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OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
61st session
Agenda item 4

71FUND/EXC.61/8
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INCIDENTS INVOLVING THE 1971 FUND

NAKHODKA

Note by the Director

Summary:	Further claims have been settled for significant amounts.
Action to be taken:	Decide on the level of the 1971 Fund's payments and on the admissibility of a claim for the cost of a marketing campaign in the fishery sector.

1 Introduction

1.1 On 2 January 1997, the Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki islands (Japan). The tanker broke into two sections, resulting in a spill of some 6 200 tonnes of oil. The stem section sank soon after the incident, with an estimated 10 000 tonnes of cargo on board. The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast and grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

1.2 The incident and the clean-up operations were described in some detail in document 71FUND/EXC.55/8.

2 Claims handling

2.1 The 1971 and 1992 Funds, the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established jointly a Claims Handling Office in Kobe. The office has at present a staff of seven surveyors, one accountant and eight support staff.

2.2 In the months to come, priority will be given to the following groups of claimants: remaining contractors working under the Japan Marine Disaster Prevention Centre (JMDPC), fishermen for loss of earnings, Prefectures for the cost of clean-up operations, contractors for cost of disposal of oily waste and claimants in the tourism sector.

3 Claims for compensation

3.1 Summary of claims situation

3.1.1 As at 16 April 1999, 453 claims totalling ¥34 714 million (£179 million)^{<1>} had been received. The claims situation is summarised in the table reproduced in the Annex.

3.1.2 In paragraphs 3.2 - 3.5 information is given on those groups of claims where developments have taken place since the Executive Committee's 60th session.

3.1.3 The shipowner/UK Club have made payments totalling US\$867 593 (£525 000).

3.1.4 The total payments made to claimants amounted to ¥5 697 million (£25.6 million) as at 12 April 1999, including the payments made by the shipowner/UK Club. Further payments of ¥991 million (£5.1 million) will be made later in April 1999.

3.2 Clean-up operations

3.2.1 Claims from the Japan Marine Disaster Prevention Centre (JMDPC) and 54 contractors engaged in clean-up operations under the JMDPC umbrella (items (a) and (b) in the annexed table) have been submitted for ¥8 322 million (£43 million). These claims include costs for the disposal of oily wastes.

3.2.2 During March and April 1999 final agreements were reached with JMDPC on a number of items relating to various sub-contractors which were originally claimed for a total of ¥3 845 million (£19.8 million). These items were settled at a total of ¥3 249 million (£16.7 million). The reduction was due to the fact that, in the view of the 1971 Fund and the UK Club, the rates claimed for certain vessels involved in the operations were too high. The 1971 Fund will shortly pay ¥672 million (£3.5 million), representing 60% of the settlement amount minus the provisional payments amounting to ¥1 277 million (£6.6 million) made in respect of these items.

3.2.3 A claim totalling ¥2 794 million (£14.4 million) has been received from JMDPC for the participation of members of the National Federation of Fishery Co-operative Associations (NFFCA) (which represents eight Prefecture fishery co-operative associations with some 68 000 members) in the clean-up operations (item © in the annexed table). In April 1999 agreement was reached with JMDPC to settle this claim at ¥2 653 million (£13.6 million). The 1971 Fund will shortly pay ¥307 million (£1.6 million), representing 60% of the settlement amount minus the provisional payments amounting to ¥1 286 million (£6.6 million) made in respect of this claim.

3.3 Fishermen's claims for loss of income

3.3.1 Claims for loss of income suffered by fishermen have been presented for ¥5 242 million (£27 million) (item (j) in the annexed table).

^{<1>} In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 9 April 1999, ie £1=¥194.442, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

3.3.2 On the basis of a preliminary assessment, in August 1998 the 1971 Fund offered to make a provisional payment of ¥107 million (£550 000) to four local fishery associations in one prefecture. The associations did not take up the offer, however, since they preferred to wait until payments could be made to all associations in the prefecture.

3.3.3 In December 1998 the IOPC Funds offered to settle a claim submitted by a Prefectural Federation of fishery associations at ¥645 million (£3.3 million), and offered to pay 60% of the settlement amount, ¥387 million (£2.0 million). The Federation did not accept this offer, since it did not want to be paid before the other Prefectural Federations.

