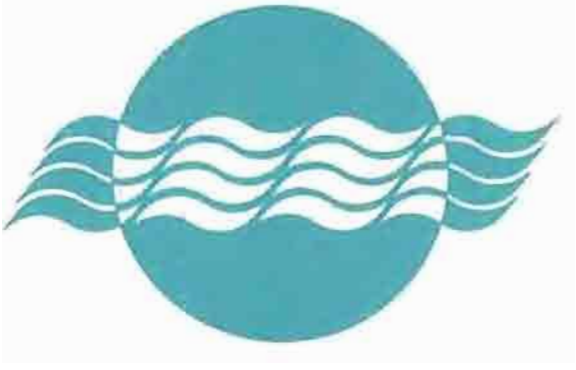
INTERNATIONAL OIL POLLUTION COMPENSATION FUND

ANNUAL REPORT 1994

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND IN THE CALENDAR YEAR 1994



Photograph on front cover:

Toyotaka Maru incident - Japan

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FOREWORD

The Director of the International Oil Pollution Compensation Fund (IOPC Fund) herewith presents the Report of the activities of the Organisation during 1994, its sixteenth year of operation. The purpose of the Report is to give general information on the most important aspects of these activities to those who in some way are involved in or concerned with the maritime transport of oil, ie governments and various public bodies, shipping interests, the oil industry and persons interested in environmental matters.

The IOPC Fund has been pleased to note a significant increase in the number of Member States during 1994. As at 31 December 1994, 64 States were Members of the IOPC Fund. It is expected that a number of States will join the Organisation in the near future.

The IOPC Fund has been involved during 1994 in handling claims for compensation arising out of a number of major oil pollution incidents and has paid significant amounts in compensation to victims. The IOPC Fund has carried out an examination of the general criteria for the admissibility of claims and has also taken important decisions of principle in respect of the admissibility of claims for compensation, thereby contributing to the development of international law in this field.

During 1994 there has also been considerable progress towards the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention, which provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. It is expected that the requirements for entry into force of these Protocols will be fulfilled during the first half of 1995, and consequently that they will enter into force during the first half of 1996, ensuring the viability in the future of the system of compensation established by these Conventions.

The IOPC Fund hopes that the information contained in this Report will be of interest to the international community and will contribute to a better understanding of the complex issues relating to liability and compensation for oil pollution damage.

Måns Jacobsson
Director

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PREFACE

After the opening of its session in October 1994, I informed the IOPC Fund Assembly that I would not be available for re-election as Chairman at the next session in 1995. As this is therefore my last year as Chairman, I am pleased to have this opportunity to comment briefly on the IOPC Fund's activities in 1994.

When I was elected Chairman at the Assembly's first session in 1978, nobody knew how the IOPC Fund would develop. As can be seen from this Annual Report, the Fund now plays a very important role in the field of liability and compensation for oil pollution damage, not only in terms of the amounts paid to victims, but also in the development of international law. This was underlined by the interest shown by governments and industry alike in the IOPC Fund's examination during 1994 of the criteria for the admissibility of claims for compensation.

The respect which the IOPC Fund has gained over the years is due largely to the efficiency and dedication of the Secretariat, led in the first six years by Reinhard Ganten and in the last ten by Måns Jacobsson. I would like to add my appreciation for the co-operation and support the staff have given to me over the years.

The 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention are central to the future of the IOPC Fund. The Organisation will therefore be making preparations during 1995 for the entry into force of the Protocols, which is expected to take place in 1996.

It has been both an honour and a pleasure to have served the international community as Chairman of the Assembly of this Organisation. I am privileged to have been associated with the IOPC Fund in this capacity for sixteen years.

Jørgen Brosbøl
Chairman of the Assembly

1 INTRODUCTION

The International Oil Pollution Compensation Fund (IOPC Fund) was set up in October 1978. It is a worldwide intergovernmental organisation which provides compensation for oil pollution damage resulting from spills of persistent oil from laden tankers. The IOPC Fund operates within the framework of two international Conventions: the 1969 International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention).

The Civil Liability Convention deals with the liability of shipowners for oil pollution damage. This Convention lays down the principle of strict liability for the shipowner and requires him to take out liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The Fund Convention, which is supplementary to the Civil Liability Convention, creates a system of additional compensation. The Fund Convention set up the IOPC Fund to administer this system.

The IOPC Fund has a three-tier organisation. It is governed by an Assembly composed of representatives of the Governments of all Member States. The Assembly elects an Executive Committee of 15 Member States. The main function of the Committee is to approve settlements of claims for compensation to the exient that the Director of the IOPC Fund is not authorised to make such settlements. The Director heads a Secretariat whose headquarters is in London.

The main function of the IOPC Fund is to provide supplementary compensation to victims of oil pollution damage in Fund Member States who cannot obtain full compensation for the damage under the Civil Liability Convention, if the total amount of the proven damage exceeds the limit of the shipowner's liability The compensation payable by the IOPC Fund for any one incident is limited to 900 million (gold) francs, which is equivalent to 60 million Special Drawing Rights (about £56 million or US$87 million), including the sum actually paid by the shipowner or his insurer under the Civil Liability Convention.

2 MEMBERSHIP OF THE IOPC FUND AND EXTERNAL RELATIONS

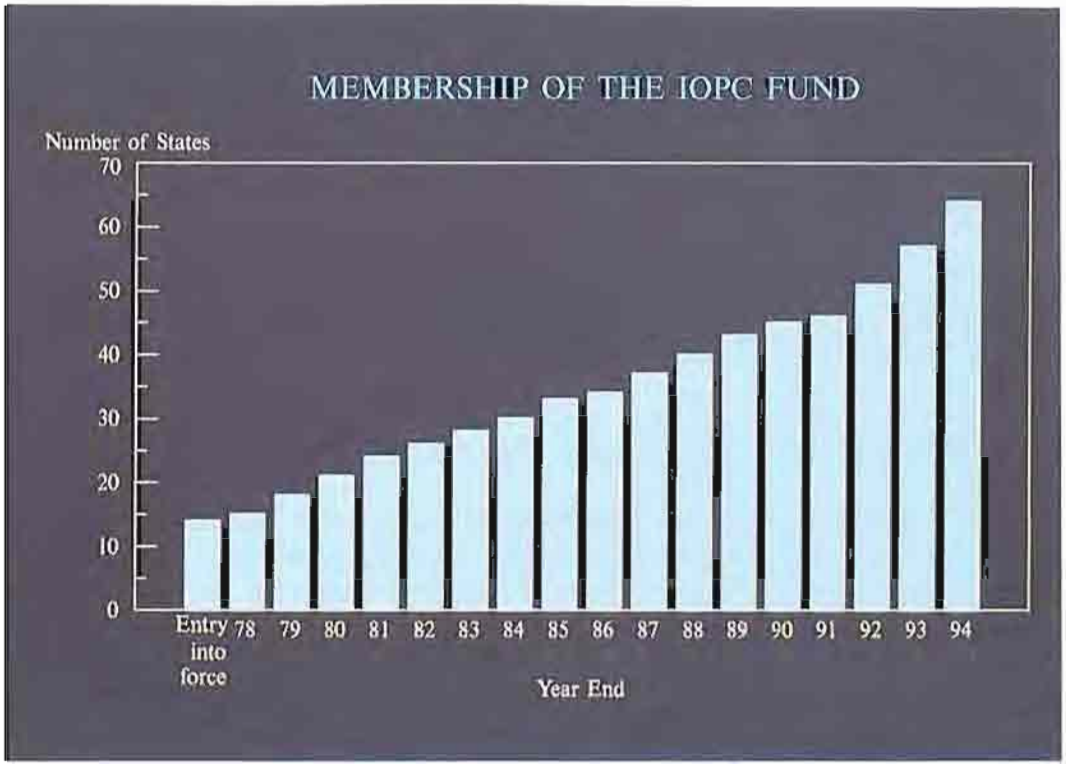
2.1 IOPC Fund Member States

At the time of the entry into force of the Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the IOPC Fund. Since then, the number of Member States has grown steadily. At the end of 1993, there were 57 Member States.

Seven States acceded to the Fund Convention during 1994. The Fund Convention entered into force for Albania on 5 July, for Barbados on 4 August, for Mexico on 11 August and for Saint Kitts and Nevis on 13 December. In addition, the Convention will enter into force for Australia on 8 January 1995, for the Marshall Islands on 28 February 1995 and for Belgium on 1 March 1995, bringing the number of Member States to 64, as set out below:

Albania	Ghana	Papua New Guinea
Algeria	Greece	Poland
Australia	Iceland	Portugal
Bahamas	India	Qatar
Barbados	Indonesia	Republic of Korea
Belgium	Ireland	Russian Federation
Benin	Italy	Saint Kitts and Nevis
Brunei Darussalam	Japan	Seychelles
Cameroon	Kenya	Sierra Leone
Canada	Kuwait	Slovenia
Côte d'Ivoire	Liberia	Spain
Croatia	Maldives	Sri Lanka
Cyprus	Malta	Sweden
Denmark	Marshall Islands	Syrian Arab Republic
Djibouti	Mexico	Tunisia
Estonia	Monaco	Tuvalu
Fiji	Morocco	United Arab Emirates
Finland	Netherlands	United Kingdom
France	Nigeria	Vanuatu
Gabon	Norway	Venezuela
Gambia	Oman	Yugoslavia
Germany		

A major reason for the smooth functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention is the strong support that Governments of Member States have given the IOPC Fund and its Secretariat over the years. In order to establish and maintain personal contacts between the IOPC Fund Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. During 1994 the Director visited five Member States for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.



2.2 Relations with non-Member States

Several States are expected to join the IOPC Fund in the near future. Legislation implementing the Fund Convention is in an advanced stage in Chile, Colombia, Ecuador, the Islamic Republic of Iran, Malaysia, Mauritius, Mozambique, New Zealand, Saudi Arabia, Singapore and Switzerland. Many other States are considering accession to the Fund Convention.

The Assembly of the IOPC Fund has, over the years, granted observer status to a number of non-Member States. At the end of 1994, the following States had observer status with the Organisation:

Argentina
Australia
Belgium
Brazil
Chile
China
Colombia
Democratic People's Republic of Korea
Ecuador
Egypt
Islamic Republic of Iran
Jamaica
Latvia
Panama
Philippines
Saudi Arabia
Switzerland
United States

The IOPC Fund Secretariat has continued its efforts to increase the number of Member States. In order to promote membership, the Director went to Australia, Bahrain, Belgium, Israel, Malaysia, Singapore and Uruguay for discussions on the Conventions and the operation of the IOPC Fund with government officials and interested circles. The Director took part in a meeting of the organisation for co-operation between the maritime authorities in South America, Mexico, Panama and Cuba (ROCRAM), held in Montevideo (Uruguay). The Director and other Officers have participated in seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operation of the IOPC Fund.

The IOPC Fund Secretariat has, on request, assisted several non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

2.3 Relations with international organisations and interested circles

As in previous years, the IOPC Fund has benefited from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

The following intergovernmental organisations have observer status with the IOPC Fund:

United Nations
International Maritime Organization (IMO)
United Nations Environment Programme (UNEP)
Baltic Marine Environment Protection Commission (Helsinki Commission)
European Community
International Institute for the Unification of Private Law (UNIDROIT)
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

The IOPC Fund has particularly close links with the International Maritime Organization (IMO) and it has observer status with that Organisation. During 1994, the Secretariat represented the IOPC Fund at meetings of the IMO Council and of various IMO Committees.

The IOPC Fund was represented in November 1994 at the first Assembly of the International Seabed Authority, held on the entry into force of the United Nations Convention on the Law of the Sea, 1982.

The following international non-governmental organisations have observer status with the IOPC Fund:

Advisory Committee on Pollution of the Sea (ACOPS)
Baltic and International Maritime Council (BIMCO)
Comité Maritime International (CMI)
Cristal Limited
Friends of the Earth International (FOEI)
International Association of Independent Tanker Owners (INTERTANKO)

International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

In the majority of incidents involving the IOPC Fund, clean-up operations are monitored and claims are assessed in close co-operation between the Fund and the P & I Club concerned. The technical assistance required by the IOPC Fund with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The IOPC Fund also co-operates closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited. The co-operation between the IOPC Fund and Cristal is very important, in view of the link which exists between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL).

Braer - aground

3 ASSEMBLY AND EXECUTIVE COMMITTEE

3.1 Assembly

17th session

The Assembly, which is composed of representatives of all Member States, held its 17th session from 17 to 21 October 1994.

Mr Jørgen Bredholt (Denmark) was re-elected Chairman of the Assembly. Mr Bredholt announced that he would not be available for re-election as Chairman at the next session of the Assembly. The Assembly expressed its profound gratitude to Mr Bredholt for the extraordinary professionalism, efficiency and good-humoured nature which he had demonstrated during his chairmanship of the Assembly, since his election at its 1st session in November 1978.

The Assembly took the following major decisions at this session.

- The following States were elected members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Algeria	Mexico
Cameroon	Norway
France	Republic of Korea
Greece	Sri Lanka
India	Sweden
Italy	United Arab Emirates
Japan	United Kingdom
Liberia	

- Mr Måns Jacobsson (Sweden) was appointed to serve as Director of the IOPC Fund for a third term of office of five years from 1 January 1995.

- The Assembly noted the External Auditor's Report and his Opinion on the Financial Statements of the IOPC Fund and approved the accounts for the financial period 1 January to 31 December 1993 (cf Section 4.2).

- The Comptroller and Auditor General of the United Kingdom was reappointed as the IOPC Fund's External Auditor for a term of four years from 1 January 1995.

- The budget appropriations for 1995 were adopted, with an administrative expenditure totalling £1 212 880.

- The Assembly decided to increase the working capital of the IOPC Fund from £11 million to £15 million.

- The Assembly decided to levy 1994 annual contributions, to be paid by 1 February 1995, for a total amount of £40 million (cf Section 5.3)

- An Investment Advisory Body was established to advise the Director in general terms on investment matters (cf Section 4.3).

- The Assembly endorsed the report of the 7th Intersessional Working Group which had been set up by the Assembly at its 1993 session to study the criteria for the admissibility of claims for compensation (cf Section 6).

- The Director was instructed to make all possible efforts to encourage States to become Parties to the 1992 Protocol to the Fund Convention. The Assembly gave the Director instructions concerning the preparations necessary for the entry into force of that Protocol, in particular as regards the administration of the Organisation (the "1992 Fund") which would be established under the Protocol (cf Section 7).

- Requests for observer status with the IOPC Fund from the Islamic Republic of Iran and the Republic of Latvia were granted.

- The Assembly decided to include the Amendments adopted in December 1992 by the Marine Safety Committee of IMO to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 1 May 1995.

- The Assembly noted with satisfaction that the 1976 Protocol to the Fund Convention would enter into force on 22 November 1994. Under this Protocol, references in the 1971 Fund Convention to the "franc" as the unit of account are replaced by references to the unit of account referred to in the 1969 Civil Liability Convention as amended by the 1976 Protocol thereto, ie the Special Drawing Right (SDR) as defined by the International Monetary Fund.

Assembly with Mr J Bredholt (Denmark) as Chairman

3.2 Executive Committee

The Executive Committee held four sessions during 1994, all under the chairmanship of Mr Charles Coppolani (France). The 38th session was held from 9 to 11 February, the 39th session on 5 and 6 May, the 40th session on 17 and 18 October and the 41st session on 21 October 1994.

The main decisions taken by the Executive Committee at the four sessions held in 1994 are reflected in Section 8.2 in the context of the particular incidents.

38th session

The discussions at the 38th session of the Executive Committee were concentrated on certain questions relating to the *Patmos* incident (Italy, 1985), the *Rio Orinoco* incident (Canada, 1990), the *Aegean Sea* incident (Spain, 1992), the *Braer* incident (Shetland, United Kingdom, 1993) and the *Keumdong N°5* incident (Republic of Korea, 1993). The Executive Committee took a number of important decisions of principle, notably concerning the admissibility of claims relating to pure economic loss.

39th session

At its 39th session, the Executive Committee continued its consideration of the claims for compensation arising out of the *Aegean Sea, Braer* and *Keumdong N°5* incidents. The main issues under discussion related to claims for pure economic loss.

40th session

The Executive Committee considered at its 40th session the question of whether the majority of claims arising out of the *Haven* incident (Italy, 1991) were time-barred. In addition, the Committee examined a number of claims resulting from the *Aegean Sea* and *Braer* incidents. It discussed developments in respect of the *Rio Orinoco, Agip Abruzzo* and *Keumdong N°5* incidents. The Committee was also informed of the situation in respect of claims arising out of other incidents involving the IOPC Fund and took note of the settlements made by the Director.

41st session

At its 41st session, the Executive Committee re-elected Mr Charles Coppolani (France) as its Chairman. The Committee considered certain claims arising out of the *Aegean Sea* incident and noted information concerning the *Toyotaka Maru* incident, which had occurred in Japan during the week of that session.

4 ADMINISTRATION OF THE IOPC FUND

4.1 Secretariat

The Secretariat administers the IOPC Fund and, in particular, deals with claims for compensation.

At the end of 1994, the Secretariat of the IOPC Fund was composed of twelve staff members, the Director, the Legal Officer, the Finance/Personnel Officer, the Claims Officer, the Administrative Officer, the Director's Secretary, four Secretaries, a Clerk/Messenger and a Telephonist/Secretary.

In view of the small size of the IOPC Fund Secretariat, the Fund uses consultants to give legal or technical advice or to carry out studies. In two cases (the *Aegean Sea* and *Braer* incidents), the IOPC Fund and the P & I insurer involved jointly set up local claims offices. These offices permitted a more efficient handling of the large numbers of claims submitted.

4.2 Accounts

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1993 were approved by the Assembly in October 1994. Statements containing a summary of the information given in the IOPC Fund's audited financial statements for this period are given in Annexes II–IX to this Report.

As in previous years, the accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's report and his opinion on the financial statements for 1993 are reproduced in full as Annexes X and XI. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund. Separate Major Claims Funds are established for incidents for which the total amount payable by the IOPC Fund exceeds one million Special Drawing Rights (SDR), at present approximately £912 000.

The General Fund (Annex III) had a total income of £1 133 536 in 1993. A major part of this income (£599 078) was derived from interest on the investment of the IOPC Fund's assets (cf Section 4.3). Initial contributions in respect of contributors in three Member States totalled £327 300. No annual contributions were due in 1993, since the Assembly had decided not to levy any 1992 contributions to the General Fund. The administrative expenditure in 1993 was £807 554, and expenditure on minor claims totalled £3 323 763. A deficit of £3 003 579 was recorded for the financial year 1993.

There were no transactions of significance during 1993 in respect of the *Brady Maria/Thuntank 5* Major Claims Fund, the *Kasuga Maru N°1* Major Claims Fund or the *Rio Orinoco* Major Claims Fund (Annexes IV, V and VI). The balances on these Major Claims Funds as at 31 December 1993 were £205 865, £349 557 and £1 268 753, respectively.

As regards the *Haven* Major Claims Fund (Annex VII), contributions were received in 1993 for a total amount of £10 478 252. There was a yield of £1 897 121 on the investment of its assets. Payments of fees and expenses totalled £765 254. The balance on this Major Claims Fund was £27 071 670 as at 31 December 1993.

The total contributions in 1993 to the *Volgoneft 263* Major Claims Fund (Annex VIII) amounted to £938 637. An amount of £3 126 was realised from the investment of the assets of this Major Claims Fund. As at 31 December 1993 the balance on this Major Claims Fund was £60 115.

The balance sheet of the IOPC Fund as at 31 December 1993 is reproduced in Annex IX. The net assets amounted to £5 740 157. Details of the IOPC Fund's contingent liabilities are given in a schedule to the financial statements. As at 31 December 1993 there were contingent liabilities estimated at £200 686 171 in respect of claims for compensation arising out of 13 incidents.

As regards the *Haven* incident (Italy, April 1991), claims had been submitted totalling approximately £480 million as at 31 December 1993. The estimated contingent liabilities for this incident are £36 982 800, based on the assumption that the maximum amount payable by the IOPC Fund under Article 4.4 of the Fund Convention, viz 900 million (gold) francs (including any amount paid by the shipowner under the Civil Liability Convention), should be converted into national currency on the basis of 15 (gold) francs equalling one Special Drawing Right (SDR). In March 1992 a judge of the Court of first instance in Genoa in charge of the limitation proceedings decided that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold, which gives an amount of Lit 771 397 947 400 (£304 million), instead of Lit 102 864 000 000 (£41 million) as maintained by the IOPC Fund, calculated on the basis of the SDR. The Fund lodged opposition against this decision, but the decision was upheld by the Court of first instance. The IOPC Fund appealed against the decision rendered by the Court of first instance. The Court of Appeal is expected to render its judgement during 1995. This issue is dealt with in more detail in Section 8.2.

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1994 will be submitted in the spring of 1995 to the External Auditor for an audit opinion, and will be presented to the Assembly for approval at its session in October 1995. These accounts will then be reproduced in the Report on the Activities of the IOPC Fund in the calendar year 1995.

4.3 Investment of funds

In accordance with the IOPC Fund's Internal Regulations, the Director invests funds which are not required for the short-term operation of the IOPC Fund. In making any investments, all necessary steps are taken, in accordance with the Internal Regulations, to ensure the maintenance of sufficient liquid funds for the operation of the Fund, to avoid undue currency risks and generally to obtain a reasonable return on the investments of the Organisation. The investments are made mainly in pounds sterling. The assets are placed on term deposit. In accordance with the Financial Regulations, investments may be made with banks, discount houses and building societies which fulfil certain requirements as to their financial standing.

During 1994 investments were made with a number of banks, discount houses and building societies in the United Kingdom. As at 31 December 1994, the IOPC Fund's portfolio of investments totalled £64 126 000. This amount was made up of the assets of the IOPC Fund, the Staff Provident Fund and a credit balance of £139 000 on the contributors' account

As a result of the general reduction in interest rates during 1992 and 1993, the return on the IOPC Fund's investments has fallen in the last few years. Apart from deposits placed for up to seven days fixed, interest rates on the IOPC Fund's investments in 1994 varied throughout the year from 5% to $7^{25}/_{32}$% per annum, with an average of 5.5%. Interest due in 1994 on the investments amounted to £3 184 000 on an average capital of £68 million.

In October 1994, the Assembly decided to set up an Investment Advisory Body, composed of external experts with special knowledge in investment matters, to advise the Director in general terms on investment matters. The Assembly appointed three members to this Body for a term of one year. It was decided that the experts would be eligible for reappointment for consecutive terms. The Assembly agreed with the Director that the Body had an advisory role and that it would remain the sole responsibility of the Director to take the necessary decisions on individual investments. It was stressed that the IOPC Fund was not an investment bank and that the Organisation should maintain its prudent and cautious investment policy.

The Assembly also decided in October 1994 to increase the maximum amount which the IOPC Fund may normally hold in any one institution from £4 million to £8 million.

Seki - shoreline clean-up operations

5 CONTRIBUTIONS

5.1 The contribution system

Basis for levy of contributions

The IOPC Fund is financed by contributions paid by any person who has received in the relevant calendar year more than 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in an IOPC Fund Member State after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors which are submitted to the Secretariat by Governments of Member States. The contributions are paid by the individual contributors directly to the IOPC Fund. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

At its session in October 1994, the Assembly noted the concerns expressed by the Director and the External Auditor relating to the continued failure of some Member States to submit their reports on contributing oil receipts. The Assembly agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly drew the attention of Member States to Resolution N°7, adopted in 1988, in which Member States were urged to take the necessary steps to ensure that the reports on contributing oil received in their territories were submitted on time and in the manner prescribed in the IOPC Fund's Internal Regulations.

Initial and annual contributions

There are initial and annual contributions.

Initial contributions are payable when a State becomes a Member of the IOPC Fund. Contributors pay a fixed amount per tonne of contributing oil received during the year preceding that in which the Fund Convention entered into force for the State in question. This amount was fixed by the Assembly at 0.04718 (gold) francs per tonne (0.003145 SDR), which at 29 December 1994 corresponded to £0.0029468.

Annual contributions are levied to meet the anticipated payments of compensation and indemnification by the IOPC Fund and the administrative expenses of the Fund during the following year.

5.2 1993 annual contributions

In October 1993, the Assembly had decided to levy 1993 annual contributions to the General Fund and four Major Claims Funds totalling £78 million, as indicated opposite.

Fund	Date of Incident	Oil Receipts: Applicable Year	Total Levy £	Levy £ per Tonne
General Fund	–	1992	8 million	0.0075811
Aegean Sea Major Claims Fund	03.12.92	1991	20 million	0.0212284
Braer Major Claims Fund	05.01.93	1992	35 million	0.0357631
Taiko Maru Major Claims Fund	31.05.93	1992	10 million	0.0093114
Keumdong N°5 Major Claims Fund	27.09.93	1992	5 million	0.0046557

As at 31 December 1994, 99.56% of the 1993 annual contributions, which were due on 1 February 1994, had been paid.

