



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
62nd session
Agenda item 3

71FUND/EXC.62/12
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INCIDENTS INVOLVING THE 1971 FUND

EVOIKOS

Note by the Director

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

1 Introduction

1.1 The Cyprus 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.

2 Impact of the spill

2.1 The spilt oil initially affected the waters and some southern islands of Singapore, but later the oil drifted into Malaysian and Indonesian waters of the Malacca Strait. On 22 December 1997, oil came ashore in scattered places along a 40 kilometre stretch of the Malaysian coast in the Province of Selangor.

2.2 On 20 November 1997, the Belize 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, north of the sinking site was reported on 12 December 1997. Some oil from the *An Tai* became mixed with slicks originating from the *Evoikos*, before coming ashore on and after 22 December 1997.

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, which initially focused on dispersant spraying at sea and was followed by containment and recovery of floating oil. Clean-up equipment owned by East Asia Response Ltd (EARL) and the Petroleum Association of Japan (PAJ) was deployed, as well as local industry and commercially available response resources.

3.1.2 Once the oil had moved out of Singapore waters it was necessary to clean selected areas of shore on a number of small islands to the south of Singapore. This was arranged by the shipowner and the UK Club.

3.2 Malaysia

3.2.1 After the first few days natural weathering processes had rendered the oil no longer amenable to dispersants. The oil slicks were nearly solid and had spread over a wide area in the Malacca Strait, rendering at-sea recovery operations impractical. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to protect sensitive resources if required. The clean-up of shorelines was co-ordinated by the Malaysian Department of Environment with support from the Marine Department. District authorities within the Province of Selangor organised the manual removal of oil and oily material from sandy shores. Oiled mangrove areas were left to recover naturally.

3.2.2 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 surround their fish cages with protective barriers against floating oil, using locally available resources. Only very small spots of weathered oil reached the farms in a few locations.

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

3.2.3 Many prawn farms along the Malacca Strait rely on intakes of fresh water for their operations. On advice from the Malaysian Fisheries Department measures were taken by the owners of the farms to monitor the intakes to prevent any oil being drawn into the facilities. Some fishermen sustained oiling of boats, nets and ropes.

3.3 Indonesia

There is no information on any clean-up operations in Indonesia.

4 Claims for compensation

4.1 Singapore

4.1.1 Claims relating to clean-up operations and preventive measures have been submitted by Singapore Government agencies for a total amount of S\$4.5 million (£1.7 million). Third party contractors have presented claims for a total of S\$11.8 million (£4.4 million). These claims are being examined. The UK Club has made a provisional payment to the Singapore authorities of S\$500 000 (£190 000).

4.1.2 Claims for property damage total S\$1.8 million (£670 000). These include claims for the cleaning of a number of ships' hulls which were contaminated by oil escaping from the *Evoikos*. A company involved in the development of an island has submitted a claim in the amount of S\$1 230 000 (£460 000) for the cost of clean-up operations on the island.

4.1.3 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 associated costs 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).

4.2 Malaysia

4.2.1 Claims for clean-up costs have been submitted by the Department of the Environment and the regional Marine Departments for a total of RM740 000 (£124 000). A Malaysian oil industry co-operative (PIMMAG) which carried out clean-up operations at the request of the authorities has presented a claim for RM996 000 (£166 000). It is understood that PIMMAG's claim has been paid by the Malaysian authorities. Assessments have been made of these claims on the basis of additional information provided by the Malaysian authorities. Further information is awaited from the authorities in respect of the clean-up costs incurred by the Department of the Environment.

4.2.2 Claims relating to fisheries total RM1.9 million (£320 000). A preliminary assessment has been made by the technical experts engaged by the UK Club and the 1971 Fund. Further information is expected from the Malaysian authorities in the near future.

4.3 Indonesia

4.3.1 The Indonesian authorities have submitted a claim to the shipowner and the UK Club for US\$3.4 million (£2.2 million). The claim, which is not supported by detailed documentation, relates to pollution of mangroves (US\$2 million), pollution of sand (US\$1.2 million), fishermen's loss of income (US\$11 000) and the cost of clean-up operations (US\$152 000). The Indonesian authorities have been

invited by the UK Club to provide further documentation. This claim has been presented in the limitation proceedings in Singapore (cf section 7 below).

4.3.2 In view of the paucity of information available in respect of the claim by the Indonesian authorities, the Director is unable to express any firm opinion on the admissibility of this claim. However, it appears that the amounts claimed under the items relating to pollution of the mangroves and pollution of sand are based on abstract calculations and that these items are therefore inadmissible.

5 Director's authority to make settlements and payments

5.1 At its 56th session, the Executive Committee authorised the Director to make final settlements 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).

5.2 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 and 59th sessions (documents 71FUND/EXC.57/15, paragraph 3.10.7 and 71FUND/EXC.59/17, paragraph 3.11.6).

5.3 Since the total amount of the established 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 ordered to pay a fine of S\$11 000 (£4 000) 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 shipowner has maintained that the limitation amount applicable to the *Evoikos* is approximately 5.9 million SDR (£4.9 million), whereas the lawyers acting for some claimants have argued that the figure should be approximately 8.8 million 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 has no information on the outcome of 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.