3.3.4 In March 1999 agreement was reached on a claim presented by the owners of a fish farm which had been contaminated with oil. The claim was for cleaning expenses, losses due to mortality of fish and reduced price of fish. The claim was settled for a total of ¥102 million (£526 000). The 1971 Fund will shortly pay ¥12 million (£62 000) representing 60% of the settlement amount minus the provisional payment amounting to ¥49 million (£253 000).

3.4 Fishermen's claims for publicity campaign

3.4.1 In order to prevent and mitigate losses in sales of fish from the area affected by the spill as a result of bad publicity arising from the *Nakhodka* incident, the National Federation of Fishery Co-operative Associations (NFFCA) undertook a major publicity campaign aimed directly at the major markets for fish caught in the affected area. As a result of a competitive tender held by the NFFCA on 11 February 1997, three posters and one pamphlet were selected for printing. Fifty-five thousand copies of each poster and 10 million copies of the pamphlet were printed and distributed during the months of March to July 1997 to 1 611 selected outlets (eg wholesalers, retailers and consumer associations) in 22 Prefectures, including metropolitan Tokyo and Osaka and the affected coastal areas. Having identified outlets and secured their agreement to display the posters and distribute the pamphlet, the required quantity to be printed was determined by canvassing each recipient. Most outlets requested six sets of posters and some 3 000 pamphlets each, while some consumer associations asked for additional sets to distribute amongst their members. The claim, which includes the cost of production, printing, selecting recipients and obtaining their addresses and publicity material requirements, packing and delivery, amounts to ¥44 845 750 (£220 000).

3.4.2 Fish sales of the members of 10 Prefecture Fishery Associations in the affected area totalled approximately ¥57 244 million (£295 million) for the period March - July 1997.

3.4.3 Having examined the claim, the Claims Handling Office has confirmed that the costs claimed for related solely to the *Nakhodka* incident and were additional to the NFFCA's normal public relations costs, which are approximately ¥11 million (£57 000) per year.

3.4.4 NFFCA's claim relates to the cost of measures to prevent pure economic loss. The 1971 Fund has taken the position that such costs may be admissible if they fulfil the following requirements (documents FUND/A.17/35, paragraph 26.8 and FUND/A.17/23, paragraph 2.6):

- (a) the cost of the proposed measures is reasonable;
- (b) the cost of the measures is not disproportionate to the further damage or loss which they are intended to mitigate;
- (c) the measures are appropriate and offer a reasonable prospect of being successful;
- (d) in the case of a marketing campaign, the measures relate to actual targeted markets;
- (e) costs of marketing campaigns must be in addition to measures normally carried out for this purpose.

3.4.5 In the Director's view, the cost of the measures undertaken by NFFCA was reasonable, and was not disproportionate to the losses which could have been sustained by fishermen in the affected area if no action had been taken. He also considers that the measures were appropriate in the circumstances. The measures related to targeted markets where the produce from the area was sold, and the costs were in addition to NFFCA's normal marketing activities. The Director takes the view, therefore, that the marketing campaign undertaken by the NFFCA meets the criteria set out in paragraph 3.4.4 and that the claim is admissible in principle.

3.5 Tourism

3.5.1 Claims have been received from 344 operators in the tourism sector (item (n) in the annexed table). These claims total ¥ 2 994 million (£15.4 million).

3.5.2 The assessment of the tourism claims has been carried out by a Japanese company in co-operation with the United Kingdom experts who assessed the tourism claims arising out of the *Braer* and *Sea Empress* incidents. A methodology for the assessment of these claims has been agreed. The Japanese experts had visited all the claimants by the end of November 1998.

3.5.3 Twenty claims in the tourism sector have been settled at a total of ¥ 153 million (£960 000), and 60% of the settlement amounts, ¥ 92 million (£475 000) has been paid to claimants.

3.6 Further claims

Further claims are expected. The shipowner is expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded. Claims will also be presented by the shipowner for costs incurred prior to and during the bow lifting operations. Further claims will be presented for loss of income in the fishing and aquaculture industries. There may also be some further claims by businesses in the tourism industry.