5.3 1994 annual contributions

In October 1994, the Assembly decided to levy 1994 annual contributions to the General Fund and three Major Claims Funds totalling £40 million, payable by 1 February 1995.

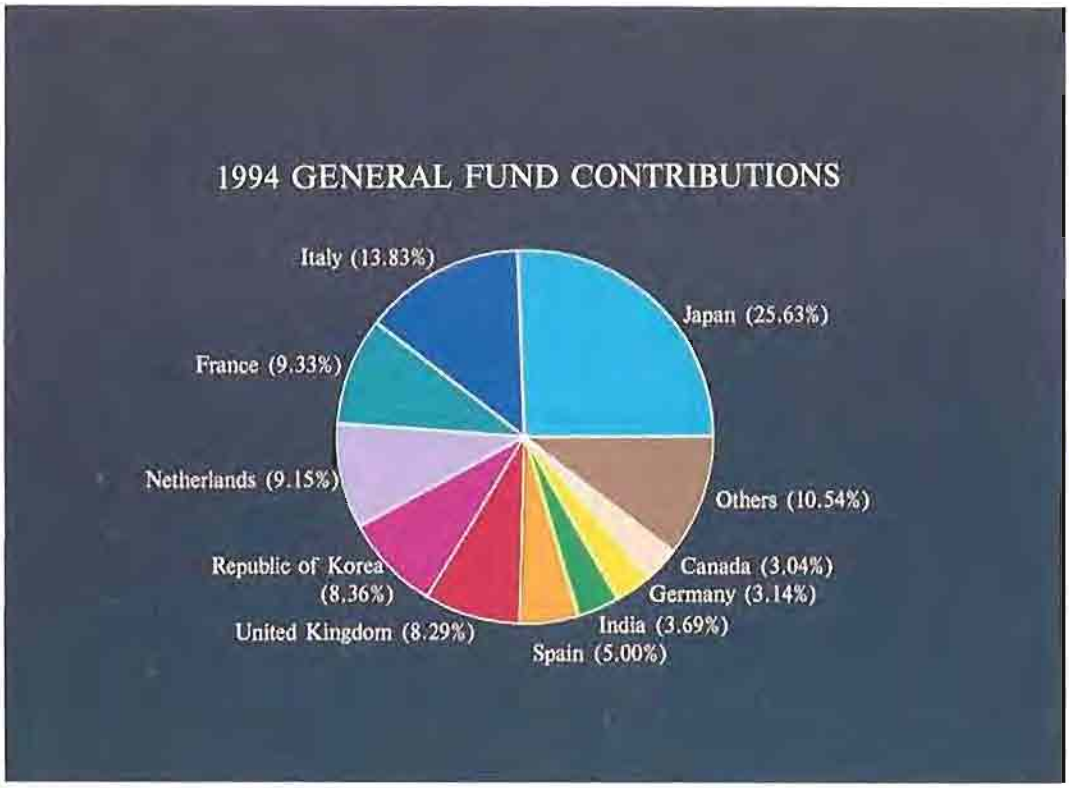
The 1994 annual contributions levied and the amounts payable per tonne of contributing oil are given in the following table.

Fund	Date of Incident	Oil Receipts: Applicable Year	Total Levy £	Levy £ per Tonne
General Fund	–	1993	6 million	0.0055015
Aegean Sea Major Claims Fund	03.12.92	1991	15 million	0.0159144
Keumdong N°5 Major Claims Fund	27.09.93	1992	10 million	0.0093375
Toyotaka Maru Major Claims Fund	17.10.94	1993	9 million	0.0081866

Of the 1994 annual contributions, £283 826 had been received as at 31 December 1994.

The 1994 General Fund levy is based on the quantities of contributing oil received in Member States in 1993 (Annex XII). The shares of the 1994 annual contributions to the General Fund in respect of Member States are illustrated by the chart shown overleaf.

The Assembly decided that the amount remaining on the *Volgoneft 263* Major Claims Fund (£63 000) could not be considered substantial and that the surplus should therefore be transferred to the General Fund on 31 December 1994, pursuant to the Internal Regulations.



5.4 Annual contributions over the years

The payments made by the IOPC Fund in respect of claims for compensation for oil pollution damage vary considerably from year to year. As a result, the level of annual contributions to the Fund varies from one year to another, as illustrated in the table opposite.

As for contributions levied in respect of previous years, £824 324 was outstanding as at 31 December 1994. Of the arrears, 65% was owed by contributors in the former Union of Soviet Socialist Republics and the former Yugoslavia.

In October 1994, the Assembly expressed its satisfaction with the situation regarding the payment of contributions.

5.5 Contributing oil: notion of "received"

As mentioned above, contributions are levied on persons who have *received* contributing oil in ports or terminal installations in an IOPC Fund Member State after sea transport. Since 1991 two storage companies in the Netherlands had argued that the interpretation of the notion of "received" in the Fund Convention applied by the IOPC Fund was incorrect. These companies maintained that they could not be considered as receivers of contributing oil, since they were only storage companies receiving oil on behalf of other companies.

Year	General Fund	Major Claims Funds	Total Levy
	£	£	£
1979	750 000	0	750 000
1980	800 000	9 200 000	10 000 000
1981	500 000	0	500 000
1982	600 000	260 000	860 000
1983	1 000 000	23 106 000	24 106 000
1984	0	0	0
1985	1 500 000	0	1 500 000
1986	1 800 000	0	1 800 000
1987	800 000	400 000	1 200 000
1988	2 900 000	90 000	2 990 000
1989	1 600 000	3 200 000	4 800 000
1990	500 000	0	500 000
1991	5 000 000	21 700 000	26 700 000
1992	0	10 950 000	10 950 000
1993	8 000 000	70 000 000	78 000 000
1994	6 000 000	34 000 000	40 000 000

The interpretation of the notion of "received" was discussed by the Assembly in October 1992. The Assembly confirmed the position taken in 1980 that Member States should have a certain flexibility to adopt a practical reporting system, allowing effective and easy checking of figures and taking into account the particularities of oil movements and the local circumstances of a particular country. It was emphasised by the Assembly that, failing payment by persons reported other than the physical receivers, the latter should ultimately be liable for contributions irrespective of whether the persons reported had their place of business or residence in a Member State. The Assembly also maintained that the storage companies in the Netherlands were liable to pay contributions for any oil actually received by them.

One of the storage companies appealed to the Administrative Court of Appeal in the Netherlands against the decision of the Dutch Ministry of Economic Affairs to include the company in its report to the IOPC Fund as having received contributing oil. The company requested that the Court should state that the company was not liable to pay contributions to the IOPC Fund and that the Court should therefore annul the notification made by the Government of the Netherlands which stated that the company had received contributing oil during 1991 and which indicated the quantity received.

This appeal was referred by the Court to the Ministry of Economic Affairs for a formal decision. In September 1992, the Minister rejected the appeal. The company lodged an appeal against this decision to the Administrative Court of Appeal of the Netherlands, but this appeal was rejected in February 1994. The storage company has no further right of appeal against the Court's decision.

6 CRITERIA FOR THE ADMISSIBILITY OF CLAIMS

6.1 Establishment of the Working Group

In October 1993 the Assembly established an Intersessional Working Group with the following mandate:

- to examine the general criteria for the admissibility of claims for compensation for "pollution damage" and "preventive measures" within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto;
- to study in particular problems relating to claims in respect of so-called "pure economic loss" and "preventive measures" taken to prevent or minimise pure economic loss;
- to consider problems relating to the admissibility of claims for environmental damage within the scope of the definition of "pollution damage" referred to above;
- to study the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

6.2 Conclusions of the Working Group

The 7th Intersessional Working Group held one meeting from 7 to 9 February 1994 and another on 3 and 4 May 1994. The Working Group elected Mr Charles Coppolani (France) as its Chairman. The Group based its work on extensive documentation prepared by Member States, the Director and international non-governmental organisations which have observer status with the IOPC Fund.

The Working Group considered that it was important to draw precise conclusions for each main issue, to provide the Executive Committee with a framework for its consideration of individual claims. The main points of the Working Group's conclusions are shown below.

Property damage and clean-up operations on shore and at sea

The Working Group agreed with the criteria applied by the IOPC Fund so far for the admissibility of claims relating to property damage and clean-up operations on shore and at sea

Measures to prevent physical damage

As regards measures to prevent physical damage, the Working Group stated that the requirement of reasonableness laid down in Article 1.7 of the Civil Liability Convention should be assessed on the basis of objective criteria.

- The assessment of technical reasonableness should be made on the basis of the facts available at the time of the decision to take the measures, in the light of the technical advice given or offered at that time. The person in charge should reassess his decision in the light of developments and further technical advice.

- The costs incurred, and the relationship between these costs and the benefits derived or reasonably expected, should be reasonable. In the assessment, due account should be taken of the particular situation of the case.

Fixed costs

The Working Group took the view that the present policy of the IOPC Fund on "fixed costs" should be maintained, namely that a reasonable proportion of fixed costs should be admissible, provided that they corresponded closely to the clean-up period in question and did not include remote overhead charges.

Consequential loss and pure economic loss

The Working Group endorsed the IOPC Fund's policy to accept in principle claims relating to loss of earnings suffered by the owners or users of property contaminated as a result of a spill (consequential loss).

As for "pure economic loss" (loss of earnings sustained by persons whose property has not been polluted), the Working Group took the view that the point of departure must be the concept of "loss or damage caused by contamination", ie that the starting point should be the pollution rather than the incident itself. The Working Group agreed that in principle claims for pure economic loss would be acceptable only if they fulfilled certain criteria. In particular, a claim would not be admissible on the sole criterion that the loss or damage would not have occurred but for the oil spill in question.

The Working Group considered that to qualify for compensation the basic criterion should be that there was a reasonable degree of proximity between the contamination and the loss or damage sustained by the claimant. The Working Group took the view that, when considering whether the criterion of reasonable proximity was fulfilled, the following elements should be taken into account:

- the geographic proximity between the claimant's activity and the contamination;
- the degree to which a claimant was economically dependent on an affected resource;
- the extent to which a claimant had alternative sources of supply;
- the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.

The Working Group considered that account should also be taken of the extent to which a claimant could mitigate his loss.

Establishing the amount of the losses sustained

The Working Group endorsed the policy followed by the IOPC Fund that the claimant had to substantiate his loss with appropriate documents, but that, in view of the economic and social situation in many countries, this requirement had to be adapted to what could reasonably be expected of a claimant in the country concerned.

Measures to prevent pure economic loss

Recognising that this constituted an innovation, the Working Group endorsed the position taken by the Executive Committee that claims relating to costs of measures to prevent pure economic loss could be admissible on certain conditions. The Working Group agreed with the criteria for the admissibility of such claims established by the Executive Committee, namely that they fulfilled the following requirements:

- the costs of the proposed measures were reasonable;
- the cost of measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- the measures were appropriate and offered a reasonable prospect of being successful; and
- in the case of a marketing campaign, the measures related to actual targeted markets.

The Working Group emphasised that to be admissible, the costs should relate to measures undertaken to prevent or minimise losses which, if sustained, would qualify for compensation under the Civil Liability Convention and the Fund Convention. In addition, the Working Group took the view that the costs of marketing campaigns or similar activities should be accepted only if the activities undertaken were in addition to measures normally carried out for this purpose, ie that compensation should be granted only for the additional costs resulting from the need to counteract the negative effects of the pollution.

The criterion of "reasonableness" should be assessed, in the Working Group's view, in the light of the particular circumstances of the case and taking into account the interests involved. The assessment should be made on the basis of the facts known at the time that the measures were taken. The Working Group recognised the difficulty of assessing the effects of abstract preventive measures. As for marketing campaigns, the point was made that it was necessary to reject measures of too general a nature.

The Working Group considered that the IOPC Fund should normally not consider claims for preventive measures of this type until they had been carried out. It was agreed that a cautious approach should be taken in respect of advance payments and that the Fund should not take on the role of the claimant's banker.

The Working Group expressed the view that when considering whether the IOPC Fund should pay the cost of marketing activities planned by an organisation, it was appropriate to take into account the attitude taken by the organisation in its contacts with the media after the incident and, in particular, whether that attitude had increased the negative effects of the pollution.

Environmental damage

The Working Group based its consideration of the admissibility of claims relating to environmental damage on the definitions of pollution damage laid down in the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Protocols thereto. It also took note of Resolution N°3 adopted by the Assembly and the conclusions of the 5th Intersessional Working Group, which had been endorsed by the Assembly. In Resolution N°3 it was stated that "the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models". The Working Group took the view that the IOPC Fund should maintain its position that claims relating to the impairment of the environment should be accepted only if the claimant had sustained a quantifiable economic loss, and that the loss must be such that it could be quantified in monetary terms.

The Working Group considered in particular the question of whether the IOPC Fund should pay compensation for the cost of measures to reinstate the marine environment. The Group took the view that this matter would have to be decided on the basis of the definition of "pollution damage" laid down in the 1992 Protocol to the Civil Liability Convention. The Working Group agreed that to be admissible for compensation, measures for reinstatement of the environment should fulfil the following criteria:

- the cost of the measures should be reasonable;
- the cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected; and
- the measures should be appropriate and offer a reasonable prospect of success.

The Working Group stated that the test of reasonableness laid down in Article 1.6 of the 1992 Protocol to the Civil Liability Convention should be an objective one, ie that the measures should be reasonable from an objective point of view in the light of the information available when the specific measures were taken. The Working Group noted that compensation should be paid only in respect of measures actually undertaken or to be undertaken.

The Working Group considered that it would normally be necessary to carry out an in-depth study before any measures of reinstatement were undertaken, and that the cost of such studies would qualify for compensation only if they fulfilled the requirements generally applied by the IOPC Fund in this regard.

Contamination of fish and shellfish, and issues relating to sampling

The Working Group agreed with the Executive Committee's position on the admissibility of claims for compensation based on the destruction of farmed fish and shellfish as a result of orders issued by public authorities in the form of fishing bans or exclusion zones. In the Working Group's view, the fact that a public authority had imposed a fishing ban or exclusion zone should not be considered as conclusive. Such claims should in the Working Group's view be admissible if and to the extent that the destruction of the produce was reasonable on the basis of the scientific and other evidence available.

The Working Group also agreed with the Executive Committee that the following aspects should be taken into account when assessing whether the destruction of the produce was reasonable:

- whether the produce was contaminated;
- the likelihood that the contamination would disappear before the normal harvesting time;
- whether the retention of the produce in the water would prevent further production;
- the likelihood that the produce would be marketable at the time of normal harvesting.

Since the decision of whether destruction was reasonable should be taken on the basis of scientific and other evidence, the Working Group considered it important that sampling and testing were carried out, in particular testing for taint.

The Working Group generally agreed that the procedure for testing set out by the Director in documentation submitted to the Group was reasonable. It emphasised that both samples from an area affected by the spill ("suspect" samples) and control samples from a nearby commercial outlet outside the polluted area should be tasted at the same time. In addition, the Working Group took the view that taste testing should be carried out in such a way that panellists were unable to identify the sample being tasted, ie whether it was a suspect or control sample ("blind" testing).

The Working Group recognised that an additional very important factor, when examining whether destruction of the produce was reasonable, would be whether and, if so, to what extent the produce would be marketable at the time of normal harvesting, even if it was established that the fish were no longer contaminated or tainted. The Working Group accepted that scientific data showing that produce was free of taint did not necessarily remove the consumer's perception that the produce was still affected.

Funding of studies

The Working Group agreed in general to maintain the policy applied by the IOPC Fund in respect of the funding of studies. This policy was based on the conclusions of the 5th Intersessional Working Group, which had been generally endorsed by the Assembly. Under the policy, expenses for research studies should be compensated only if these studies were carried out as a direct consequence of a particular oil spill and as a part of the oil spill response. It was noted that the IOPC Fund had refused to pay for studies of a general or purely scientific character.

As regards environmental studies, the Working Group accepted that post-spill studies would sometimes be necessary and useful to establish the precise nature and extent of the pollution damage caused by an oil spill and/or the need for reinstatement measures. In this situation, the Working Group considered it appropriate for the IOPC Fund to contribute to the expenses of such studies, provided that they related to damage which fell within the definition of "pollution damage" laid down in the Civil Liability Convention and the Fund Convention as interpreted by the IOPC Fund, or related to reasonable measures to reinstate the environment.

The Working Group considered that, in such cases, the IOPC Fund should be given the possibility of becoming involved at an early stage in the selection of the experts who would carry out the studies, and in the determination of the mandate of these experts. It was also considered important that the studies should be practical and that they should be likely to deliver the required data. It was emphasised that the scale of the studies should not be out of proportion to the extent of the contamination and the predictable effects, that the extent of the studies should be reasonable from an objective point of view and that the costs incurred should also be reasonable.

6.3 Position taken by the Assembly

At its session in October 1994, the Assembly agreed with the conclusions of the Working Group. It was noted that it was not always possible to lay down firm rules for the admissibility of claims for compensation. The Assembly emphasised that each claim had its own particular characteristics and that it was necessary, therefore, to consider each claim on the basis of its own merits in the light of the particular circumstances of the case. The Assembly also took the view that it was essential that any criteria adopted by the IOPC Fund should allow a certain flexibility, enabling the Fund to take into account new situations and new types of claims. In the view of the Assembly, the pragmatic approach followed by the IOPC Fund so far should be maintained, so as to facilitate out-of-court settlements.

In the Assembly's view, a uniform interpretation of the definition of "pollution damage" was essential for the functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention. The Assembly considered it essential that, as far as possible, the IOPC Fund's decisions on the admissibility of claims should be consistent, and that this should be independent of the legal systems of the Member States where the damage was caused.

The Assembly agreed with the Working Group that the Fund was operating within the framework of the 1969 Civil Liability Convention and the 1971 Fund Convention, and could therefore only accept claims falling within the definitions of "pollution damage" and "preventive measures" laid down in these Conventions. The Assembly considered it essential to base the IOPC Fund's decisions on the interpretation of these terms as adopted by the Assembly or Executive Committee, and on the definition of "pollution damage" in the 1992 Protocol to the Civil Liability Convention, which had codified the IOPC Fund's interpretation of this concept. It was also considered that national courts should, when making decisions on the interpretation of the definitions of "pollution damage" and "preventive measures", take into account the fact that these definitions were laid down in international treaties.

The Assembly endorsed the report of the Working Group.

7 THE 1992 PROTOCOLS TO THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION

7.1 Background

In 1984 a Diplomatic Conference held in London under the auspices of IMO adopted two Protocols to amend the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. By 1990, however, it had become clear that the 1984 Protocols would not enter into force, since the required number of ratifications would not be obtained.

Another Diplomatic Conference held in London in November 1992 under the auspices of IMO adopted two new Protocols amending the Conventions, in order to ensure the viability in the future of the system of compensation established by these Conventions. The Conference based its activities on two draft Protocols elaborated within the IOPC Fund. The new Protocols retain the substantive provisions of the 1984 Protocols, but with lower entry into force provisions.

7.2 Main amendments

The main differences between the Civil Liability Convention and the Fund Convention in their original version and the Conventions as amended by the 1992 Protocols are the following.

- **Special liability limit for owners of small vessels and substantial increase of the limitation amounts.** The revised limits will be: (a) for a ship not exceeding 5 000 units of gross tonnage, 3 million Special Drawing Rights (SDRs) (£2.7 million); (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDRs (£2.7 million) plus 420 SDRs (£383) for each additional unit of tonnage; and (c) for a ship of 140 000 units of tonnage or over, 59.7 million SDRs (£54.5 million).

- **Increase in the limit of compensation payable by the IOPC Fund** to 135 million SDRs (£123 million), including the compensation payable by the shipowner under the 1992 Protocol to the Civil Liability Convention. This limitation figure will be increased automatically to 200 million SDRs (£182 million) when there are three Member States of the 1992 Fund (ie the Organisation which will be established under the 1992 Protocol to the Fund Convention) whose combined quantity of contributing oil received during a given year in their respective territories exceeds 600 million tonnes.

- A simplified procedure for **increasing the limitation amounts** in the two Conventions.

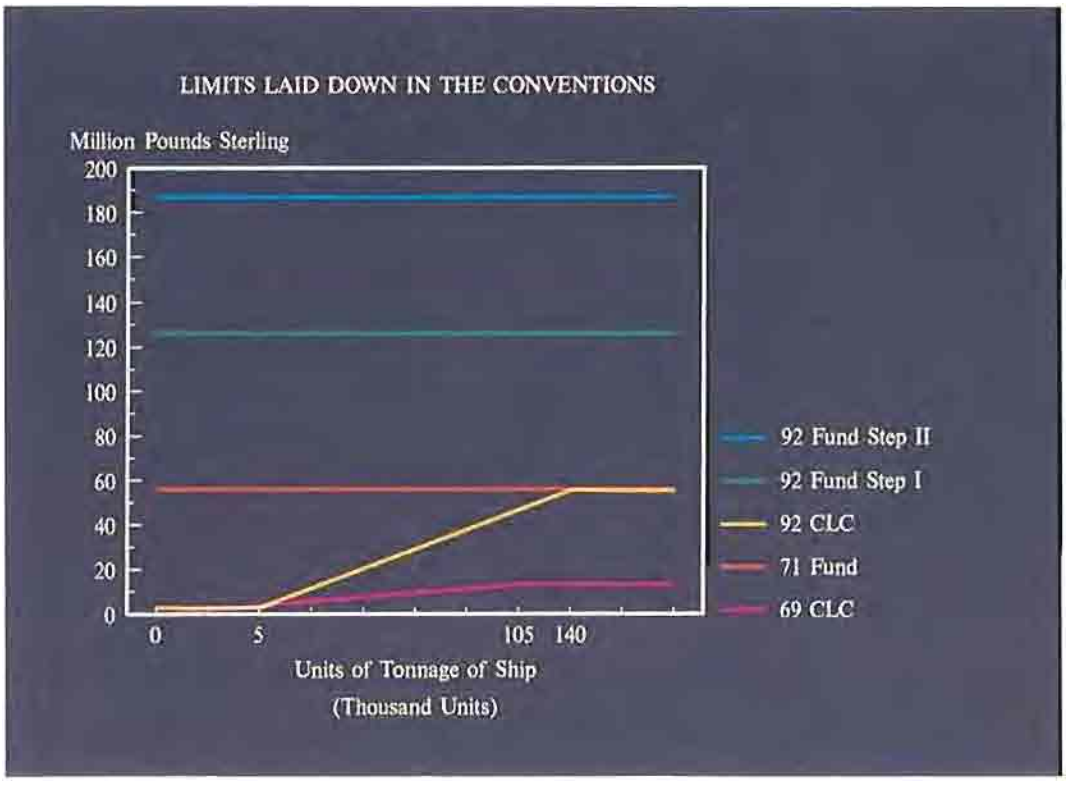
- **Extended geographical scope** of application of the Conventions to include the exclusive economic zone (EEZ), established under the United Nations Convention on the Law of the Sea.

- Pollution damage caused by spills of persistent oil from **unladen tankers** will be covered.

- Expenses incurred for preventive measures are recoverable even when **no spill of** oil occurs, provided that there was a **grave and imminent danger** of pollution damage.

- **New definition of pollution damage** retaining the basic wording of the present definition with the addition of a phrase to clarify that, for environmental damage, only costs incurred for reasonable measures to restore the contaminated environment are included in the concept of pollution damage.

The 1992 Protocol to the Fund Convention also introduces provisions setting a cap on contributions to the IOPC Fund payable by oil receivers in any given State. This cap was fixed by the Conference at 27.5% of the total annual contributions to the IOPC Fund. The capping system will cease to apply when the total quantity of contributing oil received during a calendar year in all Member States of the new Fund set up under the 1992 Protocol exceeds 750 million tonnes, or at the expiry of a period of five years from the entry into force of the 1992 Protocol to the Fund Convention, whichever is the earlier.



7.3 Prospects for entry into force

The 1992 Protocol to the Civil Liability Convention requires for its entry into force that it be ratified by ten States, including four States each with not less than one million units of gross tanker tonnage. The 1992 Protocol to the Fund Convention requires ratification by eight States representing together at least 450 million tonnes of contributing oil received.

As at 31 December 1994, the 1992 Protocols had been ratified by six States, namely France, Germany, Japan, Mexico, Oman and the United Kingdom. Of these six States, three have not less than one million units of gross tanker tonnage each. In order for the Protocol to the Civil Liability Convention to enter into force, it must be ratified by four more States, one of which should fulfil the tanker tonnage requirement. The requirement in the Protocol to the Fund Convention as to the quantity of contributing oil has been fulfilled. The requirement of the Protocol to the Fund Convention as to the number of States Parties will be fulfilled when the Protocol is ratified by two more States.

