INTERNATIONAL OIL POLLUTION COMPENSATION FUND

ANNUAL REPORT 1995

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND IN 1995

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Photograph on front cover:
Shinryu Maru N°8 incident - Japan
(Photograph: General Marine Surveyors & Co Ltd)

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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 1995, its seventeenth year of operation.

The Director has been pleased to note a continuing increase in the number of Member States during 1995. As at 31 December 1995, 67 States were Members of the IOPC Fund. A number of States have indicated that they intend to join the Organisation in the near future.

In 1995 the IOPC Fund has been involved in the handling of claims for compensation arising from a number of oil pollution cases, including seven incidents which occurred during the year. The IOPC Fund's governing bodies took a number of important decisions of principle in respect of the admissibility of claims for compensation. During the year the Fund paid significant amounts in compensation to victims of oil pollution.

During 1995 the requirements for the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention were met. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. A new organisation, known as the "1992 Fund", will be created when the Protocols enter into force on 30 May 1996. The entry into force of the Protocols will ensure the viability of the international system of compensation for oil pollution damage in the future, but will also make it necessary for the new Organisation and its Member States to address a number of important issues.

The Director 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

Annual Reports always provide an opportunity to take stock.

There are many positive aspects to the 1995 Annual Report. Amongst these I would mention the IOPC Fund's new Members, the extremely short time taken to meet the conditions for bringing into force the 1992 Protocol to the 1971 Fund Convention which governs the operation of the IOPC Fund, and the efficiency of the Secretariat which, though very small, is of exceptional quality.

This does not mean, however, that the year was all plain sailing. Despite considerable efforts, no final conclusion has been reached in the *Haven* case, nor in the *Aegean Sea* and *Braer* cases. These cases each involve a different set of circumstances, and it is not possible to give one simple explanation for the present situation. There is no escaping the fact, however, that the settlement of extremely complex cases is causing the IOPC Fund increasing difficulty, which is sometimes compounded by the problems encountered by the Fund's experts who are in the field to examine claims for compensation.

The IOPC Fund is accountable to its Member States. While ensuring that the provisions of the Convention under which it was established and the relevant national legislation are respected, the IOPC Fund shall provide equitable and prompt compensation to victims and at the same time ensure that the oil receivers who contribute to the system are not called upon to pay more than they should under the Convention. It will be impossible for the IOPC Fund to perform this balancing act on a long-term basis unless the interested parties accept the rules laid down by its Assembly in respect of the admissibility of claims and the substantiation of damage. If they do not, the number of court cases will escalate, making it impossible to achieve prompt settlements, to the detriment of those for whom compensation must be prompt if it is to be meaningful.

In view of the pragmatism and willingness to come up with concrete solutions which have always been displayed by the IOPC Fund and its Member States, there are good grounds for believing that these difficulties can be overcome. This is certainly the spirit in which we must enter the exciting period which lies before us, witnessing the transition from the system established by the 1969 and 1971 Conventions to the new system created by the 1992 Protocols. In this respect, 1996 will be a particularly important year, since it will be the first year in which the Assembly of the 1992 Fund will meet.

Charles Coppolani
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 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 extent 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. 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 £58 million or US$89 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

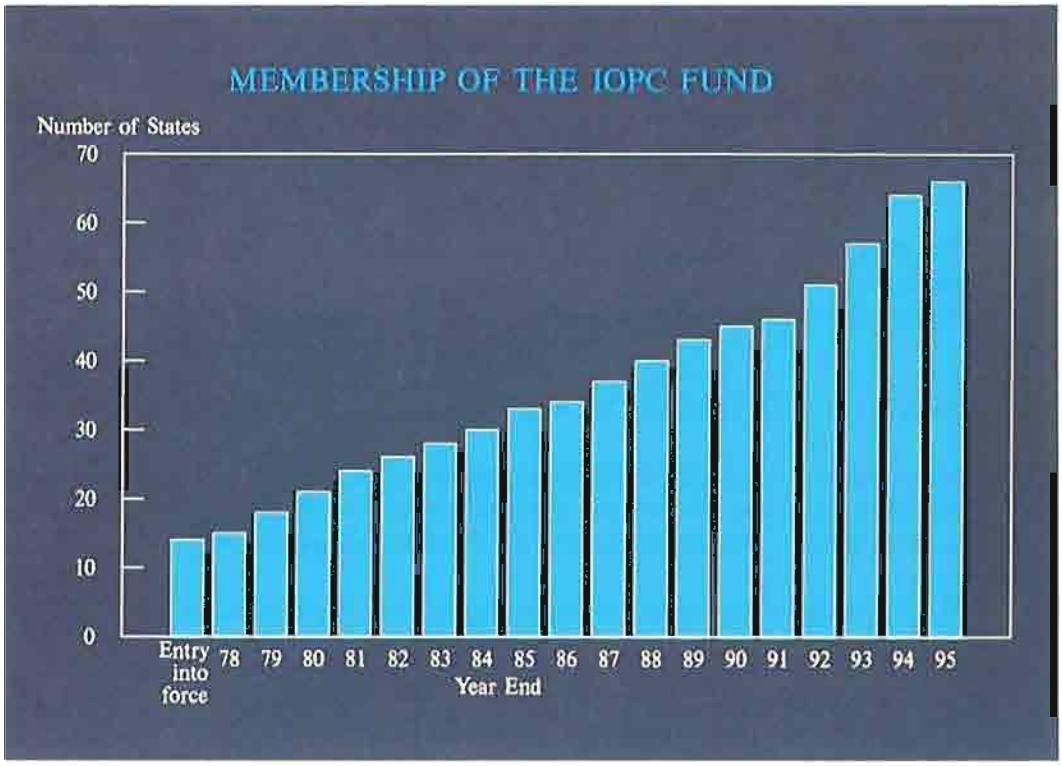
2.1 IOPC Fund Member States

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 1994, there were 61 Member States.

Six States acceded to the Fund Convention during 1995. The Fund Convention entered into force for Australia on 8 January 1995, for the Marshall Islands on 28 February 1995, for Belgium on 1 March 1995, for Malaysia on 6 April 1995 and for Mauritius on 5 July 1995. In addition, the Convention will enter into force for Mauritania on 18 February 1996, bringing the number of Member States to 67, as set out below:

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

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 1995 the Director visited eight 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 Bahrain, Chile, Colombia, Ecuador, Honduras, the Islamic Republic of Iran, Israel, Mozambique, New Zealand, Peru, 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 1995 the following States had observer status with the Organisation:

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

The IOPC Fund Secretariat has continued its efforts to increase the number of Member States. To this end, the Secretariat took part in an IMO regional seminar on International Conventions on the Protection of the Marine Environment, held in Mauritius,

and in a REMPEC regional training course on preparedness for and response to marine pollution incidents involving oil and other hazardous substances in the Mediterranean and the Black Sea (MEDIPOL 95), held in Istanbul (Turkey). The IOPC Fund was represented at the 1995 International Oil Spill Conference, which took place in Long Beach, California (USA). The Director and other Officers have also 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 1995 the Secretariat represented the IOPC Fund at meetings of the IMO Assembly, the IMO Council and various IMO Committees.

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 Salvage Union (ISU)
International Tanker Owners Pollution Federation Limited (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 shipowner's liability insurer, which in practically all cases is one of the so-called P & I Clubs. 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.

Sea Prince incident - Oil on beach at Sorido island
(photograph: KOMOS)

3 ASSEMBLY AND EXECUTIVE COMMITTEE

3.1 Assembly

18th session

The Assembly, which is composed of representatives of all Member States, held its 18th session from 17 to 20 October 1995.

Mr Charles Coppolani (France) was elected Chairman of the Assembly.

Mr Jørgen Bredholt (Denmark), who had informed the Assembly at its 17th session that he would not be available for re-election as Chairman, was granted the title of Honorary Chairman of the Assembly in recognition of his 16 years as Chairman.

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
Australia	Netherlands
Canada	Nigeria
Finland	Norway
Germany	Russian Federation
India	Spain
Japan	United Arab Emirates
Liberia	

- 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 1994 (cf Section 4.2).

- The budget appropriations for 1996 were adopted, with an administrative expenditure totalling £1 435 930.

- The Assembly decided to levy 1995 annual contributions, to be paid by 1 February 1996, for a total amount of £43 million (cf Section 5.3).

- The Assembly took note of the report of the Investment Advisory Body. It also noted the internal investment guidelines which had been approved by the Director (cf Section 4.3).

- The Assembly noted that the 1992 Protocols to the Civil Liability Convention and the Fund Convention would enter into force on 30 May 1996. The Director was instructed to continue his efforts to encourage States to become Parties to the 1992 Protocols.

- The Assembly noted the preparations made by the Director for the entry into force of the 1992 Protocol to the Fund Convention. The Assembly gave the Director further instructions in respect of these preparations, in particular as regards the

consideration of claims within the Organisation (the "1992 Fund") which would be established under that Protocol, since there would be no Executive Committee (cf Section 6.4).

- Requests for observer status with the IOPC Fund from Peru and from the International Salvage Union were granted.

- The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to include the May 1994 Amendments to SOLAS 74 adopted by the Conference of Contracting Governments to SOLAS 74 (Conference Resolution 1) and some of the Amendments covered by Resolution MSC.31(63) (ie those relating to Regulation V/8-1 and Regulation V/15-1) in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 1 May 1996.

- The problems that had arisen in relation to the *Haven* incident and the offer of a global settlement which had been made by the shipowner/UK Club and the IOPC Fund were considered. The Assembly decided that any future initiative towards a global settlement had to be taken by the claimants, including the Italian Government (cf Section 8.2).

3.2 Executive Committee

The Executive Committee held five sessions during 1995, three under the chairmanship of Mr Charles Coppolani (France) and two under the chairmanship of Mr Willem Oosterveen (Netherlands). The 42nd session was held on 10 and 11 April, the 43rd session on 9 June, the 44th session from 16 to 19 October, the 45th session on 20 October and the 46th session on 11 and 12 December 1995.

The main decisions taken by the Executive Committee at the five sessions held in 1995 are reflected in Section 8.2 in the context of the particular incidents.

42nd session

The discussions at the 42nd session of the Executive Committee were concentrated on questions relating to the *Rio Orinoco* incident (Canada, 1990), the *Haven* incident (Italy, 1991), the *Aegean Sea* incident (Spain, 1992), the *Braer* incident (United Kingdom, 1993), the *Seki* incident (United Arab Emirates, 1994) and the *Toyotaka Maru* incident (Japan, 1994). The Executive Committee took a number of important decisions of principle, notably concerning the admissibility of claims relating to pure economic loss.

43rd session

The Executive Committee considered at its 43rd session a proposal for a global settlement in the *Haven* incident. In addition, the Committee continued its consideration of the *Seki* incident. The Committee also adopted a revised version of the IOPC Fund's Claims Manual.

44th session

At its 44th session, the Executive Committee continued its consideration of the *Haven, Aegean Sea, Braer, Keumdong N°5* (Republic of Korea, 1994) and *Seki* incidents. The Committee considered the developments as regards the offer for a global settlement in the *Haven* case. Since no agreement had been reached on the proposed settlement, primarily because the Italian Government had neither accepted the offer nor given an indication that it was looking at it favourably, the Committee referred the matter to the Assembly. The Committee also discussed the *Sea Prince* incident (Republic of Korea, 1995), the *Yeo Myung* incident (Republic of Korea, 1995), the *Senyo Maru* incident (Japan, 1995) and the *Yuil N°1* incident (Republic of Korea, 1995). The Committee was 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.

45th session

At its 45th session, the Executive Committee elected Mr Willem Oosterveen (Netherlands) as its Chairman. The Committee considered claims arising out of the *Aegean Sea* incident.

46th session

The Executive Committee examined at its 46th session whether the shipowner was entitled to limit his liability in the *Braer* case and related issues. It also discussed the general situation in respect of the claims arising from the *Braer* incident. The Committee considered the developments in a number of other incidents, in particular the situation in respect of the *Honam Sapphire* incident (Republic of Korea, 1995). It also considered the problems relating to the payment of those claims in the *Haven* case which were not time-barred vis-à-vis the IOPC Fund.

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 1995 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 Telephonist/Secretary and a Clerk/Messenger.

In view of the small size of the IOPC Fund Secretariat, the Fund uses consultants to give legal or technical advice. 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 1994 were approved by the Assembly in October 1995. Statements containing a summary of the information given in the IOPC Fund's audited financial statements for this period are given in Annexes II–XIV 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 1994 are reproduced in full as Annexes XV and XVI.

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 £960 000.

The General Fund (Annex III) had a total income of £8 467 614 in 1994. Part of this income (£426 419) was derived from interest on the investment of the IOPC Fund's assets (cf Section 4.3). Initial contributions in respect of contributors in one Member State totalled £44 966. Annual contributions of £7 907 141 accounted for the major part of the General Fund's income. The administrative expenditure in 1994 was £863 053, and expenditure on minor claims totalled £1 530 265. A surplus of £6 085 290 was recorded for the financial year 1994.

On 1 February 1994 an amount of £199 958 was reimbursed to those persons who had contributed to the *Brady Maria/Thuntank 5* Major Claims Fund (Annex IV). The balance of £5 907 was transferred to the General Fund, and this Major Claims Fund was closed.

There were no transactions of significance during 1994 in respect of the *Kasuga Maru N°1* Major Claims Fund or the *Rio Orinoco* Major Claims Fund (Annexes V and VI). The balances on these Major Claims Funds as at 31 December 1994 were £363 349 and £1 288 207, respectively.

As regards the *Haven* Major Claims Fund (Annex VII), there was a yield of £1 516 751 on the investment of its assets. Payments of fees and expenses totalled £664 201. The balance on this Major Claims Fund was £28 018 647 as at 31 December 1994.

On 31 December 1994 the surplus of £60 115 on the *Volgoneft 263* Major Claims Fund (Annex VIII) was transferred to the General Fund, and the Major Claims Fund was closed.

As regards the *Aegean Sea*, *Braer*, *Taiko Maru* and *Keumdong N°5* Major Claims Funds (Annexes IX, X, XI and XII), contributions were received in 1994 for total amounts of £19 970 504, £34 812 145, £9 853 301 and £4 926 650, respectively. Compensation payments totalled £1 479 880, £20 451 175, £5 920 364 and £3 016 459, respectively. As at 31 December 1994 the balances on the *Aegean Sea*, *Taiko Maru* and *Keumdong N°5* Major Claims Funds were £19 192 042, £3 188 158 and £1 451 636, respectively. There was a deficit of £316 098 on the *Braer* Major Claims Fund as at that date.

The balance sheet of the IOPC Fund as at 31 December 1994 is reproduced in Annex XIII. The net assets amounted to £11 825 448. Details of the IOPC Fund's contingent liabilities are given in a schedule to the financial statements. As at 31 December 1994 there were contingent liabilities estimated at £178 601 159 in respect of claims for compensation arising out of 18 incidents.

As regards the *Haven* incident (Italy, April 1991), claims had been submitted totalling approximately £650 million as at 31 December 1994. The estimated contingent liabilities for this incident were £36 325 600, 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 Llt 771 397 947 400 (£304 million), instead of Llt 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 in early 1996. 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 1995 will be submitted in the spring of 1996 to the External Auditor for an audit opinion, and will be presented to the Assembly for approval at its session in October 1996. These accounts will then be reproduced in the IOPC Fund's 1996 Annual Report.

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 1995 investments were made with a number of banks, discount houses and building societies in the United Kingdom. As at 31 December 1995 the IOPC Fund's portfolio of investments totalled £90 million. This amount was made up of the assets of the IOPC Fund, the Staff Provident Fund and a credit balance of £183 000 on the contributors' account.

The base rate in London, which stood at 6¼% at the end of 1994, was raised to 6¾% on 2 February 1995, and lowered to 6½% on 13 December 1995. As in previous years, the rates obtained by the IOPC Fund on its investments have been consistently higher than the base rate. Interest due in 1995 on the investments amounted to £6 260 000 on an average capital of £91 million.

The IOPC Fund held a fixed-term deposit of £2 million with Baring Brothers & Co Ltd when substantially all entities in the Barings Group ceased trading on 26 February 1995 and were placed in administration after the Group had contracted massive debts, mainly as a result of dealing in derivatives on a large scale in its Singapore branch. On 6 March 1995 a Dutch Bank acquired Barings' main operating business, taking over substantially all its assets and liabilities. The deposit of £2 million was duly repaid to the IOPC Fund at maturity on 21 June 1995, together with interest.

In October 1994 the Assembly established an Investment Advisory Body, composed of experts with special knowledge in investment matters, to advise the Director in general terms on such matters. During 1995 the Body *inter alia* reviewed the IOPC Fund's internal procedures for assessing individual banks, discount houses and building societies, and assisted the Director in establishing internal investment guidelines. In October 1995 the Assembly took note of the report of the Body. The Assembly reappointed the three members of this Body for a second term of one year.

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 1995 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 1995 corresponded to £0.0030162.

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 1994 annual contributions

In October 1994 the Assembly had decided to levy 1994 annual contributions to the General Fund and three Major Claims Funds totalling £40 million, as indicated opposite.

As at 31 December 1995, 98.37% of the 1994 annual contributions, which were due on 1 February 1995, had been paid.

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

5.3 1995 annual contributions

In October 1995 the Assembly decided to levy 1995 annual contributions to the General Fund and three Major Claims Funds totalling £43 million, payable by 1 February 1996.

The 1995 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	–	1994	6 million	0.0051345
Braer Major Claims Fund	05.01.93	1992	14 million	0.0143552
Sea Prince	23.07.95			
Yeo Myung Major Claims Fund	03.08.95	1994	20 million	0.0170880
Yuil N°1	21.09.95			
Senyo Maru Major Claims Fund	03.09.95	1994	3 million	0.0025632

Of the 1995 annual contributions, £177 321 had been received as at 31 December 1995.

