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COMPENSATION  
FUND 1971

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Agenda item 3

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## INCIDENTS INVOLVING THE 1971 FUND

### FIVE KOREAN INCIDENTS

*Keumdong N°5, Sea Prince, Yeo Myung, Yuil N°1 and Osung N°3*

#### Note by the Director

<b>Summary:</b>	<p><i>Keumdong N°5:</i> 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.</p> <p><i>Sea Prince:</i> All tourism claims and almost all fishery claims have been settled out of court and paid in full.</p> <p><i>Yeo Myung:</i> All tourism claims and all but one fishery claim have been settled out of court and paid in full.</p> <p><i>Yuil N°1:</i> Most of the claims for the clean-up operations and those in the fishery sector have been settled. The claim relating to the removal of the oil from the sunken ship has also been settled.</p> <p><i>Osung N°3:</i> Most of the claims for clean-up operations and fishery claims in the Republic of Korea have been settled. Two claims for clean-up operations made by governmental agencies in Japan are under examination. The claim relating to the removal of the oil from the sunken ship has also been settled.</p>
<b>Action to be taken:</b>	Information to be noted.

1        Keumdong N°5  
(Republic of Korea, 27 September 1993)

1.1      The incident

1.1.1    The Korean barge *Keumdong N°5* (481 GRT) collided with another vessel near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil were spilled from the *Keumdong N°5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae island.

1.1.2    The *Keumdong N°5* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).

1.2      Claims for compensation

1.2.1    Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the Standard Club by September 1994<sup><1></sup>. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund has made advance payments to the Standard Club totalling US\$6 million (£4 million) in respect of the Club's subrogated claims.

1.2.2    The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members. The total amount of the claims presented was Won 93 132 million (£41 million). The Federation indicated that it would present further claims in the region of Won 90 000 million.

1.2.3    During the period July 1995 - September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£4.2 million), compared with a total amount claimed of Won 48 047 million (£33 million). These claims have been paid in full for the agreed amounts.

1.3      Legal actions

*Claims by Yosu fishery co-operative*

1.3.1    The Yosu Fishery Co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court for damage to common fishing grounds totalling Won 17 162 million (£8.8 million), but the claimed amount was later reduced to Won 15 348 million (£7.9 million). In addition, claims totalling Won 1 641 million (£842 000) were submitted by over 900 individual fishermen belonging to this co-operative, who are mainly fishing boat owners but also includes set net fishing licence holders or onshore fish culture facility operators.

1.3.2    The experts engaged by the 1971 Fund and the Standard Club assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£416 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that maintained by the claimants. The experts also took the view that the loss of earnings claimed by the fishing boat and set net operators was too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and because certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities did not provide any evidence that the alleged losses were caused by the oil spill.

1.3.3    A mediation hearing was held before the Court on 16 October 1998 to consider the individual fishing boat claims. The 1971 Fund explained the methods used by its experts for determining the loss of earnings in respect of different sizes of fishing vessels engaged in various fishing sectors. The claimants did not agree with the 1971 Fund's assessment methods.

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<1>      In this document, the conversion of currencies has been made on the basis of the rate of exchange at 20 September 1999, except in respect of amounts paid by the 1971 Fund where conversion has been made at the rate on the date of payment.

1.3.4 The Court rendered a compulsory mediation decision in early December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. The Court awarded the unlicensed fishing boat claimants Won 66 million (£34 000).

1.3.5 The Court's decision in respect of the unlicensed fishing boat claimants was at variance with the policy adopted by the 1971 Fund. The Fund therefore lodged an opposition to the Court's mediation decision in respect of these claims, but settled the claims in respect of licensed fishing boats. The latter group of claims, which totalled Won 1 238 million (£652 000), was settled at Won 620 million (£327 000).