The Protocols will enter into force twelve months after the date on which their respective requirements are fulfilled. However, the Protocol to the Fund Convention shall not enter into force before the Protocol to the Civil Liability Convention. If, as expected, the requirements for the entry into force of the 1992 Protocols to the Civil Liability Convention and the Fund Convention were fulfilled during the first half of 1995, the Protocols will enter into force during the first half of 1996.

7.4 Preparations for entry into force

In October 1993, the Assembly instructed the Director to begin the preparations necessary for the entry into force of the 1992 Protocol to the Fund Convention, in particular as regards the administration of the 1992 Fund which would be established under that Protocol.

In October 1994 the Director submitted a study to the Assembly on various issues, including the framework of Regulations which would have to be adopted by the 1992 Fund, the handling of claims for compensation, and the problems which might arise during the co-existence of the 1971 Fund Convention and the 1992 Fund Convention. The Assembly instructed the Director to pursue these studies and to elaborate the necessary proposals for consideration by the Assembly at its session in October 1995. The Assembly decided that, after examining the various issues relating to the entry into force of the 1992 Protocol to the Fund Convention, it would submit appropriate proposals to the first session of the Assembly of the 1992 Fund, which would take the necessary decisions.

8 SETTLEMENT OF CLAIMS

8.1 Overview

Claims settlements 1978 – 1994

Since its establishment in October 1978, the IOPC Fund has, up to 31 December 1994, been involved in the settlement of claims arising out of 63 incidents. The total compensation paid by the IOPC Fund to date amounts to some £100 million.

The IOPC Fund has made payments of compensation and indemnification of over £1 million as a result of the following incidents in respect of which all third party claims have been settled:

Ship	Place of Incident	Year	Fund Payments
Antonio Gramsci	Sweden	1979	£9 247 068
Tanio	France	1980	£18 704 316
Ondina	Federal Republic of Germany	1982	£3 004 900
Brady Maria	Federal Republic of Germany	1986	£1 106 289
Thuntank 5	Sweden	1986	£2 369 345
Kasuga Maru N°1	Japan	1988	£1 904 632
Volgoneft 263	Sweden	1990	£1 601 109
Rio Orinoco	Canada	1990	£6 151 887
Taiko Maru	Japan	1993	£7 183 928

In addition, the IOPC Fund and the shipowner have made payments of compensation of over £1 million in connection with the following incidents for which third party claims are outstanding:

Ship	Place of Incident	Year	Payments
Aegean Sea	Spain	1992	£5 049 625
Braer	United Kingdom	1993	£38 956 092
Keumdong N°5	Republic of Korea	1993	£4 529 645

Annex XIII to this Report contains a summary of all incidents for which the IOPC Fund has paid compensation or indemnification over the years, or where it is possible that such payments will be made by the Fund. It also includes some incidents in which the IOPC Fund was involved but ultimately was not called upon to make any payments.

Incidents in 1994

During 1994, five incidents occurred that have given or will give rise to claims against the IOPC Fund, namely the *Seki* (United Arab Emirates and Oman), the *Dato Maru N°5* (Japan), the *Toyotaka Maru* (Japan), the *Hoyu Maru N°53* (Japan) and the *Sung Il N°1* (Republic of Korea).

On 30 March 1994, the Panamanian registered tanker *Seki* spilled approximately 16 000 tonnes of crude oil as a result of a collision nine miles off the coast of Fujairah

(United Arab Emirates). The spilt oil affected some 30 kilometres of coast in the Emirates and Oman, necessitating onshore and offshore clean-up operations. Claims by clean-up contractors and fishermen are being examined. The claims submitted so far total about £18 million.

Approximately half a tonne of heavy fuel oil escaped from the Japanese tanker *Daito Maru N°5* during a loading operation in the port of Yokohama (Japan) on 11 June 1994. Clean-up operations were completed within three days.

The Japanese tanker *Toyotaka Maru* was involved in a collision on 17 October 1994 off the port of Kainan (Japan), resulting in the escape of some 560 tonnes of crude oil. There is extensive fishing and aquaculture in the area affected by the spill, and a number of fishery co-operative associations are expected to submit claims for compensation.

On 31 October 1994, as a result of the mishandling of a supply hose, heavy fuel oil from the Japanese tanker *Hoyu Maru N°53* entered the cargo hold of a fishing boat in the port of Monbetsu (Japan). The cargo of frozen fish was contaminated and had to be destroyed.

The coastal tanker *Sung Il N°1* ran aground in the harbour of Onsan (Republic of Korea) on 8 November 1994, spilling some 18 tonnes of her cargo of heavy fuel oil. Claims are expected in respect of clean-up operations and fishery damage.

The IOPC Fund followed the developments of three other incidents which occurred in 1994. The Cypriot tanker *Nassia*, carrying some 99 000 tonnes of crude oil, collided with a bulk carrier in the Bosporus (Turkey) in March 1994. As a result of the collision, 31 seafarers lost their lives, and the Bosporus was closed to shipping for a short period. The spilt oil affected the Bosporus and spread into the Black Sea. The oil did not affect any IOPC Fund Member State, however, and the Fund will not be called upon to pay compensation. In October 1994, the Panamanian tanker *Cercal* ran aground off the coast of northern Portugal, spilling some 2 000 tonnes of light crude oil. The total amount of the claims for compensation for pollution damage will not reach the limit of the shipowner's liability, and the IOPC Fund will therefore not be called upon to pay compensation. In December 1994, the Hong Kong registered tanker *New World* was involved in a collision off Madeira (Portugal), resulting in the escape of a significant quantity of crude oil. It is unlikely, however, that the incident will lead to any substantial claims for compensation.

Incidents in previous years with outstanding claims

As at 31 December 1994, there were outstanding third party claims in respect of six incidents involving the IOPC Fund which had occurred before 1994, namely the *Agip Abruzzo*, *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5* and *Iliad* incidents. The situation in respect of these incidents is summarised below.

The *Haven* incident (Italy, 1991) caused pollution damage in Italy, France and Monaco. Some 1 350 claims for compensation submitted to the Court of first instance in Genoa total approximately £690 million; however, a number of claims are duplications. The judge in charge of the proceedings has held hearings concerning the claims, but his decision on the various claims is not expected until 1995. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights (SDRs) or Lit 102 864 million

(£41 million). In a judgement of 26 July 1993, however, the Court of first instance in Genoa upheld a decision by the above-mentioned judge fixing the maximum amount payable by the IOPC Fund at Llt 771 397 947 400 (£304 million), calculated on the basis of the free market value of gold. The IOPC Fund has appealed against the Court's judgement. The IOPC Fund has taken the position that the majority of the claims arising out of the *Haven* incident are time-barred vis-à-vis the IOPC Fund. As instructed by the Executive Committee, and subject to certain conditions, the Director will enter into negotiations with all the parties concerned for the purpose of arriving at a global settlement of all outstanding claims and issues.

The Greek OBO *Aegean Sea* grounded on 3 December 1992 off La Coruña (Spain), resulting in the escape of a considerable quantity of crude oil. Extensive clean-up operations at sea and on shore became necessary. A large number of fishermen, persons involved in various forms of aquaculture and other persons affected by the incident submitted claims for compensation. Over 1 200 claims totalling some £110 million have been received. Payments totalling £5 million have been made by the shipowner's P & I insurer in respect of some 700 claims. The IOPC Fund has become involved in complex court proceedings in the Court of first instance in La Coruña.

On 5 January 1993, the Liberian tanker *Braer*, laden with 84 000 tonnes of crude oil, grounded in heavy weather off the southern coast of the Shetland Islands (United Kingdom). The ship broke up, resulting in the entire cargo and bunkers being lost. Due to the heavy seas, most of the spilt oil dispersed naturally. Claims for compensation have been submitted by salmon farmers, fishermen, fish processors, farmers and crofters whose grassland was contaminated, individuals whose houses were contaminated and operators in the tourist industry. So far, claims amounting to £39 million have been paid.

The Korean sea-going barge *Keumdong N°5* was involved in a collision on 27 September 1993 off the southern coast of the Republic of Korea, resulting in a spill of some 1 300 tonnes of heavy fuel oil. The oil spread over a wide area, necessitating extensive clean-up operations. Claims for clean-up operations have been settled at Won 5 600 million (£4.5 million) and have been paid by the shipowner's P & I insurer. Claims totalling Won 93 000 million (£75 million) submitted by some 6 000 fishermen are being examined. Further fishery claims will probably be submitted.

Criteria for the admissibility of claims

A claim for compensation can be accepted by the IOPC Fund only to the extent that the claim meets the criteria laid down in the Civil Liability Convention and the Fund Convention. Over the years the IOPC Fund has developed certain principles for the admissibility of claims. The Assembly and the Executive Committee have taken a number of important decisions in this regard. These principles have also been developed by the Director in his negotiations with claimants. The settlements made by the Director and the principles upon which these settlements have been based have either been explicitly approved by the Executive Committee, or have been reported to and endorsed by the Committee.

The criteria for the admissibility of claims were examined by an Intersessional Working Group which met twice in 1994. The Report of the Working Group was considered by the Assembly at its session in October 1994 (cf Section 6).

8.2 Incidents dealt with by the IOPC Fund during 1994

The following section of this Report details incidents with which the IOPC Fund has been involved in 1994. The Report sets out the developments of the various cases during 1994 and the position taken by the IOPC Fund in respect of claims. The Report is not intended to reflect in full the discussions of the Executive Committee.

The conversion of foreign currencies into pounds sterling is as at 30 December 1994, except for paid claims for which conversions are made at the rate of exchange on the date of payment.

PATMOS

(Italy, 21 March 1985)

The incident

The Greek tanker *Patmos* (51 627 GRT), carrying 83 689 tonnes of crude oil, collided with the Spanish tanker *Castillo de Montearagon* (92 289 GRT), which was in ballast, off the coast of Calabria in the Straits of Messina (Italy). Approximately 700 tonnes of oil escaped from the *Patmos*. Most of the spilt oil drifted on the surface of the sea and dispersed naturally. Only a few tonnes of oil came ashore on the Sicilian coast. The Italian authorities undertook extensive operations to contain the spilt oil and to prevent it from polluting the Sicilian and Calabrian coasts.

The owner of the *Patmos* and the owner's insurer, the United Kingdom Steamship Assurance Association (Bermuda) Ltd (UK Club), established a limitation fund with the Court of first instance in Messina. The Court fixed the limitation amount at Llt 13 263 703 650 (£5.2 million).

The claims

Claims totalling Llt 76 112 040 216 (£30 million) were lodged against the limitation fund. Most of the claims were settled out of court.

Proceedings in the Court of Appeal

Claims considered by the Court of Appeal

The Italian Government submitted a claim of Llt 20 000 million (£7.9 million), later reduced to Llt 5 000 million (£2 million), for alleged damage to the marine environment. The Government did not provide any documentation indicating the kind of damage which had allegedly been caused or the basis on which the amount claimed had been calculated. The IOPC Fund Assembly had in 1980 unanimously adopted a Resolution stating that "the assessment of compensation to be paid by the IOPC Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models". In view of this Resolution, the IOPC Fund rejected this claim. The Court of first instance rejected the claim, stating that the State had not suffered any economic loss.

The Italian Government appealed against the decision of the Court of first instance. In the appeal proceedings, the Government argued that its claim related to actual damage to the marine environment and actual economic loss suffered by the tourist industry and fishermen. For this reason, the Government maintained that the claim did not contravene the interpretation of the definition of "pollution damage" adopted by the Assembly.

Three other claims, totalling approximately Lit 690 million (£271 000), were subject to appeal proceedings.

1989 non-final judgement

In 1989, the Court of Appeal rendered a non-final judgement stating that the claim for environmental damage made by the Italian Government was admissible.

Court experts

The Court of Appeal appointed three experts with the task of ascertaining the existence, if any, of damage to the marine resources off the coasts of Sicily and Calabria consequent on the oil pollution. If such damage existed, they were to determine the amount thereof or, in any case, supply any useful element suitable for the equitable assessment of the damage.

In a report submitted in March 1990, the court experts held that, except for fishing activities, there was a lack of data to evaluate the economic impact on other activities and that a precise assessment of the damage to such activities was impossible. In the view of the experts, the evaluation should be carried out by the Court. The experts quantified the damage to the fishing activities at not less than Lit 1 000 million (£400 000).

In their pleadings to the Court, the IOPC Fund, the owner of the *Patmos* and the UK Club pointed out that the Court had instructed the experts to deal with damage which could not be assessed in monetary terms. They argued that the court experts had exceeded their mandate, since the damage allegedly suffered by fishermen and the tourist industry was not damage to the marine resources but economic loss. It was pointed out that, in any event, the experts had admitted that the damage to the tourist industry could not be quantified. The shipowner, the Club and the IOPC Fund referred to the fact that, as regards the damage to the environment properly speaking, the experts had used expressions such as "non-existent", "negligible", "modest", "of short duration" and "reversible".

As ordered by the Court, the experts produced a second report in April 1992. In this report they stated that their conclusions were only hypothetical and not confirmed by factual evidence. They estimated the quantity of water affected by the oil, and then considered how the oil might affect plankton and the development and growth of fish. A mathematical formula was used to calculate a quantity of fish which allegedly were not born or did not develop, due to lack of nutrition. The experts stated that only a percentage of such fish would have been caught and gave a nominal value to the quantity which would have been caught. They made allowance for the days when fishing was banned following the incident, to take account of loss of earnings. The experts excluded damage to the beaches because neither the authorities nor the tourist operators had submitted claims.

The experts' conclusion was based on the assumption that 2 000 tonnes of oil were spilled and that 5 000 million m^3 of sea water were polluted, causing a concentration of oil exceeding 0.1 mg/litre. The IOPC Fund, the shipowner and the UK Club argued that there was no evidence that 2 000 tonnes were spilled and that 5 000 million m^3 were affected. They pointed out that under Italian law the equitable assessment of the damage was permitted only when the existence of the damage was proved, but it was impossible or very difficult to prove the amount of the damage. The IOPC Fund, the owner and the Club also maintained that a part of the pollution did not concern Italian territorial waters but the high seas, and that any damage outside the territorial sea fell outside the scope of the Civil Liability Convention and the Fund Convention.

1994 Court of Appeal judgement

The Court of Appeal published its final judgement in January 1994.. The Court granted the State of Italy compensation totalling Lit 2 100 million (£827 000) for damage to the marine environment. The reasons for the judgement can be summarised as follows:

- The Court did not accept the position taken by the IOPC Fund, the shipowner and the UK Club that there was no evidence of the quantity of oil spilled or of the water volume affected. It accepted the conclusions of the court experts on these points.

- The Court noted that the experts had not taken into account that part of the polluted area was outside the territorial waters. The Court stated that the State of Italy had no title under the Civil Liability Convention, nor under general principles of law, to bring an action for compensation for damage outside the territorial waters. It was estimated by the Court that the area outside the territorial waters represented 20% of the polluted area.

- The Court considered that the use of dispersants made by the Port Authority of Messina had been improper. The amount of compensation should therefore be reduced, as a result of contributory negligence on the part of the party suffering the damage, pursuant to Article III.3 of the Civil Liability Convention and Articles 1227 and 2056 of the Italian Civil Code.

- The Court did not accept the court experts' view that only loss of fish which would have been caught should be taken into account for the purpose of assessing the amount of compensation. In the Court's opinion, the total quantity of fish not having come into existence as well as damage to plankton and benthos should form the basis of that assessment, since the claim was for damage to the environment in terms of loss of enjoyment suffered by the collectivity.

- The Court did not admit the claim in respect of interest and devaluation.

It appears that the Court of Appeal assessed the amount of compensation on the basis of a certain quantity of fish which was not brought into existence as a result of the pollution, at a price of Lit 8 000 per kg. The Court may also have taken into account damage to plankton and benthos. There was no indication in the judgement, however, of how the amount awarded in compensation had been calculated, and the judgement did not set out the extent of reduction of the compensation due to contributory negligence.

The Italian Government had also appealed in respect of an item of its claim for Lit 46 980 000 (£18 500) relating to certain activities of the fire brigade of Messina. This claim had been rejected by the Court of first instance on the grounds that the activities were part of the task for which the fire brigade had been set up and would therefore not give any right to compensation; in addition, these activities had been carried out after the state of local emergency had ceased. The Court of Appeal stated, however, that the activities of the fire brigade were carried out for the purpose of preventing fire during the transhipment of the crude oil from the *Patmos* to other vessels. The Court considered that, since the activities concerned the removal of the crude oil, they should be considered as anti-pollution measures. The Court also stated that the fact that the measures were taken after the state of emergency had ceased was irrelevant. For this reason, this item of the claim was accepted.

Toyotaka Maru - collection of oily waste

The other three claims subject to appeal proceedings were rejected by the Court of Appeal.

Effect of Court of Appeal judgement

As a result of the judgement of the Court of Appeal, the total amount of the accepted claims is Llt 11 583 298 650 (£4.5 million), which is below the limitation amount applicable to the *Patmos* (Llt 13 263 703 650). Since the *Patmos* was flying the flag of a State (Greece) which at the time of the incident was not Party to the Fund Convention, the shipowner is not entitled to indemnification under Article 5.1 of that Convention. It has been confirmed that the Italian Government will not appeal against the judgement of the Court of Appeal. The IOPC Fund will therefore not be called upon to make any payments of compensation or indemnification. Consequently, the IOPC Fund is not entitled to appeal against the judgement.

KASUGA MARU N°1

(Japan, 10 December 1988)

The Japanese coastal tanker *Kasuga Maru N°1* (480 GRT), carrying approximately 1 100 tonnes of heavy fuel oil, capsized and sank in stormy weather off Kyoga Misaki in the Kyoto prefecture (Japan). The sunken tanker, lying at a depth of approximately 270 metres, leaked oil. Extensive fishing activities are carried out in the area.

All claims for compensation were settled between October and December 1989. The IOPC Fund paid ¥425 million (£1 887 819), representing the aggregate amount of the agreed claims minus the shipowner's liability of ¥17 million (£75 515). Indemnification of the shipowner, ¥4 million (£16 813), was paid by the IOPC Fund in March 1991.

There is no reliable estimate of the quantity of oil remaining in the sunken vessel. In the settlement agreements, the claimants reserved their right to claim additional compensation for pollution damage caused by further leakage of oil after the date of the respective agreements. However, any further claims for compensation became time-barred in December 1994.

RIO ORINOCO

(Canada, 16 October 1990)

The incident

The asphalt carrier *Rio Orinoco* (5 999 GRT), registered in the Cayman Islands, experienced problems with the main engine while en route from Curaçao to Montreal with about 9 000 tonnes of heated asphalt cargo and about 300 tonnes of intermediate fuel oil and heavy diesel oil on board. During repairs in the Gulf of St Lawrence, the ship dragged anchor in bad weather and grounded on the south coast of Anticosti Island (Canada) on 16 October 1990. An estimated 185 tonnes of the intermediate fuel oil was spilled and came ashore east of the grounding position. About ten kilometres of the coastline were heavily polluted, and small patches of oil were spread over a further 30 kilometres. No asphalt cargo was spilled. Over subsequent weeks the cargo cooled and a significant part became solid.

The weather deteriorated and the grounded ship moved, finally coming to rest wedged between rocks. The Canadian Coast Guard attempted to refloat the vessel in December 1990, but these attempts failed. After extensive preparations, the ship was finally refloated on 7 August 1991 and removed to a safe haven.

The *Rio Orinoco* was entered with Sveriges Ångfartygs Assurans Förening (the "Swedish Club") for both hull and P & I insurance.

The limitation amount applicable to the *Rio Orinoco* was fixed by the Canadian Court at Can$1 182 617 (£543 000). The limitation fund was constituted by the Swedish Club by means of letter of guarantee.

Claims settlements

The Canadian Government submitted claims totalling Can$12 382 224 (£6 million) relating to the clean-up operations carried out by or on behalf of the Canadian authorities. The IOPC Fund approved and paid these claims for a total amount of Can$11 791 848 (£5 645 200).

The Swedish Club submitted subrogated claims for the cost of clean-up operations and waste disposal. These claims were settled at Can$2 222 661 (£979 150). After making a reduction to take account of the limitation amount (Can$1 182 617), the IOPC Fund paid a total amount of Can$1 040 044 (£458 635) towards these claims.

Indemnification of the shipowner in the amount of Can$295 654 (£135 000) has not yet been paid, as the limitation proceedings have not been completed

Investigation into the cause of the incident

The Transport Safety Board of Canada carried out an investigation into the cause of the incident. The Board's Report stated that the *Rio Orinoco* had grounded after dragging her anchors following a main engine failure. From the findings in the Report, it appeared that the underlying cause of the incident was the unseaworthiness of the ship at the beginning of the voyage both as regards the equipment and its maintenance/state of repair, and as regards the crew manning the vessel. In a communiqué from the Transport Safety Board the *Rio Orinoco* was referred to as a "substandard ship".

The Report stated that the vessel's machinery was continually undergoing repairs. It was also mentioned that, due to frequent varied and serious malfunctions and breakdowns, planned maintenance could not be undertaken. It was noted that the *Rio Orinoco* had proceeded to the anchorage near Anticosti Island to repair the main engine, which had failed several times as a result of the use of heavily contaminated fuel. It was pointed out that the ship had experienced serious and continuing fuel contamination and machinery breakdowns during the two previous voyages. According to the Report, only one of the three generators was fully operational upon departure from Curaçao, and the fuel oil was not always treated before use. The Report also stated that the condition of the engine room machinery was not brought to the attention of the classification society (Det Norske Veritas), and that the cumulative effect of the deficiencies would have called into question the seaworthiness of the ship.

The Report criticised the qualifications of the crew. It was stated that the master, the chief officer and the chief engineer did not hold the required Cayman Islands' certification, that the ship did not carry the appropriate number of qualified engineers and that there was no certified radio officer on board. It was also mentioned that the engine room crew were subjected to long hours of physically demanding work in uncomfortable conditions. According to the Report, the constant need for repair of the machinery increased the stress on the crew. The Report expressed the view that these factors together degraded the performance of the crew and compromised safety.

The Report noted that the principal members of the management team were part-owners of one or more vessels operated by the management company. It was also stated that the vessel's managers were aware of the condition of the vessel with respect to both machinery and manning.

Legal action taken by the IOPC Fund

In October 1993, as a precautionary measure, the IOPC Fund brought legal action in the competent Federal Court of Canada against the owner of the *Rio Orinoco* (Rio Number One Ltd) and the company which managed the vessel (Horizon Management Corp Inc). In the statement filed with the Court, the IOPC Fund requested that the defendants be ordered to pay, jointly and severally, to the IOPC Fund the sum of Can$12 831 892 (the total amount paid by the Fund), plus interest. The IOPC Fund also took action against the Swedish Club as guarantor of the shipowner's liability.

In the light of the findings of the Transport Safety Board, the IOPC Fund took the view that the ship was not seaworthy when it ran aground and that the incident was due to this unseaworthiness. The findings indicated, in the Fund's view, that the shipowner must have been aware of the condition of the ship and the lack of qualifications of the crew. For this reason, the IOPC Fund maintained in its pleadings to the Court that the incident

occurred as a result of the actual fault or privity of the shipowner and that the owner was not entitled to limit his liability (Article V.2 of the Civil Liability Convention).

Consideration by the Executive Committee

At its session in October 1994, the Executive Committee took the view that it would not be meaningful to pursue legal action against the shipowner or the management company, since it was unlikely that these companies would have any assets against which a judgement could be enforced. For the same reason, the Committee decided that it would not be worthwhile pursuing action against the individual directors of the management company.

The Executive Committee had previously taken the position that, except in collision cases, the IOPC Fund should only take recourse action in cases where there were very strong reasons for taking such actions and a considerable likelihood of success. At its session in October 1994, the Committee noted that the "pay to be paid" rule in the Swedish Club's Rules (ie that the Club is under an obligation to indemnify the shipowner only for compensation actually paid to the injured party) would probably be upheld by the Canadian courts if a direct action were pursued against the Swedish Club in Canada under Canadian maritime law. A number of delegations made the point, however, that as a matter of policy the IOPC Fund should try to recover any amount paid by it in compensation if an incident were caused by the unseaworthiness of the ship involved. For this reason, it was generally felt that further consideration should be given to the possibility of the IOPC Fund taking legal action against the Swedish Club in Sweden. The Director was therefore instructed to seek further legal advice on the possibility of taking successful legal action in Sweden against the Swedish Club to recover the amount paid by the Fund, and to refer the matter back to the Executive Committee when such advice had been received.