The 1995 General Fund levy is based on the quantities of contributing oil received in Member States in 1994 (Annex XVII). The shares of the 1995 annual contributions to the General Fund in respect of Member States are illustrated by the chart shown overleaf.

The Assembly considered that the amounts remaining on the *Kasuga Maru N°1* and *Rio Orinoco* Major Claims Fund were substantial. The Assembly therefore decided, pursuant to the Internal Regulations, to reimburse the contributors to each of those Major Claims Funds, on 1 February 1996, as indicated overleaf, and to transfer the balance to the General Fund.

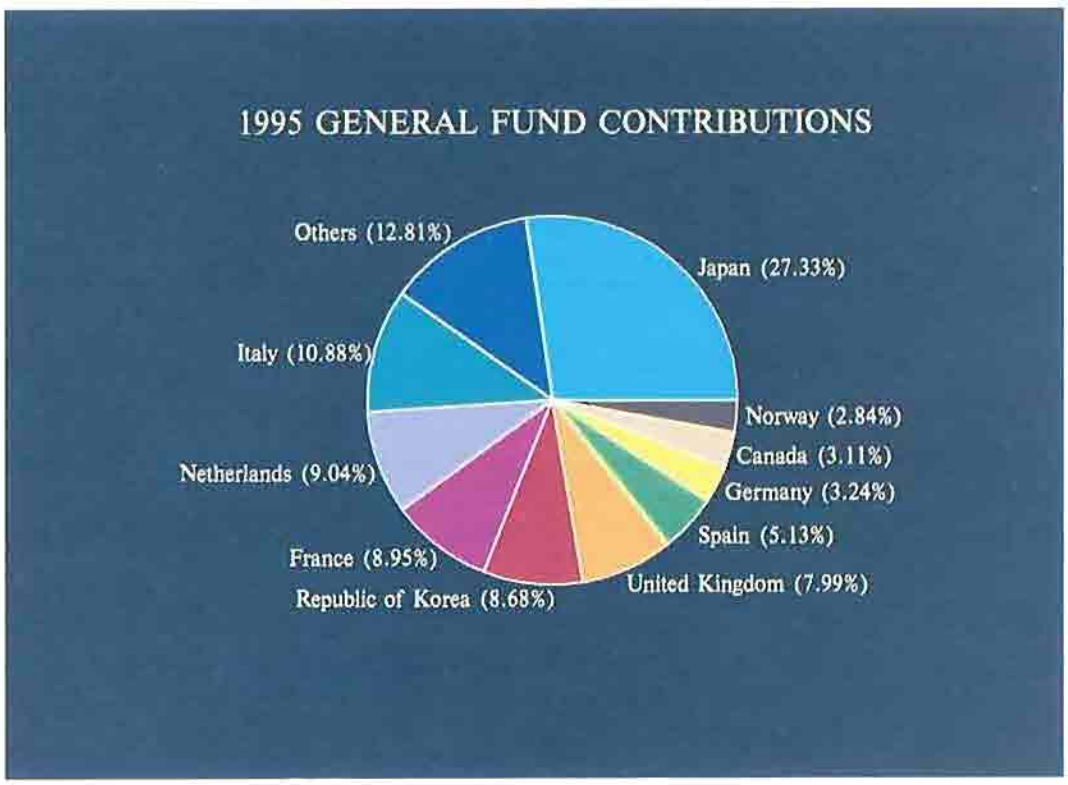
Fund	Date of Incident	Oil Receipts: Applicable Year	Total Reimbursement £	Reimbursement £ per Tonne
Kasuga Maru Major Claims Fund	10.12.88	1987	360 000	0.0004509
Rio Orinoco Major Claims Fund	16.10.90	1989	1 280 000	0.0014116

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, £968 995 was outstanding as at 31 December 1995. Of the arrears, 44% was owed by contributors in the former Union of Soviet Socialist Republics and the former Yugoslavia.

In October 1995 the Assembly expressed its satisfaction with the situation regarding the payment of contributions.



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
1995	6 000 000	37 000 000	43 000 000

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

6.1 Background

A Diplomatic Conference held in November 1992 under the auspices of IMO adopted two Protocols to amend the 1969 Civil Liability Convention and the 1971 Fund Convention. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. They contain the same substantive provisions as two Protocols adopted in 1984, but with lower entry into force provisions, since it had become clear that the 1984 Protocols would not obtain the required number of ratifications to enter into force.

6.2 Entry into force

The Protocols of 1992 amending the Civil Liability Convention and the Fund Convention will enter into force on 30 May 1996. As at 31 December 1995, 15 States had deposited instruments of ratification, acceptance, approval or accession relating to both of the 1992 Protocols, and one State (Egypt) had deposited an instrument of accession only to the 1992 Protocol to the Civil Liability Convention. The respective entry into force dates for these 16 States are as follows:

State	Entry into force	State	Entry into force
Australia	9 October 1996	Liberia	5 October 1996
Denmark	30 May 1996	Marshall Islands	16 October 1996
Egypt*	30 May 1996	Mexico	30 May 1996
Finland	24 November 1996	Norway	30 May 1996
France	30 May 1996	Oman	30 May 1996
Germany	30 May 1996	Spain**	6 July 1996
Greece	9 October 1996	Sweden	30 May 1996
Japan	30 May 1996	United Kingdom	30 May 1996

* Protocol to the Civil Liability Convention only.

** Protocol to the Civil Liability Convention. As for the Protocol to the Fund Convention, see explanation opposite.

The 1992 Protocol to the Fund Convention provides a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention, when the total quantity of contributing oil received in the States Parties to the Protocol to the Fund Convention reaches 750 million tonnes. It is expected that the requirements for the compulsory denunciation might be fulfilled during the summer of 1996. States Parties to the 1992 Protocol to the Fund Convention as well as States which have deposited their instruments of ratification in respect of that Protocol would then have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months, with effect twelve months later.

In its instrument of ratification relating to the 1992 Protocol to the Fund Convention, Spain made a declaration pursuant to that Protocol, so that the Protocol will not enter into force for Spain until 18 months after the total quantity of contributing oil has reached 750 million tonnes. No corresponding declaration was made pursuant to the Protocol to the Civil Liability Convention.

6.3 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 (SDR) (£2.9 million); (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.9 million) plus 420 SDR (£403) for each additional unit of tonnage; and (c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£57.3 million).

- **Increase in the limit of compensation payable by the IOPC Fund** to 135 million SDR (£130 million), including the compensation payable by the shipowner under the 1992 Protocol to the Civil Liability Convention. This limitation figure would be increased automatically to 200 million SDR (£192 million) if there were 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 exceeded 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 1992 Fund payable by oil receivers in any given State. This cap is fixed at 27.5% of the total annual contributions to the 1992 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 1992 Fund 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.

6.4 Preparations for entry into force of the 1992 Protocols

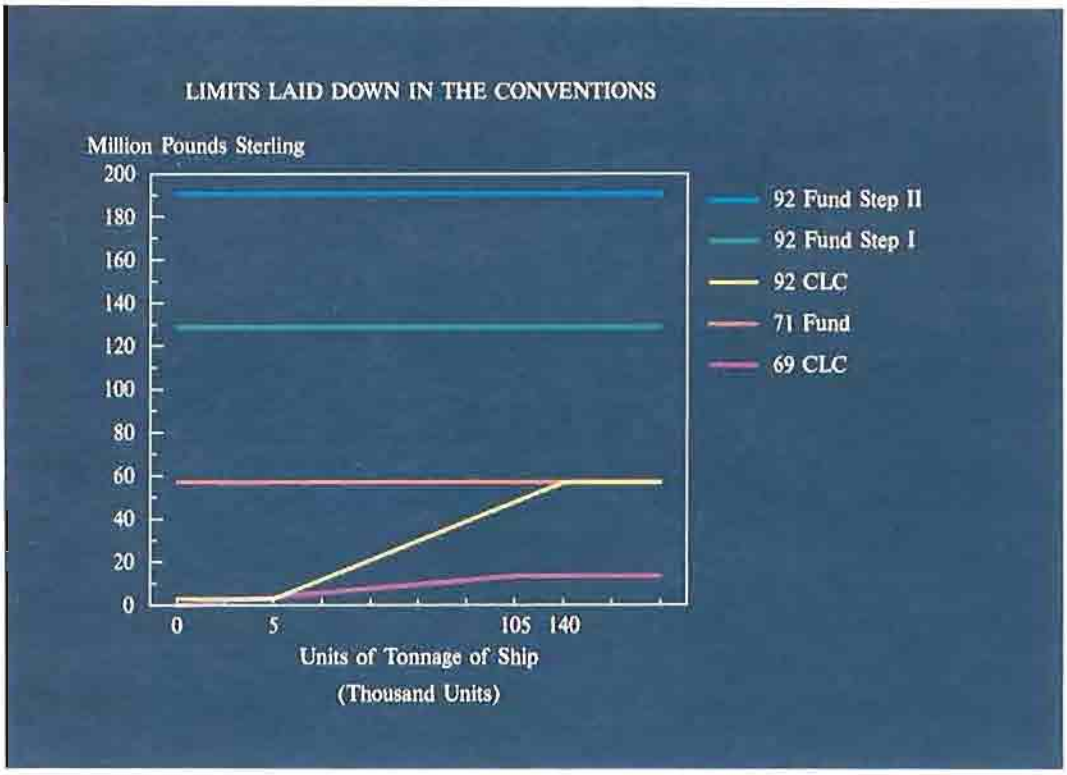
Under Article 36 of the 1971 Fund Convention as amended by the 1992 Protocol thereto (the 1992 Fund Convention), the Secretary-General of IMO shall convene the first session of the Assembly of the 1992 Fund. That session will be held during the week commencing 24 June 1996.

In October 1994 the Assembly of the present Fund Organisation (the 1971 Fund) instructed the Director to pursue his studies of the various issues relating to the entry into force of the 1992 Protocols. In October 1995 the 1971 Fund Assembly considered the results of these studies, noting that any positions it took in respect of the structure or operation of the 1992 Fund were only proposals and that any decisions on these issues would have to be taken by the Assembly of the 1992 Fund.

In view of the very close link which will exist between the 1971 Fund and the 1992 Fund, in particular during the period when the two Funds will operate concurrently, the 1971 Fund Assembly will be called upon to take certain decisions in the light of the decisions taken by the 1992 Fund Assembly at its 1st session. For this reason, the 1971 Fund Assembly will hold an extraordinary session during the same week as the 1st session of the 1992 Fund Assembly.

The Director's preparations for the entry into force of the 1992 Protocol to the Fund Convention have been based on the following assumptions:

- The 1992 Fund's Headquarters would be located in the United Kingdom.
- The 1971 Fund and the 1992 Fund would be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remained Parties to the 1971 Fund Convention.
- In view of the very close link that would exist between the 1971 Fund and the 1992 Fund, it was important that close co-ordination was ensured between the decisions of the 1971 Fund Assembly (and of the Executive Committee of the 1971 Fund in respect of functions allocated to it) and those of the 1992 Fund Assembly.
- It would be an advantage if, to the extent possible, the same Internal Regulations and Financial Regulations were to apply in respect of the 1971 Fund and the 1992 Fund.



- It would be necessary to co-ordinate the decisions of the Executive Committee of the 1971 Fund and the body of the 1992 Fund handling claims for compensation, since claims arising out of a particular incident might be dealt with by both Organisations.

- As regards the payment of contributions to the 1971 Fund and the 1992 Fund, procedures which did not put an unnecessary administrative burden on the contributors would have to be developed.

- A simple formula would be found for sharing the running costs of the joint Secretariat between the 1971 Fund and the 1992 Fund.

- The two Organisations would, if possible, have the same External Auditor.

In October 1995 the Assembly agreed with the Director that the 1971 Fund and the 1992 Fund should be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remained Parties to the 1971 Fund Convention.

The transition from the 1992 Fund being administered by the 1971 Fund Secretariat to a situation when the 1992 Fund would have its own Secretariat was discussed by the Assembly. It was agreed that this question should be considered at a later stage, for example at the end of the transitional period (ie when the compulsory denunciations have taken effect and the Member States of the 1992 Fund are no longer Members of the 1971 Fund).

The Assembly considered draft Rules of Procedure for the Assembly of the 1992 Fund and draft Internal and Financial Regulations for the 1992 Fund. These draft texts were generally endorsed, and will be submitted to the 1st session of the 1992 Fund Assembly.

A number of questions arising from the application of the provisions in the 1992 Protocol to the Fund Convention on the capping of contributions were considered by the 1971 Fund Assembly. The Assembly was of the view that the capping system should apply separately for a given year to each levy for the general fund and to each levy for a major claims fund.

The Assembly endorsed the Director's view that it would be preferable if the 1992 Fund Assembly were to postpone the first levy of contributions until an extraordinary session of the 1992 Fund Assembly, to be held in October 1996, by which time the Assembly of the 1992 Fund would be in a better position to assess an appropriate level for contributions. It was considered that the contributions to the 1992 Fund should, to the extent possible, be levied at the same time as contributions were levied to the 1971 Fund.

The Assembly considered the consequences of the 1992 Fund Convention not providing for an Executive Committee, and the need for the 1992 Fund Assembly to decide on the structure for the consideration of claims for compensation. The Assembly took the view that it would not be practicable to set up separate working groups to deal with claims arising out of each major incident, as had been suggested at the 1984 International Conference which adopted the 1984 Protocols. The Assembly considered that a claims subsidiary body should be established by the 1992 Fund Assembly and that its composition and role should be similar to those of the Executive Committee of the 1971 Fund.

It was agreed that it was essential to ensure consistency between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims. The Assembly endorsed a draft resolution to be considered by the Assembly of the 1992 Fund regarding the 1992 Fund's policy on the admissibility of claims for compensation. It was agreed that the publication of a Claims Manual issued jointly by the 1971 Fund and the 1992 Fund would be of considerable assistance to claimants.

The Director was instructed to pursue his discussions with the United Kingdom Government concerning the conclusion of a Headquarters Agreement for the 1992 Fund.

The Assembly instructed the Director to prepare revised documents in the light of its discussions and any further observations which might be made by Governments of Member States before 31 December 1995. The Assembly also instructed him to present to the Secretary-General of IMO any document prepared by him for submission to the 1st session of the 1992 Fund Assembly, inviting the Secretary-General to circulate the documents to the States and organisations concerned.

7 THE VOLUNTARY INDUSTRY SCHEMES

At the same time as the 1969 Civil Liability Convention and the 1971 Fund Convention were negotiated, two corresponding voluntary industry schemes were adopted. These two schemes were known as TOVALOP (Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution). The purpose of these industry schemes was to provide benefits comparable to those available under the Civil Liability Convention and the Fund Convention in States which had not ratified these Conventions. Both TOVALOP and CRISTAL were intended to be interim solutions and to remain in operation only until the international Conventions had worldwide application.

In November 1995 the Boards of Directors of the International Tanker Owners Pollution Federation Limited (ITOPF - the company which administers TOVALOP) and of Cristal Limited (the company which administers CRISTAL) decided that the voluntary agreements would not be renewed when their present terms ended on 20 February 1997. The Directors believed that the relevance of the interim TOVALOP and CRISTAL agreements had eroded over the years, as more States had become Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention. Their decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of these two Conventions and of the 1992 Protocols thereto, which offer significant advantages over the voluntary agreements for those claiming compensation for oil pollution damage. The Directors considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet ratified these Protocols.

8 SETTLEMENT OF CLAIMS

8.1 Overview

Claims settlements 1978 – 1995

Since its establishment in October 1978, the IOPC Fund has, up to 31 December 1995, been involved in the settlement of claims arising out of 72 incidents. The total compensation paid by the IOPC Fund to date amounts to some £116 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
Vistabella	Caribbean	1991	£1 002 512
Taiko Maru	Japan	1993	£7 183 928
Toyotaka Maru	Japan	1994	£5 081 754

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; in the case of the *Seki* and the *Sea Prince* incidents, so far payments have only been made by the shipowner or his insurer:

Ship	Place of Incident	Year	Payments
Aegean Sea	Spain	1992	£8 231 700
Braer	United Kingdom	1993	£46 228 584
Keumdong N°5	Republic of Korea	1993	£4 529 645
Seki	United Arab Emirates	1994	£6 058 500
Sea Prince	Republic of Korea	1995	£11 588 788
Yuil N°1	Republic of Korea	1995	£1 354 805

Annex XVIII 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.

Over the years there has been a considerable increase in the amounts of compensation claimed from the IOPC Fund following oil spills. In several recent cases the total amount of the claims submitted greatly exceeds the maximum amount payable under the Fund Convention. Claims have also been presented which in the IOPC Fund's view do not fall within the definition of pollution damage laid down in the Conventions. There have furthermore been claims which, although in the Fund's view are admissible in principle, are for amounts which the Fund considers greatly exaggerated. As a result, the IOPC Fund and claimants have become involved in lengthy legal proceedings. In these circumstances, it is becoming increasingly difficult for the IOPC Fund to achieve its aim of providing prompt payment for admissible claims.

Incidents in 1995

During 1995 seven incidents occurred that have given or will give rise to claims against the IOPC Fund, namely the *Dae Woong*, the *Sea Prince*, the *Yeo Myung*, the *Yuil N°1* and the *Honam Sapphire*, all of which occurred in the Republic of Korea, and the *Shinryu Maru N°8* and the *Senyo Maru*, which took place in Japan.

The Korean tanker *Dae Woong* ran aground on 27 June 1995 off the port of Kojung (Republic of Korea) some 150 kilometres south west of Seoul. Claims for clean-up costs have been submitted, and fishery claims are expected.