1.3.6 On 26 January 1999 the Seoul District Court rendered its judgement in respect of those Yosu Fishery Co-operative claims which had not been settled. The Court found that the claimants had suffered damage due to oil pollution but was unable to assess the losses. The Court therefore awarded compensation for both loss of earnings and pain and suffering (condolence money) in respect of common fishing grounds and intertidal culture farms, for loss of earnings only in respect of unlicensed fishing vessels and for pain and suffering only in respect of cage culture farms, one onshore aquarium and one onshore hatchery (document 71FUND/EXC.61/5, paragraphs 2.7 - 2.12). The total amount awarded by the Court was Won 1 571 million (£804 000). A summary of the Yosu Fishery Co-operative claims and the amounts awarded is given below:

	Claim amount	Court's award		
Type of fishery	(Won)	Loss of earnings	Condolence money	Total
Common fishing grounds and culture farms	15 347 678 899	546 301 459	936 400 000	1 482 701 459
Caged culture and hatcheries	286 966 667	---	22 000 000	22 000 000
Fishing boats	111 516 090	66 010 892	---	66 010 892
Unspecified	8 105 510	---	---	---
Total	15 754 267 166 (£8.1 million)	612 312 351 (£314 000)	958 400 000 (£490 000)	1 570 712 351 (£804 000)

1.3.7 At its 61st session the Executive Committee examined the reasoning in the judgement as well as the Director's legal analysis of the situation as set out in document 71FUND/EXC.61/5. The Director was instructed to pursue appeals in respect of the questions of fact, the decision to allow compensation for pain and suffering, the apparently arbitrary methods used to determine compensation and the decision to award compensation to fishermen operating without the required licence or registration (document 71FUND/EXC.61/14, paragraphs 4.4.3 - 4.4.6).

1.3.8 All the claimants belonging to the Yosu Fishery Co-operative, with the exception of one Village Fishery Association, have appealed against the judgement. Their total claimed amount is indicated in the appeal at Won 13 868 million (£7.1 million).

#### *Arkshell fishery co-operative's claim*

1.3.9 An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of claims totalling Won 4 175 million (£2.1 million) for pollution damage to arkshell culture farms and hatcheries. These claims relate specifically to alleged mortalities and retarded growth of arkshells caused by dispersed oil. The claim was rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

1.3.10 The Seoul District Court also rendered its judgement in respect of these claims on 26 January 1999 (document 71FUND/EXC.61/5, paragraphs 3.4 - 3.8). The Court held that oil treated with dispersants moved with the currents and reached the arkshell culture farms and the arkshell hatcheries and that this had led to mortalities and retarded growth of arkshells. With regard to the culture arkshell farms, the Court held that property losses had occurred, but was unable to assess these losses, and therefore awarded compensation to the claimants for pain and suffering totalling Won 457 million (£244 000). As regards the arkshell hatcheries,

the Court rejected the claims as presented due to lack of supporting evidence but awarded compensation for pain and suffering totalling Won 16.4 million (£9 000) instead of compensation for unquantifiable losses due to mortality and growth retardation.

1.3.11 At its 61st session Executive Committee instructed the Director to pursue appeals in respect the questions of fact and the decision to allow compensation for pain and suffering (document 71FUND/EXC.61/14, paragraphs 4.4.3 and 4.4.4).

1.3.12 The arkshell hatchery claimants have appealed against the judgement. Their total claimed amount is indicated in the appeal at Won 359 million (£184 000).

#### *Appeals by the 1971 Fund*

1.3.13 The 1971 Fund lodged appeals against both judgements. In accordance with requirements under Korean law, the Fund deposited with the Court Won 1 571 million (£795 000) in respect of the Yosu Fishery Co-operative claims and Won 474 million (£240 000) in respect of the arkshell fishery co-operative claims, corresponding to the amounts awarded by the first instance Court (document 71FUND/EXC.61/5, section 4).

1.3.14 Several hearings have been held in the Seoul Appellate Court. It is expected that the hearings will continue at approximately monthly intervals until the parties have presented all their evidence.

1.3.15 The Appellate Court granted a request by the 1971 Fund for the claimants to produce various sales records in respect of the arkshell fishery co-operative and common fishing grounds within the area of the Yosu Fishery Co-operative.