PORTFIELD

(United Kingdom, 5 November 1990)

The British tanker *Portfield* (481 GRT) sank at her berth in Pembroke Dock, Wales (United Kingdom) with a cargo of 80 tonnes of diesel oil and 220 tonnes of medium fuel oil. Approximately 110 tonnes of the medium fuel oil were spilled as a result of the sinking. Most of the spilt oil was contained in the berth by booms deployed by the port authority. This oil was recovered by skimmers and vacuum suction trucks and disposed of at a local refinery. A relatively small quantity of the spilt oil escaped from the berth on the first day and affected numerous pleasure craft moored in the estuary. The ship was refloated after the cargo tanks had been emptied, and the main clean-up operations were terminated soon thereafter. The local authorities carried out shoreline cleaning on a small scale at a few key locations.

Claims were presented relating to clean-up operations and preventive measures and to damage to small craft and fishing equipment. These claims were settled and paid in 1991 for £303 438. A claim for £19 063 submitted by the Ministry of Defence for costs incurred in connection with this incident was settled in full in March 1993. In June 1993, the IOPC Fund paid £12 709, representing two thirds of the settled amount in respect of the Ministry's claim, and the shipowner's hull underwriters paid the remaining one third.

A claim for £287 298 was presented by the owner of a fish farm. The fish farm had been contaminated by oil, but no fish were being cultivated there at the time of the spill. This claim was settled and paid in April 1994 for £12 511.

Sung Il N°1 - Preparation for lightening operations

In total, the IOPC Fund and the shipowner's P & I insurer have paid £289 186 and £39 472 in compensation respectively. The limitation amount applicable to the *Portfield* is estimated at £39 970.

Indemnification of the shipowner has not yet been paid, since the limitation proceedings have not been completed.

VISTABELLA

(Caribbean, 7 March 1991)

The sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, was being towed by a tug on a voyage from a storage facility in the Netherlands Antilles to Antigua. The tow line parted and the barge sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity remaining in the barge is not known.

Under the influence of the current, the spilt oil spread northwards and some oil came ashore on St Barthélemy (Department of Guadeloupe, France), where a number of yachts and fishing boats were polluted. Offshore clean-up operations were carried out by the French Navy, applying dispersants in the sea area between the sinking site and St Barthélemy. The dispersant treatment had little effect because of the high viscosity of the spilt oil, and these operations were therefore stopped after a few days. French army personnel on St Barthélemy carried out manual clean-up of the oiled shoreline.

The shores of Saint Kitts, Nevis, Saba and Sint Maarten were also polluted. The first two islands form the independent State of Saint Kitts and Nevis, while Saba and Sint Maarten are part of the Netherlands Antilles. Oil also came ashore on the British Virgin Islands, the United States Virgin Islands and Puerto Rico (United States).

In total, five jurisdictions were affected as a result of this incident. However, only the pollution damage in the French Department of Guadeloupe and in the British Virgin Islands qualified for compensation from the IOPC Fund. The independent State of Saint Kitts and Nevis was not a Member of the IOPC Fund at the time of the incident. Puerto Rico and the United States Virgin Islands are not covered by the Fund Convention. The Kingdom of the Netherlands has not extended the application of the Fund Convention to the Netherlands Antilles.

The *Vistabella* was not entered in any P & I Club. It appears that the vessel was covered by a third party liability insurance, but the IOPC Fund has so far been unable to establish the extent of this cover. The limitation amount applicable to the ship is not known. The shipowner and his insurer did not respond to invitations to co-operate in the settlement procedure. Following an investigation of the financial position of the shipowner, it appeared unlikely that he would be able to meet his obligations under the Civil Liability Convention unless there was an effective insurance cover.

Claims totalling FFr189 202 (£19 000) were submitted by some 30 owners of yachts and fishing vessels in St Barthélemy. In 1991 the IOPC Fund settled and paid these claims for a total amount of FFr110 010 (£11 040).

A claim for US$6 099 (£3 198) in respect of clean-up operations was submitted by the owner of a hotel on Peter Island, British Virgin Islands. The Authorities of the British Virgin Islands presented a claim for US$1 969 (£1 033) in respect of onshore clean-up operations. Both claims were accepted in full and paid by the IOPC Fund in 1992.

In November 1992, the French Government submitted a claim for compensation totalling FFr8 711 275 (£1 057 700). This claim was settled in June 1994 at FFr7 000 000 plus interest of FFr1 127 519. The IOPC Fund paid FFr8 127 519 (£986 948) to the French Government in July 1994.

The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The IOPC Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government will in the near future withdraw from the proceedings. The IOPC Fund intends to pursue this action to recover the amounts paid by the Fund to claimants.

AGIP ABRUZZO

(Italy, 10 April 1991)

The incident

While lying at anchorage two miles off the port of Livorno (Italy), the Italian tanker *Agip Abruzzo* (98 544 GRT) was struck at night by the Italian ro-ro ferry *Moby Prince*. Both vessels caught fire. All passengers and all crew members but one on board the ferry

(143 persons) died, and the ferry was destroyed by the fire. There were no fatalities on board the tanker, although some crew members were injured.

The *Agip Abruzzo* was carrying about 80 000 tonnes of Iranian light crude oil. As a result of the collision, a cargo tank was damaged and about 2 000 tonnes of cargo oil were lost, part of which was consumed by fire. The fire on board the tanker lasted seven days and destroyed the accommodation area and engine room. Explosions in a bunker tank three days after the incident caused extensive structural damage to the ship and the subsequent loss of an unknown quantity of bunkers.

Claims for compensation

A number of claims for compensation relating to clean-up operations and preventive measures were presented by private contractors to the shipowner and the IOPC Fund. These claims were settled out of court at a total of Llt 17 917 500 000 (£7.1 million). With the exception of a claim presented by the shipowner himself, these claims were paid by the shipowner.

In February 1993, the Italian Government submitted a claim for Llt 1 333 300 000 (£525 300) for costs incurred in connection with the use of military aircraft and ships. The Government informed the shipowner and the IOPC Fund that it had not yet been able to decide whether to submit a claim relating to damage to the marine environment, since the investigation into the environmental effects of the spill had not been completed.

The owner of a number of pleasure boats submitted a claim for Llt 65 335 000 (£25 700) relating to contamination of his boats.

IOPC Fund's involvement in the payment of claims

The settled claims (Llt 17 917 500 000 or £7.1 million) and the pending claims (Llt 1 398 635 000 or £551 000) total Llt 19 316 135 000 (£7.6 million), which is below the limitation amount applicable to the vessel (approximately Llt 21 900 million or £8.6 million). The IOPC Fund will therefore not be called upon to pay compensation as a result of the incident. Claims became time-barred on or shortly after 10 April 1994, unless claimants had complied with the relevant provisions in the Civil Liability Convention (Article VIII) and the Fund Convention (Article 6.1). Since the IOPC Fund has no obligation to pay compensation to victims, the Fund does not have to consider whether any of the pending claims are time-barred.

The IOPC Fund will have to indemnify the shipowner under Article 5.1 of the Fund Convention to the extent that the total amount paid by him or his insurer exceeds 7 192 000 SDR (approximately Llt 17 100 million or £6.7 million). The exact amount of the indemnification payable cannot be established until the total compensation paid by the shipowner to claimants is known.

In March 1994, the shipowner's P & I insurer (the Skuld Club) instituted legal proceedings against the IOPC Fund before the Court of first instance in Livorno in respect of the IOPC Fund's obligation to pay indemnification.

Limitation proceedings

In July 1993, the owner of the *Agip Abruzzo* made an application to the Court of first instance in Livorno to open limitation proceedings. The Court has not yet taken any decision on this application.

The Skuld Club requested that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund in view of the high legal costs involved. Since the IOPC Fund's involvement in the case was limited to the payment of indemnification, and in view of the legal problems encountered by the P & I insurer in its attempt to establish the limitation fund, the Executive Committee decided in October 1994 that the IOPC Fund should, as an exception, waive the requirement to establish the limitation fund.

Enquiry into the cause of the incident

An administrative enquiry into the cause of the incident was carried out by a special Board appointed by the Ministry of Merchant Marine. The Board concluded that the most likely cause of the collision was the negligence of the *Moby Prince* master/crew by having sailed at excessive speed (about 15-18 knots) notwithstanding the number of vessels at anchor at Livorno roads and the poor visibility at that time of day (after 10.00 pm) and the foggy weather. As for the *Agip Abruzzo*, her third mate, who was on duty on the bridge at the relevant time, was found negligent in having failed or delayed to make the sound signals provided by the international collision regulations for vessels at anchor in restricted visibility.

Limitation of liability and recourse action

At its session in October 1992, the Executive Committee noted the Director's view that there were so far no indications that there was any fault or privity on the part of the owner of the *Agip Abruzzo* and that it would therefore not be possible to deprive the shipowner of the right to limit his liability.

The Skuld Club started recourse action against the owner of the *Moby Prince*. The IOPC Fund intervened in the proceedings to protect its interests.

Claims totalling Llt 81 800 million (£32 million) have been presented against the owner of the *Moby Prince* by the *Agip Abruzzo*'s hull underwriters, the owner of the *Agip Abruzzo* and the Skuld Club. It is unlikely that it will be possible to break the limit of liability of the *Moby Prince* in respect of these claims. The limitation amount applicable to the *Moby Prince* is estimated to be between Llt 3 200 million (£1.3 million) and Llt 4 000 million (£1.6 million).

As stated above, the IOPC Fund will only be called upon to pay indemnification to the shipowner. The amount of indemnification cannot be established at this stage but will not exceed £1.5 million. If the recourse action against the *Moby Prince* were successful, the IOPC Fund's share of the recovery would be less than £50 000. For this reason, the Executive Committee decided in October 1994 that the IOPC Fund should not pursue its action in the recourse proceedings.

HAVEN

(Italy, 11 April 1991)

The incident

The Cypriot tanker *Haven* (109 977 GRT) caught fire and suffered a series of explosions on 11 April 1991 while at anchor seven miles off Genoa. The vessel, which was carrying approximately 144 000 tonnes of crude oil, broke into three parts. A large section of the deck separated from the main structure and sank to a depth of about 80 metres. About seven miles south of Arenzano, the bow section became detached and sank to a depth

of about 500 metres. The remaining main part of the ship was towed into shallower water. On 14 April, after a further series of explosions, it sank to a depth of 90 metres, some 1.5 miles off the coast at Arenzano

Clean-up operations and related issues

The quantity of oil consumed by the fire has not been established, but it is estimated that over 10 000 tonnes of fresh and partially burnt oil were spilled into the sea. Since most of the oil spilt initially consisted of highly viscous burnt residue, its collection at sea proved very difficult. The Italian authorities concentrated on deploying booms to protect sensitive areas (primarily amenity beaches) along the coast. A significant quantity of oil came ashore between Genoa and Savona. The clean-up on shore in Italy was initially conducted by local authorities. Oil entered two marinas, resulting in the oiling of moorings, harbour walls and about 330 yachts and fishing boats.

On 22 May 1991, the Italian Government and a consortium of contractors known as ATI concluded a contract on pollution monitoring and clean-up. This contract was intended to apply retroactively from 14 April. The beach clean-up activities as outlined in the contract were completed by the end of August. Increased water temperatures and wave action resulted in droplets of sunken oil rising to the surface, however, causing limited but regular re-contamination of some beaches during the summer of 1991. Approximately 1 000 tonnes of oily waste and some 10 000 tonnes of oily water were collected and disposed of. Some 20 000 metres of contaminated booms had to be destroyed.

Some oil spread as far west as Hyères near Toulon in France, affecting the coast in four French departments. The clean-up operations at sea were carried out by the French Government and the onshore clean-up by the local authorities.

Investigations into the cause of the incident

A Summary Enquiry into the cause of the incident was conducted by the Genoa Port Authority pursuant to the Code of Navigation. The Summary Enquiry concluded that there had been negligence both on the part of the shipowner and on the part of the crew, but that the negligence of the owner had no link of causation with the incident. The report on the Summary Enquiry has no legal value.

The Panel of Enquiry for the Ligurian area carried out a formal enquiry into the cause of the *Haven* incident. The Panel held public hearings from 14 November 1991 to 13 February 1992. Crew members and other persons were heard by the Panel, and extensive documentation was examined.

In its report, the Panel of Enquiry discussed three possible causes of the incident: structural failure in central tank N°1, leakage of cargo into central tank N°2 which was a dedicated ballast tank, and an explosion in the pump room. The Panel concluded that it could not establish the cause. Nevertheless, the Panel deemed that the master, the chief mate, the chief engineer and the shipowner had been guilty of negligence or gross negligence in certain regards, although the Panel did not link the incident to such negligence. The Panel also held that the owner had been guilty of gross negligence for not having ensured the efficiency of certain essential equipment before allowing the ship to return to commercial operation, for not having ordered the ship to stop sailing in view of certain technical problems which had arisen and for not having informed the classification society that one inert gas generator was out of order.

Criminal proceedings against the owner of the Troodos Group (which operated the ship) and the shipowner's superintendent started in December 1994.

Limitation proceedings

After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991. The Court fixed the limitation amount at Lit 23 950 220 000 (£9.4 million), which corresponds to 14 million SDR, the maximum amount under the Civil Liability Convention. The limitation fund was established by the P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the UK Club), by means of a bank guarantee. The IOPC Fund intervened in the limitation proceedings, pursuant to Article 7.4 of the Fund Convention.

The IOPC Fund lodged opposition to the Court's decision to open the limitation proceedings, challenging the shipowner's right of limitation. Corresponding oppositions were lodged by the Italian Government and some other claimants

A large number of claims, totalling over Lit 1 650 000 million (£660 million), have been filed in the limitation proceedings against the shipowner.

Claims for compensation

Italian claims other than those relating to environmental damage

Some 1 350 Italian claimants have presented claims relating to damage other than damage to the environment. These claims total approximately Lit 765 000 million (£301 million).

A number of these claims are, however, duplications. The duplications are mainly due to the fact that the State of Italy and a number of contractors and sub-contractors have presented claims in respect of the same operations. It appears that the duplications total approximately Lit 455 000 million (£179 million). After deducting this amount from the total figure, a balance of some Lit 310 000 million (£122 million) remains for claims other than those relating to damage to the marine environment. The figures given above do not in any way represent the position of the IOPC Fund on the admissibility of respective claims, nor on the reasonableness of the amounts claimed.

The Italian Government has presented the largest claim. This claim, excluding the items relating to environmental damage, totals Lit 261 000 million (£103 million). The claim includes items relating to initial clean-up costs incurred by contractors instructed by several government authorities, reimbursement of the value of oil booms lost or destroyed, expenses incurred by various ministries and public bodies, and costs associated with the execution of the above-mentioned contract relating to clean-up operations and monitoring concluded between the Italian Government and the ATI consortium.

The owners of 43 yachts have claimed Lit 126 million (£49 600) for contamination of their boats. Thirty-eight fishermen have claimed Lit 439 million (£173 000) for contamination of their boats and nets. Nearly 700 hotel owners have claimed Lit 80 000 million (£32 million) and 150 fishermen Lit 22 750 million (£19 million) for loss of income. Ninety-three operators of beach facilities have claimed Lit 3 900 million (£1.5 million) for reduced income. Some 230 shops and restaurants have also claimed compensation for Lit 18 000 million (£7 million).

Seki - Badiyah Beach

In 1993, the Executive Committee took a number of decisions on matters of principle in respect of Italian claims arising out of the *Haven* incident. The Executive Committee did not take any such decisions in 1994.

Italian claims relating to environmental damage

The Italian Government presented a claim relating to damage to the marine environment. The claim documents did not originally indicate the kind of "environmental damage" which was allegedly sustained, nor did it originally set out the method used to calculate the amount claimed, Lit 100 000 million (£40 million). The Italian Government informed the IOPC Fund that it had not been possible to describe the environmental damage because the study of the effects of the incident on the marine environment had not yet been completed. The Government also stated that the figure given in the claim was only provisional.

The Region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, Lit 100 000 million, be increased to Lit 200 000 million (£80 million). The Region has maintained that the amount should be apportioned between the various territorial entities which have directly suffered or are suffering ecological damage. Two provinces and 14 communes have included items relating to environmental damage in their respective claims.

The claims relating to damage to the marine environment were discussed by the Executive Committee in December 1991 on the basis of a study carried out by the Director. In the study it was emphasised that if a conflict arose between the Civil Liability Convention

and the Fund Convention, which had been implemented into Italian legislation by Statute, and any other Italian Statute, the Conventions should prevail. In his study, the Director pointed out that the IOPC Fund had consistently taken the position that claims relating to non-quantifiable elements of damage to the environment could not be admitted. In its interpretation of the Civil Liability Convention and the Fund Convention, the IOPC Fund Assembly had excluded the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (Resolution N°3 adopted by the Assembly in 1980). The Assembly had also taken the view that compensation could only be granted if a claimant had suffered quantifiable economic loss. In the study it was emphasised that the Civil Liability Convention and the Fund Convention had been adopted for the purpose of providing compensation to victims of pollution damage. For this reason, it was maintained in the study that claims which did not relate to compensation did not fall within the scope of the Conventions, for example, damages awarded under an Italian Act of 1986 relating to non-quantifiable elements of damage to the environment which were of a punitive character.

The Executive Committee agreed in general with the Director's analysis of the issues involved.

During the discussions in the Executive Committee, the Italian delegation stated that it did not agree with the basis of the Director's analysis of the problem nor with his conclusions. The Italian delegation could not agree that only quantifiable elements of damage to the marine environment were admissible. In the view of the Italian delegation, compensation was mainly governed by an Italian Act of 1982 which envisaged the possibility of compensation for damage to the marine environment for both quantifiable and unquantifiable elements. The Italian delegation did not accept that compensation under the 1986 Act should be considered as a sanction.

In October 1994, in its endorsement of the conclusions of the 7th Intersessional Working Group, the Assembly reiterated its previous position on the non-admissibility of claims relating to environmental damage of the kind covered by the Italian Government's claim (cf Section 6).

In June 1994, the Italian Government quantified the alleged damage to the environment as follows:

- restoration of 43 hectares of phanerogams; Llt 266 042 million (£105 million);
- consequences of the beach erosion caused by damage to the phanerogams; not quantified but left to the assessment of the Court on the basis of equity;
- wreck removal; Llt 20 000 million (£7.9 million);
- damage restored by the natural biologic recovery of the resources; Llt 591 364 million (£233 million) for the sea and Llt 6 029 million (£2.4 million) for the atmosphere, or a total of some £235 million;
- irreparable damages to the sea and atmosphere; not quantified but left to assessment by the Court on the basis of equity; and
- compensation for inflation and interest.

The total amount of these quantified items is Llt 883 435 million (£348 million).

Judge's examination of the Italian claims

The judge in charge of the limitation proceedings started hearings in September 1991 to discuss the individual claims. Most claims have been given preliminary consideration. As a number of claims are not supported by any documents, the judge has invited the claimants to present documentation. It is expected that the judge will not be able to establish the list of admissible claims ("stato passivo") until mid-1995 at the earliest.

In July 1993 the IOPC Fund presented, jointly with the shipowner and the UK Club, extensive pleadings to the Court in respect of all claims relating to clean-up operations and preventive measures, excluding the clean-up operations carried out in France. In April 1994 the IOPC Fund filed pleadings on the claims for damage to the environment, setting out the Fund's position in principle on such claims.

French claims

The French Government presented a claim to the Court in Genoa for the cost of operations at sea and beach clean-up in France for a total amount of FFr16 284 592 (£1.9 million).

In September 1994, the French Government, on the one side, and the IOPC Fund, the shipowner and the UK Club, on the other side, reached agreement on the admissible amount of the Government's claim, viz FFr12 580 724 (£1 497 700). The agreement is subject to the approval of the judge in charge of the limitation proceedings. The reduction in the amount claimed related mainly to certain reconnaissance flights, which the IOPC Fund considered were not justified, and to the rates for two French Navy vessels which in the Fund's view were disproportionate to the operations carried out. In addition, a reduction was made in the amount claimed for certain operations at sea which were carried out after the date when, in the Fund's view, they were no longer required.

Claims totalling FFr78 410 591 (£9.3 million) have been presented to the Court in Genoa by 32 French communes and one other public body. These claims relate almost exclusively to shoreline clean-up activity and loss of income in the tourist industry. One of the public bodies (Parc National de Port Cros) has claimed compensation for damage to the marine environment.

Correspondence has been exchanged between the communes (including Parc National de Port Cros) and the IOPC Fund, the shipowner and the UK Club. As a result, agreements have been reached with 17 communes on the quantum of their claims, for a total amount of FFr4 580 292 (£549 000). These agreements are subject to the approval of the judge in charge of the limitation proceedings. Discussions are continuing with the remaining communes.

Claim by the Principality of Monaco

The Principality of Monaco has presented a claim in the Court in Genoa for FFr329 091 (£39 400) for the cost of clean-up operations.

Method of the conversion of (gold) francs

The amounts in the Civil Liability Convention and the Fund Convention in their original versions were expressed in (gold) francs (Poincaré francs). Under the Civil Liability Convention, the amounts expressed in (gold) francs should be converted into the national currency of the State in which the shipowner established the limitation fund on the basis of the *official* value of that currency by reference to the franc on the date of the establishment

of the limitation fund. In 1976 Protocols were adopted to both Conventions. Under these Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The 1976 Protocol to the Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the Fund Convention only came into force in 1994, ie after the *Haven* incident.

An important legal question has arisen in the limitation proceedings, namely the method to be applied for converting the maximum amount payable by the IOPC Fund (900 million (gold) francs) into Italian Lire. The IOPC Fund had taken it for granted that the conversion should be made on the basis of the SDR. It was maintained by some claimants, however, that the conversion should be made by using the free market price of gold, since there was no longer any official value of gold and the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

The IOPC Fund's main argument in support of its position is that the inclusion of the word "official" in the definition of the unit of account laid down in the original text of the 1969 Civil Liability Convention was made deliberately to ensure stability in the system, and that it was clearly meant to rule out the application of the free market price of gold. The Fund has drawn attention to the fact that the judge fixed the limit of the shipowner's liability by using the SDR. The unit of account in the Fund Convention is defined by a reference to the Civil Liability Convention, and in the IOPC Fund's view this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto. The Fund has pointed out that the application of different units of account in the Civil Liability Convention and the Fund Convention would lead to unacceptable results, particularly as regards the relationship between the portion of liability to be borne by the shipowner and the IOPC Fund, respectively, on the basis of Article 5.1 of the Fund Convention.

A judge of the Court of first instance in Genoa, who is in charge of the limitation proceedings, rendered his decision on this issue on 14 March 1992. He held that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold, which gives an amount of Llt 771 397 947 400 (£304 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Llt 102 864 million (£41 million), as maintained by the IOPC Fund, calculated on the basis of the SDR.

An opposition to this decision lodged by the IOPC Fund was considered by the Court of first instance (which was composed of three judges, including the judge who rendered the decision in 1992). On 26 July 1993, the Court upheld the decision of 14 March 1992 and fixed the maximum amount payable by the IOPC Fund at Llt 771 397 947 400 (£304 million).

In its judgement the Court noted that the adjective "official" was inserted in the text of the Convention at the last session of the 1969 Diplomatic Conference. The Court stated that since gold no longer had an official value, the reference to gold could not mean anything other than the free market value of gold. The Court rejected the IOPC Fund's argument that Article 1.4 of the Fund Convention, which relates to the unit of account, should be considered as referring to the Civil Liability Convention as amended by the 1976 Protocol. The Court maintained that the calculation of indemnification of the shipowner under Article 5 of the Fund Convention should be made using a percentage calculation, which would result in the Fund's indemnification being determined in SDR. The Court

admitted that the general opinion of States was that the (gold) franc should be substituted by the SDR, but stated that the opinion of States did not change the law.

The IOPC Fund has appealed against this judgement and has presented extensive pleadings to the Court of Appeal in Genoa. The Court of Appeal is expected to render its judgement during 1995.

In October 1993, the Executive Committee expressed its concern about the consequences of the judgement for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It emphasised that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR.

Discussions with the Italian Government

At the session of the Executive Committee in March 1993, the Italian delegation drew attention to the fact that, although nearly two years had passed since the *Haven* incident, no payments had been made, which was causing considerable financial hardship to victims in Italy. The Italian delegation stated that, in view of the complexity of the on-going court proceedings, it might take many years before these proceedings could be brought to an end. This delegation stated that, for this reason, the Italian Government was ready to enter into discussions with the other parties involved in the incident in order to find acceptable compromise solutions to the various issues, thereby making it possible to settle the whole incident out of court.

Haven - fire fighting vessels attend the blazing tanker

Several delegations stated that they shared the concerns of the Italian delegation about the delay in payment to victims and the risk of protracted litigation. For this reason, they supported the Italian proposal that discussions should be held for the purpose of exploring the possibilities of out-of-court settlements. These delegations nevertheless drew attention to the fact that this case had given rise to several questions of principle of great importance and that it might be difficult to find acceptable solutions on these points.