On 23 July 1995 the Cypriot tanker *Sea Prince* grounded near Yosu (Republic of Korea) with approximately 86 000 tonnes of crude oil on board. Some 700 tonnes of bunkers together with a small unknown quantity of crude oil from the cargo tanks were spilled. The remaining cargo was transferred to other ships, with the exception of a quantity of some 950 tonnes. The spilt oil affected the coastline and necessitated major clean-up operations. Intensive acquaculture is carried out in the area and acquaculture facilities were affected by the oil. This incident has given rise to claims for compensation in very significant amounts. The shipowner has made payments of some £12 million for clean-up operations.

The Korean tanker *Yeo Myung* collided with a tug on 3 August 1995 off Koje Island (Republic of Korea). The spilt oil, some 40 tonnes, affected part of the coastline which had been cleaned following the *Sea Prince* incident. The oil also affected some acquaculture facilities. Claims for compensation for considerable amounts have been presented for the cost of clean-up operations and for losses suffered by the fishery and aquaculture sectors.

While the Japanese-registered tanker *Shinryu Maru N°8* was supplying bunkers to a bulk carrier through another tanker in Chita (Japan) on 4 August 1995, oil escaped following the mishandling of a supply hose. As a result, oil contaminated three vessels and some oil escaped into the sea. This incident will give rise to claims for only modest amounts.

On 3 September 1995 the Japanese coastal tanker *Senyo Maru* collided with a bulk carrier off Ube, Yamaguchi Prefecture (Japan), resulting in a spill of some 95 tonnes of the cargo of heavy fuel oil. Intensive fishing is carried out in the affected area. The IOPC Fund has received claims for clean-up costs and fishery damage.

The Korean coastal tanker *Yuil N°1* ran aground off Pusan (Republic of Korea) on 21 September 1995. The vessel was refloated, but sank while being towed. There was an initial release of oil following both the grounding and sinking, and thereafter small quantities

of oil leaked from the wreck. Extensive clean-up operations were undertaken. The spilt oil affected fishing and acquaculture facilities. Claims for compensation have been presented for significant amounts. Payments of some £1.3 million have been made.

During berthing manoeuvres on 17 November 1995 at the oil terminal in Yosu (Republic of Korea), the Panamanian tanker *Honam Sapphire* struck a fender, puncturing a tank. An unknown quantity of crude oil escaped from the damaged tank. Several floating fish farms and onshore hatcheries, set nets and common intertidal fishing areas were affected by the oil. Claims for clean-up costs and fishery damage will reach significant amounts.

The IOPC Fund was informed in March 1995 of oil pollution which had affected Mohammedia (Morocco) on 30 November 1994. It appears, however, that this oil did not originate from a laden tanker. Any claims for compensation would therefore not be admissible under the Fund Convention.

In December 1995 the IOPC Fund received a claim in respect of the *Kihnu* incident, which had taken place in Estonia in January 1993.

The IOPC Fund followed the grounding of the Norwegian tanker *Borga* off Milford Haven (United Kingdom) in October 1995. The vessel, carrying 120 000 tonnes of crude oil, was refloated the following day without any oil being spilled. In addition, the IOPC Fund followed the *Sarpindo-Privumi* incident, in which two tankers collided off Sumatra (Indonesia) in July 1995. Neither of these incidents will give rise to claims against the IOPC Fund.

Incidents in previous years with outstanding claims

As at 31 December 1995 there were outstanding third party claims in respect of six incidents involving the IOPC Fund which had occurred before 1995, namely the *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5*, *Iliad* and *Seki* incidents. The situation in respect of these incidents is summarised below.

The *Haven* incident (Italy, April 1991) caused serious oil pollution in Italy and also affected France and Monaco. Some 1 350 claims for compensation were submitted to the Court of first instance in Genoa in the limitation proceedings against the shipowner for a total amount corresponding to approximately £680 million; however, a number of claims are duplications. The judge in charge of these proceedings has held hearings concerning the claims, but his decision on the various claims is not expected until 1996. 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 (SDR) or Llt 102 643 800 000 (£42 million). However, the Court in Genoa has fixed the maximum amount payable by the IOPC Fund at Llt 771 397 947 400 (£313 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 maintained in the legal proceedings in Italy that the majority of the claims arising out of the *Haven* incident became time-barred as regards the IOPC Fund on or shortly after 11 April 1994. In June 1995 the Executive Committee decided to instruct the Director to continue the negotiations with the claimants in the *Haven* case and authorised him to agree, on behalf of the IOPC Fund, to a global settlement within the framework of a total amount of Llt 137 643 800 000 (£56 million), on certain terms and

conditions, and without prejudice to the IOPC Fund's position in respect of the time bar. This amount would be made up as follows: the shipowner and his P & I insurer would contribute the shipowner's limitation fund under the 1969 Civil Liability Convention (Llt 23 950 220 000, or £9.7 million) plus a without prejudice offer of interest on this amount (Llt 10 000 million, or £4.1 million) and an additional *ex gratia* payment (Llt 25 000 million, or £10.2 million); the IOPC Fund would contribute the difference between the shipowner's limitation fund and the maximum 60 million SDR payable under the 1971 Fund Convention (Llt 78 693 580 000, or £31.9 million). No agreement was reached on the proposed global settlement, however, primarily because the Italian Government neither accepted the offer nor gave an indication that it was looking favourably at the offer. In October 1995 the Executive Committee referred the matter to the Assembly, since the conditions set by the Committee had not been met. The Assembly decided that any future initiative towards a global settlement had to be taken by the claimants, including the Italian Government.

The *Aegean Sea* incident (Spain, December 1992) has given rise to claims totalling some £132 million. These claims relate to the cost of clean-up operations, and to economic loss suffered by a large number of fishermen, by persons involved in various forms of aquaculture and by other persons affected by the incident in various ways. Most of the claims have not yet been settled, due mainly to the fact that many of the claimants have not presented sufficient supporting documentation. As at 31 December 1995 a total amount of £8.2 million had been paid in respect of 815 claims. Claims arising from the *Aegean Sea* incident became time-barred on or shortly after 3 December 1995.

Honam Sapphire incident - Local fishermen assisting with clean-up operations (photograph: ITOPF)

The *Braer* incident (United Kingdom, January 1993) has also resulted in a large number of claims, relating mainly to economic loss suffered by salmon farmers, fishermen, businesses involved in packing and processing fish, farmers and crofters whose grassland was contaminated and by persons whose houses were contaminated. As at 31 December 1995 claims had been settled and paid for a total amount of £46.2 million. In October 1995 the Executive Committee decided that further payments should be suspended, as a result of the uncertainty which existed in respect of the outstanding claims, in particular since a number of claimants had taken or were expected to take legal action against the IOPC Fund. Claims arising from the *Braer* incident will become time-barred on or shortly after 5 January 1996. By that date legal action had been taken in respect of 290 claims totalling £80 million.

The *Keumdong N°5* incident (Republic of Korea, September 1993) has also given rise to a large number of claims which may total some £155 million. All claims relating to the clean-up operations have been settled and paid for a total amount of £4.5 million. The remaining claims, which relate to economic loss suffered by fishermen and persons involved in acquaculture, are still pending.

Oil spilt from the *Iliad* (Greece, October 1993) affected some 20 kilometres of coastline. Fishing and tourism are important industries in the affected area, and claims for compensation totalling some £8.3 million have been lodged in the competent Greek court.

The *Seki* (United Arab Emirates, March 1994) spilled approximately 16 000 tonnes of crude oil as a result of a collision nine miles off the port of Fujairah. The spilt oil affected some 30 kilometres of coast in the Emirates and Oman, necessitating onshore and offshore clean-up operations. The claims submitted so far total about £18 million. The P & I insurer has made payments for approximately £6.1 million.

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 been explicitly approved or endorsed by the Executive Committee.

During 1994 the criteria for the admissibility of claims were examined by an Intersessional Working Group. The Report of the Working Group was endorsed by the Assembly in October 1994, and the conclusions of the Working Group are reflected in the revised version of the IOPC Fund's Claims Manual published in 1995.

8.2 Incidents dealt with by the IOPC Fund during 1995

The following section of this Report details incidents with which the IOPC Fund has been involved in 1995. The Report sets out the developments of the various cases during 1995 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.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 29 December 1995, except for claims paid by the IOPC Fund for which conversions have been made at the rate of exchange on the date of payment.

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). An estimated 185 tonnes of the intermediate fuel oil was spilled and came ashore. 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 in 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$1.2 million (£543 000). The limitation fund was constituted by the Swedish Club by means of a letter of guarantee.

Claims settlements

The Canadian Government's claims relating to the clean-up operations were settled and paid for a total amount of Can$11.8 million (£5.6 million). The IOPC Fund paid a total amount of Can$1.0 million (£459 000) to the Swedish Club in respect of subrogated claims for the cost of clean-up operations and waste disposal.

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".

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* and the company which managed the vessel. 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$12.8 million (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).

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. 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.

In April 1995 the Executive Committee agreed with the Director's conclusion that in the *Rio Orinoco* case, on the basis of the further advice received, it was unlikely that the Swedish Courts would set aside the "pay to be paid" rule in the Swedish Club's Rules. For this reason, the Committee decided that the IOPC Fund should not take legal action against the Swedish Club in Sweden.

Indemnification of the shipowner

The Executive Committee examined in April 1995 whether and, if so, to what extent the IOPC Fund was exonerated from its obligation under Article 5.1 of the Fund Convention to indemnify the shipowner and his insurer for a portion of the limitation amount prescribed in Article V.1 of the Civil Liability Convention. The Committee took the view that, as a result of the fault or privity of the shipowner, the *Rio Orinoco* did not comply with certain requirements relating to the maintenance of ships laid down in Chapter I, Regulation 11 of the International Convention for the Safety of Life at Sea, 1974, as modified by the 1978 Protocol thereto, and that the incident and the ensuing pollution damage was wholly caused by this non-compliance. For this reason, the Committee decided that, pursuant to Article 5.3 of the Fund Convention, the IOPC Fund was wholly exonerated from its obligation to pay indemnification to the shipowner and his insurer.

The Swedish Club informed the IOPC Fund that it would not bring legal action against the Fund in respect of indemnification of the shipowner.

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 was spilled as a result of the sinking. Most of the spilt oil was contained in the berth by booms. This oil was recovered by skimmers and vacuum trucks and disposed of at a local refinery. A relatively small proportion of the spilt oil escaped from the berth 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 £303 400. A claim for £19 100 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 £12 700, 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 £287 300 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 £12 500.

The limitation amount applicable to the *Portfield* was £51 000 plus interest of £18 300, or a total of £69 100. In total the IOPC Fund and the shipowner's P & I insurer paid £259 500 and £69 100 in compensation, respectively.

In March 1995 the IOPC Fund paid indemnification to the shipowner which, including interest, amounted to £17 200.

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 which remained in the barge is not known.

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 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.

The IOPC Fund paid compensation amounting to FFr8.1 million (£986 500) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands in the amounts of FFr110 000 (£11 040), US$6 100 (£3 200) and US$2 000 (£1 000), respectively. Further claims against the IOPC Fund are time-barred.

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 has withdrawn from the proceedings.

There has been very little progress in the proceedings during 1995. In view of the weak financial position of the shipowner and the uncertainty of the extent of insurance cover, the IOPC Fund will consider whether it is worthwhile for the Fund to pursue its action to recover the amounts paid by the Fund to claimants.

AGIP ABRUZZO

(Italy, 10 April 1991)

The incident

While lying at anchor 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 in all) died, and the ferry was totally burned out. 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 a subsequent loss of an unknown quantity of bunkers.

Claims for compensation

A number of claims for compensation were presented to the shipowner and the IOPC Fund. The claims related mainly to clean-up operations and preventive measures carried out by private contractors. These claims were settled out of court for a total of Llt 17 936 million (£7.3 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 LIt 1 333 million (£541 000) 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 effects of the spill had not been completed.

IOPC Fund's involvement in the payment of claims

The total amount of the settled claims (LIt 17 936 million or £7.3 million) and the Italian Government's pending claim (LIt 1 333 million or £541 000), ie LIt 19 269 million (£7.8 million), falls below the limitation amount applicable to the vessel (estimated at LIt 21 838 million or £8.9 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 the relevant provisions in the Civil Liability Convention (Article VIII) and the Fund Convention (Article 6.1) had been complied with. Since the IOPC Fund was not under an obligation to pay compensation to victims, the Fund did not have to consider whether the pending claim was time-barred.

Indemnification of the shipowner

In March 1994 the shipowner's P & I insurer (Assuranceföreningen Skuld, the "Skuld Club") instituted legal proceedings against the IOPC Fund before the Court of Livorno in respect of the IOPC Fund's obligation to pay indemnification under Article 5.1 of the Fund Convention.

Senyo Maru incident - Oil-stained rocks at Himeshima
(photograph: Pegasus)

In October 1994 the Executive Committee considered a request from the Skuld Club that the IOPC Fund should waive the requirement to establish the limitation fund. The Committee noted that the IOPC Fund's involvement in the case was limited to the payment of indemnification. For this reason, and in view of the legal problems encountered by the Skuld Club in its attempt to establish the limitation fund, the Committee decided, as an exception, to waive the requirement to establish such a fund.

In June 1995 the IOPC Fund paid indemnification to the Skuld Club in the amount of Llt 1 666 million (£635 300), which corresponds to the difference between the total amount paid in compensation and the Fund's intervention point under Article 5.1(a) of the Fund Convention, plus interest.

Recourse action

In October 1992 the Executive Committee authorised the Director to take recourse action against the owner of the other ship involved in the collision (the *Moby Prince*) to recover any amount paid by the IOPC Fund as a result of the incident. The Skuld Club started recourse action against the owner of the *Moby Prince*, and the IOPC Fund intervened in these proceedings to protect its interests. In October 1994 the Executive Committee decided that, since the IOPC Fund might recover only a low amount, the 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

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. A significant quantity of oil came ashore between Genoa and Savona. 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.

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 November 1991 to 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. 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

Criminal proceedings against the owner of the Troodos Group (which operated the ship) and the shipowner's superintendent started in December 1994. The hearings have been adjourned to 27 February 1996 and the judgement is expected later in the year.

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 Llt 23 950 220 000 (£9.7 million), which corresponds to 14 million SDR, the maximum amount under the Civil Liability Convention. The limitation fund was established by the shipowner's 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 Llt 1 650 000 million (£670 million) plus FFr95 million (£13 million), have been filed in the limitation proceedings against the shipowner.

The judge in charge of the limitation proceedings started hearings in September 1991 to examine the individual claims. It is expected that the judge will establish the list of admissible claims ("stato passivo") in the spring of 1996.

Claims for compensation

Italian claims other than those relating to environmental damage

Some 1 350 Italian claimants presented claims in the limitation proceedings against the shipowner relating to damage other than environmental damage. These claims total approximately Llt 765 000 million (£311 million).

A number of these claims are duplications. The duplications are mainly due to the fact that the State of Italy and a number of contractors and sub-contractors presented claims in respect of the same operations. It appears that the duplications total approximately Llt 455 000 million (£185 million). After deducting this amount from the total figure, a balance of some Llt 310 000 million (£126 million) remains for claims other than those relating to damage to the marine environment. These figures do not in any way represent the position of the IOPC Fund as to the admissibility of the respective claims, or as to the reasonableness of the amounts claimed.

The Italian Government presented the largest claim. This claim, excluding the items relating to environmental damage, totals Llt 261 000 million (£106 million). The claim includes *inter alia* costs associated with the execution of the contract relating to clean-up operations and monitoring concluded between the Italian Government and the ATI consortium.

The owners of 43 yachts claimed compensation for contamination of their boats and 38 fishermen for contamination of their boats and nets. Nearly 700 hotel owners and 150 fishermen claimed compensation for loss of income. Ninety-three operators of beach facilities (bagni) claimed for reduced income. Some 230 shopkeepers and restaurateurs also claimed compensation.

Italian claims relating to environmental damage

The Italian Government presented a claim in the limitation proceedings against the shipowner relating to damage to the environment. In June 1994 the Government quantified the alleged damage to the environment as follows:

- restoration of 43 hectares of phanerogams; Llt 266 042 million (£108 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 (£8.1 million);
- damage restored by the natural biologic recovery of the resources; Llt 591 364 million (£240 million) for the sea and Llt 6 029 million (£2.4 million) for the atmosphere, or a total of some £242 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 quantified parts of the Government's claim total Llt 883 435 million (£359 million).

The Region of Liguria, two provinces and 14 communes included items relating to environmental damage in their respective claims. The Region maintained that the compensation

should be apportioned between the various territorial entities which had directly suffered or were suffering ecological damage.

The IOPC Fund has 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 has 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 has also taken the view that compensation could only be granted if a claimant has suffered quantifiable economic loss.

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 FFr16.3 million (£2.1 million).

Claims totalling FFr79 million (£10.4 million) were presented to the Court in Genoa by 31 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) claimed compensation for damage to the marine environment and loss of touristic image.

Two companies each owning a villa in Saint Tropez presented claims for clean-up costs and loss of rental income.

Principality of Monaco

The Principality of Monaco presented a claim in the Court of Genoa for FFr321 700 (£42 400) for the cost of clean-up operations.

Method of converting (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 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 value 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 value 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 in 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 (£313 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Llt 102 643 800 000 (£42 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 had rendered the decision in 1992). In July 1993 the Court upheld the decision of March 1992 and fixed the maximum amount payable by the IOPC Fund at Llt 771 397 947 400 (£313 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 held hearings on this issue in November and December 1995. It is expected that the Court will render its judgement in early 1996.

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.

Haven incident - The blazing tanker
(photograph: Studio Ing Mattarelli)

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 Fund or by making a notification to the Fund under Article 7.6 of the Fund Convention. Only a few claimants 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.