1.3.16 The first instance Court had not accepted the 1971 Fund's arguments that oil of the type spilled from the *Keumdong N°5* was not amenable to dispersants and that neither the oil nor dispersants would have been harmful to sub-tidal marine life. The Fund has requested that the Appellate Court shall appoint an expert with the mandate to establish whether oil of the type spilled from the *Keumdong N°5* was dispersible and to conduct oil and dispersant toxicity testing. The Court has deferred its decision on this request.

1.3.17 The 1971 Fund's experts have obtained further evidence in support of its opposition to the claims and are preparing technical opinions on the first instance Court's judgement. These opinions and the new evidence will be presented to the Court in the near future.

## **2      Sea Prince** (Republic of Korea, 23 July 1995)

### **2.1      The incident**

2.1.1 The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with some 85 000 tonnes of Arabian crude oil, grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area. Some 5 000 tonnes of oil was spilled as a result of the grounding. Most of the oil was carried eastward by currents and some oil eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Oki.

2.1.2 A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95). The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column if the oil were to be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship would break up during refloating. In view of this the salvage contract under Lloyds Open Form 95 was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters but sank close to the Philippines without any further oil spillage.

2.1.3 The *Sea Prince* was entered with the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

2.1.4 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/9, 71FUND/EXC.55/6, 71FUND/EXC.57/5, 71FUND/EXC.58/4 and 71FUND/EXC.58/4/Add.1.

## 2.2 Claims for compensation

2.2.1 Nearly all claims relating to clean-up operations were settled at Won 19 700 million (£8.4 million). These claims were paid in full by the shipowner and the UK Club, who have presented subrogated claims to the 1971 Fund.

2.2.2 In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment corresponded, at the rate of exchange applicable at that time, to less than 25% of the assessed amount, the level at which the Fund's payments were fixed at the time.

2.2.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total of ¥357 214 (£1 800). This claim was approved by the Director in August 1996 at the amount claimed and was paid in September 1996 by the UK Club.

2.2.4 All claims in the tourism sector have been settled for Won 538 million (£276 000) and paid in full.

2.2.5 Almost all of the claims in the fisheries sector have also been settled and paid in full in the amount of Won 19 500 million (£10 million). The only unsettled fishery claims are those in respect of 19 owners of caged fish facilities for Won 95 million (£49 000). The claimants originally took legal action in the limitation proceedings but have also filed a separate action against the 1971 Fund.

2.2.6 In April 1998, the shipowner filed two additional claims with the court in charge of the limitation proceedings, one for the cost of post-spill environmental studies for Won 1 140 million (£500 000) and the other for the costs totalling Won 135 million (£59 000) associated with additional clean-up undertaken by the shipowner in early 1998. Both the studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents. The post-spill environmental studies involved the measurement of petroleum hydrocarbons in seawater, sediments and marine products. Although the studies were reported to be for the purpose of obtaining information which could be used for the restoration of areas polluted by the two incidents, the contracts between the shipowner and the Korea Maritime Institute and Seoul National University, the bodies which undertook the studies, clearly stated that the studies were not to be conducted so as to relate to any form of compensation arising out of the incidents.

2.2.7 The Director took the view that the post-spill environmental studies appeared to duplicate the work to sample and analyse seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. He therefore rejected the claim for the cost of these studies.

2.2.8 On the basis of surveys carried out by the 1971 Fund's experts prior to and during the period of additional clean-up, these experts took the view that the additional clean-up operations were not technically justified. Although buried oil was found at most of the locations which were subjected to further cleaning, the quantities were small, the oil was hard to find and the contamination was sporadic. Not all the oil samples collected matched the oils spilled from the *Sea Prince* and *Honam Sapphire*. The experts concluded that the remaining oil did not pose any threat to fisheries and tourism, nor did it represent an aesthetic problem. Furthermore, because of the difficulty of finding and getting access to the remaining oil, they considered that the clean-up would involve harsh, intrusive and seriously disruptive methods likely to cause more damage than the oil itself. In the light of the experts' opinion, the Director informed the shipowner that the 1971 Fund considered that the cost incurred for the additional clean-up did not qualify for compensation.