The Executive Committee, recognising the great complexity of the issues involved, instructed the Director to enter into discussions with the Italian and French Governments for the purpose of exploring the possibilities of out-of-court settlements of claims arising out of the *Haven* incident.

The Director has entered into discussions with the Italian Government. So far these discussions have focused on establishing the main areas of dispute.

Question of time-bar

The legal situation

Claims for compensation against the IOPC Fund are time-barred three years after the date when the damage occurred, unless the claimants take certain legal steps. In the *Haven* case, the three-year period expired on or shortly after 11 April 1994.

The question has arisen of whether or not the majority of the claims arising out of the *Haven* incident are time-barred vis-à-vis the IOPC Fund. According to Article 6.1 of the Fund Convention, a claimant can avoid or interrupt the time-bar as regards the IOPC Fund by bringing legal action against the IOPC Fund or by making a notification to the Fund under Article 7.6 of the Fund Convention. Only a few claimants have fulfilled the requirements of Article 6.1 by making a notification under Article 7.6 to the IOPC Fund, namely the French State, the French communes, the Principality of Monaco and a few Italian claimants. On the basis of legal advice, the Director informed the Executive Committee, at its session in October 1994, that he was of the opinion that all other claims submitted in the limitation proceedings became time-barred in respect of the IOPC Fund on or shortly after 11 April 1994.

Position taken by the Executive Committee

At its session in October 1994, the Executive Committee recognised that the Director had been obliged to raise the issue of time-bar both in the legal proceedings in Italy and in the Executive Committee.

The Executive Committee agreed with the Director's analysis of the legal situation, and took the view that the claims in respect of which no formal notification had been made to the IOPC Fund met the requirements for time-bar, in the light of the provisions in Article 6.1 of the Fund Convention.

Being convinced of the legal validity of the IOPC Fund's position in respect of the time-bar issue, the Executive Committee, nevertheless, recognised that the on-going legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this issue. For this reason, and conscious of the desirability of victims of pollution damage being compensated, the Executive Committee instructed the Director to enter into negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues. The Committee emphasised that any such solution must respect the following conditions:

the maximum payable under the Civil Liability Convention and the Fund Convention was 60 million SDR;

- claims could only be admissible if a claimant had suffered a quantifiable economic loss and claims for damage to the marine environment per se were not admissible;
- the negotiations should be without prejudice to the IOPC Fund's position on the time-bar;
- the negotiations should, to the extent possible, take into account the economic interests of those claimants who had respected the requirements laid down in Article 6.1 of the Fund Convention.

The Executive Committee emphasised that the decision to enter into negotiations in the *Haven* case did not constitute a precedent but should be seen in the context of the very special circumstances of this case.

In December 1994 the shipowner, the UK Club and the IOPC Fund contacted all claimants, proposing procedures for discussion of their claims.

KUMI MARU N°12

(Japan, 27 December 1991)

The Japanese tanker *Kumi Maru N°12* (113 GRT) collided with a container ship in Tokyo Bay (Japan). The *Kumi Maru N°12* sustained damage to her starboard shell plating and N°4 tank, allowing some five tonnes of her cargo of heavy fuel oil to spill into the sea. To prevent further pollution, the remaining cargo was transferred to another vessel. The Maritime Disaster Prevention Centre immediately began clean-up operations.

Claims in respect of clean-up operations were settled at ¥4 115 079 (£21 919). In November 1992, the IOPC Fund paid ¥1 056 519 (£5 629), representing the settlement amount minus the limitation amount applicable to the *Kumi Maru N°12*.

The shipowner's P & I insurer (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) requested that the IOPC Fund should waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention, the Executive Committee decided that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established.

Indemnification of the shipowner, ¥764 640 (£4 900), has not yet been paid, since the investigation into the cause of the incident has not been completed.

AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. All 32 crew members were rescued

by helicopter after the grounding. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section smouldered for several days but remained to a large extent intact. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil were found in the aft section. This oil was removed by salvors working from the shore. No oil remained in the sunken forward section. While the quantity of oil spilled is unknown, it appears that most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea.

Clean-up operations

Due to the heavy weather, little could be done to recover oil at sea. Attempts were made to protect sensitive areas using booms deployed from ships and from the shore. As a result of the nature of the oil cargo (Brent Blend Crude) and the vigorous wave action typical of the exposed coast, there was considerable natural dispersion of the oil.

In areas where access from the shore was possible, efforts were made to remove floating oil, using vacuum trucks, skimmers and pumps. A total quantity of about 5 000m^3 of oil/water mixture was collected and taken to local oil reception facilities for processing.

Several stretches of shoreline east and north-east of La Coruña were contaminated. The cleaning of polluted beaches began in late December 1992. An estimated quantity of 1 200m^3 of oiled sand and contaminated debris was removed. The more sheltered Ría de Ferrol, which contains mudflats and saltmarshes, was also polluted Work in the estuary, which was completed in July 1993, involved the manual removal of oily beach material and debris, and the washing of rocks and manmade surfaces.

Effects on fishery activities

The Fisheries Council of the Region of Galicia imposed a comprehensive fishing ban in the affected area, comprising near-shore waters and the shoreline. As conditions improved, these restrictions were removed, and fishing was back to normal in August 1993. The restrictions affected some 3 000 fishermen, including shellfish harvesters.

There is extensive raft cultivation of mussels in Ría de Betanzos. Even though physical contamination of the rafts by oil was slight, tainting of mussels occurred. There are also turbot and salmon farms and clam and mussel purification plants in the area. Some of the farms were affected by oil and the purification plants were closed for several months. All the plants have been reopened.

Claims handling

An agreement on the procedure for co-operation in the handling of claims was concluded between the Spanish Government, the Government of the Region of Galicia, the shipowner, the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd. "UK Club") and the IOPC Fund.

The Spanish authorities set up a public office in La Coruña to give information to potential claimants concerning the procedure for presenting claims and to distribute claim forms provided by the UK Club and the IOPC Fund. The shipowner, the UK Club and the IOPC Fund established a joint office in La Coruña to receive and handle claims for compensation. This Joint Claims Office has worked closely with the Spanish authorities and claimants in order to facilitate the handling of the claims.

Burnt out wreck of the *Aegean Sea*

Claims for compensation

General situation

As at 31 December 1994, 1 231 claims had been received by the Joint Claims Office, totalling Pts 22 695 million (£110 million). The UK Club has made payments in respect of 735 claims for a total amount of Pts 1 040 million (£5 million). Further payments have been approved for Pts 359 million (£1.7 million), and these payments will be effected by the IOPC Fund in early January 1995.

Claims have also been submitted to the Court of first instance in La Coruña, totalling some Pts 20 765 million (£101 million). These claims correspond to a large extent to those presented to the Joint Claims Office. The IOPC Fund's lawyers and experts are examining the claim documents.

In view of the high total amount of the claims presented to the Court, the Executive Committee took the view in October 1993 that caution had to be exercised when making payments to claimants, in order to ensure that the provisions in the Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director that the Fund should make only partial payments in respect of accepted claims not exceeding 30%-40% of the amount approved. The Director decided to limit the payments to 25% of the established damage suffered by each claimant.

In the light of certain information provided by the Spanish authorities in October 1994, the Director took the view that the uncertainty as to the total amount of the claims had

been reduced. For this reason, the Director decided to increase partial payments to 40% of the damage suffered by the respective claimants as assessed by the IOPC Fund on the basis of the advice of its experts at the time when a partial payment or additional partial payment was to be made.

Clean-up costs

The Spanish Government, the Government of the Region of Galicia and some local authorities incurred costs for clean-up operations and preventive measures. Some clean-up operations at sea and on shore were carried out by contractors engaged by the authorities. It has been agreed that these contractors may submit claims in respect of these operations directly to the shipowner and the IOPC Fund.

So far, 99 claims relating to clean-up operations have been received, totalling some Pts 5 114 million (£24.8 million). Partial payments, totalling Pts 1.2 million (£5 800), have been made to 20 claimants. Two further claims have been approved for a total amount of Pts 9.3 million (£45 150), and partial payments totalling Pts 3.7 million (£18 000) will be effected in early January 1995. The remaining claims are being examined

Property damage

A number of houses were contaminated by smoke generated by the burning oil and had to be cleaned. Yachts and other boats were also contaminated. Payments totalling Pts 46.9 million (£227 800) have been made in settlement of 687 claims for the cleaning of houses and boats.

Near-shore aquaculture

There is an important aquaculture industry in the area affected by the spill, concentrated in the Sada-Lorbé area, consisting of the cultivation of mussels, salmon, oysters and scallops. Mussel cultivation is the most important activity, representing more than 80% of the total harvest value.

A Resolution issued on 12 April 1993 by the Fisheries Council of the Region of Galicia stated that all cultivated produce within the Sada-Lorbé area should be destroyed. The experts engaged by the IOPC Fund, the shipowner and the UK Club did not consider that a total destruction of these products was justified. However, the experts accepted that, with the optimum time for the first of the 1993 mussel seeding drawing near, it was necessary to take steps to limit the consequences of the incident for future production. On the strength of the test results available at that time, which showed that the mussels were still tainted, the experts acknowledged that the destruction of a sufficient quantity of the largest commercially harvestable size mussels was justified, to make space for the first of the 1993 mussel seed intake due by May/June 1993. Such a partial destruction was, however, not carried out. The experts considered it premature to destroy smaller mussels covered by the Resolution, or to destroy salmon, oysters and scallops, in view of the possibility of taint being removed by a process of natural depuration. The Resolution was, nevertheless, put into effect on 9 August 1993, and the destruction was completed by 24 September.

The experts engaged by the IOPC Fund and the UK Club endeavoured to obtain sufficient evidence in the form of sample testing to enable them to assess whether the above-mentioned destruction was justified. A monitoring programme was carried out to determine the natural depuration of the mussels.

In April 1994 the Director accepted that, on the basis of the test results provided, it was not unreasonable to destroy the marketable size mussels and salmon that would have been harvested during 1993.

The IOPC Fund's position of principle on claims for the destruction of farmed fish and shellfish is set out in Section 6.2 above.

Fifteen claims totalling Pts 6 183 million (£30 million) have been received for losses relating to clam, mussel, turbot and salmon farms. The information presented in support of these claims is very limited. On the basis of this information and after an examination of the official statistics published by the Fisheries Council, the IOPC Fund and the UK Club have made a provisional assessment of the losses sustained. As a result, one claimant received partial payments totalling Pts 48 million (£233 000) in November 1993 and November 1994. In December 1994, partial payments totalling Pts 296 million (£1.4 million) were approved in respect of five claimants, and these payments will be made by the IOPC Fund in early January 1995. All claimants have been invited to submit further supporting documents so as to make a proper assessment of the claims possible.

Depuration plants

Claims from six plants depurating shellfish total Pts 1 585 million (£7.7 million). On the basis of the limited information provided, the experts of the IOPC Fund and the UK Club have made a provisional assessment of the losses sustained in respect of three of these claims. As a result, one claimant has received a partial payment of Pts 5.7 million (£27 700). Partial payments totalling Pts 58.7 million (£285 000) have been approved in respect of the two other claims and will be effected in January 1995. The remaining three claims are being examined by the IOPC Fund's experts.

Onshore aquaculture

Two onshore fish farms in the affected area have presented claims totalling Pts 1 524 million (£7.4 million) for alleged loss of stock caused by pollution. These claims are being examined by the IOPC Fund's experts.

Boat fishing and shellfish harvesting

Claims from some 3 680 fishermen and shellfish harvesters total Pts 9 405 million (£45.7 million). Some of these claims have been lodged by individuals and others by groups. Partial payments, totalling Pts 932 million (£4.5 million), were made during 1993 and 1994 to these claimants. Three claimants were paid in full for a total of Pts 3 068 668 (£15 190).

Several meetings were held in 1994 with representatives of a number of fishermen to discuss the handling of their claims. The Director invited the claimants to provide more information substantiating their losses, to enable the UK Club and the IOPC Fund to assess these claims properly and to make further partial payments.

Other claims for pure economic loss

In 1993, the Executive Committee had taken decisions on a number of claims for pure economic loss, some of which gave rise to questions of principle.

During 1994, the Executive Committee considered claims presented by two ship agencies for compensation for losses allegedly suffered as a result of the diversion of five

vessels which had intended to call at the port of La Coruña, which was closed as a result of the *Aegean Sea* incident. The Executive Committee took the view that the claimants had not shown that they had suffered any economic loss and therefore rejected these claims.

So far, the IOPC Fund has approved nine claims for pure economic loss (other than those relating to fishing activities) for a total amount of Pts 5.2 million (£25 200). Payments have been made totalling Pts 2.3 million (£11 200).

Payments to victims made by other bodies

In 1994, the Executive Committee considered in what circumstances payments made by other bodies to victims of oil pollution should be deducted from compensation payable under the Civil Liability Convention and the Fund Convention. The question arose because the Fisheries Council of the Region of Galicia and the Commission of the European Community had made certain payments to fishermen who had also claimed compensation under the Conventions.

The Executive Committee took the view that payments to claimants in connection with an incident which were in the nature of a gift should not be deducted from compensation payable under the Civil Liability Convention and the Fund Convention and that such payments could not be reclaimed from the IOPC Fund. The Committee also decided that payments which could be categorised as compensation or advances towards compensation should be deducted from compensation payable under the Conventions. The Committee noted, however, that payments which could be categorised as compensation or advances towards compensation could be reclaimed from the shipowner and the IOPC Fund, provided that such payments related to loss or damage which fell within the scope of application of the Conventions and that the payer could invoke a valid subrogation.

Since the payments made by the Fisheries Council to fishermen and shellfish gatherers (totalling Pts 438 million) were granted as humanitarian aid and therefore were in the nature of a gift, the Executive Committee decided in October 1994 that these payments should not be deducted from the compensation payable under the Civil Liability Convention and the Fund Convention.

As for payments made by the Commission of the European Community, the Executive Committee decided that payments made through Directorate-General XIV (which is in charge of fisheries) should be deducted from any compensation payable under the Civil Liability Convention and the Fund Convention, since these payments were for losses which in principle, if proven, would qualify for compensation under the Conventions. The Committee also decided that payments made through Directorate-General XI (which is responsible for environment, nuclear safety and civil protection) should not be taken into account when determining the amount of compensation payable under the Conventions, because these payments were in the nature of a gift.

Social security payments

Claims were submitted by two Spanish public bodies responsible for making unemployment benefit payments to people who allegedly had been made redundant due to the reduction in work as a result of the restrictions placed on fishery activities following the incident. These claims gave rise to a question of principle similar to that concerning claims for loss of income by employees in sea-related activities who had been made redundant. The Executive Committee had in 1993 rejected claims by such employees.

Aegean Sea - smoke rising above La Coruña

The Executive Committee took the view that public bodies paying unemployment benefits could not be given a more favourable position vis-à-vis the IOPC Fund than people who had been made redundant. For this reason, the Executive Committee rejected the claims presented by these two bodies.

Investigations into the cause of the incident

The Court in La Coruña is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The IOPC Fund has been following this investigation through its Spanish lawyer.

A Commission set up by the Spanish administration investigated the cause of the incident. The Commission concluded that a major part of the blame for the incident rested with the master of the *Aegean Sea* and that a contributing factor had been the deteriorating weather conditions immediately before the incident. The IOPC Fund presented observations on the above-mentioned report, in consultation with the shipowner and the UK Club. Subsequently, the Spanish authorities informed the Director that the report was final and that the IOPC Fund's observations could not be taken into account.

Court proceedings in La Coruña

On 30 December 1992, the Court of first instance in La Coruña ordered the shipowner to deposit security for an amount of Pts 1 121 219 450 (£5.4 million). This amount corresponds to the estimated limit of liability applicable to the *Aegean Sea*, but the

Court has not taken any decision about the shipowner's right to limitation. The security was constituted on 20 January 1993 by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

On 31 August 1993, the Court in La Coruña seized with the criminal proceedings against the master of the *Aegean Sea* and the pilot in charge of its entry into the port of La Coruña rendered a decision containing the following elements.

- The master of the *Aegean Sea* and the pilot were ordered to provide guarantees within seven days of the order, the master for Pts 8 000 million (£38 million) and the pilot for Pts 4 000 million (£19 million).

- The UK Club and the IOPC Fund were liable, jointly and severally with the master and the pilot, within their respective legal limits. The Club and the Fund were ordered to provide security for Pts 12 000 million (£58 million) within seven days. If this security was not provided, the Court would arrest their property in accordance with the applicable provisions of the Code of Criminal Procedure.

- If the UK Club and IOPC Fund did not provide sufficient security, such security should be provided by the owner of the cargo (Repsol Petroleo SA) and the owner of the *Aegean Sea* (Aegean Sea Traders Corporation).

The IOPC Fund appealed against this decision. The IOPC Fund maintained that it did not have a direct liability under the Fund Convention, since the Fund was liable only when the amounts actually paid under the Civil Liability Convention were insufficient to meet all claims in full. The Fund also argued that criminal proceedings were actions against individuals and that there was no link between the Fund and the accused master and pilot. This appeal was rejected, since under Spanish law decisions of this type are not subject to appeal but are reviewed in connection with the final judgement.

In October 1993, the Executive Committee expressed its concern that the Court's request for security from the IOPC Fund was at variance with the Fund Convention, which forms part of Spanish law. The Committee instructed the Director not to put up any security in the Court.

In its provisional pleadings on the merits of the claims for compensation, presented in September 1993, the IOPC Fund maintained that the pilot and the Military Commandant of the Port of La Coruña (Comandante Militar de Marina) were liable for the grounding. The Fund argued that the pilot was liable because he ordered the master to enter the port of La Coruña at 2.00 am, despite the heavy weather and being aware that the weather would deteriorate further. In addition, in the IOPC Fund's view, the pilot was liable because he did not meet the ship at the designated pilot boarding station, thus contravening the applicable Pilot Regulations. In the view of the Fund, the liability of the Military Commandant of the Port was based on his being aware of an order prohibiting ships like the *Aegean Sea* from entering the port at that time of the night, at the prevailing state of the tide, and in such severe weather conditions.

The Court decided that the Military Commandant of the Port was not liable. It is possible that this question will be reopened, should the criminal proceedings reveal that the Military Commandant is indeed liable.

The Court of first instance is expected to hold a hearing on the various claims in March 1995.

BRAER

(United Kingdom, 5 January 1993)

The incident

In the morning of 5 January 1993, the Liberian tanker *Braer* (44 989 GRT), laden with approximately 84 000 tonnes of North Sea crude oil, suffered a machinery failure in severe weather conditions south of the Shetland Islands (United Kingdom). The vessel grounded at Garths Ness, and oil began to escape almost immediately. All crew members were rescued by helicopter before the grounding.

The heavy weather conditions lasted almost without interruption until 24 January 1993, resulting in the ship breaking up and the cargo and bunkers escaping into the sea. Due to the heavy seas, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast.

On 8 January 1993, the United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone. The zone was extended on 27 January. The ban on whitefish was lifted on 23 April 1993, and that on salmon placed into cages within the zone in the spring of 1993 was lifted on 8 December 1993. The ban on certain species of shellfish was lifted on 30 September 1994, but remains in force for other species of shellfish.

Braer Claims Office

On 8 January 1993 the shipowner's P & I insurer (Assuranceforeingen Skuld, "Skuld Club") and the IOPC Fund established a joint office in Lerwick (Shetland), known as the Braer Claims Office. The task of the office was to assist claimants in their presentation of claims and to handle submitted claims.

At the end of May 1994, the Braer Claims Office was relocated from Lerwick to Aberdeen, since the majority of the claims had been settled and paid. A small office has been maintained in Lerwick where cheques may be collected and receipts signed.

Claims for compensation

General situation

As at 31 December 1994, 1 467 claims for compensation had been presented. Some 1 300 claims had been paid, wholly or partly, for a total amount of approximately £39 million.

Property damage

So far, 792 persons have received compensation totalling £5 991 990 for costs incurred for the cleaning or repainting of their houses and other property, such as fences and sheds, and the renewal of mineral felt roofs contaminated by wind-blown oil emanating from the *Braer*.

Contamination of grassland

The oil spray from the *Braer* contaminated some 40-45 km^2 of grassland on the southern part of Shetland. As a result, some 23 000 sheep had to be moved from their normal grazing and given special feed. The IOPC Fund agreed to pay the cost of feed for sheep, cattle and horses until their normal grazing areas were declared fit for grazing. Feed was supplied to over 200 crofters and farmers. So far, the IOPC Fund and the Skuld Club have paid £719 620 for such feed and £183 638 for fertilizers to regenerate grass for grazing.

A number of crofters have needed additional labour to cope with the extra work involved in feeding the sheep. The IOPC Fund has approved 165 claims for costs for extra labour and farm machinery, and for lost cattle and sheep, totalling £2 383 789.

Fishermen

Some 140 fishermen who normally fish within the exclusion zone have claimed compensation for loss of income as a result of having been unable to fish. Payments totalling £4 826 113 have been made towards such claims.

Salmon farms

Dispersed oil affected 18 salmon farms within the exclusion zone. In 1993, the IOPC Fund accepted as reasonable, on the basis of scientific and other evidence available, the slaughter and disposal of the 1991 and 1992 salmon intakes which were in these farms within the exclusion zone at the time of the *Braer* incident.

The destruction of the 1991 salmon intake was completed in May 1993, and compensation totalling £7 175 470 was paid in 1993.

The destruction of the 1992 salmon intake within the exclusion zone was completed in March 1994. Final settlement has been made with all but two salmon farms. Payments to date total £12 272 565. The IOPC Fund expects to make further payments in the region of £800 000 to the remaining farms.

Fish processors' claims for loss of supply of fish

Fish processors presented claims for economic loss as a result of having been deprived of a supply of fish from the exclusion zone. The Executive Committee recognised that it could be argued that such losses, although caused only indirectly by the contamination, were a foreseeable consequence of a major oil spill in the area. The Committee took the view that such losses should be considered as damage caused by contamination.

The Executive Committee has taken the position that the criterion for the assessment of compensation should be whether the fish processor's activity *as a whole* has suffered losses as a result of the *Braer* incident.

Compensation totalling £2 845 642 has been paid to 16 fish processors for claims of the type referred to above.

Loss of income suffered by fish producers due to reduction in prices

- Whitefish

Whitefish producers on Shetland have maintained that, in spite of the imposition of the exclusion zone, extensive media coverage of the incident caused a loss of confidence on the part of the buyers of Shetland whitefish, which in its turn caused a drop in the first sale price and a reduced demand for whitefish from the Islands. The claimants stated that, in

their view, the amount of the losses should be assessed by comparing the average monthly prices of fish sold at market on Shetland with the corresponding prices paid at Aberdeen and Peterhead in Scotland. They developed statistical models to predict for each species what the price should have been had the incident not occurred, resulting in an alleged total loss of £1 072 300.

The technical experts appointed by the IOPC Fund took the view that the method used by the claimants was in principle reasonable, except that the method did not identify the "*Braer* effect" as distinct from other prevailing market influences. In their assessment, the IOPC Fund's experts used identical data but applied different assumptions in order to take account of other market influencing factors. In December 1994, the IOPC Fund and representatives of the fishermen agreed on the results of the analysis of the price information for the eight species of whitefish under consideration. The claims submitted on behalf of 58 fishermen were settled at a total amount of £446 180. Payments will be made in January 1995.

- *Salmon*

Shetland salmon farmers have maintained that the price of Shetland farmed salmon sold from outside the exclusion zone, on both the domestic and the export market, is still depressed as a result of the incident. Salmon farmers operating outside the exclusion zone have presented claims for losses resulting from such price depression. On the basis of the analysis presented by the claimants, the aggregate amount of the claims would be in the region of £8.3 million for losses up to the end of 1993, plus large losses of a similar order for 1994 and beyond.

The IOPC Fund's experts have analysed the data provided by the claimants and other information relating to the salmon trade. In the light of the results of this analysis, the Director has accepted that there was a fall in the relative price of Shetland salmon during the months immediately following the incident. The extent and duration of the price depression have been analysed by the IOPC Fund's experts. On the basis of the results of this analysis, the IOPC Fund has made payments amounting to £311 593 in respect of claims from 27 salmon farms located outside the exclusion zone.

The salmon farmers have not accepted, however, that the IOPC Fund's position reflects the full extent of the damage suffered.

Smolt producer

A claim for £2 601 506 plus interest was presented by a company which rears salmon smolt on the west coast of Scotland, some 500 kilometres from Shetland. The company maintained that a general loss of confidence in the Shetland salmon farming industry in the months following the *Braer* incident led to a reduction or cancellation of orders for sale of smolt, as well as to a reduction in prices. The company also claimed compensation for losses suffered as a result of having kept considerable quantities of smolt reared under contract until a buyer could be found. The claim included increased production costs, increased financing costs and loss of goodwill. In May 1994, the Executive Committee took the view that the company's claim did not fulfil the criteria laid down by the Committee, and rejected the claim.

