims for a total amount of Won 25 million (£9 000) and fishery-related claims for a total amount of Won 15 530 million (£5.6 million) have not yet been assessed.

5.2.4 The claims situation as at 30 September 1998, excluding the pumping operations, is shown in the tables set out below.

| **Claims settled out of court** | | | |
|---|---|---|---|
| | Claimed (million Won) | Assessed by the 1971 Fund's experts (million Won) | Agreed (million Won) |
| Fishery claims | 13 742 | 3 631 | 3 631 |
| Clean-up claims | 12 564 | 12 393 | 12 393 |
| Total | 26 306 (£9.4 million) | 16 024 (£5.8 million) | 16 024 (£5.8 million) |

| **Claims pending in court** | | |
|---|---|---|
| | Claimed (million Won) | Assessed by the 1971 Fund's experts (million Won) |
| Fishery claims | 25 031 | 272 |
| Fishery claims | 15 530 | To be assessed |
| Clean-up claims | 25 | To be assessed |
| Total | 40 586 (£14.6 million) | 272 (£98 000) |

5.3 *Osung N°3*: other claims

5.3.1 As regards the Republic of 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. Claims totalling Won 1 200 million (£510 000) have been examined by the 1971 Fund's experts. Further claims totalling Won 140 million (£59 000) are being examined.

5.3.2 Five claims totalling ¥673 million (£2.9 million) have been submitted for clean-up operations carried out in Japan. After a preliminary assessment, the 1971 and 1992 Funds made a provisional payment of ¥130 million (£566 000) to one of these claimants in June 1998. A claim has been presented by a Japanese fishery co-operative association for ¥282 million (£1.3 million) for loss of income caused by the oil spill. These claims are being examined by the 1971 Fund's experts.

5.3.3 A further claim for some ¥60 million (£260 000) by the Japanese Self Defence Force for clean-up operations is expected. Other than this, no more claims are anticipated.

## 6 Limitation proceedings in the Republic of Korea

6.1 *Yuil N°1*

6.1.1 The owner of the *Yuil N°1* commenced limitation proceedings at the Pusan District Court in April 1996. The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£106 000).

6.1.2 By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£26 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fishery and clean-up claims to the Court for a total amount of Won 10 000 million (£4.2 million). The clean-up

contractors and fishery associations, who had at that time received only 60% of the agreed amounts, filed claims for the balance, totalling Won 4 700 million (£2.0 million) and Won 29 million (£12 000), respectively.

6.1.3 At the court hearings, the Standard Club and the 1971 Fund filed objections to the fishery claims and the fishermen submitted objections to all the clean-up claims.

6.1.4 At a court hearing held in October 1996, an administrator appointed by the Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable.

6.1.5 In November 1997, the Court rendered its decision adopting the administrator's proposal to accept one third of the amounts of the fishery claims. The 1971 Fund has lodged an opposition to the Court's decision.

6.2 *Osung N°3*

6.2.1 The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£600 000) per incident.

6.2.2 The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£84 000).

6.2.3 The shipowner applied to the competent court for the commencement of limitation proceedings, which was granted in October 1997.

6.2.4 In January 1998, the 1971 Fund and the 1992 Fund notified the Court that they would have to pay compensation to claimants who had suffered damage in Japan, and indicated provisionally that those claims would total ¥1 003 million (£4.6 million).

## 7 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 1971 Fund should take recourse action in respect of the *Yuil N°1* incident (paragraph 2.1.9);

(c) to review the level of payments in respect of claims arising from the *Osung N°3* incident (paragraphs 4.2.2 and 4.2.3); and

(d) to give the Director such instructions as it may deem appropriate in respect of the *Yuil N°1* and *Osung N°3* incidents.