In October 1994 the Executive Committee took the view that the claims in respect of which no formal notification had been made to the IOPC Fund were time-barred, in the light of the provisions in Article 6.1 of the Fund Convention. The IOPC Fund has therefore taken the necessary steps to preserve its right to invoke the defence of time bar, although the claimants had not taken action against the Fund.

Search for a solution

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 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.

In April 1995 the Executive Committee set up a Consultation Group to assist the Chairman in his monitoring of the Director's search for a solution. The Committee appointed the delegations of Algeria, Japan, Norway and the United Kingdom as members of the Consultation Group.

Developments April 1995 - June 1995

By June 1995 agreements on quantum had been reached between the shipowner/UK Club and a large number of claimants in Italy and offers had been made to others. The IOPC Fund's lawyers had followed the negotiations with the Italian claimants, and the Director had been consulted by the shipowner/UK Club before any agreements or offers on quantum were made. In the Director's view, all claims in respect of which agreements had been reached or offers had been made fulfilled the criteria for admissibility laid down by the Committee. He was also of the view that the amounts agreed or offered were reasonable and that, if the IOPC Fund had not raised the defence of time bar, he would have recommended that these claims be accepted by the Executive Committee in the amounts agreed or offered.

Agreements on quantum had also been reached by the IOPC Fund with the French Government and with 20 municipalities in France.

Proposal of settlement

In June 1995 the shipowner/UK Club offered to make available an additional amount of Lit 25 000 million (£10.2 million) as an *ex gratia* payment in an effort to assist in arriving at a global settlement.

At its session in June 1995 the Executive Committee, having considered all the issues involved, instructed the Director to continue the negotiations with the claimants and authorised the Director to agree, on behalf of the IOPC Fund, to a global settlement within the framework of the amount of some Lit 137 000 million (£56 million) being made available to victims, calculated as follows:

	Llt
60 million SDR	102 643 800 000
Interest on the shipowner's limitation fund calculated at the legal rate of 10% per annum (approximate)	10 000 000 000
Sub-total	112 643 800 000
Additional amount offered by the shipowner/UK Club as an *ex gratia* payment	25 000 000 000
Total	137 643 800 000

The Committee decided that the proposed global settlement was subject to the following terms and conditions:

- Except as regards the shipowner's/UK Club's *ex gratia* payment of Llt 25 000 million, payments would be made only to the extent that a claimant had suffered a quantifiable economic loss and no payment would be made in respect of claims for damage to the marine environment *per se*.

- All parties to the on-going legal proceedings in Italy would withdraw their actions for compensation, irrespective of the grounds upon which the claims might be based, and irrespective of the identity of the defendant, including the claims submitted in the limitation proceedings and the claims for compensation presented in the criminal proceedings.

- The IOPC Fund, the State of Italy and other claimants would terminate all proceedings in respect of the decision of the Court of first instance opening the limitation proceedings, in which they challenged the right of the shipowner to limit his liability. All parties would also terminate their cases of opposition to the "stato attivo", ie relating to interest accrued on the shipowner's limitation fund and the method for the determination of the maximum amount available under the Fund Convention.

- The IOPC Fund would withdraw its legal actions against all other parties for the purpose of recovering any amount that the IOPC Fund might have to pay as a result of the incident.

- The State of Italy would give an undertaking to hold harmless the shipowner, the UK Club and the IOPC Fund against any claims by the enterprises forming ATI and their sub-contractors, Castalia and LOGECO, and the Italian territorial public entities to the extent that any of these parties did not formally withdraw their actions as set out above.

In the court proceedings the IOPC Fund has argued that the bank guarantee constituting the shipowner's limitation fund should also cover interest and that the interest should accrue to the benefit of the IOPC Fund, whereas the shipowner/UK Club has maintained that no interest was payable. The Court of first instance had held that the bank guarantee should cover interest but that the interest should accrue to the benefit of claimants. Both the IOPC Fund and the shipowner/UK Club have appealed against this decision. The shipowner/UK Club offered, without prejudice to their position, to pay interest at the legal

rate on the limitation fund, if this amount could be made available to the claimants as part of a global settlement. The 1984 and 1992 Protocols to the Fund Convention expressly state that interest should be to the benefit of victims (Article 4.4(d)). The States participating in the 1984 International Conference decided to amend the Fund Convention on this point, since it appeared unfair that interest should be to the benefit of the IOPC Fund and not the victims. In the light of the deliberations of the 1984 International Conference, the Executive Committee decided to accept, in the *Haven* case, that interest on the shipowner's limitation amount should go to the benefit of the victims. This position was taken only in the context of a possible global settlement without prejudice to the IOPC Fund's position under the 1971 Fund Convention in future cases.

The UK Club informed the Executive Committee that it was in agreement with the proposal for a global settlement subject to the conditions set out above. The Club emphasised that the offer by the shipowner/UK Club to make an *ex gratia* payment of Llt 25 000 million was entirely without prejudice and without any admission of liability of any parties in any proceedings, and subject to certain conditions being satisfied, thereby bringing an end to all litigation in this case.

The IOPC Fund had suggested that the proposed settlement should also include a waiver by the shipowner/UK Club of any right to indemnification under Article 5 of the Fund Convention. The shipowner and the UK Club maintained that there were no grounds on which the IOPC Fund could decline to pay indemnification under Article 5. The Club stated that, nevertheless, the shipowner/UK Club would waive the right to indemnification provided that all conditions of the proposed settlement were fulfilled. Without prejudice to the IOPC Fund's position in respect of the payment of indemnification in this case, the Executive Committee noted the waiver by the shipowner/UK Club of the right to indemnification under Article 5.

At the Executive Committee's June 1995 session, the Italian delegation stated that it was not yet in a position to express any definite opinion on the proposal of a settlement. The Italian Government considered, nevertheless, that great progress had been made, that there were good prospects for a global solution and that it would examine the proposal in depth with the highest priority and in an effort to reach a global settlement.

The Executive Committee decided that the offer of a settlement on the conditions set out above would be open until 31 July 1995 and that this time period could be extended by the Chairman if he considered such an extension justified in view of the progress being made in the negotiations. This time period was extended by the Chairman in stages to 16 October 1995.

The Executive Committee emphasised that neither the decision to enter into negotiations nor the decision to agree to a global solution in the *Haven* case constituted a precedent but should be seen in the context of the very special circumstances of this case.

Developments June - October 1995

By October 1995 agreements had been reached between the shipowner/UK Club and 667 Italian claimants in the categories of individuals or small businesses on the admissible quantum of their claims, for a total amount of Llt 13 046 million (£5.3 million). Offers had been made to a further 84 claimants in these categories for a total amount of Llt 389 million (£157 900).

Agreements on quantum had also been reached between the shipowner/UK Club and 12 of the 16 Italian contractors who operated outside the so-called ATI consortium for a total of LIt 8 450 million (£3.4 million). Negotiations with three contractors were not completed. The claims of the remaining contractors (including those who operated inside the ATI consortium) would be included in the compensation payable to the State of Italy under the offer of a global settlement.

The shipowner/UK Club had further agreed with the Region of Liguria, the Province of Savona and seven municipalities on the amount of their claims for clean-up costs and promotional expenses at a total of LIt 780 million (£316 700). In October 1993 the Executive Committee had considered the items relating to promotional expenses as inadmissible. These items would therefore have to be met from the *ex gratia* payment. The UK Club accepted the IOPC Fund's position in respect of the promotional expenses referred to above for the purpose of a global settlement, but reserved its position as regards the admissibility of these claims.

Agreements on quantum had been reached by the IOPC Fund with the French Government, the Direction Départementale des Services d'incendie et de secours du Var, 31 municipalities in France and Parc National de Port Cros for a total amount of FFr23.2 million (£3.1 million). Agreement in the amount of FFr270 035 (£35 600) was also reached on the quantum of the claim submitted by the Principality of Monaco.

The agreements between the shipowner/UK Club and a number of the claimants on the admissible quantum of their claims contained a clause to the effect that the agreements would be null and void unless the amounts agreed were paid within six months of signing the respective agreements. Since the Italian Government had not accepted the offer of a settlement by the end of July 1995, the shipowner/UK Club decided that they were unable to pay the agreed amounts to these claimants.

Following further discussion with the Italian Government and the lawyer representing the Region of Liguria, the shipowner/UK Club made a revised offer within the terms of the proposed global settlement, under which the shipowner/UK Club offered to pay directly to the Region, for and on behalf of itself and the other local public bodies, part of the *ex-gratia* payment which had been offered to the State of Italy. This revised offer to the Region of Liguria was accompanied by the equivalent reduction in the offer of the amount available to the State of Italy.

On 11 October 1995, after discussions within the Consultation Group, the Chairman of the Executive Committee sent a letter to the Italian Ambassador in London, setting out his understanding of the Italian Government's position. The Chairman stated in that letter that, if his understanding was correct, the Committee would have to conclude that the proposal of a global settlement had been rejected by the State of Italy. The Chairman stated further that, if he had misunderstood the Italian Government's position, he would be grateful for a declaration by 16 October 1995 in writing or verbally at the Executive Committee, that his understanding was wrong and that the Italian Government was looking favourably at the offer.

Consideration by the Executive Committee in October 1995

At the Executive Committee's October 1995 session the Italian delegation informed the Committee that the above-mentioned letter requesting urgent clarification of the Italian Government's position had been forwarded to the competent Italian authorities. The Italian

delegation confirmed that the Italian Government had considered with great interest the proposed global settlement, as well as the numerous attempts made to improve it. The delegation stated that the question was being closely examined at various levels within the Italian Administration but that, due to the extreme complexity of the issues involved and the number of competent bodies which would have to agree to a decision, the Italian authorities were as yet unable to finalise their position.

The Executive Committee noted that the Italian authorities wished to continue their study of the offer of a global solution. Nevertheless, since the conditions set by the Executive Committee for a global solution had not been met, the Committee decided to refer the matter to the Assembly.

Consideration by the Assembly in October 1995

At the session of the Assembly held in October 1995, a number of delegations expressed their regret that the Italian Government had neither accepted the offer of a global settlement in the *Haven* case nor made any indication that it considered the offer favourably. They drew attention to the serious consequences of the Italian Government's position for the Italian claimants, in particular individuals and small businesses who, under the offer, would have been paid promptly after an agreement was reached but who might now have to wait for many more years before receiving any payment at all. Reference was also made to the difficulties caused for those claimants who had complied with the provisions of the Conventions relating to the time bar but had nevertheless not received any compensation. They also expressed their deep concern of the consequences of this situation for the future of the international compensation system established by the Civil Liability Convention and the Fund Convention. It was pointed out that a compensation system of this kind could function only if all Member States were willing to respect the principles generally agreed upon within the framework of the Fund Convention and referred in particular to the problems which had arisen in respect of the Italian Government's claim for environmental damage.

The Assembly endorsed the following statement made by Professor H Tanikawa of Japan as the position of the IOPC Fund:

> We have heard the report of the Chairman of the Executive Committee. We regret that there has been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the IOPC Fund. For this reason we interpret this to mean that the offer has not been accepted by the Italian Government. We therefore believe that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government. As already decided by the Assembly, the *Haven* Major Claims Fund remains, but no further contributions have been levied. The terms and conditions of the previous offer of a global settlement are well known. Should the claimants, including the Italian Government, wish to revert to a settlement on the terms of that offer, then the matter would have to be referred to the Assembly for decision.

The UK Club stated that the Club would, at least for some time, continue its negotiations and discussions with the local authorities in Italy in the hope that, if these authorities would agree to be part of a global settlement, the Italian Government's position might be modified.

Request by the French Government for payment to French claimants

At the Executive Committee's session in October 1995, the French delegation requested that the Director should take the necessary steps in the coming weeks so that compensation could be paid to the French claimants immediately after the next session of the Executive Committee. This request was considered by the Assembly at its October 1995 session. The Assembly authorised the Executive Committee to approve at least partial payments to claimants in France, Monaco and Italy who had taken the steps required under the Conventions to prevent their claims from becoming time-barred.

In December 1995 the Executive Committee considered a formal request made by the French Government regarding payment to French claimants. In its request the French Government stated that, in its view, it would not be possible to find a solution acceptable to the victims on a purely technical basis. The French Government maintained that only a payment by the IOPC Fund based on equity would meet the concerns expressed by the French delegation.

The French Government suggested that payments of the French claims could be made in stages, with the claims presented by the 31 French municipalities, Direction Départementale des Services d'incendie et de secours du Var and Parc National de Port Cros being paid in full during the weeks following the December 1995 session of the Committee, while the question of payment to the French State, as well as the payment of interest and legal costs to all French claimants, could be referred to a future session after the Court of first instance in Genoa had issued its decision on the list of established claims. The French Government considered that such a solution would be equitable and would take account of the technical difficulties for the IOPC Fund of making payments.

The Executive Committee shared the Director's view that the question of payments to claimants whose claims were not time-barred vis-à-vis the IOPC Fund had to be considered not only for the French claimants but also for the claimants in Monaco and Italy who had also fulfilled the requirements of Article 6.1 of the Fund Convention.

During the discussions in the Executive Committee, the French delegation drew the Committee's attention to the particular case of the 31 French municipalities. The delegation indicated that by proposing to defer payment of the French State's own claim until the legal situation had become clearer, the French Government envisaged guaranteeing the IOPC Fund - up to the level of the French State's own claim - against the risk of overpayment which might result from immediate payment to the other French claimants who had been caught up in this procedure.

The Executive Committee shared the concern of the French delegation that those claimants who had taken the necessary steps to prevent their claims from becoming time-barred should be paid as soon as possible. Nevertheless, the Committee took into account the remaining uncertainty as to the outcome of the legal proceedings in Italy. The Committee recognised that, depending on the outcome of these proceedings, the total amount of the established claims against the Fund could be fixed by the Italian courts at an amount which exceeded the total amount available under the Civil Liability Convention and the Fund Convention. The Committee noted that if, in such a hypothetical situation, the IOPC Fund had paid a number of claimants more than their *pro rata* share, a complex legal situation would arise. It also noted the advice given by the IOPC Fund's Italian lawyer as to the negative consequences which payments to the French claimants might have on the possibility of reaching a global settlement in this case and on the on-going court proceedings in Italy.

For these reasons, the Committee decided to postpone further consideration of this issue to its session in February 1996.

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 Japan Maritime Disaster Prevention Centre began clean-up operations immediately.

Claims in respect of clean-up operations were submitted for a total amount of ¥6.2 million (£38 800). These claims were settled at ¥4.1 million (£21 919). In November 1992 the IOPC Fund paid ¥1.1 million (£5 600) representing the settlement amount minus the limitation amount applicable to the *Kumi Maru N°12*, ¥3.1 million (£16 300). The IOPC Fund paid indemnification of ¥764 600 (£5 600) to the shipowner.

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.

In December 1995 the IOPC Fund recovered ¥650 500 (£4 100) as a result of recourse action against the colliding vessel.

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. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil remained onboard, all in the aft section. This oil was removed by salvors working from the shore. 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.

Burnt out wreck of the *Aegean Sea*
(photograph: Foto Blanco, La Coruña)

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 coastline east and north-east of La Coruña were contaminated. The cleaning of polluted beaches began in 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, mussels became tainted. Some turbot and salmon farms and clam and mussel purification plants in the area were affected by oil and depuration plants were closed for several months. All the plants have been reopened.

Claims handling

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 IOPC Fund. The IOPC Fund, the shipowner and the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, "UK Club") established a joint office in La Coruña to receive claims for compensation and make a preliminary technical assessment of such claims. This Joint Claims Office has worked closely with the Spanish authorities and claimants in order to facilitate the handling of the claims.

Claims for compensation

General situation

As at 31 December 1995, 1 275 claims had been received by the Joint Claims Office, totalling Pts 24 730 million (£132 million). Compensation had been paid in respect of 815 claims for a total amount of Pts 1 548 million (£8.3 million). Out of this amount, the UK Club paid Pts 782 million (£4.2 million) and the IOPC Fund Pts 765 million (4.1 million). It should be noted that many of the claims presented to the Joint Claims Office have become time-barred, as set out below.

Claims have also been submitted to the Criminal 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.

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 onshore were carried out by contractors engaged by the authorities. Some 99 claims relating to clean-up operations have been submitted, totalling Pts 4 931 million (£26 million). Partial payments totalling Pts 118 million (£634 000) have been made to 36 claimants.

Property damage

A number of houses were contaminated by smoke from the burning oil and had to be cleaned. Yachts and other boats were also contaminated. Payments totalling Pts 48 million (£255 000) have been made in settlement of 704 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.

Twelve claims totalling Pts 4 584 million (£24 million) have been submitted for losses relating to oyster, scallops, mussel and salmon farms. The information presented in support of these claims was 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 made a provisional assessment of the losses sustained. As a result, partial payments have been made in respect of nine claims, totalling Pts 381 million (£2 million).

Claims totalling Pts 139 million (£744 825) have been submitted from three intertidal farms producing various species of clams and cockles. As regards one farm, which is located

outside the area affected by the oil pollution, there is no evidence that any loss was suffered. In respect of the other two farms which are located in the affected area, the evidence presented in support of the claims was limited. On the basis of the information available, the experts of the IOPC Fund and the UK Club have made a provisional assessment, and one claimant received a partial payment of Pts 760 000 (£4 100) in April 1995.

Depuration plants

Claims have been submitted in respect of nine depuration plants, totalling Pts 2 112 million (£11.3 million). On the basis of the limited information provided, the experts of the IOPC Fund and the UK Club made a provisional assessment of the losses sustained in respect of all of these claims. As a result, these claimants received partial payments totalling Pts 130 million (£697 000).

Onshore aquaculture

Three onshore fish farms in the affected area have presented claims totalling Pts 2 041 million (£10.9 million) for alleged loss of stock caused by pollution. Partial payments amounting to Pts 61 million (£325 400) have been made to these claimants.