At the company's request, the claim was re-examined by the Executive Committee in October 1994. At that session, the United Kingdom delegation informed the Committee that the claim would be reduced to a total amount of between £750 000 and £1 million.

since the company had sold the fish held at a site outside the exclusion zone, thereby reducing the loss suffered as a result of the incident.

The Executive Committee noted the Director's view, based on legal advice, that it was very unlikely that a Scottish Court would accept the company's claim on the basis of the Merchant Shipping (Oil Pollution) Act 1971 and the Merchant Shipping Act 1974, the United Kingdom legislation implementing the Civil Liability Convention and the Fund Convention.

In its re-examination of this claim, the Executive Committee took into account a number of considerations including the following. The Committee was of the opinion that the loss allegedly suffered by the company could not be considered as damage to property rights. The Committee noted the argument advanced by the company that the criterion of geographic proximity must be viewed in the light of the impossibility of Shetland to meet its own requirements for smolt, due to the lack of adequate freshwater on Shetland. Nevertheless, in the Committee's view, the company's smolt-rearing activity was geographically more remote from the contamination than the activities of claimants who had received compensation in the *Braer* case or in previous cases. The Executive Committee did not accept that the company's smolt production should be seen as a joint venture with the Shetland salmon farming industry, as maintained by the company. In the view of the Committee, the company should be considered as a supplier of raw material to the Shetland salmon farming industry. Although the Committee noted the claimant's point that the company and the Shetland salmon industry were financially inter-dependent, since, according to the claimant, the group of companies to which the claimant belonged was a major employer and supporter of the Shetland economy, the Committee did not accept that a criterion of economic inter-dependency would be an appropriate test for the admissibility of claims. In addition, the Committee took the view that the company's smolt-rearing activity did not form an integral part of the economic activity of the area. It was noted that the company had argued that a test should be whether the claimant's business was so inextricably linked with an operation carried out in polluted waters that the claimant must necessarily be affected by the inability to use those waters, whether this business was affected to a significant degree and whether the claimant had any opportunity to avoid the damage. The Committee did not accept that the concept of "inextricably linked" was an appropriate criterion for admissibility. In the Committee's view, the loss could not be considered as damage caused by contamination but was due to the unwillingness of customers to conclude contracts for the purchase of smolt and to the company's lack of adequate alternative markets.

After having re-examined the issues involved and the company's arguments, the Executive Committee maintained the view that the company's claim did not fulfil the criteria for admissibility laid down by the Committee and confirmed its decision to reject the claim.

Other claims for pure economic loss

In 1993, the Executive Committee had considered claims of various types relating to pure economic loss arising out of the *Braer* incident, and some of the decisions taken in respect of these claims related to important questions of principle.

During 1994, the Executive Committee also considered a number of claims from various businesses for pure economic loss allegedly suffered as a result of the *Braer* incident. Most of these claims were rejected, since the Executive Committee considered that they did not fulfil the criteria for admissibility laid down by the Committee.

Braer - salmon farm

A claim was presented by a company supplying smolt from its installation on mainland Scotland for contract-rearing by a salmon farmer within the exclusion zone. The claim concerned losses allegedly suffered by this company through not having been able to implement the contract. The Committee rejected the claim on the grounds that the claimant's activities did not form an integral part of the economy of the area affected by the contamination. A claim by a salmon trader with his place of business in Norway for lost commission on the sale of produce from two salmon farms within the exclusion zone was rejected for the same reason, as was a claim by a salmon feed manufacturer in Denmark for losses resulting from reduced sales of fish feed to salmon farmers within the exclusion zone. Claims for loss of sales commission were presented by two companies operating on mainland Scotland. The Committee took the view that the activities of these two claimants to sell salmon reared within the exclusion zone could not be considered as an integral part of the economic activity of the area affected by the spill, and therefore rejected the claim.

Two companies operating salmon farms outside the exclusion zone presented claims. One of them argued that the uncertainty within the Shetland salmon industry in the aftermath of the *Braer* incident and the depression in the price of salmon had led to a loss of confidence on the company's part. It had therefore decided not to buy certain equipment needed, which allegedly led to this company not rearing any 1993 smolt. The claim related to loss of profit allegedly suffered as a result of not introducing smolt into its farm in 1993 as planned. The other company alleged that it had delayed harvest of its 1991 stock because of the depression in prices as a result of the *Braer* incident, and that it had to purchase new cages in order to take in the 1993 smolt as normal. The latter company claimed

compensation for the cost incurred for these purchases and for additional costs associated with holding the fish for longer than planned. Both these claims were rejected, since, in the Committee's view, the alleged losses could not be considered as damage caused by contamination but were a result of decisions by the claimants not to buy certain equipment or to delay harvesting, respectively.

A claim was submitted by a farmer producing potatoes who had for 20 years been the sole provider of potatoes to the only supermarket on Shetland. After the incident the supermarket had started to buy potatoes from the Scottish mainland which were prewashed and prepacked in plastic bags. The supermarket continued to buy these potatoes even after the crop on Shetland had been declared fit for consumption by the authorities. The claimant maintained that he had suffered a reduction in income as a result of being unable to compete with the produce from the mainland. The farmer claimed compensation for the cost of upgrading the operation of his farm in order to compete with produce from the Scottish mainland first brought to Shetland after the *Braer* incident. The Executive Committee took the view that the losses allegedly suffered by the claimant could not be considered as damage caused by contamination and rejected the claim.

Activities to counteract the negative effect of the Braer incident in respect of the fishery sector

In October 1993, the Executive Committee considered a joint claim submitted by the Shetland Salmon Farmers' Association, the Shetland Fish Processors' Association and the Shetland Fish Producers' Organisation for the costs of activities to be undertaken in order to counteract the negative effect of the *Braer* incident on the reputation of Shetland fish products. The total costs of these activities were indicated at £2.975 million, later revised to £1.5 million.

The Committee took the view that costs for activities of the kind covered by this claim could not be considered as falling within the definition of "pollution damage", unless they were to be considered as costs of "preventive measures". In the Committee's view, it was likely that the drafters of the Civil Liability Convention did not foresee that activities of the kind envisaged by these three organisations should fall within the definition of "preventive measures". After examining the issue, the Executive Committee decided that measures to prevent or minimise pure economic loss should be considered as preventive measures, provided that they fulfilled the following requirements:

- the costs of the proposed measures were reasonable;
- the costs of the measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- the measures were appropriate and offered a reasonable prospect of being successful; and
- in the case of a marketing campaign, the measures related to actual targeted markets.

In the light of these criteria, the IOPC Fund accepted in 1993 part of a claim relating to measures taken by the Shetland Salmon Farmers' Association, during the months immediately following the incident, to limit the damage to the reputation of Shetland salmon caused by the incident, for an amount of £218 301. The Fund also accepted certain further claims for marketing activities by the three associations for a total amount of £60 016.

In February 1994, the Executive Committee took the view that it was unlikely that the industries concerned would suffer further damage resulting from the *Braer* incident and that, for this reason, the activities proposed by the three organisations did not fulfil the criteria for admissibility laid down by the Committee.

Tourism

Shetland Islands Tourism, an organisation of tourism-related businesses, presented a claim relating to the cost of a marketing campaign to counteract the negative effect of the *Braer* incident on tourism. The Executive Committee noted that the Shetland tourism industry as a whole had not suffered as a result of the *Braer* incident to the extent alleged by Shetland Islands Tourism, and that it was unlikely that there would be any significant losses in the future caused by the *Braer* incident. For this reason, the Executive Committee considered that the marketing activity proposed by Shetland Islands Tourism did not fulfil the requirements for admissibility.

Mitigation of loss

The Executive Committee took the view that in principle income which a claimant earned in connection with an oil spill should be deducted from any compensation for loss of income to which he might be entitled. The Committee noted, however, that it was in the IOPC Fund's interest that people in the affected area assisted in the clean-up operations and other activities related to that spill. For this reason, the Committee decided that the IOPC Fund should take a flexible approach and should not insist on the deduction of small amounts paid to people who, without acting to protect their own property or trade, take part in clean-up operations or assist the IOPC Fund in connection with an incident.

Losses allegedly caused as a result of failed attempts at mitigation

A fish processing company on Shetland indicated its intention to claim compensation for loss of income as a result of failed attempts to mitigate a loss. The company normally sold large quantities of smoked salmon to France, but this market collapsed in early 1993. The company maintained that this collapse was due to the *Braer* incident, although research carried out by the IOPC Fund's experts showed that other significant factors had caused the reduced demand for smoked salmon in France at that time. The company had found buyers in another European country, but these buyers had failed to pay for the smoked salmon supplied.

The Executive Committee rejected this claim, since it considered that the loss allegedly suffered by this potential claimant could not be considered as damage caused by contamination but was a result of normal business risks.

Public authorities

In May 1994, the United Kingdom Government submitted a claim for compensation for costs incurred for clean-up operations at sea and on shore, for disposal of oily waste, for monitoring the operations carried out for the purpose of salving ship and cargo, and for the cost of carrying out tests on water to establish the extent of hydrocarbon content. The claim is for a total amount of £2 642 310. An additional claim will be submitted.

Shetland Islands Council submitted an interim claim for £1 083 707 in March 1994, and a final claim for an additional £417 737 in June 1994, making a total claim of £1 501 444. The claim covers the costs allegedly incurred by the Council as a result of the incident.

The Government's and the Council's claims are being examined by the IOPC Fund and the Skuld Club.

Scottish Office Bridging Fund

The United Kingdom Government, through the Scottish Office, set up a Bridging Fund to facilitate payments. The Bridging Fund was established to make advance payments to claimants whose claims were considered by the Skuld Club and the IOPC Fund to be admissible in principle under the Civil Liability Convention and the Fund Convention, if liquid funds available to the Skuld Club and the IOPC Fund were insufficient to ensure prompt payments. The Bridging Fund paid a total of £2 651 090 towards claims from salmon farmers. This amount was repaid by the IOPC Fund to the United Kingdom Government in February 1994.

Investigations into the cause of the incident

The United Kingdom Government carried out an investigation into the cause of the incident through the Marine Accident Investigation Branch of the Department of Transport. A similar investigation was carried out on behalf of the Government of Liberia through the Commissioner of Maritime Affairs.

The reports of these investigations were published on 20 January 1994. The Director is examining these reports with the assistance of the IOPC Fund's Scottish lawyer and technical experts.

SAMBO N°11

(Republic of Korea, 12 April 1993)

The Korean tanker *Sambo N°11* (520 GRT), laden with 680 tonnes of heavy fuel oil and 24 tonnes of marine diesel, ran aground some 400 kilometres south-east of Seoul (Republic of Korea). Some four tonnes of bunker oil and engine room bilges escaped into the sea.

The Regional Marine Police and private contractors engaged by the shipowner on the orders of the Marine Police carried out clean-up operations. The clean-up at sea consisted of the deployment of booms and the spraying of dispersants. The spill affected some six kilometres of shoreline which was cleaned manually. Extensive fishing and aquaculture activities take place in the affected area.

Claims submitted by five private contractors for clean-up operations and preventive measures were settled at Won 127 million (£115 563).

The Marine Police submitted a claim for Won 55 million (£44 570) in respect of the clean-up operations. Under the applicable Korean legislation, the shipowner is obliged to pay the amount claimed by the Marine Police within a short time and can only challenge the amount afterwards in court. If the shipowner fails to pay within the prescribed period, he is obliged to pay a penalty of 5% of the claimed amount and an additional 2% penalty for each further month of delay. The IOPC Fund took the position that this obligation did not apply to the Fund which is only obliged to pay compensation in respect of reasonable measures and reasonable costs. In addition, the IOPC Fund considered that it was not liable to pay any penalty in the event of delay. After negotiations, this claim was settled at Won 50 million (£41 800). The settlement amount did not include any penalty.

Fishermen in the affected area claimed compensation for loss of earnings, totalling Won 506 million (£410 050). These claims were settled at Won 43 million (£35 411).

The shipowner presented a claim to the IOPC Fund for his expenses for clean-up operations. This claim was not accepted by the IOPC Fund, since the shipowner had not constituted any limitation fund.

The accepted claims total Won 219 million (£192 774). They were paid by the IOPC Fund during the period September 1993 - January 1994.

The limitation amount applicable to the *Sambo N°11* is estimated at Won 78 million (£63 200).

Since the *Sambo N°11* was carrying less than 2 000 tonnes of oil in bulk as cargo, the shipowner was not obliged to maintain insurance pursuant to the Civil Liability Convention. The *Sambo N°11* was not entered in any P & I Club, but she was insured for protection and indemnity up to a limit of US$1 million (£639 200) per incident, with a deductible of US$50 000 (£31 950). The insurer maintained that, as the insurance was strictly one of indemnity, no legal liability arose under the policy until claims were paid by the insured. For this reason, the insurer made it clear that he would not constitute the limitation fund. After investigations into the financial position of the owner, the IOPC Fund concluded that the shipowner was incapable of constituting a limitation fund and was also incapable of paying the deductible of US$50 000.

After lengthy negotiations, the shipowner's insurer agreed to pay an amount corresponding to the sum that the insurer would have paid, had the shipowner established the limitation fund and paid the deductible, viz the limitation amount minus the indemnification of the shipowner and the deductible under the insurance policy of US$50 000. The IOPC Fund accepted this payment without prejudice to the Fund's position in future cases as to whether or not the insurer in such a case is entitled to indemnification. In April 1994, the shipowner's insurer paid to the IOPC Fund US$22 504 (£14 959) as his share of the compensation.

TAIKO MARU

(Japan, 31 May 1993)

The incident

The Japanese coastal tanker *Taiko Maru* (699 GRT), carrying 2 062 tonnes of heavy fuel oil as cargo, collided with the Japanese cargo ship *Kensho Maru N°3* (499 GRT) some five kilometres off Shioyazaki, Fukushima (Japan). As a result, two cargo tanks of the *Taiko Maru* were ruptured and some 520 tonnes of oil escaped into the sea.

Clean-up operations

The shipowner and his P & I insurer, the Japan Shipowners' Mutual Protection and Indemnity Association (JPIA), engaged the Japan Maritime Disaster Prevention Center (JMDPC) to carry out clean-up operations in accordance with the directives given by the Maritime Safety Agency. JMDPC engaged contractors to carry out these operations. The shipowner set up a response centre, and he also engaged contractors to respond to the spill. The operations were monitored by surveyors employed jointly by JPIA and the IOPC Fund

A number of boats were involved in the clean-up operations, but these operations were not effective due to dense fog. The oil from the *Taiko Maru* spread over a large area and affected some 70 kilometres of coast from Hisanohama to Hitachi. The popular tourist beaches along this part of the coast between Obama and Oisu were polluted and were closed for swimming during the period of 20-30 July 1993. Some 5 000m^3 of oily sand had to be removed from these beaches. The fishing ports of Ena and Nakanosaku and their piers and breakwaters were heavily contaminated. The piers and breakwaters were cleaned mainly by the use of chemicals. The sea off these two ports is used for cultivating and collecting abalone and sea urchins, and this area was severely affected by the spill.

Onshore clean-up operations were carried out by local contractors and fishermen under contract with the JMDPC. The operations consisted of the manual and mechanical removal of stranded oil and contaminated beach sediments. Collected oil and oily waste was transported to a disposal factory for incineration. Most of the onshore clean-up was completed by mid-June 1993.

Considerable quantities of oil sank to the bottom of the sea. Removal of the submerged oil was carried out by a vessel specially equipped for this purpose. On 27 August 1993, a typhoon caused some of the sunken oil to resurface at various places, and this oil threatened to cause further contamination of the coast. Since clean-up operations were undertaken immediately, however, the pollution damage caused by this oil was minimal.

Impact on fishing activities

A number of fishermen carry out boat fishing in the affected area. The oil damaged fishing nets and led to the disruption of fishing activities. Four fixed fishing nets, varying between 200 and 800 metres in length, were contaminated, and the fishermen were prevented from fishing until 25 June when these nets had been cleaned.

Most of the fishermen affected by the spill collect abalone, sea urchins and hokkigai shellfish. These species are cultivated under controlled conditions before being placed on the seabed by the fishery associations. Abalone and sea urchins are harvested by divers, whereas the hokkigai shellfish are harvested from small boats using metal rakes.

The fishermen in the area are members of fishery co-operative associations. Soon after the incident, a committee composed of representatives of the fishery associations, the local authorities and the health authorities decided to suspend the catching of young sardines and abalone and the gathering of sea urchins and shellfish in the affected area. These fishing activities were partly resumed by the end of June or early in July 1993. The lifting of the suspension on harvesting of hokkigai shellfish was not approved by the local health authorities until 6 and 12 August 1993, after analysis of samples showed that the shellfish were no longer contaminated.

Claims for compensation

The Maritime Safety Agency presented a claim in respect of clean-up operations for ¥4 552 431 (£28 996). The IOPC Fund accepted this claim in full.

Twenty-five entities presented claims for compensation for clean-up operations and preventive measures. The total amount of these claims was ¥860 million (£5.6 million), including the costs of the participation of the fishery associations in the clean-up operations (¥172 million). These claims were settled in March 1994 at ¥734 523 078 (£4.8 million).

The operator of a power station submitted a claim for ¥3 706 328 (£23 800) for the cost of cleaning contaminated water intakes. The IOPC Fund accepted this claim in full. Claims for clean-up costs were presented by Fukushima Prefecture for ¥50 557 550 (£324 100) and by Iwaki Municipality for ¥6 326 194 (£40 550). The claim by Fukushima Prefecture was settled at ¥25 278 775 (£166 636), whereas the claim by Iwaki Municipality was accepted in full. A claim for the cost of cleaning oil stained yachts, totalling ¥2 611 860 (£16 636), was also accepted in full.

Ten fishery co-operative associations presented claims for loss of income on behalf of their members for a total amount of ¥1 086 million (£6.8 million). These claims mainly concerned loss of income allegedly resulting from the suspension of fishing and future loss of income resulting from the oil spill allegedly destroying a proportion of the abalone, sea urchins and hokkigai shellfish. After lengthy negotiations, these claims were settled in March 1994 at ¥345 391 509 (£2 284 335), mainly for loss of income as a result of the suspension of fishing. These claims were assessed on the basis of a comparison between the actual income during 1993 and the average of the catches during the years 1990-1992, as evidenced by catch records and accounting books produced by the claimants. The IOPC Fund did not accept any item relating to future loss of income due to allegedly destroyed products.

All claims presented were settled and paid by 6 April 1994 for a total amount of ¥1 122 390 175 (£7 565 299). It is very unlikely that there will be any further claims for compensation arising out of this incident.

The settlements are summarised in the following table.

Claimant	Amount Claimed ¥	Amount Settled ¥
Maritime Safety Agency	4 552 431	4 552 431
25 Entities (JMDPC, shipowner & their contractors)	859 968 725	734 523 078
Power Station	3 706 328	3 706 328
Fukushima Prefecture	50 557 550	25 278 775
Iwaki Municipality	6 326 194	6 326 194
Stained Yachts	2 611 860	2 611 860
Fishery Claims	1 086 019 949	345 391 509
TOTAL	2 013 743 037 *(£13.3 million)*	1 122 390 175 *(£7.6 million)*

The limitation amount applicable to the *Taiko Maru* is estimated at ¥29 205 120 (£187 200). The limitation proceedings started in September 1994.

Investigation into the cause of the incident

In a judgement rendered on 24 March 1994, the competent Marine Court found that the collision was caused by improper navigation on the part of both vessels in the restricted visibility, and that this was a result of the two masters not having given proper instructions to the crews.

The IOPC Fund carried out an investigation, through a Japanese lawyer, into whether the incident was caused by the fault or privity on the part of the owner of the *Taiko Maru*, which would deprive him of the right to limit his liability. This investigation showed, however, that there was no such fault or privity.

The IOPC Fund is taking the necessary steps to initiate recourse action against the owner of the *Kensho Maru N°3*.

RYOYO MARU

(Japan, 23 July 1993)

The Japanese coastal tanker *Ryoyo Maru* (699 GRT), laden with 2 081 tonnes of heavy gas oil, collided with a car carrier off Shimoda, Izu peninsula, Shizuoka (Japan). Two tanks of the *Ryoyo Maru* were fractured, and approximately 500 tonnes of oil leaked out. The *Ryoyo Maru* was towed to a shipyard after the remaining oil had been transferred to another ship.

Most of the spilt oil appeared to have drifted out to sea as a result of the bad weather. On 24 July, however, oil came ashore on the southern part of the Izu peninsula. The clean-up operations were carried out by the Japan Maritime Disaster Prevention Center and its subcontractors.

It was established through chemical analysis that the heavy gas oil carried by the *Ryoyo Maru* was a "persistent oil" for the purpose of the Civil Liability Convention.

Seven entities which took part in the clean-up operations presented claims totalling ¥67 million (£429 500). These claims were settled at ¥36 538 921 (£240 750). In September 1994, the IOPC Fund paid ¥8 433 001 (£54 512), representing the total amount of the agreed claims minus the shipowner's limitation amount of ¥28 105 920 (£181 680).

The IOPC Fund is following the investigations into the cause of the incident.

KEUMDONG N°5

(Republic of Korea, 27 September 1993)

The incident

The Korean barge *Keumdong N°5* (481 GRT) collided with the Chinese freighter *Bi Jia Shan* 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*. This oil quickly spread over a wide area, due to strong tidal currents. The oil affected mainly the north-west coast of Namhae Island, where there are many fisheries and important mariculture resources.

The balance of the cargo was transhipped and the *Keumdong N°5* was towed to a nearby repair yard. During slipping at the shipyard, a further quantity of approximately 50 tonnes of heavy fuel oil escaped from the ruptured tanks. Most of this oil was contained by a boom, but some escaped and caused light pollution to shores in the vicinity.

Keumdong N°5 - traditional oyster farm

Clean-up operations

The Korean Marine Police carried out clean-up operations at sea using dispersants and sorbents, applied from its own vessels as well as from ships belonging to the Yosu Port Authority and fishing boats.

Four major clean-up contractors were engaged in the shoreline clean-up operations, and over 4 000 villagers, policemen and army personnel were employed. The clean-up activities, which involved the use of dispersants and the manual cleaning of contaminated rocks, were completed in early January 1994.

The disposal of oily waste proved difficult because of the quantities involved and the limited access to many of the clean-up sites. After collection, the waste was transported by barge to Inchon for incineration and landfill.

Claims for compensation

Claims relating to the cost of clean-up operations were presented by the Korean Marine Police and Navy, the local marine police force, Yosu Port Authority, Namhae County and some private contractors. These claims were settled at a total amount of Won 5 600 million (£4.5 million) and were paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd, Standard Club) between November 1993 and September 1994.

In September 1994, a shipping company presented a claim for US$25 970 (£16 600) for cleaning its allegedly contaminated vessel and for loss of hire during the cleaning operation. This claim is being discussed with the claimant.

The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation have been submitted by Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing eleven fisheries co-operatives with some 6 000 members in all. The total amount of the claims presented so far has provisionally been indicated at Won 93 000 million (£75 million). The IOPC Fund's surveyors are examining these claims. The Kwang Yang Bay Federation has indicated that it will submit further claims in the region of Won 90 000 million (£73 million).

At meetings held in London in February and April 1994 with representatives of the Kwang Yang Bay Federation, the IOPC Fund explained its procedure for claims handling and the criteria applied for the admissibility of claims.

In March 1994, on the instructions of the IOPC Fund and the Standard Club, an expert from the International Tanker Owners Pollution Federation Limited (ITOPF), together with two United Kingdom-based fishery experts, visited Korea to carry out field investigations into fishery and aquaculture resources allegedly affected by the spill, as part of the assessment of the claims submitted by the Kwang Yang Bay Federation. Three Korean scientists joined these experts in the investigations. The IOPC Fund experts' report, containing a detailed written analysis of the claims, has been made available to the firm of London solicitors representing the claimants.

In September 1994 the IOPC Fund, the Standard Club and the above-mentioned solicitors met in London to discuss the various fishery claims. Very little progress was made since the assessment of the claims made by the IOPC Fund's experts differed greatly from the assessment made by the experts employed by the claimants. Discussions are continuing between the IOPC Fund and the solicitors of the claimants.

As the total amount of the claims submitted in this case exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, the IOPC Fund decided to limit its payments, at least for the time being, to 50% of the established damage suffered by each claimant. When the IOPC Fund is called upon to make payments, it will consider whether this percentage should be adjusted.

Limitation proceedings

The shipowner has started limitation proceedings at the competent District Court. The limitation amount applicable to the *Keumdong N°5* is estimated at Won 77.4 million (£62 750).

ILIAD

(Greece, 9 October 1993)

The incident

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria Island after leaving the port of Pylos (Greece). The *Iliad* was carrying a cargo of about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes were spilled. The Greek national contingency plan was activated. The spill was soon brought under control and the vessel left the port, anchoring offshore to await inspection and temporary repairs.

