



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
62nd session  
Agenda item 3

71FUND/EXC.62/2  
11 October 1999

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## INCIDENTS INVOLVING THE 1971 FUND

Note by the Director

<b>Summary:</b>	A résumé of all incidents and all documents submitted under this agenda item is set out.
<b>Action to be taken:</b>	Information to be noted.

### 1 Introduction

1.1 Article 26.1(b)(ii) of the 1971 Fund Convention provides that the Executive Committee shall approve settlements of claims against the 1971 Fund and take all other steps in relation to such claims envisaged in Article 18.7 of the 1971 Fund Convention.

1.2 No incidents have occurred that have given or may give rise to claims against the 1971 Fund since the 59th session of the Executive Committee. However, there are 24 incidents which took place before the 59th session which will be reported to the Committee.

### 2 Presentation of documentation

2.1 The documentation presented to the 59th session of the Executive Committee has been structured in the following way:

- (a) incidents which the Executive Committee is invited to consider on the basis of a separate document for each incident; and
- (b) incidents which the Executive Committee is invited to consider in groups, since the incidents in each group occurred in the same Member State or were grouped together for practical reasons.

2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made - unless otherwise indicated - on the basis of the rates of exchange on 20 September 1999. However, for amounts representing actual payments by the 1971 Fund, the conversion has been made at the rate of exchange on the day of payment.

### 3 Summary of incidents

The situation in respect of the incidents involving the 1971 Fund can be summarised as follows:

#### 3.1 Document 71FUND/EXC.62/3

- *Haven* (Italy, 1991): On 4 March 1999 the Italian State, the shipowner, the UK Club and the 1971 Fund signed an agreement on a global settlement of all outstanding issues. The agreement was approved by the Corte dei Conti on 22 April 1999. When all legal actions in the Italian courts had been withdrawn in accordance with the agreement, payments were made to the Italian State, the French State and the Principality of Monaco.

**No action requested.**

#### 3.2 Document 71FUND/EXC.62/4

- *Aegean Sea* (Spain, 1992): It is understood that a number of claimants have brought legal action in the civil courts against the 1971 Fund, although the Fund has not been served with the actions. The question is whether these actions are time-barred. Legal opinions on the time bar issue have been obtained. There exist differences of opinion between the Spanish State and the 1971 Fund as to the distribution of liabilities between the State and the Fund. An agreement has been concluded between the Spanish State and the 1971 Fund to the effect that the period for the Fund to take recovery action against the State is extended by one further year. The Spanish Government has submitted documentation in support of the claims in the fishery and mariculture sector. The procedure for the execution of the Court of Appeal's judgement in the criminal proceedings in respect of a number of claims for compensation has started, but the proceedings have been suspended.

**No action requested.**

#### 3.3 Document 71FUND/EXC.62/5

- *Braer* (United Kingdom, 1993): Claims became time-barred on or shortly after 5 January 1996. The 1971 Fund has paid approximately £40.6 million in compensation, and the shipowner's P & I insurer has paid some £4.3 million. Further claims amounting to £5.7 million have been agreed but not paid. The total amount of the claims in court, originally £80 million, now stands at £34 million, after a number of claims have been dismissed, settled out of court, withdrawn from the court proceedings or reduced in amounts. The total amount of the claims presented exceeds the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, viz 60 million SDR (£50 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided, at its 44th session, to suspend any further payments of compensation.

A claim by Landcatch Ltd relating to losses allegedly suffered as a result of the *Braer* incident having interrupted the normal stocking of salmon smolt in Shetland waters was rejected by the Appeal Court in Edinburgh. Landcatch Ltd did not appeal against the judgement.

**No action requested.**

#### 3.4 Document 71FUND/EXC.62/6

- *Keumdong N°5* (Republic of Korea, 1993): All claims relating to the clean-up operations have been settled and paid for a total amount of £3.9 million. Claims totalling £7.6 million are pending. The 1971 Fund has appealed against the first instance Court's decisions in respect

of a number of fishery claims. Several hearings have been held and the 1971 Fund intends to submit new evidence.