4 Level of payments

4.1 Consideration by the 1971 Fund Executive Committee and Assembly

4.1.1 In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee at its 52nd session decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made (document 71FUND/EXC.52/11, paragraph 3.7.14). The Committee decided at later sessions, most recently at its 60th session, that the 60% limit should be maintained (document 71FUND/EXC.60/17, paragraph 3.8.5).

4.1.2 At its 3rd extraordinary session the 1971 Fund Assembly endorsed the Director's view that the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation (document 71FUND/A/ES.3/7, paragraph 4.5).

4.2 Consideration by the 1992 Fund Assembly and Executive Committee

At its 2nd extraordinary session the Assembly of the 1992 Fund decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made (document 92FUND/A/ES.2/6, paragraph 3.1.16). The 1992 Fund Executive Committee decided at its 2nd session to maintain the 60% limit (document 92FUND/EXC.2/10, paragraph 3.2.5).

4.3 Review of the level of payments

In the light of the continuing uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Director is unable to recommend an increase in the percentage of 60% fixed by the Executive Committee.

5 Investigation into the cause of the incident

5.1 The Japanese and Russian authorities decided to co-operate in the investigation into the cause of the incident. The Japanese investigation was carried out by a special committee set up for this purpose. A summary of the reports on these investigations was given in document 71FUND/EXC.59/9, paragraphs 5.2 and 5.3.

5.2 The Director studied the Japanese and Russian reports, with the assistance of legal and technical experts. The preliminary assessment of the conclusions set out in these reports made by the IOPC Funds' experts and the observations by the shipowner on the views expressed by these experts were set out in document 71FUND/EXC.59/9, paragraphs 5.5 and 5.6.

5.3 In May 1997 the Director requested from the shipowner and the UK Club access to all classification records, repair and maintenance records, statutory certificates, port state surveys and reports, P & I condition survey reports and all documents concerning the voyage when the incident occurred, including crew statements and communications between the ship and the office. The IOPC Funds was given access to only general arrangement drawings and stability information. No classification records, repair or maintenance records were provided.

5.4 The Director has very recently received additional documentation, which will be examined by the IOPC Funds' experts.

5.5 The Director continues his consideration of the technical and legal issues involved and will report his findings to the Executive Committee in due course.

6 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 consider the admissibility of the National Federation of Fishery Co-operative Association's claim for the costs of its publicity campaign (section 3.4);
- (c) to review the level of the 1971 Fund's payment of claims (paragraph 4.3) ; and
- (d) to give the Director such instructions as it may deem appropriate in respect of the handling of claims arising from this incident and on issues relating to limitation of liability and recourse.

Claims situation as at 12 April 1999

Claim			Claims submitted			Claims paid		
			Number	Amount		Number	Amount	
				US\$ ^{<1>}	Yen (million)		US\$ ^{<1>}	Yen (million)
Clean-up costs	(a)	JMDPC - Operations carried out by JMDPC	2		268	1	<2> 50	
	(b)	- Contractors under JMDPC	54		8 054	48	<2> 2 618	
	(c)	- Fishery Co-operative Associations	1		2 794	1	<2> 1 286	
	(d)	- Japanese Government Agencies	11		1 519	0	0	
	(e)	- Prefectures and Municipalities	10		6 939	9	<2> 1 443	
	(f)	Electricity companies	6		2 629	0	0	
	(g)	Other entities	7		192	2	57	
	(h)	EARL	1	542 593	61	1	542 593	<3> 61
	(i)	Russian authorities	2	3 284 322	370	1	325 000	<3> 37
	Sub-total		94		22 821	63	5 552	
Loss of income: fishery	(j)		9		5 242	1	<2> 49	
Causeway construction and removal	(k)	JMDPC	1		2 333	0	0	
Removal of oil from ship	(l)	JMDPC and three contractors	4		1 312	0	0	
Aquarium	(m)		1		7	1	<2> 4	
Tourism	(n)		344		2 994	20	92	
TOTAL			453		34 714	83	5 697	
					£185 million		£25.6 million	

- <1> Amounts in US\$ converted into Yen on the basis of the rate of exchange at 12 April 1999
- <2> Includes provisional payments
- <3> Payments made by the shipowner/UK Club

ANNEX

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