



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
60th session  
Agenda item 3

71FUND/EXC.60/5/Add.1  
29 January 1999

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### KEUMDONG N°5

Note by the Director

<b>Summary:</b>	The Court rendered judgement in relation to the Yosu Fishery Co-operative and arkshell claims, in both cases awarding apparently arbitrary amounts on the grounds that it was impossible to quantify the damage suffered.
<b>Action to be taken:</b>	Decide whether to appeal against the Court's judgement.

#### 1 Introduction

This document deals with developments in respect of the *Keumdong N°5* incident since the document 71FUND/EXC.60/5 was issued.

#### 2 Legal actions

##### 2.1 Yosu Fishery Co-operative claims

2.1.1 On 26 January 1999, the Court rendered a judgement in respect of the Yosu Fishery Co-operative claims. Although the Court found that the claimants had suffered damage due to the oil pollution, the Court could not calculate the quantum of the loss. For this reason the Court awarded compensation for the pain and suffering of the claimants. Because of the large number of claimants involved, the Court did not indicate the amounts awarded, but stated that it would set out the amount for each claimant in an attachment to the written judgement. The Court decided that 1/9th of the legal costs of both parties should be paid by the 1971 Fund and 8/9ths should be paid by the claimants.

2.1.2 In view of the fact that the Court appears to have awarded compensation for pain and suffering, which does not fall within the definition of "pollution damage" in the Conventions, the Director considers that it is necessary for the Fund to appeal against this judgement.

## 2.2 Arkshell claims

2.2.1 The Court also rendered a judgement in respect of the arkshell claims on 26 January 1999 and awarded the claimants Won 473 million (£236 500), plus interest at 5% per annum from 27 September 1993 to 26 January 1999, and at 25% per annum from 27 January 1999 to the date of full payment. The amount awarded is approximately 1/9th of the claimed amount. The Court decided to distribute legal costs in the same proportion as those in respect of the Yosu Fishery Co-operative claims. The reasons for the judgement will not be available until the middle of February 1999.

2.2.2 It appears that the judgement is based upon the presumption that if oil reached a certain area, marine life in that area would be affected and the burden of proving that this was not so is placed on the 1971 Fund. The Executive Committee will recall that the Fund's experts have maintained that oil on the sea surface could not have affected arkshells living on the seabed. In the Director's view, acceptance by the Court that marine life on the seabed would be affected by oil on the surface sets an important precedent for future pollution incidents in the Republic of Korea. For this reason he believes that the 1971 Fund should consider appealing against the judgement. However, he takes the view that a final decision in this regard cannot be taken until the written judgement is available.

## 3 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
  - (b) to decide whether to appeal against the Court's judgements in respect of the Yosu Fishery Co-operative and arkshell claims.
-