**No action requested.**

- *Sea Prince* (Republic of Korea, 1995): Claims totalling £88.7 million have been settled at £20.4 million. All tourism claims and almost all fishery claims have been settled out of court. The remaining fishery claims total £49 000.

The P & I insurer has presented a claim for £5.2 million relating to salvage, maintenance of the wreck and wreck removal which is being examined. The P & I insurer has claimed indemnification under Article 5.1 of the 1971 Fund Convention for £4.7 million.

**No action requested.**

- *Yeo Myung* (Republic of Korea, 1995): All claims, with the exception of one fishery claim for £173 000, have been settled at a total of £753 000.

**No action requested.**

- *Yuil N°1* (Republic of Korea, 1995): Fishery and clean-up claims, as well as claims for the cost of the operations to remove the oil from the sunken vessel, have been settled at £14.5 million.

**No action requested.**

- *Osung N°3* (Republic of Korea, 1997): Most fishery and clean-up claims in the Republic of Korea, as well as the claims for the cost of the operations to remove the oil from the sunken vessel, have been settled at £3.6 million. Claims in Japan have been settled for £3.8 million. Claims totalling £1.1 million are pending.

**No action requested.**

3.5 Documents 71FUND/EXC.62/7 and 71FUND/EXC.62/7/1

- *Sea Empress* (United Kingdom, 1996): The *Sea Empress* ran aground near the entrance to Milford Haven harbour. The ship was carrying a cargo of approximately 130 000 tonnes of crude oil. It is estimated that a total of some 72 000 tonnes of oil was spilled.

Payments have been made to 778 claimants totalling £16.3 million. Legal proceedings have been commenced in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period.

The Director has considered whether the 1971 Fund should take recourse action against various persons involved in the incident, in particular against the Milford Haven Port Authority.

**Action requested:**

- Decision as regards the admissibility of a claim by a county fire brigade
- Decision as to whether the 1971 Fund should take recourse action against the Milford Haven Port Authority or any other third parties.

3.6 Documents 71FUND/EXC.62/8 and 71FUND/EXC.62/8/1

- *Nakhodka* (Japan, 1997): The *Nakhodka* broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. Claims totalling £204 million have been received by the Claims Handling Office in Kobe. The total payments made by the 1971 Fund to claimants amount to £38.3 million. The shipowner/UK Club has made payments totalling £560 000. Further claims are expected. The payments are currently restricted to 60% of the damage suffered by each claimant.

The IOPC Funds' experts have examined the reports of the investigations into the cause of the incident carried out by the Japanese and Russian authorities. They have also considered other information available, *inter alia* documents provided by the shipowner. The experts' conclusion is that the *Nakhodka* was not seaworthy at the start of the voyage and that the shipowner was or should have been aware of the unseaworthiness. In the light of the opinions expressed by the experts the Director has examined whether the IOPC Funds should take recourse action against the shipowner and other third parties to recover the amount paid by the Funds in compensation.

**Action requested:**

- Decision in respect of the level of the 1971 Fund's payment of claims
- Decision in respect of whether the 1971 Fund should oppose the shipowner's right to limit his liability
- Decision as to whether recourse action should be taken against:
  - (i) the registered owner, Prisco Traffic Ltd;
  - (ii) the parent company of the owner, Primorsk Shipping Corporation;
  - (iii) the UK Club; and
  - (iv) the Russian Maritime Register of Shipping.

3.7 Document 71FUND/EXC.62/9

- *Nissos Amorgos* (Venezuela, 1997): A claim has been submitted by the Republic of Venezuela relating mainly to the environmental effects of the incident. On the basis of a report prepared by experts engaged by the shipowner, the P&I insurer and the 1971 Fund, the Fund has taken the view that the claim is not admissible. The Court appointed a panel of three experts to advise the Court on the technical merits of the claim. In its report, the panel confirms the findings of the 1971 Fund's experts. The shipowner intends to resist claims by the Republic of Venezuela under Article III.3 of the 1969 Civil Liability Convention, and also reserves the right to seek exoneration from liability under Article III.2(c). The documents available to the 1971 Fund indicate that negligence on the part of the Instituto Nacional de Canalizaciones may have contributed to the incident. The Director is not convinced, on the basis of the evidence available, that the shipowner would be wholly exonerated from liability pursuant to Article III.2(c).