Clean-up operations

A specialist contractor was engaged to collect the floating oil in the bay, using skimmers and other specialised equipment, assisted by a number of fishing boats. The

recovered oil was stored in a barge at Pylos. There was widespread oiling of the coast around Navarino Bay, but most of the sandy beaches were soon cleaned by local labour. Temporary stockpiles of bagged oily wastes accumulated around the bay.

A fish farm, rearing sea bass and sea bream in floating cages in the north-western corner of Navarino Bay, was contaminated by oil before defensive booms could be deployed, but the oiling was relatively light and only a few fish died as a result. The farm, which was subsequently protected by booms, was cleaned manually. A shallow lagoon, also used for mariculture, was very lightly oiled as tidal streams carried floating oil in through a narrow entrance. The mouth of the lagoon was protected from further oil by booms and the oil residues already inside were cleaned manually.

Outside Navarino Bay, there was relatively limited oiling of shorelines. Most of the oil evaporated, degraded and dissipated naturally in the open sea. The sandy beaches immediately north of the entrance to Navarino Bay on the outer coast which became oiled were cleaned manually. Patches of oil drifted some ten kilometres to the south of Pylos, but caused only very minor coastal contamination.

By 22 October only sheens and traces of oil residues remained on the water surface, and the recovery at sea was terminated. The removal of oil from sandy beaches was completed by 29 October. The final cleaning of sea-walls and selected areas of rocky shoreline in Pylos Bay was completed by the middle of January 1994.

Although floating oil interrupted the fishing activities in Pylos Bay and along the outer coast for about two weeks, it is extremely unlikely that there will be any long lasting effects to wild fish stocks. The fish farm at Pylos lost a small part of its stock and it appears that the farm's normal selling pattern was interrupted. Tests on the stock showed that there was no residual contamination.

Claims for compensation

A number of lawyers have submitted documents to the shipowner's P & I insurer (the Newcastle Club) in support of claims for loss of income allegedly suffered by individuals and a large range of small businesses, such as hoteliers, restaurateurs and fishermen, as well as taxi drivers, shopkeepers, estate agents and hairdressers. The total amount of the claims presented is Drs 3 100 million (£8.2 million).

The supporting documents are being examined by lawyers and technical experts appointed by the shipowner, the Newcastle Club and the IOPC Fund.

The shipowner submitted a claim for Drs 277 million (£737 000) for costs incurred during the clean-up operations, which has been paid by the Newcastle Club.

Limitation proceedings

In March 1994, the Newcastle Club established a limitation fund amounting to Drs 1 496 533 000 (£3 980 150) with the competent court by the deposit of a bank guarantee.

The Court has appointed a liquidator to examine the claims in the limitation proceedings. The claims should be lodged with the Court by 20 January 1995.

SEKI

(United Arab Emirates and Oman, 30 March 1994)

The incident

The tanker *Baynunah* (34 240 GRT), registered in the United Arab Emirates, and the Panamanian-registered tanker *Seki* (153 506 GRT) collided some nine miles off the port of Fujairah (United Arab Emirates). *Baynunah* was in ballast at the time, whereas the *Seki* was fully laden with some 153 000 tonnes of Iranian light crude oil. The N°1 port wing tank of the *Seki* was ruptured, resulting in the escape of approximately 16 000 tonnes of oil.

The spilt oil drifted northwards under the influence of wind and currents and came ashore north of the port of Khorfakkan. Much of this oil was refloated by offshore winds and driven away from the coast, where much of it dispersed by natural processes. However, some of the oil drifted further north along the coast, affecting the Emirates of Fujairah and Sharjah and polluting some 30 kilometres of shoreline between Khorfakkan in Sharjah and Diba in Fujairah. The coast of the Musandam peninsula in Oman was also polluted south of Limah.

Clean-up operations

In the United Arab Emirates, the response to the oil spill was organised by the Fujairah Port Authority, with the assistance of experts from the International Tanker Owners Pollution Federation Limited, acting as technical advisers on behalf of the shipowner, the P & I insurer (the Britannia Steam Ship Insurance Association Limited, "the Britannia P & I Club") and the IOPC Fund.

Three skimming vessels operated by a local contractor were engaged in offshore recovery operations. Additional clean-up resources were provided by the Abu Dhabi National Oil Company and the Government of Oman. Vacuum trucks and skimmers were used from shore to collect oil pooled against the coast.

The shoreline clean-up, initially conducted by local contractors, was suspended when it became clear that the oil had penetrated deeply into the coarse sand beaches. Trials were conducted to identify the optimum clean-up methods. Meanwhile, a considerable degree of natural cleaning took place as a result of wave and tidal action.

Two companies, one French and one Saudi Arabian, were engaged to remove oil remaining trapped in the sand and pebble sediments along the coast, the work being divided between them. Their contracts provided for payment on a lump sum basis. The operations began during the last week of August and both contracts were completed by the second week of October. It became evident, however, that the extent of oiling was greater than had been estimated when the contracts were concluded. For this reason, a further contract relating to additional clean-up operations was concluded with the French company which provided for payments on a daily rate basis. These operations were close to completion at the end of 1994. Some 10 000m^3 of oily waste have been collected and will have to be disposed of.

The spill affected artisanal fisheries. Fishermen along the east coast of the United Arab Emirates were instructed by the authorities to suspend fishing activities. Amenity beaches used by tourists for swimming and diving were also affected. However, the main tourist season runs through the cooler winter months, from late September onwards. A desalination plant immediately south of Khorfakkan was temporarily shut down at night as a precautionary measure.

Claims for compensation

The Government of Fujairah has submitted 19 claims totalling Dhr105 million (£18.2 million), including a claim for damage to fisheries of Dhr36.9 million (£6.4 million). The Britannia P & I Club has paid the French and Saudi Arabian companies Dhr4.2 million (£734 000) and Dhr4.6 million (£804 000) respectively. The local contractor who conducted offshore recovery operations during the initial stages of the incident has submitted a claim for US$6.0 million (£3.8 million). Claims for losses allegedly suffered in other sectors of the economy are anticipated.

The claims are being examined by the Britannia P & I Club and the IOPC Fund, with the assistance of experts.

The Government of Oman submitted a claim for OR100 568 (£167 000) for costs of surveillance activities, costs incurred in placing dispersant-spraying aircraft on standby and in the provision of offshore recovery equipment to the Government of Fujairah. The claim included an item for OR27 000 (£44 800) for fishery damage along the affected coastline of the Musandam peninsula. This claim was settled and paid by the P & I Club in November 1994 at OR92 279 (£153 000).

Limitation proceedings and related issues

The limitation amount applicable to the *Seki* is approximately £12.9 million. The Britannia P & I Club has established a limitation fund for the limitation amount in the Court of Fujairah by means of a letter of guarantee.

Through its agent (World-Wide Shipping Agency Limited) the owner of the *Seki* entered into a Memorandum of Agreement with the Government of Fujairah. Pursuant to this Memorandum, the owner has deposited US$19.6 million (£12.7 million) with a bank in the United Arab Emirates. A claim presented by the Government can be paid out of this deposit even if it has been rejected by the Britannia P & I Club and the IOPC Fund. If such a payment were to be made for a rejected claim, the shipowner may take legal action in respect of that claim against the Club and the IOPC Fund in the competent court in the United Arab Emirates. The Government is obliged to refund to the shipowner the amount received towards any part of a claim not upheld by the court.

The IOPC Fund made it clear to the shipowner and the authorities of the United Arab Emirates that the Fund is not bound by any agreement in respect of a claim unless that claim has been approved explicitly by the Fund or has been established by a final judgement rendered by a competent court in legal proceedings brought under Article IX of the Civil Liability Convention or Article 7.1 of the Fund Convention.

Investigations into the cause of the incident

The authorities of the United Arab Emirates are investigating the cause of the incident. The IOPC Fund is following these investigations.

DAITO MARU N°5

(Japan, 11 June 1994)

While the Japanese tanker *Daito Maru N°5* (116 GRT) was loading heavy fuel oil as cargo at the private berth of a refinery in the Port of Yokohama (Japan), half a tonne of this oil flowed from the cargo tank and spilled into the sea. Clean-up operations were

immediately undertaken by the refinery and four contractors. These operations were completed on 13 June 1994.

Claims for clean-up costs presented by the refinery and the contractors were settled in September 1994 for the amount claimed, ie ¥4 573 864 (£29 320). The IOPC Fund will have to pay ¥2 033 944 (£13 040), representing the total amount of the settled claims minus the shipowner's limitation amount of ¥3 386 560 (£21 700) plus indemnification of the shipowner amounting to ¥846 640 (£5 430).

The shipowner's P & I insurer (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) requested that the IOPC Fund should waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs which would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention, the Executive Committee decided that the requirement to establish the limitation fund should be waived in the *Daito Maru N°5* case, so that the IOPC Fund could, as an exception, pay compensation and indemnification without the limitation fund being established.

TOYOTAKA MARU

(Japan, 17 October 1994)

The incident

The Japanese tanker *Teruho Maru N°5* (496 GRT) collided with the Japanese tanker *Toyotaka Maru* (2 960 GRT), while the latter ship was at anchorage off the port of Kainan, Wakayama prefecture, on the south-west coast of Honshu (Japan). The *Toyotaka Maru* was laden with 5 000 tonnes of crude oil, of which some 560 tonnes escaped as a result of the collision.

The clean-up operations at sea were carried out by the Japan Maritime Safety Agency (JMSA), the Japan Maritime Disaster Prevention Center (JMDPC) under contract with the shipowner, and various contractors. JMSA and JMDPC deployed a number of patrol vessels and two oil-retrieval vessels. Fishery co-operative associations provided a large number of boats.

Most of the spilt oil was contained in Wakaura Bay, and the majority of this oil was collected at sea in the initial stages of the clean-up operation. A sheen of oil spread along the coast southwards out of the bay, although beaches and rocky promontories on the southern coast of the bay became polluted. Fishermen, fire brigades and contractors were engaged in beach clean-up, collecting the oily waste for subsequent incineration or burial. Some 100 members of the Self Defence Force cleaned the beaches to which it was difficult to gain access. The clean-up operations onshore lasted until 28 November 1994.

Claims for compensation

Various entities involved in the clean-up operations presented claims for compensation. In December 1994, provisional payments, totalling ¥50 million (£320 500), were made to eight small businesses which were sub-contractors of JMDPC.

Extensive fishing and aquaculture are carried out in the area affected by the spill, and the members of some 18 fishery co-operative associations were affected. These associations are expected to present claims for compensation for significant amounts.

Toyotaka Maru - fishing boat engaged in clean-up operations

To enable the IOPC Fund to pay claimants promptly, the Executive Committee, at its session in October 1994, authorised the Director to make final settlement of all claims arising out of this incident, except to the extent that questions of principle arose in respect of which the Committee had not previously made a decision.

The limitation amount applicable to the *Toyotaka Maru* is estimated at ¥81 823 680 (£524 500).

HOYU MARU N°53

(Japan, 31 October 1994)

While the Japanese-registered tanker *Hoyu Maru N°53* (43 GRT) was supplying bunkers to a fishing boat in the port of Monbetsu, Hokkaido Prefecture (Japan), heavy fuel oil was inadvertently pumped into a cargo hold. As a result, 36 tonnes of frozen fish were contaminated and had to be destroyed.

The owner of the fishing boat is expected to submit a claim for the cost of cleaning the contaminated hold and for the value of the destroyed fish.

The limitation amount applicable to the *Hoyu Maru N°53* is estimated at ¥1 075 200 (£6 890).

SUNG IL N°1

(Republic of Korea, 8 November 1994)

The coastal tanker *Sung Il N°1* (150 GRT), registered in the Republic of Korea, ran aground in the harbour of Onsan (Republic of Korea), spilling some 18 tonnes of her cargo of heavy fuel oil.

Divers plugged the damaged bottom plating of the *Sung Il N°1* to prevent further leakage of oil. The cargo remaining on board and the mixture of oil and water in the damaged tanks were transhipped to other coastal tankers. Clean-up operations were carried out by the Ulsan Marine Police, the shipowner and private contractors. Some four kilometres of coastline were affected by the oil. Dispersants and high pressure water were used during the onshore clean-up. The clean-up operations were completed on 18 November 1994.

Claims for clean-up costs presented by the Ulsan Marine Police, Ulsan Maritime and Port Authority and a private contractor were settled in December 1994 at a total amount of Won 9 206 345 (£7 460). These claims were paid by the shipowner.

The incident affected fishing activities and the aquaculture industry in the area. Three fishery associations have submitted claims for compensation totalling Won 475 939 300 (£385 700). These claims are being examined by the IOPC Fund's experts.

The limitation amount applicable to the *Sung Il N°1* is estimated at Won 22 million (£17 800). The ship is not entered into any P & I Club but had insurance corresponding to the limitation amount.

9 LOOKING AHEAD

When the present Director took up office on 1 January 1985, the IOPC Fund had 30 Member States. The number of Member States has since grown to 64 at the end of 1994. It is anticipated that a number of States will ratify the Fund Convention in the near future. The IOPC Fund is thus becoming a truly worldwide Organisation. This continuing expansion of membership demonstrates that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing prompt compensation to victims of oil pollution damage.

The worldwide public debate on oil pollution resulting from major shipping incidents in recent years focused on the need to enhance the safety of navigation, to study tanker design and construction, to improve contingency plans and to develop better equipment and materials for oil spill clean-up. This debate has also increased the awareness in all States, including those which are not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

The role of the IOPC Fund in oil pollution incidents has evolved over the years. In recent years the Fund has been involved in several major incidents which caused significant pollution damage and gave rise to thousands of claims for compensation. This has necessitated a reassessment of the procedures applied by the IOPC Fund in the handling of claims. The Fund has relied heavily on the use of independent experts of various professions in the assessment of claims. Local claims offices have been set up jointly with the P & I insurer in two cases. In other cases local surveyors have been entrusted to carry out tasks similar to those performed by such offices.

During recent years new types of claims have been submitted. The IOPC Fund has taken a number of important decisions on the criteria to be applied for the admissibility of claims for compensation, in particular those for pure economic loss, viz economic loss suffered by persons whose property has not been contaminated as a result of the incident in question. In this context reference is made to Article 235 of the United Nations Convention on the Law of the Sea, under which States are under an obligation to develop international law relating to liability and compensation. The IOPC Fund Assembly has expressed the opinion that a uniform interpretation of the definition of "pollution damage" is essential for the functioning of the regime of compensation established by the Civil Liability Convention and the Fund Convention.

As a result of the IOPC Fund's involvement in a number of major incidents, the Fund has been required to levy significant amounts in contributions. The response by contributors in Member States has always been extremely good. As the IOPC Fund has been holding significant funds, the investment of its assets has become increasingly important. The Assembly and the Director have, during recent years, paid great attention to investment matters, and these issues will have to be kept under constant review.

The smooth operation of the IOPC Fund has only been possible due to the strong support which the Organisation has enjoyed over the years from the Governments of Member States. Close co-operation with the P & I Clubs has greatly facilitated the activities. The IOPC Fund has also had the benefit of important support from the shipping and oil industries. It is crucial for the IOPC Fund that it continues to enjoy this strong support from governments, public bodies and various private interests involved in oil spills

The 1992 Protocols were adopted to modify the 1969 Civil Liability Convention and the 1971 Fund Convention. These Protocols are expected to enter into force during the first half of 1996, thereby ensuring the viability of the international system of compensation established by the Civil Liability Convention and the Fund Convention in the future. It will be an essential task for the Organisation to continue to develop this system to ensure that it continues to meet the needs of society in respect of compensation for oil pollution damage. The Assembly will, at its next session to be held in October 1995, be called upon to take a number of important decisions concerning the preparations for the entry into force of the 1992 Protocols.

ANNEX I

Structure of the IOPC Fund

ASSEMBLY

Composed of all Member States

Chairman:	Mr J Bredholt	(Denmark)
Vice-Chairmen:	Professor H Tanikawa	(Japan)
	Mr A Al-Yagout	(Kuwait)

EXECUTIVE COMMITTEE

38th to 40th sessions

Chairman:	Mr C Coppolani (France)
Vice-Chairman:	Ms A Ogo (Nigeria)
Canada	Republic of Korea
Côte d'Ivoire	Spain
France	Sri Lanka
Greece	Sweden
Italy	Tunisia
Netherlands	United Kingdom
Nigeria	Venezuela
Poland	

41st session

Chairman:	Mr C Coppolani (France)
Vice-Chairman:	Mrs C Asseng-Nguele (Cameroon)
Algeria	Mexico
Cameroon	Norway
France	Republic of Korea
Greece	Sri Lanka
India	Sweden
Italy	United Arab Emirates
Japan	United Kingdom
Liberia	

IOPC FUND SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr H Osuga	Legal Officer
Mr S O Nte	Finance/Personnel Officer
Mrs S Broadley	Claims Officer
Mrs H Rubin	Administrative Officer

AUDITORS

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on Published Financial Statements

The financial statements reproduced in Annexes III to IX are a summary of information contained in the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1993, approved by the Assembly at its 17th session.

EXTERNAL AUDITOR'S STATEMENT

The summary financial statements set out in Annexes III to IX are consistent with the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1993.

National Audit Office
for the Comptroller and Auditor General
United Kingdom

31 January 1995

ANNEX III

General Fund

INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY – 31 DECEMBER 1993

	1993		1992	
INCOME	£	£	£	£
Contributions				
Initial Contributions		327 300		–
Annual Contributions		–		4 862 904
Adjustment to Prior Years' Assessments		189 542		(1 021)
		516 842		4 861 883
Miscellaneous				
Miscellaneous Income	297		499 744	
Interest on loan to MCF *Volgoneft 263*	6 775		43 457	
Interest on loan to MCF *Rio Orinoco*	–		20 165	
Interest on loan to MCF *Taiko Maru*	7 646		–	
Interest on loan to MCF *Keumdong N°5*	273		–	
Interest on Overdue Contributions	2 625		9 223	
Interest on Investments	599 078		494 383	
	616 694	616 694	1 066 972	1 066 972
		1 133 536		5 928 855
EXPENDITURE				
Secretariat Expenses				
Obligations incurred		807 554		625 326
Claims				
Compensation		2 920 680		1 674 728
Claims Related Expenses				
Fees	377 443		155 108	
Travel	17 969		4 853	
Miscellaneous	7 671		759	
	403 083	403 083	160 720	160 720
		(2 997 781)		3 468 081
Exchange Adjustment		(5 798)		34 997
Excess/(Shortfall) of Income over Expenditure		(3 003 579)		3 503 078

ANNEX IV

Major Claims Fund – Brady Maria/Thuntank 5 [1]

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1993

	1993		*1992*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	–		–	
Interest on Investments	16 599		*11 160*	
	16 599	16 599	*11 160*	*11 160*
EXPENDITURE				
Fees	–		–	
Miscellaneous	–		–	
	–	–	–	–
Excess of Income over Expenditure		16 599		*11 160*
Balance b/f: 1 January		189 266		*178 106*
Balance as at 31 December		205 865		*189 266*

[1] The *Brady Maria* and *Thuntank 5* Major Claims Funds have been amalgamated in accordance with the decision of the Assembly at its 15th session.

ANNEX V

Major Claims Fund – Kasuga Maru N°1

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1993

	1993		*1992*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	–		*812*	
Interest on Investments	28 185		*19 024*	
	28 185	28 185	*19 836*	*19 836*
EXPENDITURE				
Compensation	–		–	
Fees	–		–	
Interest on Loans	–		–	
Miscellaneous	–		–	
	–	–	–	–
Excess of Income over Expenditure		28 185		*19 836*
Balance b/f: 1 January		321 372		*301 536*
Balance as at 31 December		349 557		*321 372*

ANNEX VI

Major Claims Fund – Rio Orinoco

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1993

	1993		*1992*	
INCOME	£	£	*£*	*£*
Contributions				
Adjustment to Prior Years' Assessments		240 815		
Annual Contributions		–		*6 490 768*
		240 815		*6 490 768*
Miscellaneous				
Interest on Overdue Contributions	4 006		*9 274*	
Interest on Investments	96 377		*44 434*	
	100 383	100 383	*53 708*	*53 708*
		341 198		*6 544 476*
EXPENDITURE				
Compensation	–		*2 956 838*	
Fees	19 155		*18 711*	
Travel	–		*10 608*	
Interest on Loans	–		*20 165*	
Miscellaneous	233		*136*	
	19 388	19 388	*3 006 458*	*3 006 458*
Excess of Income over Expenditure		321 810		3 538 018
Balance b/f: 1 January		946 943		*(2 591 075)*
Balance as at 31 December		1 268 753		*946 943*

ANNEX VII

Major Claims Fund – Haven

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1993

	1993		*1992*	
INCOME	£	£	*£*	*£*
Contributions				
Annual Contributions (second levy)	9 922 253		–	
Annual Contributions (first levy)	555 999		*14 588 712*	
	10 478 252	10 478 252	*14 588 712*	*14 588 712*
Miscellaneous				
Interest on Overdue Contributions	5 845		*17 996*	
Interest on Investments	1 897 121		*761 238*	
Interest on loan to MCF *Braer*	236 608		–	
	2 139 574	2 139 574	*779 234*	*779 234*
		12 617 826		*15 367 946*
EXPENDITURE				
Fees	726 190		*110 384*	
Travel	4 296		*13 639*	
Miscellaneous	34 768		*24 825*	
	765 254	765 254	*148 848*	*148 848*
Excess of Income over Expenditure		11 852 572		*15 219 098*
Balance b/f: 1 January		15 219 098		–
Balance as at 31 December		27 071 670		*15 219 098*

ANNEX VIII

Major Claims Fund – Volgoneft 263

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1993

	1993	
INCOME	£	£
Contributions		
Annual Contributions		938 637
Miscellaneous		
Interest on Overdue Contributions	608	
Interest on Investments	3 126	
	3 734	3 734
		942 371
EXPENDITURE		
Interest on loan from General Fund	6 775	
	6 775	6 775
Excess of Income over Expenditure		935 596
Less Amount due to General Fund		875 481
Balance as at 31 December		60 115

ANNEX IX

Balance Sheet of the IOPC Fund as at 31 December 1993

	1993	*1992*
	£	*£*
ASSETS		
Cash at Banks and in Hand	21 882 868	*24 740 802*
Contributions Outstanding	880 416	*727 192*
Due from MCF *Volgoneft 263*	–	*875 481*
Due from MCF *Braer* to MCF *Haven*	13 738 119	–
Due from MCF *Taiko Maru*	362 126	–
Due from MCF *Keumdong N°5*	76 319	–
VAT Recoverable	24 800	*2 559*
Miscellaneous Receivable	14 352	*10 287*
Interest on Overdue Contributions	2 726	*7 980*
TOTAL ASSETS	36 981 726	*26 364 301*
Liabilities		
Staff Provident Fund	541 175	*450 746*
Accounts Payable	13 188	*3 574*
Unliquidated Obligations	98 372	*28 140*
Prepaid Contributions	1 506 276	*287 422*
Contributors' Account	126 598	*174 004*
Due to MCF *Brady Maria & Thuntank 5*	205 865	*189 266*
Due to MCF *Kasuga Maru N°1*	349 557	*321 372*
Due to MCF *Rio Orinoco*	1 268 753	*946 943*
Due to MCF *Haven*	27 071 670	*15 219 098*
Due to MCF *Volgoneft 263*	60 115	–
Total Liabilities	31 241 569	*17 620 565*
General Fund Balance	5 740 157	*8 743 736*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	36 981 726	*26 364 301*

ANNEX X

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 1993

INTRODUCTION

Scope of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund ("the Fund") for the fifteenth financial period ended 31 December 1993. My examination was carried out with due regard to the provisions of the Fund Convention and the Financial Regulations.

Audit Objective

2 The main objective of the audit was to enable me to form an opinion as to whether the income and expenditure recorded against both the General and Major Claims Funds in 1993 had been received and incurred for the purposes approved by the Assembly; whether income and expenditure were properly classified and recorded in accordance with the Fund's Financial Regulations; and whether the financial statements presented fairly the financial position as at 31 December 1993.

Auditing Standards

3 My audit was carried out in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency. These standards require me to plan and carry out the audit so as to obtain reasonable assurance that the Fund's financial statements are free of material mis-statement. The Fund were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence gathered in my audit.

Audit Approach

4 In accordance with the Common Auditing Standards, my audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. This included:

- a general review of the Fund's accounting procedures;
- a broad assessment of the internal controls for income and expenditure; cash management; accounts receivable and payable; and supplies and equipment;
- substantive testing of transactions across all funds;

- substantive testing of year end balances; and

- a review of the claims and contributions procedures to the extent set out in paragraphs 5 to 9 below.