Boat fishing and shellfish harvesting

Claims from some 4 100 fishermen and shellfish harvesters total Pts 10 364 million (£55 million). On the basis of a provisional assessment made by the experts engaged by the IOPC Fund and the UK Club, these claimants received partial payments totalling Pts 793 million (£4.2 million). Three claimants were paid in full for a total of Pts 3 million (£16 000).

Several meetings were held in 1994 and 1995 with representatives of a number of fishermen and shellfish harvesters to discuss the handling of their claims. Some documentation was presented in March 1995, but this did not contain any elements which enabled the experts to increase their previous assessment of the losses actually suffered.

Other claims for pure economic loss

So far, the IOPC Fund has approved 32 claims for pure economic loss (other than those relating to fishing activities) for a total amount of Pts 16 million (£85 900). Payments have been made totalling Pts 6.7 million (£35 640).

Social security payments

In April 1995 the Executive Committee re-examined claims 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. The Committee had previously rejected claims for loss of income suffered by persons who had been made redundant. The Committee took the view that public bodies which paid unemployment benefits could not be given a more favourable position vis-à-vis the IOPC Fund than people who had been made redundant and maintained its previous decision to reject the claims of these public bodies.

The Committee also rejected a claim presented by one of the above-mentioned public bodies for the contributions that it had paid to the Social Security System which the affected employers would have paid if their business activities had not been suspended.

Promotion of fish products

A claim had been submitted by the Regional Government of Galicia relating to the cost of a campaign for the promotion of Galician fish products. The Executive Committee took the view that the promotional activities were of too general a nature to qualify for compensation and therefore rejected this claim.

Claim for alleged loss as a result of forced sale of fishing boats

A claim presented by a company which, at the time of the *Aegean Sea* incident, operated four fishing boats was examined in October 1995. The claimant had alleged that, as a result of the pollution, the consequent fishing ban and the reduction in catches which occurred when the fishing was resumed, the company's financial situation had deteriorated to such an extent that it had had to sell three of the boats. The company's claim related to loss of profit from the three sold boats for the period up to 1999, and included an amount for loss allegedly suffered as a result of the boats having been sold at less than their real market value due to the forced nature of these sales.

The Executive Committee took the view that the losses allegedly suffered could not be considered as damage caused by contamination, but were a result of the claimant's decision to sell the boats. For this reason, the Committee decided that this claim was not admissible in principle and rejected the claim.

Cost of removing oil from the Aegean Sea

The owner of the *Aegean Sea* engaged the services of salvage contractors under Lloyd's Open Form salvage agreement 1990 (LOF 90) in order to remove the oil which remained in the stern section of the wreck. The shipowner and the UK Club presented a claim for reimbursement of the amount paid to the salvage contractor.

The Executive Committee noted that this claim led to the wider question of the admissibility in general of claims for salvage operations and similar activities, which was of relevance beyond the *Aegean Sea* case. The Committee instructed the Director to make a study of these issues.

Level of provisional payments

In view of the uncertainty of the total amount of the claims arising out of the *Aegean Sea* incident, the Director had decided in 1993 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 decided that the partial payments could be increased 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. The Executive Committee endorsed the Director's decision. In December 1995, the Committee confirmed its position on this point.

Spanish 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.

Court proceedings in La Coruña

Criminal proceedings were initiated in the Criminal Court in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the Port of La Coruña.

The Criminal Court had scheduled a hearing in the criminal proceedings commencing 13 March 1995. Since the master of the *Aegean Sea* did not appear at the hearing, the Court postponed these proceedings to start on 9 January 1996. The Court will then also consider the claims for compensation which have been presented in these proceedings. It should be noted that a number of claimants have in the criminal proceedings reserved their right to claim compensation at a later date in civil proceedings.

Request for the IOPC Fund to pay 60 million SDR into Court

A lawyer representing a large number of claimants filed a request in November 1995 that the Criminal Court should order the IOPC Fund to constitute a fund with the Court of 60 million Special Drawing Rights (SDR). In his petition to the Court, the lawyer maintained that such a payment would be in conformity with the IOPC Fund's obligation under the Civil Liability Convention and the Fund Convention to constitute a fund, and referred to the fact that the total amount of the claims pursued in the Criminal Court exceeded the amount available under the Conventions.

The Executive Committee took the view that there was no basis in the Fund Convention for this request. The Committee stated that unlike under the Civil Liability Convention, where the shipowner's entitlement to limit his liability was conditional on the establishment of a limitation fund, the maximum amount of 60 million SDR in the Fund Convention applied without the establishment of any "fund" with the Court. For these reasons, the Executive Committee decided that the IOPC Fund should oppose the request made by this lawyer as having no basis in the Fund Convention, which formed part of Spanish law.

Question of time bar

Claims for compensation against the IOPC Fund become time-barred three years after the date when the damage occurred unless the claimant has taken certain legal steps. In order to prevent his claim from becoming time-barred, the claimant must take legal action against the IOPC Fund before the expiry of the three-year period, or notify the IOPC Fund before that date of a legal action for compensation against the shipowner or his insurer.

The three-year time period specified in Article 6.1 of the Fund Convention expired in the *Aegean Sea* case for most claimants on or shortly after 3 December 1995. At its December 1995 session the Executive Committee examined whether some claims had become time-barred vis-à-vis the IOPC Fund.

A number of claimants in the *Aegean Sea* case had exercised their right to claim compensation from the shipowner and the insurer in the criminal proceedings, as permitted under Spanish procedural law. The IOPC Fund had been notified of these actions. Actions for compensation had also been taken by these claimants, through the public prosecutor and in some cases directly against the IOPC Fund in these proceedings. The Committee took the view that these claims were not time-barred vis-à-vis the IOPC Fund.

A number of claimants in the fishery and aquaculture sectors had filed criminal accusations against four individuals. These claimants had not submitted claims for

compensation in these proceedings, but only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. The Executive Committee noted that these claimants had neither brought legal action against the IOPC Fund within the prescribed time period, nor notified the IOPC Fund of an action for compensation against the shipowner or the UK Club. Recalling that it had previously decided that the strict provisions on time-bar in the Civil Liability Convention and the Fund Convention should be applied in every case, the Committee took the view that these claims should be considered time-barred vis-à-vis the IOPC Fund.

The Committee considered the position of a third group of claimants who had presented their claims to the Joint Claims Office in La Coruña but not to the Court. The Committee took the view that these claimants had not taken the steps required under the Fund Convention to prevent their claims from becoming time-barred vis-à-vis the IOPC Fund.

The Executive Committee also examined the position of those claimants with whom agreements had been reached as to the admissible quantum of their claims, many of whom had been paid in full or in part. The Committee was of the view that these claims were not time-barred vis-à-vis the IOPC Fund and that the claimants in this group who had not been paid in full retained the right to further payments on the basis of their respective settlement agreements.

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 being spilled 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. On 9 February 1995 the ban was lifted in respect of all other species of shellfish, with the exception of mussels and Norway lobsters, for which the ban remains in force.

Braer Claims Office

On 8 January 1993 the shipowner's P & I insurer (Assuranceföreningen 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. At the end of May 1994, the Braer Claims Office was relocated from Shetland to Aberdeen. The office in Aberdeen was closed in July 1995.

Claims for compensation

General situation

As at 31 December 1995, some 2 000 claims for compensation had been paid, wholly or partly, for a total amount of approximately £46 million. In addition, claims amounting to approximately £1 million had been accepted as admissible but not yet paid.

Property damage

Some 1 000 persons have received compensation totalling £8.1 million for costs incurred for the cleaning or repainting of their houses and other property and the renewal of mineral felt roofs contaminated by wind-blown oil emanating from the *Braer*.

Some 290 claims totalling £3.7 million were submitted for damage to asbestos cement tiles and corrugated sheets that were used as roof covering for homes and agricultural buildings which the claimants alleged was a result of pollution.

A detailed investigation was carried out by consulting engineers engaged by the IOPC Fund who concluded that the analysis of the physical characteristics of the materials revealed nothing which was inconsistent with the age of the roofs, their degree of exposure, and the standard of workmanship and maintenance. According to the consulting engineers, the physical and microstructural analysis revealed no evidence that oil from the *Braer* had contributed to the deterioration of the materials examined. The consulting engineers stated that the chemical analysis and the petrographic examinations revealed no evidence that petroleum hydrocarbons had penetrated the materials or caused any kind of deterioration.

In the light of the results of the investigation, the IOPC Fund rejected the claims relating to the asbestos roofs.

Agriculture

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 and the Skuld Club paid over 200 crofters and farmers for the cost of feed for sheep, cattle and horses until their normal grazing areas were declared fit for grazing, and for fertilizers to regenerate grass for grazing. In addition, a number of crofters needed additional labour and equipment to cope with the extra work involved in feeding the sheep. The total payments for this category of claims amounts to £3.4 million.

Salmon farms: destruction of salmon

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 at the time of the *Braer* incident.

The destruction of the 1991 salmon intake reared at salmon farms within the exclusion zone, was completed in May 1993, and the destruction of the 1992 salmon intake in March 1994. Settlements in respect of the destruction have been made with all but one of the salmon farms. Payments to date total £21 million.

Alleged loss of income suffered by salmon farmers due to reduction in prices

Shetland salmon farmers maintained that the price of Shetland farmed salmon sold from outside the exclusion zone was depressed for an extended period of time as a result of the incident and presented claims for losses resulting from such price depression. On the basis of an analysis presented by the claimants in March 1995, it appeared that the aggregate amount of the claims would be in the region of £2.0 million for losses up to the end of the first quarter of 1994.

The IOPC Fund's experts concluded that there was a fall in the relative price of Shetland salmon during the months immediately following the *Braer* incident, and compensation totalling £311 600 was paid to a number of claimants on this basis.

The experts took the view that the effect of the *Braer* incident on the price of Shetland salmon had ended by the summer of 1993. The claimants argued that the depression in prices lasted until mid-1995. In view of its experts' opinion, the IOPC Fund rejected the claims for further compensation.

Fishermen and shell fishermen

Fishermen who normally fished within the exclusion zone claimed compensation for loss of income as a result of having been unable to fish. Payments totalling £1.3 million have been made towards such claims.

Compensation totalling £5.7 million has been paid to fishermen catching various kinds of shellfish who were not permitted to operate within the exclusion zone.

A number of fishermen continue to claim compensation for reduced catches.

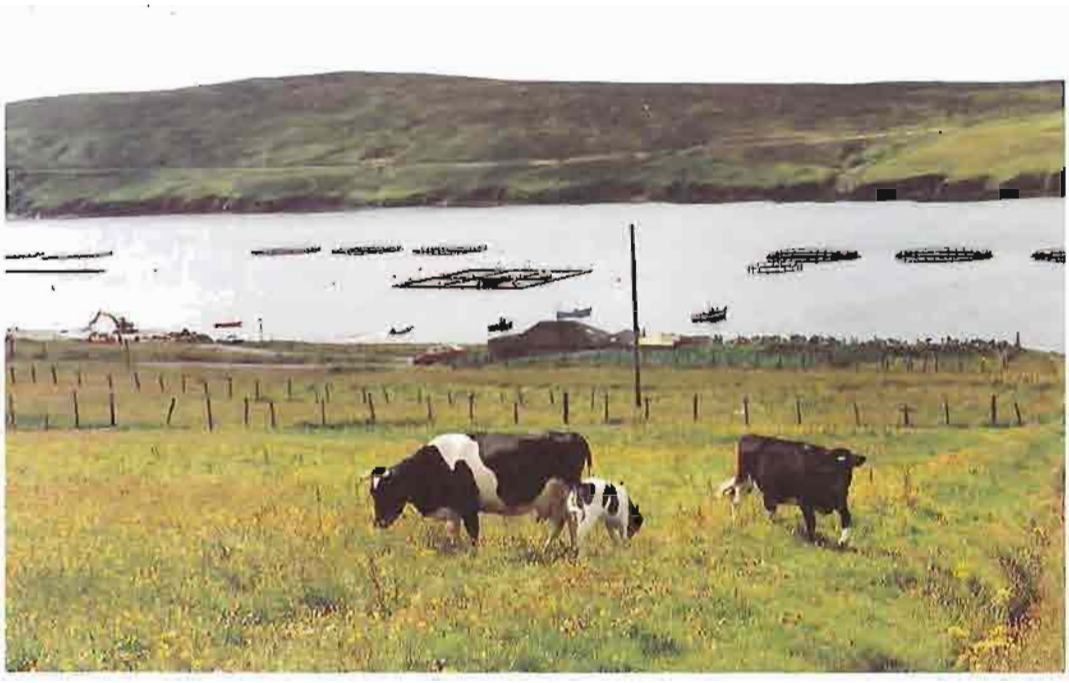
The fishing ban was lifted in respect of all shellfish species except mussels and Norway lobsters in February 1995. The owners of a number of vessels have received compensation for being unable to fish for Norway lobsters within the exclusion zone.

Burra Haaf

Compensation for loss of income sustained until the end of June 1995 due to reduced catches was paid to the owners of four small whitefish vessels which normally fished in an area to the west of the island of Burra (known as the Burra Haaf). By virtue of their small size, these vessels had very limited opportunities to mitigate their losses by fishing on more distant fishing grounds or by using alternative fishing methods.

Catches of commercial fish species from the Burra Haaf area remain reduced in comparison with those from other Shetland fishing grounds. This may be due to elevated hydrocarbon levels persisting in surface sediments. Based on information obtained from the Scottish Office the IOPC Fund has acknowledged that the fishery may not return to normal for some years.

In considering claims from the owners of these four vessels, the Executive Committee decided that the IOPC Fund should maintain its policy of assessing and compensating on-going losses as and when they arose.



Braer incident - Grazing land and salmon farms
(photograph: Dennis Coutts, Shetland Islands)

Mussels

As a result of the imposition of the exclusion zone, the IOPC Fund informed the owners of three mussel farms in the zone that it would be reasonable to destroy their stock and has paid a total of £15 600 in compensation to them.

Two of these mussel farmers maintained that since the *Braer* incident young mussels (known as spat) had not settled on their growing ropes as they would have expected and they attribute this to pollution damage arising from the *Braer*. They claimed that their mussel growing business would be affected for several years into the future. The IOPC Fund's experts conducted an investigation and found that the proportion of mussel spat compared to older mussels was generally similar at sites inside and outside the exclusion zone. For this reason, the IOPC Fund rejected these claims.

Scallops and queen scallops

Members of the Shetland inshore fishing fleet claimed that following the lifting of the exclusion zone for scallops and queen scallops in February 1995, the landings of those species were lower than expected, with fewer juveniles found, and that this was a consequence of the *Braer* incident.

The IOPC Fund's experts expressed the opinion that the claimants had not shown that the alleged reduced catches were caused by the *Braer* incident.

The Executive Committee took the view that claims for loss of income suffered by fishermen who normally caught scallops and queen scallops in the area formerly covered by

the exclusion zone would be admissible in principle only if the claimants demonstrated that there was actually a reduction in stocks and that such a reduction was a result of the oil pollution resulting from the *Braer* incident. The Committee stated that it would not be sufficient for claimants to indicate that this damage *could* have been caused by the oil pollution.

These claims are still being investigated.

Herring roe

Shetland Fishermen's Association has alleged there was a significant reduction in the sales of roe-in herring in 1993 and 1994, compared with preceding years. The Association has maintained that the reduced quantity of herring caught in 1993 and 1994 was attributable to the *Braer* incident.

The IOPC Fund's experts have pointed out that other factors may have caused or contributed to a decline in the quantity of roe-in herring landings.

The Association has maintained that *Braer* oil had settled on the habitual spawning grounds of herring in the waters around southern Shetland. The monitoring of sedimentary hydrocarbons by the Scottish Office indicates that oil was present in above-background concentrations in one herring spawning area in January and February 1993, with concentration much reduced in the area in May 1994. A study commissioned by the IOPC Fund in July/August 1994 detected above-background concentrations of oil in that area, but a fingerprinting analysis confirmed that this did not originate from the *Braer*'s cargo.

These claims are still under consideration.

Loss of fish quotas

The Executive Committee considered a claim submitted by Shetland Fish Producers Organisation (SFPO) relating to alleged loss of fish quotas in respect of whitefish (haddock and whiting) and Norway lobster. The quota allocated to a fish producer organisation is based on the actual catch of its members during the preceding three years. It was stated by SFPO that the reduction in catches caused by the *Braer* incident resulted in its members being allocated a smaller quota than would otherwise have been the case. SFPO maintained that in order to secure a reasonable quota allocation for its members in future years, it had to purchase licences which had a "track record", that the cost of these purchases would be financed by SFPO from levies on its members, and that this cost should be compensated by the IOPC Fund.

The Executive Committee took the view that these costs could not be considered as damage caused by contamination and that a claim for the recovery of these costs would not be admissible.

Fish processors' claims

Compensation totalling £3.2 million has been paid to 17 fish processors and associated services mainly for loss suffered as a result of being deprived of the supply of fish from the exclusion zone.

Ten claims submitted by fish processors remain outstanding. The remaining issues relate to losses allegedly suffered as a result of a reduction in the processing of herring roe, whitefish from the Burra Haaf area and scallops, queen scallops and lobsters during the

period 1993-1995. These claims are linked to the claims presented by fishermen concerning alleged reduced availability of herring roe and alleged reduced catches of whitefish and scallops.

Tourism

Compensation totalling £77 375 has been paid to three claimants for economic loss resulting from a fall in tourism due to the *Braer* incident. Four other claims in this category have been rejected on the grounds that no damage had been suffered as a result of the incident. Three claims in this category are outstanding, pending the presentation of more information by the claimants.