**Action requested:**

- Review the level of the 1971 Fund's payments and consideration of the Fund's position on the cause of the incident.

3.8 Documents 71FUND/EXC.62/10 and 71FUND/EXC.62/10/Add.1

- *N°1 Yung Jung* (Republic of Korea, 1997): All third party claims have been settled and paid for a total of £36 300.

The question has arisen as to whether the 1971 Fund should pursue an action against the Government of the Republic of Korea to recover the amounts paid by the Fund. The Director

has taken the view that the incident was caused by a defect in a public facility or structure and that the Republic of Korea was liable for the damage resulting therefrom.

The Korean Government has maintained that the cause of the incident was not a defect in the installation or maintenance of a public facility or structure owned by the Government but the negligence of the shipowner that used those facilities improperly without giving notice to, or obtaining the permission of, the Port Authority, and without giving full consideration to the possible effects of the weather or the tide.

There is also a difference of opinion on the interpretation of Article 4.3 of the 1971 Fund Convention, which precludes reduction of compensation to a claimant who has taken preventive measures on the grounds of contributory negligence.

**Action requested:**

- Decision as to whether the 1971 Fund should pursue an action against the Republic of Korea to recover the amounts paid by the Fund in compensation or indemnification.

3.9 Document 71FUND/EXC.62/11

- *Pontoon 300* (United Arab Emirates, 1998): Intermediate fuel oil was spilled from the barge *Pontoon 300* off the port Hamriyah, Sharjah. Claims totalling £1.2 million have been submitted. The claims have been assessed at £790 000. Compensation payments so far total £344 800. Further claims, including claims relating to losses suffered by fishermen, are expected. Payment by the 1971 Fund is limited to 75% of the loss or damage actually suffered by each claimant.

**Action requested:**

- Decision in respect of the level of the 1971 Fund's payment of claims

3.10 Document 71FUND/EXC.62/12

- *Evoikos* (Singapore, 1997): The tanker *Evoikos* collided with the tanker *Orapin Global* in the Strait of Singapore. It is estimated that some 29 000 tonnes of heavy fuel oil was spilled from the *Evoikos*. Claims have been received from Singapore (£6.8 million), Malaysia (£610 000) and Indonesia (£2.2 million).

The shipowner has commenced limitation proceedings in the competent Singapore court. He has maintained that the limitation amount applicable to the *Evoikos* is approximately 5.9 million SDR (£4.9 million), whereas some claimants have argued that the figure should be approximately 8.8 million SDR (£7.4 million).

**Action requested:**

- Decision as to whether the Director should be authorised to make payments

3.11 Document 71FUND/EXC.62/13

- *Irving Whale* (Canada, 1970): The barge *Irving Whale* sank in 1970, while being towed by a tug. Heavy fuel oil was released from the barge and oil continued to seep from the barge over the years. The barge was refloated in 1996. A small quantity of oil was released during the refloating operation. The cost of the refloating and clean-up operations amounted to some £17 million. The Canadian Government took legal action against the owners and operators of the *Irving Whale* claiming compensation for these costs, and notified the 1971 Fund of the legal action.

The 1971 Fund requested the Canadian court to declare that the Fund had no liability with regard to the *Irving Whale* case. In December 1998 the Court dismissed the action against the 1971 Fund. There has been no appeal against this decision.

**No action requested.**

- *Vistabella* (Caribbean, 1991): All claims have been settled and paid. The 1971 Fund is involved in legal proceedings for the purpose of recovering from the shipowner and his insurer the amount of compensation paid by the Fund.