Claims

5 The Fund make compensation payments to meet claims for oil pollution damage arising from incidents involving laden tankers and also meet claims for associated expenses arising from these incidents. They pay compensation to a claimant only where they, or in some circumstances, an adjudicating court, consider that the claim is justified having regard to the criteria laid down in the Fund Convention. Accordingly, the Fund require all claimants to substantiate their claims by producing explanatory notes, invoices, receipts and other supporting documents.

6 In the case of claims for compensation for damage, the Fund and the tanker owners' insurers jointly commission surveys by marine surveyors to report on the reasonableness of the claims presented. On the basis of these reports the Fund negotiate settlements with the claimants.

7 As in previous years, my examination of the settlements negotiated in 1993 was limited to seeing that the Fund followed satisfactory procedures in reviewing the claims received, and that properly stated accounts were drawn up for each incident.

Contributions

8 Under Article 15.2 of the Fund Convention, Contracting States are responsible for submitting to the Fund annual reports on the quantities of contributing oil received in their respective countries during the preceding calendar year. The Director of the Fund makes an estimate of the contributions he believes will be required over the next twelve months to finance the General Fund and any Major Claims Funds. He submits these estimates to the Assembly, which considers and decides upon the level of contributions payable to the General Fund and any Major Claims Funds. The oil reports are then used to determine the levy of contributions to be paid by individual oil receivers.

9 As in previous years, I have accepted these reports for the purpose of my audit. Accordingly, my examination was restricted to establishing that the Fund made appropriate checks to verify all reports received; and to ensuring that the financial statements fairly present the contributions received.

Reporting

10 During the audit, my staff sought such explanations from the Fund as they considered necessary on matters arising from their examination of the internal controls, accounting records and financial statements. My observations on those matters arising from the audit which I consider should be brought to the attention of the Assembly are set out in the paragraphs below.

Overall Results

11 My examination revealed no weaknesses or errors considered material to the accuracy, completeness and validity of the financial statements as a whole. Subject to the

restrictions on the scope of my examination referred to in paragraphs 7 and 9 above and to the continuing uncertainty surrounding the outcome of the court action on the Haven incident (paragraphs 16 and 25 to 31 below), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1993.

12 The detailed findings of my audit are set out in paragraphs 13 to 37 below.

SUMMARY OF MAIN FINDINGS

On Budgetary Outturn

13 Obligations incurred in 1993 were within the approved budget (paragraphs 17 and 18).

On Submission of Oil Reports

14 As at 31 December 1993, oil reports from 15 Member States concerning 55 assessments were still outstanding (paragraphs 19 to 21).

On the Financial Position

15 As at 31 December 1993, the Fund have recorded a General Fund balance of £5 740 157. This is £259 843 less than the working capital of £6 000 000. The working capital will be restored to its approved level when contributions are paid (paragraphs 22 and 23).

Contingent Liabilities

16 The Fund's financial statements show contingent liabilities of £200 686 171 as at 31 December 1993. Some £37 million of this relates to oil spillage off the coast of Genoa, caused by the tanker Haven in April 1991. However, the Italian Court in Genoa has ruled that the Fund's potential liability for this incident could be significantly higher, representing some £305 million as at 31 December 1993. The Fund have appealed against the Court's judgement. Because of the continuing uncertainty of the outcome of these legal proceedings, I have qualified my opinion in respect of this contingent liability (paragraphs 25 to 29).

DETAILED FINDINGS

FINANCIAL MATTERS

Budgetary Outturn and Transfers

17 Statement I to the financial statements shows that obligations incurred in the period ended 31 December 1993 totalled £807 554, this being £88 646 within the budget of £896 200.

18 During 1993, the Director of the Fund made transfers of appropriations within Chapters of the budget in accordance with Financial Regulation 4.3. He has reported on these transfers in his comments which accompany the audited financial statements.

Contributions – Non Submission of Oil Reports

19 The levy of contributions to the Fund is based on reports of contributing oil receipts submitted by governments of Member States. At its 11th Session in 1988, the Assembly urged Member States to submit reports on contributing oil receipts on the due date and in the manner prescribed in the Fund's Internal Regulations to ensure that the system of levying contributions functions in an equitable manner.

20 As at 31 December 1993, oil reports covering the period 1986–92 were still outstanding from 15 Member States (Schedule I). Consequently, a total of 55 assessments for initial contributions and annual contributions in respect of the General Fund and Major Claims Funds could not be calculated for contributors in these states.

21 I note the Assembly's concerns on this matter and encourage the Fund to persevere in its efforts to obtain all oil reports due for previous periods.

The Financial Position

22 Statement IX to the financial statements shows a General Fund balance of £5 740 157 as at 31 December 1993, compared to £8 743 736 as at 31 December 1992. This is £259 843 less than the working capital of £6 000 000 (Note 20 to the Financial Statements).

23 This position has arisen because of a shortfall of income over expenditure on the General Fund of £3 003 579 (Statement II) owing largely to the prompt settlement of claims for which contributions were not due to be levied until 1 February 1994. The Fund told me that the working capital will be restored to the level decided by the Assembly when contributions are paid.

CONTINGENT LIABILITIES

General

24 The Fund's contingent liabilities are disclosed in Schedule III to the financial statements and mostly relate to compensation claims for oil pollution damage. Under the Fund Convention, those liabilities which mature will be met by contributions assessed by the Assembly.

Haven Incident

25 In April 1991, an oil pollution incident occurred when the tanker Haven caught fire and sustained a series of explosions whilst at anchor off Genoa. Claims submitted to the Fund for compensation for oil pollution damage from this incident were approximately £720 million. As at 31 December 1991, the Italian Court in Genoa dealing with the claims had made no ruling on the extent of the Fund's liability under the Fund Convention.

26 On 14 March 1992, the judge in charge of the limitation proceedings rendered a decision which, if implemented, indicated that the IOPC Fund would face a potential maximum liability of £359 million as at 31 December 1991. This compared with the Fund's assessment of £48 million, prepared in accordance with the Fund Convention, and noted in the 1991 financial statements. After reviewing the judge's decision at its 31st session on

28 May 1992, the Executive Committee endorsed the Fund's assessment of £48 million and instructed the Director to pursue the Fund's opposition to the decision.

27 The Fund lodged opposition to the judge's decision of 14 March 1992, and at its 15th session in October 1992, the Assembly supported the concerns expressed by the Executive Committee at its 31st session in May 1992. The Assembly endorsed the Fund's legal opposition to the judge's decision of 14 March 1992.

28 Because of the uncertainty surrounding the outcome of the legal proceedings, I qualified my opinion on the 1992 financial statements in respect of the contingent liability for the Haven incident, and set out the reasons in my Report.

29 On 26 July 1993, the Italian Court in Genoa rendered its judgement in respect of the Fund's opposition in which it upheld the judge's decision of 14 March 1992. The Fund have appealed against this judgement and are expecting the Court of Appeal to render its judgement on this appeal in 1995.

30 In Schedule III to the Financial Statements the Fund show £200 686 171 as their assessment of contingent liabilities as at 31 December 1993, compared with £79 915 820 in 1992. The increase was largely due to three major incidents, the Aegean Sea, Braer and Keumdong N°5, where substantive claims arose in 1993. Within the total contingent liability, £36 982 800 relates to the Haven incident, representing the Fund's view of the maximum compensation of £40 611 160 payable under the Fund Convention, less the ship owners' limitation amount of £9 455 650 plus indemnification of £3 827 290 and fees of £2 000 000. However, based on the Court's judgement of 26 July 1993, the Fund could face a potential maximum liability equivalent to £305 million, at 31 December 1993.

31 I have noted the Fund's estimate of the contingent liability in the Haven case; the Court's judgement and the Assembly's full support of the position taken by the Director in the legal proceedings. Because of the continuing uncertainty of the outcome of the current legal action, I have again qualified my opinion in respect of this contingent liability.

FINANCIAL CONTROL MATTERS

The Accounting Systems

32 During the 1993 audit, my staff carried out a review of the accounting systems to the extent considered necessary for the purpose of forming an opinion on the financial statements. As a result of their examination, my staff concluded that proper books of account had been maintained and that the accounting records were, in all significant respects, sufficient to form the basis of the 1993 financial statements.

Control of Supplies and Equipment

33 In accordance with the Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the Fund's Balance Sheet. Note 15(b) to the financial statements shows that the value of these assets held by the Fund as at 31 December 1993 amounted to £101 227.

34 My staff carried out a test examination of the Fund's records of supplies and equipment under Financial Regulation 10.12. As a result of this examination, I am satisfied

that the supplies and equipment records as at 31 December 1993 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

Common Accounting Standards

35 In 1993, the United Nations General Assembly recognised a set of common accounting standards, developed by the Consultative Committee on Administrative Questions (Finance and Budgetary Questions), for application in the United Nations System.

36 In consultation with my staff, the Fund began a review of their financial statements in 1993 to identify the changes necessary to ensure conformity with these standards. This review will be completed during 1994, with a view to implementing any necessary changes in the accounts for that financial period.

OTHER MATTERS

Amounts Written Off and Fraud

37 The Fund told me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

38 I wish to record my appreciation of the willing co-operation and assistance extended by the Director and his staff during the audit.

SIR JOHN BOURN KCB
Comptroller and Auditor General, United Kingdom
External Auditor

12 July 1994

ANNEX XI

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE YEAR ENDED 31 DECEMBER 1993

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund

I have examined the appended financial statements, comprising Statements I to IX, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund for the year ended 31 December 1993 in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

Subject to the scope restrictions referred to in paragraphs 7 and 9 and to the uncertainty relating to a contingent liability referred to in paragraph 31 of my Report, as a result of my examination, I am of the opinion that the financial statements present fairly the financial position as at 31 December 1993 and the results of the year then ended; that they were prepared in accordance with the Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year; and that the transactions were in accordance with the Financial Regulations and legislative authority.

SIR JOHN BOURN KCB
Comptroller and Auditor General, United Kingdom
External Auditor

12 July 1994

ANNEX XII

Contributing Oil Received in the Territories of Member States in the Calendar Year 1993

As reported by 31 December 1994

Member State	Contributing Oil (tonnes)	% of Total
Japan	270 152 466	25.41
Italy	145 722 167	13.71
France	98 288 261	9.24
Netherlands	96 475 729	9.07
Republic of Korea	88 128 599	8.29
United Kingdom	87 405 462	8.22
Spain	52 615 071	4.95
India	38 865 000	3.66
Germany	33 082 651	3.11
Canada	32 044 153	3.01
Norway	24 401 071	2.30
Sweden	19 556 221	1.84
Mexico	15 206 997	1.43
Indonesia	9 802 686	0.92
Finland	9 176 966	0.86
Poland	7 328 393	0.69
Denmark	6 550 104	0.62
Morocco	6 351 810	0.60
Bahamas	4 650 983	0.44
Côte d'Ivoire	3 619 095	0.34
Croatia	3 291 817	0.31
Tunisia	3 243 686	0.30
Ireland	2 759 637	0.26
Sri Lanka	1 799 567	0.17
Cyprus	1 504 041	0.14
Cameroon	1 137 355	0.11
Djibouti	0	0.00
Estonia	0	0.00
Iceland	0	0.00
Kuwait	0	0.00
Monaco	0	0.00
Oman	0	0.00
Papua New Guinea	0	0.00
Seychelles	0	0.00
Vanuatu	0	0.00
	1 063 159 988	100.00

<Note> No report from Albania, Algeria, Barbados, Benin, Brunei Darussalam, Fiji, Gabon, Gambia, Ghana, Greece, Kenya, Liberia, Maldives, Malta, Nigeria, Portugal, Qatar, Russian Federation, Saint Kitts and Nevis, Sierra Leone, Slovenia, Syrian Arab Republic, Tuvalu, United Arab Emirates, Venezuela and Yugoslavia.

ANNEX

SUMMARY OF

(31 December

For this table, damage has been grouped into the following categories:

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
1	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584	Grounding
2	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
3	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356	Collision
4	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480	Sinking
5	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
6	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180	Collision
7	*Tanto*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
8	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443	Collision
9	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920	Collision

XIII

INCIDENTS

1994)

- Clean-up (including preventive measures)
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
5 500	Clean-up	SKr95 707 157		1
540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 ¥149 538 167	¥5 438 909 recovered by way of recourse	2
(unknown)	Clean-up	£363 550		3
10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 ¥10 399 705		4
100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 ¥105 135 659	¥9 893 496 recovered by way of recourse	5
<140			Because of the distribution of liability between the two colliding ships, IOPC Fund not called upon to pay any compensation	6
13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr 2 429 338 FFr52 024 FFr494 816 FFr222 140 643	Total payment equalled limit of compensation available under Fund Convention; payments by IOPC Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse	7
200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 96 recovered by way of recourse	8
270	Clean-up Fishery-related Indemnification	¥163 053 598 ¥50 271 267 ¥8 941 480 ¥222 264 345	¥18 221 905 recovered by way of recourse	9

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
10	*Jose Marti*	7.1.81	Dalarc, Sweden	USSR	27 706	SKr23 844 593	Grounding
11	*Sumi Maru N°11*	21.11.81	Kanaiso, Japan	Japan	199	¥7 396 340	Grounding
12	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324	Grounding
13	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM 10 080 383	Discharge
14	*Shiota Maru N°2*	31.3.82	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding
15	*Fukuoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision
16	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
17	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
18	*Eiko Maru N°1*	13.8.83	Kanakuwazaki, Japan	Japan	999	¥39 445 920	Collision
19	*Kovi Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660	Collision
20	*Tsuchisa Maru N°8*	26.8.84	Osaka, Japan	Japan	78	¥964 800	Sinking
21	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
22	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
23	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	Lit 13 263 703 650	Collision

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement	10
10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 ¥8 275 942		11
>16 000	Indemnification	US$467 953	No damage in Member State	12
200-300	Clean-up	DM11 345 174		13
20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 ¥72 671 789		14
85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 ¥368 942 865		15
33	Indemnification	¥598 181	Total damage less than shipowner's liability	16
3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 ¥1 475 395		17
357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 ¥34 596 589	¥14 843 746 recovered by way of recourse	18
49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 ¥27 755 163	¥8 994 083 recovered by way of recourse	19
30	Clean-up Indemnification	¥16 610 200 ¥241 200 ¥16 851 400		20
20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 ¥95 458 298		21
80	Clean-up Indemnification	¥26 124 589 ¥474 080 ¥26 598 669	¥8 866 222 recovered by way of recourse	22
700			Total damage agreed out of court or decided by court (Lit 11 583 298 650) less than shipowner's liability	23

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
24	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr 1 576 170	Grounding
25	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 *(estimate)*	Discharge of oil
26	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629	Collision
27	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge of oil
28	*Oued Gueterma*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge
29	*Thuntank*	21.12.86	Gavle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
30	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854	Grounding
31	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
32	*El Ham*	22.7.87	Indonesia	Libya	81 412	£7 900 0000 *(estimate)*	Grounding
33	*Ikari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 *(estimate)*	Fire
34	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 *(estimate)*	Unknown
35	*Hinode Maru N°1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
36	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
37	*Tuyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
38	*Cantarca*	8.5.88	St Romuald, Canada	Canada	81 197	*(unknown)*	Collision with berth

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
300	Clean-up Indemnification	DKr9 455 661 DKr394 043 DKr9 849 704		24
(unknown)			Claim against IOPC Fund (US$44 204) withdrawn	25
200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse	26
0.1	Indemnification	¥104 987	Total damage less than shipowner's liability	27
15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766		28
150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 SKr23 903 069		29
600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by IOPC Fund since USSR not Member of Fund at time of incident	30
15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed)	31
3 000			Clean-up claim (US$242 800) not pursued	32
1 000	Clean-up Clean-up	Dhs864 293 US$187 165	US$160 000 refunded by shipowner's insurer	33
200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and IOPC Fund withdrawn	34
25	Clean-up Indemnification	¥1 847 225 ¥152 000 ¥1 999 225		35
2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 FFr1 286 977	FFr1 000 000 recovered from shipowner's insurer	36
6	Clean-up Indemnification	¥6 134 885 ¥619 200 ¥6 754 085		37
(unknown)			Fund Convention not applicable, as incident occurred before entry into force of Fund Convention for Canada. Clean-up claim (Can$1 787 771) not pursued.	38

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
39	*Kasuga Maru N°1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking
40	*Nestucca*	23.12.88	Vancouver Island, Canada	United States of America	1 612	*(unknown)*	Collision
41	*Fukkol Maru N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe
42	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
43	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
44	*Kifuku Maru N°103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo
45	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge
46	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
47	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
48	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160	Collision
49	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
50	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
51	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo
52	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 *(estimate)*	Mishandling of cargo

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 ¥429 618 927		39
(unknown)			Fund Convention not applicable, as incident occurred before entry into force of Fund Convention for Canada. Clean-up claims (Can$10 475) not pursued.	40
0.5	Clean-up Indemnification	¥492 635 ¥549 600 ¥1 042 235		41
7	Other damage to property Indemnification	¥19 159 905 ¥742 880 ¥19 902 785		42
(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 ¥676 860		43
(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 ¥8 717 720		44
250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed)	45
0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 ¥3 210 530		46
3	Clean-up Indemnification	¥5 490 570 ¥623 840 ¥6 114 410		47
30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 ¥50 312 666	¥45 038 833 recovered by way of recourse	48
(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 ¥1 434 431	¥430 329 recovered by way of recourse	49
800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 SKr16 849 328		50
(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 ¥1 288 500		51
20			Total damage less than shipowner's liability (clean-up £130 000 agreed)	52

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
53	*Rio Orinoco*	16.10.90	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 167	Grounding
54	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£50 884 *(estimate)*	Sinking
55	*Vestabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	US$100 000 *(estimate)*	Sinking
56	*Hokuman Maru N°12*	5.4.91	Okushiri Island, Japan	Japan	209	¥3 523 520	Grounding
57	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	Lit 21 900 000 000 *(estimate)*	Collision
58	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000	Fire and explosion
59	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
60	*Kuni Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
61	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
185	Clean-up Indemnification *(not yet paid)*	Can$12 831 891 Can$295 654 Can$13 127 545		53
110	Clean-up Fishery-related Indemnification *(not yet paid)*	£316 147 £12 511 £12 721 £341 379	£39 472 paid by shipowner's insurer	54
(unknown)	Clean-up Clean-up	FFr8 237 529 US$8 068		55
(unknown)	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 ¥7 025 709		56
2 000			Total damage less than shipowner's liability (clean-up Lit 17 917 500 000 agreed and Lit 1 398 635 000 pending). Amount of indemnification payable dependent on final level of claims paid by shipowner's insurer.	57
(unknown)	Clean-up: o Italian Government *(claimed)* o Other Italian Authorities *(claimed)* o Private claimants *(claimed)* o French Government *(agreed)* o Other French Authorities *(agreed)* o Other French Authorities *(claimed)* Tourism-related: o Italian private claimants *(claimed)* Fishery-related: o Italian private claimants *(claimed)* Environmental damage: o Italian Government *(claimed)* o Other Italian Authorities *(claimed)*	 Lit 89 904 000 000 Lit 1 800 000 000 Lit 55 000 000 000 Lit 146 704 000 000 FFr12 580 724 FFr4 580 292 FFr8 993 342 FFr26 154 358 Lit 106 234 000 000 Lit 24 151 000 000 Lit 883 435 000 000 Lit 100 000 000 000 Lit 983 435 000 000	No amounts yet indicated for some claims. Question of time-bar vis-à-vis IOPC Fund has arisen in respect of majority of claims.	58
25	Clean-up Fishery-related Indemnification	¥53 513 992 ¥39 553 821 ¥3 665 120 ¥96 732 933		59
5	Clean-up Indemnification *(not yet paid)*	¥1 056 519 ¥764 640 ¥1 821 159		60
(unknown)	Other damage to property Indemnification	¥4 243 997 ¥549 600 ¥4 793 597		61

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
62	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
63	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	84 000	£5 500 000 *(estimate)*	Grounding
64	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 *(estimate)*	Grounding
65	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
66	*Ryoyo Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision
67	*Keumdong N°5*	27.9.93	Yeousu Bay, Republic of Korea	Republic of Korea	481	Won 75 500 000 *(estimate)*	Collision
68	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000 *(estimate)*	Grounding

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
73 500	Clean-up:		Amounts indicated as *paid* include partial payments. *Claimed* amounts represent the remainder of agreed amounts, where partial payments have been made, plus outstanding claimed amounts. Pts 1 039 894 472 paid by shipowner's insurer. Further claims may be submitted.	62
	◦ Spanish Government *(paid)*	Pts 29 000		
	◦ Spanish Government *(claimed)*	Pts 1 133 402 495		
	◦ Other Spanish Authorities *(claimed)*	Pts 595 675 629		
	◦ Private claimants *(paid)*	Pts 12 150 079		
	◦ Private claimants *(claimed)*	Pts 3 284 656 749		
		Pts 5 025 913 952		
	Fishery-related:			
	◦ Spanish Government *(claimed)*	Pts 107 495 000		
	◦ Private claimants *(paid)*	Pts 980 619 281		
	◦ Private claimants *(claimed)*	Pts 14 160 664 598		
		Pts 15 248 778 879		
	Tourism-related:			
	◦ Spanish Government *(claimed)*	Pts 3 927 480		
	Other loss of income:			
	◦ Spanish Government *(claimed)*	Pts 54 591 849		
	◦ Private claimants *(paid)*	Pts 11 078 595		
	◦ Private claimants *(claimed)*	Pts 1 699 651 285		
		Pts 1 765 321 729		
	Other damage to property:			
	◦ Spanish Government *(claimed)*	Pts 83 131 180		
	◦ Private claimants *(paid)*	Pts 38 730 423		
	◦ Private claimants *(claimed)*	Pts 10 506 932		
		Pts 132 368 535		
	Total	Pts 22 176 310 575		
84 000	Clean-up:		Further claims for significant amounts are being examined. Additional claims may be submitted. £4 807 323 paid by shipowner's insurer.	63
	◦ Private claimants *(paid)*	£200 285		
	◦ UK Government *(claimed)*	£2 642 310		
	◦ Local Authorities *(claimed)*	£1 501 444		
		£4 344 039		
	Fishery-related *(paid)*	£29 336 300		
	Tourism-related *(paid)*	£77 375		
	Farming-related *(paid)*	£3 350 141		
	Other damage to property *(paid)*	£5 991 991		
	Total	£43 099 846		
4	Clean-up	Won 176 866 632	US$22 504 recovered from shipowner's insurer	64
	Fishery-related	Won 42 848 123		
		Won 219 714 755		
520	Clean-up	¥776 998 666		65
	Fishery-related	¥345 391 509		
	Indemnification *(not yet paid)*	¥7 301 280		
		¥1 129 691 455		
500	Clean-up	¥8 433 001		66
	Indemnification *(not yet paid)*	¥7 026 480		
		¥15 459 481		
1 280	Clean-up *(paid)*	Won 5 587 815 812	Further claims for significant amounts will be submitted. Won 5 587 815 812 paid by shipowner's insurer.	67
	Fishery-related *(claimed)*	Won 93 132 425 000		
		Won 98 720 240 812		
200	Clean-up *(claimed)*	Drs 300 000 000	Further claims may be submitted	68
	Other loss of income *(claimed)*	Drs 3 100 000 000		
		Drs 3 400 000 000		

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
69	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	£12 900 000 *(estimate)*	Collision
70	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
71	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	496	¥81 823 680 *(estimate)*	Collision
72	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 075 200 *(estimate)*	Mishandling of oil supply
73	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 22 000 000 *(estimate)*	Grounding

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 30 December 1994 are as follows:

£ =	Din 67.3478	£ =	FFr 8.3494	£ =	Y 156.090	£ =	Pts 205.935
	Can$ 2.1945		DM 2.4250		OR 0.6023		SKr 11.6306
	DKr 9.5208		Drs 376.419		Won 1233.61		Dhr 5.7460
	FM 7.4150		Lit 2538.01		Rbls 1.0423		US$ 1.5645

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
16 000	Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(claimed)* Clean-up *(paid)* Fishery-related *(paid)* Clean-up *(claimed)*	Dhr8 800 000 Dhr68 100 000 Dhr36 900 000 Dhr113 800 000 OR 65 538 OR 26 741 OR 92 279 US$6 000 000	Further claims will be submitted. Dhr8 800 000 and OR 92 279 paid by shipowner's insurer.	69
0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 ¥2 033 944		70
560	Clean-up *(paid)*	¥50 000 000	Further claims will be submitted	71
(unknown)			Claims not yet submitted	72
18	Clean-up *(paid)* Fishery-related *(claimed)*	Won 9 206 345 Won 475 939 300 Won 485 145 645	Won 9 206 345 paid by shipowner's insurer	73

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the IOPC Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the IOPC Fund (ie excluding the shipowner's liability).