2.2.9 The UK Club has presented a claim on the basis of subrogation for US\$8.3 million (£5.2 million) relating to the cost of preventive measures associated with the work carried out under the contracts relating to salvage, maintenance of the wreck and wreck removal. The UK Club provided various documents relating to these operations, including a report by its own experts on the apportionment of costs between salvage/wreck removal and pollution prevention. These documents are being examined by the 1971 Fund's salvage expert who attended the incident.

2.2.10 The claims situation as at 30 September 1999 is shown in the tables set out below.

Claims settled and paid in full		

Claims settled and paid in full		
Claims category	Amount originally claimed million Won	Settlement amounts million Won
Clean-up	21 544	19 700
Fishery claims	146 521	19 500
Tourism and agriculture	4 759	538
Total	172 824	39 738
	(£88.7 million)	(£20.4 million)

Claims pending in court (other than shipowner's/UK Club's claims)		
	Amount originally claimed million Won	Amount claimed in court million Won
Fishery claim	1 739	95
Total	1 739	95
	(£893 000)	(£49 000)

2.2.11 The shipowner and the UK Club have claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£4.7 million).

### 2.3 Limitation proceedings

2.3.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 26 600 million (£13.7 million) at the exchange rate applicable on 20 September 1999. The limitation fund has not yet been constituted, and the limitation amount in Won has therefore not yet been fixed.

2.3.2 In June 1998, the Court delivered its decision accepting the assessments made by the 1971 Fund's experts for the unsettled fishery and non-fishery claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner has lodged opposition to this decision.

2.3.3 Outstanding issues in the limitation proceedings are the subrogated claims by the UK Club in respect of the salvage operations referred to in paragraphs 2.2.9 - 2.2.18 and clean-up operations carried out by various contractors. These claims were assessed by the Court at a total of US\$27.8 million (£16.3 million) and ¥4 million (£19 400). The 1971 Fund has lodged objection to the Court's decisions concerning these items on the grounds of lack of supporting documentation.

2.3.4 At its 61st session the Executive Committee considered whether certain claims filed in the limitation proceedings had become time-barred *vis-à-vis* the 1971 Fund, namely a subrogated claim by the UK Club for payments made to various contractors, claims by three village fishery associations and a claim by the UK Club for indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/EXC.61/6).

2.3.5 After a detailed discussion of the issues involved the Executive Committee decided that the UK Club's subrogated claim should be considered as not being time-barred. The Committee also decided that the claims of the three village fishery associations and the UK Club's claim for indemnification should be treated as not being time-barred (document 71FUND/EXC.61/14, paragraphs 4.5.16, 4.5.21 and 4.5.26).

### 3 Yeo Myung (Republic of Korea, 3 August 1995)

#### 3.1 The incident

3.1.1 The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul island, near Koeje island (Republic of Korea). Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil was spilled.

3.1.2 The oil drifted in a north-easterly direction and stranded at a number of locations on Koeje island from 4 - 8 August 1995. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July 1995, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koeje island were not affected by the spill.

3.1.3 The *Yeo Myung* was entered in the North of England Protection and Indemnity Association Limited (North of England P & I Club).

3.1.4 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/12, 71FUND/EXC.55/6, 71FUND/EXC.57/5, 71FUND/EXC.58/4 and 71FUND/EXC.59/6.

#### 3.2 Claims for compensation

3.2.1 Claims for clean-up operations totalling Won 760 million (£526 000) were settled at Won 684 million (£457 000). The claims were paid partly by the North of England Club and partly by the 1971 Fund.

3.2.2 All claims in the tourism sector were settled for Won 270 million (£139 000) and paid in full.

3.2.3 All but one claim in the fisheries sector were settled and paid in full in the amount of Won 509 million (£262 000). The outstanding claim for Won 335 million (£173 000) is in respect of an owner of a caged fish facility. The claim has been assessed by the 1971 Fund's expert at Won 459 000 (£236).