**No action requested.**

- *Iliad* (Greece, 1993): Claims for compensation totalling some £7 million have been lodged in the competent Greek court. Claims against the 1971 Fund became time-barred on or shortly after 9 October 1996. With the exception of an owner of a fish farm, the shipowner and the P & I insurer, the claimants have failed to take legal action against the 1971 Fund.

**No action requested.**

- *Honam Sapphire* (Republic of Korea, 1995): During berthing manoeuvres at an oil terminal, the fully laden *Honam Sapphire* struck a fender, puncturing a wing tank. An unknown quantity of crude oil escaped from the damaged tank. Claims have been received in respect of clean-up costs for £4.9 million and fishery-related claims for £25 million. All claims but one have been settled for a total of £8.4 million. The outstanding claim is for £630 000. The 1971 Fund will not therefore be called upon to make any payments in respect of this incident.

**No action requested.**

- *Kriti Sea* (Greece, 1996): The *Kriti Sea* spilled 20 - 50 tonnes of crude oil while discharging her cargo. Claims totalling £7.9 million have been notified to the shipowner and his P & I insurer and to the administrator appointed by the Court to examine claims against the shipowner's limitation fund. The total amount of the claims accepted by the administrator was £2.2 million, well below the limitation amount applicable to the *Kriti Sea* of £4.4 million. Appeals against the decision of the administrator have been lodged by the shipowner/insurer and the 1971 Fund. Some claimants have also lodged appeals and the amounts set out in the appeals are for a total of £5.3 million. The shipowner/insurer have taken legal action against the 1971 Fund in respect of claims in excess of the shipowner's limitation fund as well as for indemnification.

**No action requested.**

- *Plate Princess* (Venezuela, 1997): The tanker *Plate Princess* spilled some 3.2 tonnes of crude oil whilst loading cargo at an oil terminal at Puerto Miranda on Lake Maracaibo. Claims totalling some £27 million have been presented by a fishermen's trade union in both the Criminal Court of first instance in Cabimas and the Civil Court in Caracas. The 1971 Fund has not been notified of these actions. There has been no progress in the court proceedings.

**No action requested.**

- *Katja* (France, 1997): The *Katja* struck a quay in the Port of Le Havre, and some 190 tonnes of heavy fuel oil was spilled. Claims for compensation in respect of clean-up, damage to property and loss of income have been presented totalling £2.8 million. The limitation amount applicable to the *Katja* is £5.2 million. It is not expected that the 1971 Fund will be called upon to make any payments in this case.

**No action requested.**

- *Diamond Grace* (Japan, 1997): The tanker *Diamond Grace*, carrying 257 000 tonnes of crude oil, grounded in Tokyo Bay spilling some 1 500 tonnes. Seventy-seven claims for compensation in respect of clean-up operations and fishery damage totalling £12.4 million have been submitted. Sixty-two claims totalling £8.3 million have been settled for £5.7 million. It is probable, therefore, that the total amount of the claims will not exceed £11.8 million, the limitation amount applicable to the *Diamond Grace*, and that the 1971 Fund will not be called upon to make any payments in respect of this incident.

**No action requested.**

- *Kyungnam N°1* (Republic of Korea, 1997): The coastal tanker *Kyungnam N°1* ran aground off Ulsan and spilled some 15 - 20 tonnes of cargo. Thirty-one claims totalling £500 000 were submitted, 28 of which totalling £494 000 have been assessed by the 1971 Fund at £117 000. The three remaining claims are being examined.

**No action requested.**

- *Maritza Sayalero* (Venezuela, 1998): While discharging cargo the tanker *Maritza Sayalero* spilled an estimated 262 tonnes of medium diesel oil. A nearby town presented a claim for compensation for an estimated £10.6 million against the terminal operator, the shipowner and his P & I insurer before the Supreme Court in Caracas. The town requested the Court to notify the 1971 Fund of the proceedings. The Fund has not yet been notified. The Executive Committee decided that the incident fell outside the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention because the oil involved was non-persistent and was not being carried by the *Maritza Sayalero* at the time of the spill.

**No action requested.**

#### **4 Action to be taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.

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