P & O Scottish Ferries Ltd

The Executive Committee considered a claim for £902 600 submitted by P & O Scottish Ferries Ltd for alleged loss of income from its ferry service from Aberdeen to Shetland as a result of a reduction in the number of tourists visiting the Shetland Islands and in the volume of freight.

The Committee took the view that the criterion of reasonable proximity laid down by the IOPC Fund had not been fulfilled. In particular, the Committee considered that there was not sufficient proximity between the claimant's activity and the contamination. It was also considered that the claimant's business did not form an integral part of the economic activity of Shetland. For these reasons, the claim was rejected.

Smolt suppliers

The Committee re-examined a claim from a company supplying smolt from its installation on mainland Scotland. The Committee maintained the view that the company's activities did not form an integral part of the economic activity of the area affected by the contamination and confirmed its decision to reject the claim.

Personal injury

At its session in October 1995 the Executive Committee noted that a number of unquantified claims had been submitted to the shipowner, the Skuld Club and the IOPC Fund for alleged personal injury, such as respiratory conditions resulting from the inhalation of oil vapour and skin complaints resulting from contact with oil.

The Committee took the view that, in the light of the discussions at the 1969 International Conference which adopted the Civil Liability Convention, the Convention in principle covered personal injury caused by contamination whereas personal injury resulting from other causes was not admissible. The Committee emphasized that it was for the claimant to prove that the alleged damage was actually caused by contamination by the oil from the ship in question and the amount of the loss or damage sustained. The Committee reiterated its position that exposure to health risks and anxiety would not fall within the definition of pollution damage and could therefore not be accepted.

United Kingdom Government

The United Kingdom Government submitted a claim for compensation for costs incurred for clean-up operations at sea and onshore, 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 £3.6 million. An amount of £1.3 million was approved, and further information was requested in respect of a number of outstanding items of the claim.

Shetland Islands Council

The Shetland Islands Council submitted a claim totalling £1.5 million for costs incurred as a result of the incident. In December 1995 the Executive Committee considered in particular certain items of this claim, totalling £908 200, which related to environmental impact studies, to the handling of the media and other visitors and to some legal fees.

As regards environmental impact studies, the Committee noted that, in the Director's view, the reports on these studies were of a fairly general nature and did not include a level of detail which would support any particular claim, that the reports relied to a great extent on information that was available from other sources, and that due to the timing of their publication they did little to contribute to clarification of the issues relating to compensation. The Committee considered that, for these reasons, these studies did not contribute to the submission of admissible claims for compensation and that the claim for the costs associated with such studies should be rejected.

The Committee agreed with the Director that the items relating to the handling of media and other visitors were not admissible, since the costs incurred could not be considered as damage caused by contamination.

The Committee took the view that legal fees for advice given by an American law firm on United States legislation was not admissible. It further decided that fees incurred by two United Kingdom law firms were not admissible, since the advice given mostly related to matters other than the preparation and presentation of claims under the Civil Liability Convention and the Fund Convention.

Salvage operations and related issues

The owner of the *Braer* engaged the services of salvage contractors under Lloyd's Open Form salvage agreement 1990 (LOF 90) to try to salve the vessel and, later, to remove the oil which remained after the grounding. The shipowner has maintained that the operations were carried out to prevent or minimise pollution. The shipowner has presented a claim for reimbursement of the amount paid to the salvage contractor, £1.8 million.

The Executive Committee noted that this claim led to the wider question of the admissibility in general of claims for salvage operations and similar activities, which was of relevance beyond the *Braer* case. The Committee instructed the Director to make a study of these issues.

Total amount of the claims

At its session in October 1995 the Executive Committee took note of the total amount of the claims presented so far and noted that a number of claimants intended to bring legal actions against the shipowner, the Skuld Club and the IOPC Fund. The Committee instructed the Director to suspend any further payments of compensation until the Committee had re-examined in December 1995 the question of whether the total amount of the established claims would exceed the maximum amount available under the Civil Liability Convention and the Fund Convention, viz 60 million Special Drawing Rights (£57 million). The Committee instructed the Director to continue negotiations concerning the outstanding claims, for the purpose of arriving at agreements on the quantum of the losses sustained.

In December 1995 the Executive Committee decided, in view of the remaining uncertainty as regards the outstanding claims, that the suspension of payments should be maintained until the matter had been re-examined at its session in February 1996.

Question of time bar

In October 1995 the Executive Committee considered certain questions concerning the need for claimants to take legal action to prevent their claims from becoming time-barred. The Committee took the view that the IOPC Fund should not give any interpretation of the relevant provisions in the Conventions relating to time bar and should not give legal advice to claimants. The Committee considered that the strict provisions on time-bar in the Conventions should be applied in every case.

The Assembly examined the legal situation of those claimants with whom the IOPC Fund had agreed a full settlement on the admissible quantum of their claims, but where no payment or only a partial payment had been made. The Assembly took the view that, if such claimants did not take legal action, the IOPC Fund would not consider their claims to be time-barred.

Court proceedings

Claims against the IOPC Fund will become time-barred on or shortly after 5 January 1996, ie at the expiry of a period of three years from the date when the damage occurred. Towards the end of the three-year period some 270 claimants had taken action in the Court of Session in Edinburgh against the shipowner, the Skuld Club and the IOPC Fund. The total amount claimed is approximately £80 million.

The actions relate mainly to the following heads of damage: damage to asbestos roofs, reduction in prices of salmon, loss of income in the fishing and fish processing sector, loss of fishing quotas and personal injury. Claims were also presented by the United Kingdom Government and the Shetland Island Council. Some of these claimants, eg the United Kingdom Government and a number of fishermen, took legal action to preserve their right to make it possible to continue discussions for the purpose of arriving at an out-of-court settlement. The majority of the claims had however been rejected by the IOPC Fund on the basis of decisions taken by the Executive Committee.

Most of the claimants have not included in their summonses sufficient details of the alleged losses to enable the IOPC Fund to assess the validity of their claims.

Shipowner's right of limitation

In October 1995 the owner of the *Braer* presented a summons to the Court of Session in Edinburgh requesting an order that he should be entitled to limit his liability.

In December 1995 the Executive Committee considered whether the IOPC Fund should challenge the right of the owner of the *Braer* to limit his liability and whether the Fund should take legal action against the owner (or any other person) to recover the amounts paid by it in compensation.

The IOPC Fund's technical experts who had investigated the circumstances surrounding the incident had stated that the cause of the casualty was the main engine failure and the loss of all main power through sea water contamination of the diesel oil. Pipes which had been stowed on deck broke loose in heavy weather and caused damage to some air ventilation pipes, which allowed sea water to enter a diesel storage tank. In the experts' view, the deficiencies in the steam generating plant and the lack of sufficient diesel oil on board to complete a safe passage to Quebec in the event of complete steam plant failure caused the ship to be unseaworthy. It was their view that the shipowner was aware of these conditions. The Fund's legal advisers had expressed the opinion that on the basis of the

technical assessment made by the Fund's experts, the Fund had "a reasonably stateable case with at least some prospect of success" to challenge the shipowner's right to limit his liability.

The shipowner and the Skuld Club maintained that, on the basis of the findings of the official enquiries carried out by the competent authorities in Liberia and the United Kingdom, it was impossible to maintain that the incident had resulted in any way from the actual fault or privity of the shipowner.

The Committee noted that the Braer Corporation had been dissolved in March 1994 and that it was unlikely that there were any assets against which a judgement against the shipowner could be enforced.

After careful consideration and in view of the fact that a successful recovery by the Fund of any significant amounts was unlikely, the Executive Committee decided that the IOPC Fund should not challenge the shipowner's right of limitation or take legal action against him to recover the amounts paid by the IOPC Fund in compensation. However, the Committee also decided that, if new information became available showing that the IOPC Fund had greater prospects of success, the Director - after consultation with the Chairman - should take action to challenge the shipowner's right of limitation and take actions for recovery, if such actions were still possible.

Possible recourse actions

The Executive Committee also considered in December 1995 whether the Fund should take legal action against any person other than the shipowner in order to recover the amounts paid by it in compensation.

It was noted that United Kingdom legislation effectively barred any action against the company managing the *Braer*, since the management company would be considered as belonging to the category of "servants or agents of the shipowner" and actions could not be brought against such persons. For this reason, the Committee decided not to take action in the United Kingdom against that company.

The Executive Committee noted that another option would be for the IOPC Fund to take legal action in the United States against the management company, other companies belonging to the same group and individual directors of these companies. The Committee took the view that the IOPC Fund should not submit to the jurisdiction of the courts of a non-Member State, and for this reason, the Committee decided that the Fund should not take action in the United States.

The Committee also considered whether the IOPC Fund should take legal action in the United Kingdom against the Skuld Club to recover the amounts paid by the Fund in compensation. It was noted that the Skuld Club Rules contained a "pay to be paid" clause (ie that the Club was only under an obligation to indemnify the shipowner for compensation actually paid by him to the injured party), which had been upheld by the United Kingdom courts in recent cases. The Committee therefore decided that the IOPC Fund should not take legal action against the Skuld Club in the United Kingdom.

As for the possibility of taking legal action against the Skuld Club in Norway, the Executive Committee noted the legal opinion that the Norwegian courts would not have jurisdiction to hear a recourse action brought by the IOPC Fund against the Skuld Club to

recover the amounts which the Fund had paid in compensation for pollution damage in connection with the *Braer* incident. The Committee therefore decided that the IOPC Fund should not take legal action against the Skuld Club in Norway.

Indemnification of the shipowner

At its session in December 1995, the Executive Committee also considered the question of whether and, if so, to what extent the IOPC Fund was exonerated from its obligation to indemnify the shipowner and his insurer under Article 5.1 of the Fund Convention. The Committee decided to postpone its decision on this issue to its February 1996 session.

The Director was invited to discuss the indemnification issue with the shipowner and the Skuld Club and to suggest that they should consider not pressing for indemnification.

KIHNU

(Estonia, 16 January 1993)

The Estonian tanker *Kihnu* (949 GRT) grounded close to the port of Tallin (Estonia). The ship was carrying around 650 tonnes of heavy fuel oil and 460 tonnes of diesel oil. It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled as a result of the grounding.

The Estonian authorities carried out certain clean-up operations. It was understood that the shipowner's insurer paid compensation for the costs incurred for these operations.

In response to a request of the Estonian authorities made under the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), the Finnish Environment Agency despatched two oil combatting vessels and a helicopter to Estonia to assist the Estonian authorities in dealing with the spill.

The Finnish authorities informed the IOPC Fund of the incident on 18 January 1993. The IOPC Fund requested further information, but no such information was given.

In December 1995 the Finnish Environment Agency submitted a claim to the IOPC Fund for FM713 055 (£105 000). As the basis for the claim, the Finnish authorities have maintained that there was a risk that the oil would be taken by winds and currents to the coast of Finland. The Finnish authorities have referred to the fact that the Finnish coast is only some 80 kilometres north of Tallin. They have argued that for this reason the measures taken by the Finnish authorities were carried out in order to prevent and minimise pollution damage in Finland, and that the costs incurred are admissible for compensation under the Civil Liability Convention and the Fund Convention.

It should be noted that the Civil Liability Convention and the Fund Convention entered into force for Estonia on 1 March 1993, ie after the *Kihnu* incident.

The IOPC Fund's technical experts are examining the claim submitted by the Finnish authorities. The Director has reserved the IOPC Fund's position as to the admissibility of this claim.

It is understood that the Finnish authorities will take legal action in the Finnish courts against the shipowner, his insurer and the IOPC Fund before 16 January 1996, in order to prevent their claim from becoming time-barred.

The limitation amount applicable to the *Kihnu* is estimated at 113 000 Special Drawing Rights (£110 000).

TAIKO MARU

(Japan, 31 May 1993)

The Japanese coastal tanker *Taiko Maru* (699 GRT), carrying some 2 000 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. The oil remaining on board the *Taiko Maru* was transferred to another vessel. Clean-up operations were carried out at sea and on the shore. The oil damaged fishing nets and led to a disruption of fishing activities in the area, and also affected acquaculture facilities.

All claims presented were settled and paid by 6 April 1994 for a total amount of ¥1 122 million (£7 million), representing ¥777 million in respect of clean-up costs and ¥345 million in respect of fishery claims.

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

Japanese lawyers acting of behalf of the IOPC Fund carried out an investigation into whether the incident had been 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 limitation amount applicable to the *Taiko Maru* is ¥29 million (£182 400). In April 1995 the IOPC Fund paid indemnification of ¥7 million (£46 700) to the shipowner.

The IOPC Fund started negotiations with the owner of the *Kensho Maru N°3* with a view to recovering part of the amount paid by the Fund. Agreement was reached between the *Kensho Maru N°3* interests and the *Taiko Maru* interests, including the IOPC Fund, on an apportionment of liability at 50:50. The amount recovered from the owner of *Kensho Maru N°3* for pollution damage was ¥50 million (£371 000), of which the IOPC Fund received ¥49 million (£363 600) in April 1995.

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 damaged, 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.

Senyo Maru incident - Burning of oil-stained debris at Nishiura Beach, Himeshima (photograph: Pegasus)

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 Centre and its sub-contractors.

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 procedures presented claims totalling ¥68 million (£421 900). These claims were settled at ¥37 million (£228 200). In September 1994, the IOPC Fund paid ¥8.4 million (£54 500), representing the total amount of the agreed claims minus the shipowner's limitation amount of ¥28 million (£175 500).

In a judgement rendered on 18 January 1995, the competent Marine Court held that the collision was caused by improper navigation of the two vessels.

The Director 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 *Ryoyo Maru*, which would deprive him of the right to limit his liability. This investigation showed that there was no such fault or privity. The limitation proceedings were completed in June 1995. The IOPC Fund paid indemnification of ¥7 million (£52 000) to the shipowner in July 1995.

The Director is taking the necessary steps to initiate recourse action against the owner of the other ship involved in the collision.

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 acquaculture 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.

Clean-up operations

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

For the shoreline clean-up operations, four major clean-up contractors were engaged and a labour force of over 4 000 villagers, policemen and army personnel were employed. The clean-up activities involved the use of dispersants and the manual cleaning of contaminated rocks. The clean-up operations 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 taken by barge for incineration and landfill.

Claims for compensation

Claims relating to the cost of clean-up operations were presented by the Korean Marine Police, the Navy, Yosu Marine and Port Authority, Namhae and Hadong County and some private contractors. All these claims have been settled at an aggregate amount of Won 5 600 million (£4.6 million) and have been paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd, Standard Club) during the period November 1993 - September 1994.

It is unlikely that there will be any further claims relating to clean-up operations.

The incident affected fishing activities and the acquaculture 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 93 132 million (£77 million). The claims have been examined by the IOPC Fund's surveyors. The Kwang Yang Bay Federation has indicated that it will submit further claims in the region of Won 90 000 million (£75 million).

The IOPC Fund's experts have presented a report containing a detailed written analysis of the claims presented by the fishery interests. This report has been made available to the firm of London solicitors representing the Kwang Yang Bay Federation.

In July 1995 agreements were reached on the admissible amount in respect of a number of items of the claims presented by Kwang Yang Bay Federation. These items, which relate to damage to equipment and loss of earnings, were agreed for a total of Won 1 117 million (£930 000), compared with the claimed amount of Won 6 463 million (£5.4 million).

In December 1995 agreement was reached with the fishery co-operative which had presented the largest group of claims (Won 17 795 million or £14.8 million). These claims were settled at Won 4 361 million (£3.6 million).

Discussions are being held with several other co-operatives concerning the admissible quantum of their claims.

The Director informed the Executive Committee in February 1994 that, as the total amount of the claims submitted exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, he had decided that the IOPC Fund's payments would, at least for the time being, be limited to 50% of the established damage suffered by each claimant. The Committee endorsed the Director's decision and instructed him to consider whether this percentage should be adjusted, in the light of developments. In May 1994 the Committee instructed the Director to exercise caution in making payments, in order to ensure equal treatment of claimants, in accordance with Article 4.5 of the Fund Convention.

In order to make it possible for the IOPC Fund to pay agreed items in full, an agreement in principle was reached between the Fund and the Kwang Yang Bay Federation in the summer of 1995 that the admissible amount of the claims of the members of all the eleven fisheries co-operatives forming part of the Federation would not exceed Won 60 000 million (£49.8 million). This sum was determined by reducing the amount of 60 million SDR (Won 68 994 million) by the total amount paid so far (Won 5 588 million) and by making a further reduction to give the IOPC Fund a certain safety margin. This agreement should be signed by the Chairmen of the above-mentioned eleven co-operatives, on the basis of powers of attorney issued by all the individual members, some 2 500 fishermen. Some technical problems relating to this guarantee have been discussed between the IOPC Fund's Korean lawyer and the lawyer representing the Federation. In October 1995 the Executive Committee shared the Director's view that, once the agreement was properly signed to the satisfaction of the IOPC Fund's Korean lawyer, the Fund would be in a position to pay any established claims in full. This agreement has not yet been signed by the Chairmen of the eleven co-operatives.

Limitation proceedings

The total amount paid by the Standard Club, Won 5 588 million (£4.6 million), by far exceeds the limitation amount. The Standard Club will present a claim in subrogation to the IOPC Fund for the excess. The IOPC Fund has made advance payments to the Standard Club totalling US$6 million (£4 million) in respect of these subrogated claims.

In March 1994 the shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount

plus the interest, corresponding to Won 77 million (£64 200), in cash to the Court in December 1994. The Court prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund was distributed to the claimants, and the limitation proceedings were completed on 25 August 1995.