3.2.4 The claims situation as at 30 September 1999 is shown in the tables set out below.

Claims settled		
Claims category	Amount originally claimed million Won	Amount agreed million Won
Fishery	21 131	509
Tourism	2 592	270
Clean-up	760	684
Total	24 483	1 463

Claims settled		
	(£10.7 million)	(£753 000)

Claims pending		
Claims category	Amount originally claimed million Won	Amount assessed by the Fund's experts Won
Fishery	335	459 000
Total	335 (£173 000)	459 000 (£236)

### 3.3 Limitation proceedings

3.3.1 The shipowner commenced limitation proceedings at the Tong Young District Court. The limitation fund was established by the North of England P & I Club by payment of the limitation amount of Won 21 million (£9 200) to the Court.

3.3.2 On 20 September 1999 the Court held a hearing at which the 1971 Fund filed its subrogated claims against the shipowner's limitation fund. At the Court's request the 1971 Fund has submitted a copy of the Fund's experts' assessment report.

## 4 Yuil N°1 (Republic of Korea, 21 September 1995)

### 4.1 The incident

4.1.1 The *Yuil N°1* (1 591 GRT) carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan. The tanker was refloated but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.

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

### 4.2 Removal of oil from the wreck

4.2.1 In 1997 the Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Yuil N°1*. The report 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.

4.2.2 The operation to recover the oil from the *Yuil N°1* commenced on 24 June 1998. The operations were completed on 31 August 1998 when all 11 tanks had been emptied and washed. Some 670 m<sup>3</sup> of oil was recovered from the tanks of the *Yuil N°1*.

4.2.3 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.



#### 4.3 Claims for compensation

##### *Oil removal operations*

4.3.1 Korean Marine Pollution Response Corporation (KMPRC) submitted 11 claims for compensation, totalling Won 13 765 million (£7.2 million), in respect of the operations to remove the oil from the *Yuil N°1* and the *Osung N°3* (see section 5). These claims relate to the amounts paid under the oil removal contract to the salvor carrying out the operations 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. The costs relating to both operations, such as the cost of mobilisation and demobilisation of craft and equipment, were apportioned on a 50:50 basis between the two cases.

4.3.2 KMPRC's claims in relation to the *Yuil N°1* operation were settled at a total of Won 6 824 million (£3.2 million). The claims have been paid in full by the 1971 Fund.

##### *Other claims*

4.3.3 All clean-up claims arising out of this incident have been settled at a total of Won 12 393 million (£8.5 million). The shipowner's insurer, the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club), paid some of these claims in full, and the 1971 Fund reimbursed 60% of these payments to the Club. The 1971 Fund will reimburse the Standard Club the balance (40%) of these payments minus the shipowner's limitation amount after that amount has been established in Won.

4.3.4 Fishery claims totalling Won 22 359 million (£11.8 million) have been settled at Won 5 391 million (£2.8 million). Fishing claims totalling Won 25 031 million (£13.2 million), which have been assessed by the Fund's experts at Won 272 million (£143 000), have not yet been settled. These claims have been filed in court for a reduced amount of Won 11 881 million (£6.3 million). Further fishing claims totalling Won 2 448 million (£1.2 million) have also been filed in court, but these claims have not yet been assessed by the Fund's experts.

4.3.5 The claims situation as at 30 September 1999, excluding the oil removal operations, is shown in the tables set out below.

Claims settled and paid in full		
Claims category	Amount claimed (million Won)	Amount agreed (million Won)
Fishery claims	22 359	5 391
Clean-up claims	12 564	12 393
Total	34 923 (£ 18.4 million)	17 784 (£11.3 million)

Claims pending in court		
	Amount claimed (million Won)	Amount assessed by the 1971 Fund's experts (million Won)
Fishery claims	11 881	272
Fishery claims	2 448	under assessment
Total	14 329 (£ 7.5 million)	272 (£ 143 000)

#### 4.4 Limitation proceedings

4.4.1 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 (£125 000).

4.4.2 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.

4.4.3 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.

4.4.4 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.

4.4.5 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.