The IOPC Fund had intended to intervene in the legal proceedings brought against the shipowner and his insurer, in accordance with Article 7.4 of the Fund Convention. Under this Article, each Contracting State should ensure that the IOPC Fund has the right to intervene in such proceedings. Under the Korean Statute implementing the Civil Liability Convention and the Fund Convention, the IOPC Fund may intervene in limitation proceedings in accordance with Supreme Court Regulations. However, the Supreme Court had not at that time issued any Regulations concerning the Fund's right to intervene. The IOPC Fund's Korean lawyer informed the Director that the Fund was therefore not entitled to intervene in the limitation proceedings. The Supreme Court issued the appropriate Regulations in October 1995.

The IOPC Fund was not formally notified of the limitation proceedings. Any decision made by the Court in these proceedings is therefore not binding on the IOPC Fund (cf Article 7.5 of the Fund Convention).

Investigation into the cause of the incident

The Korean Maritime Accident Inquiry Agency carried out an investigation into the cause of the incident. The conclusion was that the incident was caused by navigational errors on the part of both vessels.

The IOPC Fund examined, through a Korean lawyer, whether it could be considered that there was any fault or privity on the part of the owner of the *Keumdong N°5* which would deprive him of the right to limit his liability. The investigation showed that there was no such fault or privity on the part of this ship.

Auction proceedings

The owner of *Keumdong N°5* arrested the *Bi Jia Shan* to secure claims relating to damage caused by the collision, and proceedings were commenced for the sale of the *Bi Jia Shan* at auction. It appears that the value of the ship is approximately £450 000.

The IOPC Fund, following the Executive Committee's decision in May 1994, joined in the auction proceedings for the purpose of recovering part of the amounts paid to the claimants. The ship was sold in October 1995, but the price obtained did not even cover the cost of the sale and, for this reason, the IOPC Fund will not make any recovery.

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 300 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 acquaculture, 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 1993. 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 was most unlikely that there would be any long lasting effects to wild fish stocks. The fish farm at Pylos lost a small part of its stock and it appeared that the farm's normal selling pattern was interrupted. Tests on the stock showed that there was no residual contamination.

Limitation proceedings and claims for compensation

In March 1994 the shipowner's P & I insurer, the Newcastle Protection and Indemnity Association (the Newcastle Club) established a limitation fund amounting to Drs 1 497 million (£4.1 million) with the competent court by the deposit of a bank guarantee.

The Court appointed a liquidator to examine the claims in the limitation proceedings.

The Court decided that the claims had to be lodged with the Court by 20 January 1995. By that date 526 claims had been presented, totalling Drs 3 061 million (£8.3 million) plus amounts for compensation for 'moral damage'.

The Ministry of Merchant Marine has presented a claim for the cost of the clean-up operations for Drs 15 million (£40 100). There are also a number 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 shipowner submitted a claim for Drs 277 million (£754 100) for costs incurred during the clean-up operations, which has been paid by the Newcastle Club.

The documents submitted in support of the claims are being examined by the lawyers and technical experts appointed by the shipowner, the Newcastle Club and the IOPC Fund.

The operator of the above-mentioned fish farm has challenged the shipowner's right to limit his liability.

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). The *Baynunah* was in ballast at the time, whereas the *Seki* was laden with some 293 000 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 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 Dibba Hassan in Fujairah. The coast of the Musandam peninsula in Oman was also polluted south of Limah.

The spill affected various 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. The main tourist season runs, however, 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.

The *Seki* is entered in the Britannia Steam Ship Insurance Association Limited (the Britannia P & I Club).

Clean-up operations

In the United Arab Emirates the response to the oil spill was organised by the Fujairah Port Authority, with advice from experts from the International Tanker Owners Pollution Federation Ltd (ITOPF), acting as technical advisers on behalf of the shipowner, the Britannia P & I Club and the IOPC Fund.

Three skimming vessels operated by a local contractor were engaged in offshore oil 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 on the 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. A further contract relating to additional clean-up operations was concluded with the French company which provided for payments on a daily rate basis. Some 11 000m^3 of oily waste have been collected and will have to be disposed of.

Clean-up operations were stopped in early April 1995 on ITOPF advice that the work had reached a point where the shorelines were as clean as could reasonably be expected and that the techniques being used could not be expected to improve the situation further. The ITOPF experts considered that additional cleaning using these or more aggressive techniques was likely to delay the natural recovery of the shorelines identified as particularly biologically important by the Federal Environmental Agency of the United Arab Emirates, acting as technical advisers to the Government of Fujairah.

Throughout the clean-up operations, agreement on the completion of the cleaning of each site was reached by a joint inspection team which comprised representatives of the Government of Fujairah, the Federal Environmental Agency and surveyors acting on behalf of the Britannia P & I Club in liaison with ITOPF. However, agreement was not reached in respect of the last three sites where some oil was still present in the sand, and the operations were resumed in late November 1995 to clean these sites to the satisfaction of the local authorities.

Claims for compensation: general situation

United Arab Emirates

The Government of Fujairah has notified the Court of Fujairah of 30 claims amounting to Dhr 163 million (£28.6 million). The Government has so far, however, submitted only 19 claims to the Britannia P & I Club, totalling Dhr 98.3 million (£17.2 million). These claims include one submitted by the Government of Fujairah on behalf of 743 fishermen for Dhr 36.9 million (£6.5 million). The Britannia P & I Club and the IOPC Fund have been given notice of a further 17 claims (ie 36 claims in all), although some of these claims have not yet been quantified.

The Britannia P & I Club has made payments to the Government of Fujairah totalling Dhr 35.4 million (£6.2 million), including payments of Dhr 13.7 million (£2.4 million) in respect of the fisheries claims.

Oman

The Government of Oman submitted a claim for OR100 564 (£168 000) 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 (£45 200) for fishery damage along the affected coastline of the Musandam peninsula. This claim was settled and paid by the Britannia P & I Club in November 1994 at OR92 279 (£154 400), after consultation with the Director.

Fisheries claims

Submission of claims and initial assessment

The fisheries claims referred to above had been assessed by a sub-committee established by a Higher Committee set up by the Ruler of Fujairah. The sub-committee was composed of representatives of the Government ministries involved, of the three municipalities within the affected area and of two fisheries co-operatives.

Experts appointed by the Club and the IOPC Fund made a preliminary assessment of the losses suffered by fishermen. Since very little information had been presented by claimants, this assessment was made on the basis of a survey of the fishing industry conducted in September 1994, supported by published summaries of fishery statistics, the daily fish sale records of the Khorfakkan Fishermen's Society (a major fishery co-operative) and other relevant records. The experts estimated a total loss of Dhr 5.2 million (£911 900). In January 1995, the Britannia P & I Club paid this amount as an advance to the Government, after consultation with the IOPC Fund. After clarification relating to the licensing of fishing vessels had been provided by the Government of Fujairah in January 1995, the assessment was adjusted to Dhr 6.6 million (£1.2 million). The balance of Dhr 1.4 million (£240 700) was paid to the Government by the Club in February 1995, again after consultation with the Director.

Consideration by the Executive Committee in April 1995

At its session in April 1995 the Executive Committee reiterated the IOPC Fund's position that a claim was admissible only to the extent that the quantum of the loss actually suffered was demonstrated. The Committee accepted, however, that a certain flexibility would have to be exercised as regards the application of the requirement of proof to be submitted by a claimant in order to demonstrate the quantum of his loss, taking into account the particular situation of the country concerned. In the view of the Committee, it was necessary to investigate all possible elements of proof available, which would not be limited to accounts or taxation documents. The Committee took the view that the findings of a government committee or similar body could not be considered as proof in itself, but was an element which should be taken into consideration for the assessment of the loss suffered. The Committee stated that other elements should be taken into account, including statistics relating to the level of catches in previous years and to the income of fishermen during previous years in the area under consideration. It was emphasised that it was necessary that the IOPC Fund's experts were given the possibility of forming an independent opinion of the quantum of the losses actually suffered.

In the light of the discussions, the Executive Committee instructed the IOPC Fund's experts to search, in co-operation with the authorities of Fujairah, for all evidence and elements of proof available, whether statistics, regional studies or declarations of various kinds made in previous years. It was emphasised that it was particularly important to establish by all possible means the existence and duration of any interruption of fishing, as well as the reaction of the market for locally caught fish following the incident.

Revised assessment

Fishery experts engaged by the Britannia P & I Club and the IOPC Fund visited Fujairah from 26 May to 5 June 1995 to meet with the fisheries sub-committee of the Government of Fujairah, collect further information, meet with the individuals who actually filled in the assessment forms in respect of the individual claims, and search for any further evidence and elements of proof in support of the fisheries claims. All information and documentation requested was provided by the Government of Fujairah to the experts by the end of June 1995, to the extent that such information and documentation were available to the authorities. The most important new documentation consisted of records pertaining to fish landings and fish market sales from 1993 and onwards.

On the basis of this data and information collected earlier, the experts carried out a more detailed analysis of the coastal fisheries in the affected region. On this basis their best assessment of the total losses in respect of the fishery claims amounted to

Dhr 13.7 million (£2.4 million), compared with Dhr 5.2 million (£911 900) initially assessed and the revised assessment of Dhr 6.6 million (£1.2 million) made in January 1995.

After consultation with the IOPC Fund, the Britannia P & I Club paid the difference between the experts' January 1995 assessment and their revised assessment, viz Dhr 7 million (£1.2 million).

Consideration by the Executive Committee in October 1995

At the Executive Committee's October 1995 session a number of delegations emphasised that the IOPC Fund acted within the framework of a mutual system and that it was necessary, therefore, that there were rules on the admissibility of claims which were respected by all Member States. These delegations also expressed their support for the policy as regards the need for evidence to substantiate the claims, as laid down by the Executive Committee in April 1995.

At that session the Executive Committee reiterated its position that the IOPC Fund could pay compensation only to the extent that a claimant had demonstrated an actual loss supported by evidence which would enable the Fund's experts to form an independent opinion of the damage sustained. The Committee expressed the hope that further co-operation between the Government of Fujairah and the experts engaged by the IOPC Fund and the Britannia P & I Club would make it possible to arrive at a settlement of all claims, respecting the requirement laid down by the Committee in respect of evidence to support claims.

Response by the Government of Fujairah

In December 1995, the Government of Fujairah submitted a technical response to the revised assessment of the fishery claims. The response advanced a number of arguments to support the alleged extent of fishing gear losses, and presented a detailed breakdown of fishing gear costs to justify the unit replacement values accepted by the fisheries sub-committee. It also argued that poor catches early in 1994 in respect of certain types of fishing were due to reduced fishing activity during Ramadan rather than over-fishing, and that the sub-committee's assessment of income losses should therefore be upheld. This document is being considered by the fishery experts appointed by the Britannia P & I Club and the IOPC Fund.

Claims in respect of clean-up operations

The French and Saudi Arabian clean-up contractors each submitted claims for Dhr 4.65 million (£815 500). After consultation with the IOPC Fund, the Britannia P & I Club paid Dhr 4.2 million (£744 800) and Dhr 4.65 million (£815 500) to these contractors, respectively through the Government of Fujairah. Payments totalling Dhr 4.1 million (£714 300) were made by the Club to the Government in respect of the work carried out by the French company under the daily rate contract for additional work.

The local contractor responsible for offshore recovery operations during the initial stages of the incident submitted a claim for US$6 million (£3.9 million). The Britannia P & I Club made an advance payment of US$1 million (£644 000) to this contractor through the Government of Fujairah. An examination of the claim carried out by the experts appointed by the Club and the IOPC Fund showed that, in their view, the amount claimed was excessive due to the calculation being based on inflated hire charges and because vessels and equipment were kept on hire longer than was considered reasonable.

The Abu Dhabi National Oil Company (ADNOC) also assisted in the initial stages of the clean-up operations and submitted a claim for Dhr 1.6 million (£287 000) in respect of work carried out and provision of specialised equipment. The Britannia P & I Club made an advance payment of Dhr 655 561 (£115 000) to the Government of Fujairah in respect of this claim. As a result of queries raised by the experts appointed by the Club and the Fund, ADNOC reduced the claimed amount to Dhr 1.4 million (£244 000). Experts appointed by the Club and the Fund are currently examining the additional information provided by ADNOC.

Advance payments to the Government of Fujairah by the Britannia P & I Club in respect of the Government's own claims and those of other clean-up contractors amount to Dhr 20.8 million (£3.6 million).

Claim in respect of legal fees

The Government of Fujairah submitted a claim in respect of fees for legal advice following the incident in the amount Dhr 1.4 million (£239 100). The IOPC Fund requested further information as to the nature of the work carried out by the lawyers involved. Following further discussions with the Government of Fujairah, this claim is still under consideration.

Other claims

Three claims totalling Dhr 17.6 million (£3.1 million) were presented for losses allegedly suffered in respect of, *inter alia*, loss of value of a house, interruption of beach sand extraction and lost income for a beach-side hotel. Questions relating to these claims were forwarded to the Government of Fujairah, but no further explanations have been received.

The Britannia P & I Club also paid Dhr 86 423 (£14 700) for the cost of advice to the Government of Fujairah on the ship-to-ship transfer of the oil remaining in the *Seki* and other matters relating to the condition of the ship and the cause of the incident. In the IOPC Fund's view these costs fall outside the concepts of "pollution damage" and "preventive measures" laid down in the Civil Liability Convention and the Fund Convention.

Claims notified to the Court which have not yet been submitted to the Britannia P & I Club include claims - totalling some Dhr 2.5 million (£438 400) - for additional losses to sectors of the economy other than fishing (such as losses by a hotel owner in Fujairah, fish transporters, fish traders and ice producers), and a claim for alleged damage to the environment in the amount of Dhr 59 million (£10.3 million).

As regards environmental damage, the Executive Committee has referred to the IOPC Fund's policy which had been laid down by the Assembly, namely that damage to the environment *per se* was not admissible whereas reasonable costs for reinstatement actually incurred or to be incurred qualified for compensation.

Limitation proceedings and related issues

The limitation amount applicable to the *Seki* is 14 million SDR (approximately £13.4 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.

Investigations into the cause of the incident

The authorities of the United Arab Emirates have investigated the cause of the incident. The Director is studying the report of this investigation.

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 berth of a refinery in the Port of Yokohama (Japan), half a tonne of 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.

The shipowner's P & I insurer 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.

In January 1995 the IOPC Fund paid compensation for clean-up costs amounting to ¥1.2 million (£7 500). At the same time the Fund paid indemnification of ¥846 600 (£5 300) to the shipowner.

Yeo Myung incident - Fishing boat engaged in clean-up operations
(photograph: Dae Sung Maritime Business Co Ltd)

TOYOTAKA MARU
(Japan, 17 October 1994)

The incident

While at anchor off the Port of Kainan, Wakayama prefecture, on the south-west coast of Honshu (Japan), the Japanese tanker *Toyotaka Maru* (2 960 GRT) was struck by the Japanese tanker *Teruho Maru N°5* (496 GRT). The *Toyotaka Maru* was laden with 5 000 tonnes of crude oil, of which some 560 tonnes were spilled as a result of the collision.

The *Toyotaka Maru* was entered in the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA).

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, work boats of various sizes 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 headlands on the southern coast of the bay became polluted. Fishermen, fire brigades and contractors were engaged in beach clean-up and collecting the oily waste for subsequent incineration or burial. Some 100 members of the Self Defence Force cleaned the parts of the beaches to which it was difficult to gain access. The clean-up operations onshore lasted until 28 November 1994.

Claims for compensation

Requests were received for advance payments from individuals and small businesses having taken part in the clean-up operations. In December 1994 the IOPC Fund approved provisional payments, totalling ¥50 million (£320 300), to 13 small businesses which had worked as sub-contractors of JMDPC. These payments were made by JPIA. In March 1995, the Fund approved further provisional payments to seven contractors totalling ¥150 million (£1 million). These payments were made by JPIA and the IOPC Fund. A third provisional payment for ¥12 million (£83 700) was made in March 1995 by the IOPC Fund to the fishery co-operative associations for their claims in respect of costs for participation in the clean-up operations.

JMSA submitted a claim for the deployment of vessels for clean-up operations in the amount of ¥438 900 (£3 100). This claim was settled and paid in full.

JMDPC presented a claim for clean-up operations carried out by 21 sub-contractors totalling ¥620 million (£4.6 million). This claim was settled at ¥582 million (£4.2 million). Claims by 21 local fishery co-operative associations for ¥97 million (£716 500) relating to the costs of mobilising their members for the clean-up operations were settled at ¥93 million (£684 400). Five contractors engaged by the shipowner presented claims for clean-up operations and preventive measures totalling ¥26 million (£188 900). These claims were settled at ¥25 million (£186 300). A claim by Shimotsu Municipality totalling ¥3 million (£19 900) for mobilising the fire brigade and the Self Defence Force was settled in full.

Intensive fishing and aquaculture activities are carried out in the area affected by the spill, and members of some 21 fishery co-operative associations were affected. In

February 1995 these associations presented claims for the loss of income allegedly resulting from the suspension of fishing and for damage to the sea products, totalling ¥75 million (£557 200). These claims were settled at ¥57 million (£420 000) for the loss of income resulting from the suspension of fishing, and they were paid in June 1995. The part of the claims relating to alleged damage to sea products was rejected, since there was no evidence that such damage had occurred.

A company, which was supplying earth and sand to reclamation sites, had its pier located in the middle of the contaminated area. As the water surrounding the pier was contaminated and the pier was used as a base for the clean-up operations, this company could not ship the sand and earth it produced. The company presented a claim in the amount of ¥49 million (£360 000) for loss of income and loss due to being prevented from using equipment and manpower. This claim was settled for the loss of income in the amount of ¥17 million (£125 900), and this amount was paid in July 1995. The IOPC Fund rejected the part of the claim in respect of equipment and manpower, as such loss was already covered by the item relating to loss of income.

All claims presented so far were settled and paid by 7 July 1995 for a total of ¥778 million (£5.7 million), of which ¥704 million represented clean-up costs and preventive measures, ¥57 million represented fishery damage and ¥17 million related to other loss of income. It is unlikely that there will be any further claims arising out of this incident.