## 5 Osung N°3 (Republic of Korea, 3 April 1997)

### 5.1 The incident

5.1.1 On 3 April 1997 the *Osung N°3* (786 GRT) ran aground on the island of Tunggado, just south of the island of Kojedo in the Pusan area, 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 was not possible to assess the quantity spilt or the quantity remaining on board.

5.1.2 Oil which was shown to have originated from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997.

5.1.3 Concerning the clean-up operations in the Republic of Korea and Japan, reference is made to document 71FUND/EXC.59/7.

### 5.2 Removal from Osung N°3

5.2.1 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. 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.

5.2.2 The oil removal operations commenced on 2 September 1998 after completion of the oil removal operations on the *Yuil N°1* (see section 4). The operations were occasionally interrupted by typhoons.

5.2.3 The operations were completed on 9 November 1998, when all the tanks had been emptied and washed and the recovered oil had been discharged. Some 27 m<sup>3</sup> of oil was recovered from the tanks of the *Osung N°3*. During the operation, there was no release of oil from the wreck into the sea. It was established that there could be no more than 1.4 m<sup>3</sup> of oil in the bunker tanks and that only clingage remained in the cargo tanks.

5.2.4 The experts engaged by the 1971 Fund issued a certificate stating that in their view no significant quantity of pollutants remained in the tanks.

### 5.3 Level of payment

5.3.1 In view of the great uncertainty as to the total amount of the claims arising from the *Osung N°3* incident, the Executive Committee decided at its 54th session to limit the 1971 Fund's payments to 25% of the damage or loss suffered by each claimant (document 71FUND/EXC.54/10, paragraph 3.5.7).

5.3.2 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 £51 million).

5.3.3 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 (£115 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.

5.3.4 At its second session, the 1992 Fund Assembly authorised the Director to pay the balance of the established claims relating to damage in Japan (document 92FUND/A.2/29, paragraph 17.3.6).

5.3.5 As reported in document 71FUND/EXC 60/7, paragraph 4.2.8, the Director decided on 26 November 1998, pursuant to the authority given to him by the Executive Committee, to increase the 1971 Fund's payments from 25% to 100% of each established claim arising out of the *Osung N°3* incident.

5.3.6 As a consequence of his decision to increase the 1971 Fund's payments in respect of the *Osung N°3* incident to 100%, the Director decided that the 1971 Fund should reimburse the 1992 Fund the amounts it had paid to cover the balance of the Japanese claims. The 1992 Fund will therefore ultimately not be liable in respect of this incident. On 23 December 1998 the 1971 Fund paid the balance, ¥340 million (£1.6 million), to the 1992 Fund, plus interest thereon amounting to £29 000.

#### 5.4 Claims for compensation

##### *Oil removal operation*

5.4.1 Claims arising out of the *Osung N°3* oil removal operation were settled at a total of Won 6 739 million (£3.2 million). The claims have been settled in full by the 1971 Fund.

##### *Other claims*

5.4.2 As regards the Republic of Korea, claims for compensation were 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 1 219 million (£593 000) were settled at Won 848 million (£410 000) and were paid in full.

5.4.3 Only one claim is pending in respect of the Republic of Korea, namely a clean-up claim for Won 93 million (£49 000). This claim was assessed by the 1971 Fund's experts at Won 64 million (£34 000), but this assessment was rejected by the claimant.

5.4.4 Six claims totalling ¥673 million<sup><1></sup> (£3.9 million) have been submitted for clean-up operations carried out in Japan. Three of these claims, for ¥477 million (£2.8 million), were settled at ¥453 million (£2.7 million) and were paid in full. The remaining three claims are being examined. A claim was presented by a Japanese fishery co-operative association for ¥282 million (£1.7 million) for loss of income caused by the oil spill. This claim was settled at ¥182 million (£1.1 million) and was paid in full.

#### 5.5 Limitation proceedings

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<2> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 20 September 1999, ie £1=¥170, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

5.5.1 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.

5.5.2 The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£87 000).

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

5.5.4 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 (£5.0 million).

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; and
  - (b) to give the Director such instructions as it may deem appropriate in respect of remaining claims arising from the incidents which are dealt with in this document.
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