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Toyotaka Maru* is estimated at ¥82 million (£605 800). The limitation proceedings were commenced in October 1995.

The IOPC Fund is following the investigation by the Maritime Court into the cause of the incident.

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 submitted a claim for the cost of repair of the hold and for the value of the destroyed fish in the amount of ¥5 million (£31 200). The owner of *Hoyu Maru N°53* submitted a claim for the cost of cleaning the contaminated hold in the amount of ¥313 100 (£2 000). In September 1995 these claims were settled for ¥5 million (£31 200) and ¥256 000 (£1 600) respectively.

The limitation amount applicable to the *Hoyu Maru N°53* is ¥1.1 million (£6 800).

The P & I insurer of the *Hoyu Maru N°53* requested that the IOPC Fund should waive the requirement to establish the limitation fund. In October 1995 the Executive Committee noted that disproportionately high legal costs would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention in this case. For this reason, the Committee decided that the requirement to

establish the limitation fund should be waived in respect of the *Hoyu Maru N°53* case, so that the IOPC Fund could, exceptionally, pay compensation and indemnification without the limitation funds being established.

In October 1995 the IOPC Fund paid the Fund's share of the compensation in the amount of ¥4.2 million (£26 000) and paid indemnification to the shipowner in the amount of ¥272 300 (£1 700).

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, totalling Won 9.7 million (£8 000), were settled in December 1994 at a total of Won 9.2 million (£7 600). These claims were paid by the shipowner.

Three other contractors presented claims for clean-up operations and preventive measures in the amount of Won 62 million (£51 500). These claims were settled for Won 23 million (£19 200) and were paid jointly by the shipowner and the IOPC Fund in June 1995.

The incident affected fishing activities and the aquaculture industry in the area. Three fishery associations and the owners of seafood restaurants submitted claims for compensation, totalling Won 476 million (£395 200). These claims were settled and paid by the IOPC Fund in March 1995 for a total of Won 28 million (£23 600).

It is unlikely that there will be any further claims resulting from this incident.

SPILL FROM UNKNOWN SOURCE IN MOROCCO

(Morocco, 30 November 1994)

In March 1995 the IOPC Fund was informed of an oil spill which had occurred on 30 November 1994 in the port of Mohammedia (Morocco). The Moroccan authorities claimed compensation for clean-up costs totalling Dhr 2.6 million (£196 900). The authorities did not give any indication as to the source of the spill but stated that the oil could only have come from the sea, either as a result of the escape of ballast water, the cleaning of tanks, or accidental pollution.

The Director drew the attention of the Moroccan authorities to Article 4.1 of the Fund Convention. Under that Article the IOPC Fund is obliged to pay compensation for pollution damage where the victim is unable to obtain compensation because "no liability arises under the Civil Liability Convention". One of the situations in which no liability would arise under the Civil Liability Convention is where the identity of the ship which caused the damage is not known, since in that case no shipowner can be held liable under that Convention. Article 4.2(b) of the Fund Convention provides that in such cases the IOPC Fund is not obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

The Moroccan authorities maintained that in all probability, in view of the quantity involved, the oil originated from a laden tanker. The authorities referred to a survey report in which it was stated that the results of laboratory tests, the colour of the oil and its smell showed that it was a crude oil from an unknown source.

The IOPC Fund's experts have examined the documentation presented by the Moroccan authorities. The experts expressed the opinion that the investigation carried out to determine the oil type was not adequate to establish whether the oil in question was a crude oil or a fuel oil. They stated that the main argument invoked by the Moroccan authorities as evidence that the pollutant was a crude oil appeared to be the odour and the size of the spill, but that no attempt was made to estimate the quantity spilt. The experts agreed that crude oils have distinctive smells, and noted that a strong odour associated with the spill was reported both by the Port Authority and its surveyor. They maintained, however, that smell was a very subjective test. The experts also stated that it was not possible, on the basis of the information available, to determine any source of the alleged pollution.

On the basis of the opinion of the Fund's experts, the IOPC Fund informed the Moroccan authorities in December 1995 that it had not been established that the oil originated from a ship as defined in the Fund Convention (ie a laden tanker) and that for this reason the IOPC Fund could not accept the claim for compensation.

DAE WOONG

(Republic of Korea, 27 June 1995)

The Korean tanker *Dae Woong* (642 GRT), laden with 1 500 tonnes of heavy fuel oil and 70 tonnes of diesel oil as cargo, ran aground off the port of Kojung on the west coast of the Republic of Korea. Two cargo tanks were damaged, and approximately one tonne of oil was spilled into the sea. After temporary repairs had been carried out by divers and the remaining oil had been transhipped to another vessel, the *Dae Woong* was towed to a nearby port for permanent repairs.

Some small islands near the site of the incident were contaminated by oil. Clean-up operations were carried out by the Marine Police and contractors applying dispersants and sorbents. The clean-up operations were terminated on 1 July 1995. Some acquaculture facilities were also affected by the oil spill.

In August 1995 the IOPC Fund received claims from the Marine Police and a private clean-up contractor in respect of the clean-up operations for Won 31 million

(£25 800) and Won 14 million (£11 700), respectively. Several fishery co-operative associations have indicated that they will submit claims for compensation.

The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£78 900). The ship was not entered into any P & I Club but a Korean bank had provided security corresponding to the limitation amount.

SEA PRINCE

(Republic of Korea, 23 July 1995)

The incident

The Cypriot tanker *Sea Prince* (144 567 GRT) part-laden with over 80 000 tonnes of Arabian crude oil grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area.

It is believed that some 700 tonnes of bunker fuel were spilled together with a small, unknown quantity of crude oil from cargo tanks damaged as a result of grounding. During the following weeks small quantities of oil leaked from the half submerged section of the tanker. Some of the spilt oil spread to the islands immediately north of Sorido island. Most of the oil was carried eastward by currents and eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Tsushima.

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

Removal of vessel and remaining oil cargo

A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, and a salvage contract (Lloyds Open Form 95) was concluded on 28 July 1995 between that company and the shipowner.

The IOPC Fund engaged salvage experts to follow the development on its behalf.

It was understood that after technical evaluations the salvor intended to refloat the vessel with the remaining oil on board and tow it to a safe place for discharging the cargo. On the advice of the IOPC Fund's salvage experts, the Fund conveyed to the shipowner, the UK Club and the salvor the Fund's concerns in respect of the planned operations, in view of the risk of further pollution. The IOPC Fund indicated that it might challenge the admissibility under the Fund Convention of costs for such operations on the grounds that the planned measures would not be reasonable.

The salvor decided to remove the oil before attempting to refloat the ship. The salvor transhipped some 80 000 tonnes of oil via barges during the period 6 to 22 August 1995, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column should the oil be lost during subsequent salvage operations or bad weather. The intention was for the salvor to refloat the ship and tow it to a ship-breaker or repair yard. However, shortly after the completion of the transhipping operations, another typhoon passed close to the site of the grounding, and the salvor was forced to suspend all activities. Further investigation undertaken after the

period of bad weather revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship could break up during refloating.

In view of this the shipowner decided to negotiate a contract for the removal of the vessel and oil remaining on board, and invitations for tender were issued. The salvage contract under Lloyds Open Form 95 was terminated on 1 September 1995 in accordance with its provisions, when it appeared that there was no reasonable prospect of the salvor being able to salve the ship.

A contract was signed with Smit International for the removal of the ship. The contract stipulated that all oil should be removed from cargo and fuel tanks, machinery and pipelines etc. The *Sea Prince* was successfully refloated on 26 November 1995 and was towed out of Korean waters.

Clean-up operations and impact on acquaculture and fisheries

The International Tanker Owners Pollution Federation Ltd (ITOPF) was engaged jointly by the IOPC Fund and the UK Club to follow the clean-up operations and give technical advice to those carrying out these operations. Two Korean firms of surveyors were also appointed to monitor these operations and to conduct investigations into the possible impact on fishery and acquaculture resources as well as on other resources.

An oil spill response was organised by the shipowner in co-operation with the Marine Police. Under instruction of the Marine Police, the shipowner mobilised a dispersant spraying aircraft operated by a Singapore company. The shipowner also borrowed offshore and shoreline recovery equipment from the Petroleum Association of Japan (PAJ). Seven containers of equipment were transported by road and sea from the PAJ stockpile in Mizushima (Japan) to Yosu. The offshore recovery equipment was placed on standby in Yosu in case of a major release of oil but, in the event, was not deployed. However, the shoreline equipment was used to remove bulk oil from a shoreline adjacent to the wreck. Six local contractors were engaged, offshore recovery vessels and equipment were mobilised and dispersant spraying was carried out. Fishermen assisted in the response as well as the Marine Police using its own vessels.

The shoreline impact of the oil was mostly light to moderate, with predominantly small stretches of rocky coasts, sea wall defences and isolated pebble beaches being affected. Contractors were engaged to provide equipment and materials to the villagers who undertook the cleaning of beaches using manual methods. Some 2 000 people were involved in this work which was largely completed by the end of August. Two of the worst affected islands required further cleaning.

Clean-up operations were completed in all but one area of Sorido island by the end of October 1995. It is expected that the clean-up operations in the remaining area, closest to the vessel's grounding site, will be completed by the end of April 1996.

A local waste disposal contractor has been given the task of transporting collected waste from temporary storage sites on the islands to a licensed incineration and landfill disposal site.

In addition to traditional fishery, intensive acquaculture is carried out in the area, particularly around the islands near Sorido. Floating fish cages, mussel farms and set nets were oiled to varying degrees, and the operators of these facilities undertook to clean them with assistance from villagers.

Joint surveys to record the oil pollution of acquaculture facilities in the affected area were carried out with the involvement of various local fishing representatives, marine scientists working with ITOPF and local surveyors. Experts from Centre de documentation de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE) also participated in the surveys on behalf of the shipowner/Club and the IOPC Fund. Samples of fish, shellfish and seaweed were taken for chemical analysis and taint testing.

Chemical analyses of marine products taken from polluted and non-polluted areas were undertaken in the United Kingdom. Most of the samples taken from the polluted areas showed low levels of petroleum hydrocarbons comparable to those found in samples taken from the non-polluted areas. Samples of mussels and clams taken from the polluted area showed high levels of concentration of petroleum hydrocarbons. However, the fingerprints of the oils indicated that the *Sea Prince* was not the source of the contamination.

Taste testings of samples were proposed by the experts of the UK Club and the IOPC Fund. The claimants have so far refused to carry out these tests.

Claims for compensation

In October 1995 the Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims. The Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. However, the Director was instructed not to make any payments.

In December 1995, in the light of the information then available on the aggregate amount of the claims presented, the Executive Committee authorised the Director to make partial payments of claims which had been settled. In view of the fact that the aggregate amount of the claims presented or indicated still greatly exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, however, the Committee decided that the IOPC Fund's payments should for the time being be limited to 25% of the established damage suffered by each claimant.

A number of claims relating to clean-up operations have been settled at Won 18 060 million (£15 million). The shipowner and the UK Club have made payments in respect of claims for such operations totalling Won 14 007 million (£11.6 million). A number of claims in this category are being examined.

In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fisheries co-operative associations have maintained that this red tide, which caused massive damage to fisheries, resulted from the oil spill response to these two incidents, in particular the use of large quantities of dispersants. It is the view of the IOPC Fund's experts, however, that red tides are a common phenomenon in Korean

waters in September and October and that they are caused by a combination of industrial pollutants, municipal waste and ambient sea temperatures at that time of the year.

Provisional claims for fishery damage have been submitted by most of the villages affected by the spill in respect of alleged damage to caged fish and alleged damage to common fishing grounds, but so far without supporting documentation. The damage suffered has been provisionally indicated at Won 75 278 million (£63 million), with an additional Won 145 396 million (£121 million) for anticipated future losses.

A claim has been submitted for Won 35 million (£29 100) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil. This claim is being investigated.

Provisional claims totalling Won 4 804 million (£4 million) have been submitted by hoteliers and others engaged in tourism-related activities on Namhae island, Koje island and Yeochon county. Supporting documentation has not yet been provided, but it would appear that there is some overlap between these claims and corresponding claims arising from the *Yeo Myung* incident.

The UK Club and the owner of the *Sea Prince* have reserved their position with regard to claims for reimbursement of the cost of the measures associated with the work carried out under the contract for the removal of the oil and vessel referred to above.

Honam Sapphire incident - Clean-up operations ashore and afloat
(photograph: ITOPF)

Limitation proceedings and investigation into the cause of the incident

The shipowner has not yet initiated limitation proceedings. The limitation amount applicable to the *Sea Prince* is 14 million SDR (£13.4 million).

The Korean authorities are carrying out an investigation into the cause of the incident. The IOPC Fund is following this investigation through its Korean lawyers.

YEO MYUNG

(Republic of Korea, 3 August 1995)

The incident

The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul Island, near Koje Island (Republic of Korea).

Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled. The oil drifted in a north-easterly direction and stranded at a number of locations on Koje Island from 4 to 8 August. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koje Island were not affected by the spill.

The *Yeo Myung* was entered with the North of England Protection and Indemnity Association Limited (The North of England P & I Club) for pollution risks.

Clean-up operations and impact on aquaculture, fishery and tourism

A Korean firm of surveyors (National Marine Surveyors and Consultants, NASCO) was appointed by the IOPC Fund and the North of England P & I Club to monitor clean-up operations and to conduct investigations into potential damage to fisheries, acquaculture and tourism. The International Tanker Owners Pollution Federation Ltd (ITOPF) also provided assistance.

In response to the spill, the Marine Police initiated clean-up at sea using dispersants and sorbents. Shoreline clean-up was initially organised by officials from the Koje City Hall using local labour. On 9 August the Marine Police and the Koje City Hall handed over the clean-up to a specialised contractor, which continued to use local labour drawn from the inhabitants of the villages affected by the spill. As a result of the clean-up operations, large quantities of oily waste have been collected and disposed of.

In addition to traditional fishing, acquaculture activities are carried out in the area affected by the *Yeo Myung* incident, although not to the same extent as in the area around Sorido, where the *Sea Prince* grounded. At the time of the *Yeo Myung* incident, surveys of the fishery damage resulting from the *Sea Prince* incident had not been undertaken in the Koje area. Consequently, the surveyors acting in respect of the two incidents conducted joint surveys in this area.

Claims for compensation

Claims have been received for a total of some Won 941 million (£781 300) for the cost of clean-up operations on Koje island as a result of the *Sea Prince* and *Yeo Myung* incidents. Further claims are expected.

A claim for compensation was made by the specialist contractor appointed by the local authorities for a total of Won 687 million (£570 400). After consultation with the IOPC Fund, the North of England P & I Club made an advance payment of Won 120 million (£101 800) to this contractor in September 1995. The IOPC Fund paid US$135 000 (£87 000) to the P & I Club in December 1995 as a partial payment of the Club's subrogated claims.

Clean-up operators in the Pusan area have presented claims for Won 13.7 million (£11 400).

The fishermen have provisionally indicated that they will present claims for losses in the fishery and acquaculture sector caused by the *Yeo Myung* incident in the region of Won 4 500 million (£3.7 million). They have also indicated claims for anticipated future losses amounting to about Won 15 300 million (£12.7 million). No documentation in support of the claims or the anticipated future losses has yet been provided.

So far, the owners of set nets and fish farms have presented their claims for Won 644 million (£534 700) and an additional Won 1 671 million (£1.4 million) for anticipated future losses.

The Marine Police and the Koje City Hall have claimed compensation for the cost of their involvement in the clean-up operations for Won 29 million (£24 100) and Won 154 million (£127 900), respectively. These claims were settled in full, and the settlement amounts were paid by the Club in December 1995. The Marine Police has presented claims for damaged booms and extra labour in the amounts of Won 4 million (£3 300) and Won 22.5 million (£18 700), respectively.

Local businesses in the tourist sector along the affected beaches have presented claims for some Won 3 000 million (£2.5 million) for loss of income. It would appear that there is some overlap between these claims and corresponding claims arising out of the *Sea Prince* incident.

In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. In this regard reference is made to the report on the *Sea Prince* incident.

Limitation proceedings and investigation into the cause of the incident

The shipowner has not yet commenced limitation proceedings. The limitation amount applicable to the *Yeo Myung* is estimated at Won 21 million (£17 400).

The Korean authorities are carrying out an investigation into the cause of the incident. The IOPC Fund is following this investigation through its Korean lawyers.

SHINRYU MARU N°8

(Japan, 4 August 1995)

While the Japanese-registered tanker *Shinryu Maru N°8* was supplying bunkers to a bulk carrier at the berth of a factory in Chita, Aichi Prefecture (Japan), the hose used for delivering the oil from the *Shinryu Maru N°8* was not properly handled. As a result, approximately half a tonne of heavy fuel oil flowed onto the decks of the three vessels, contaminated the decks and hulls and spilled into the sea.

The clean-up operations at sea and the cleaning of the bulk carrier were carried out by the owner of the *Shinryu Maru N°8* and contractors employed by him. The operations were completed on 5 August 1995.

The IOPC Fund has not yet received any claims arising out of this incident.

The limitation amount applicable to the *Shinryu Maru N°8* is estimated at ¥2.9 million (£18 200).

The P & I insurer of the *Shinryu Maru N°8* (Japan Ship Owner's Mutual Protection & Indemnity Association (JPIA)) requested that the IOPC Fund should waive the requirement to establish the limitation fund. In October 1995 the Executive Committee noted that disproportionately high legal costs would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention in this case. For this reason, the Executive Committee decided that the requirement to establish the limitation fund should be waived in respect of the *Shinryu Maru N°8* case, so that the IOPC Fund could, exceptionally, pay compensation and indemnification without the limitation funds being established.

SENYO MARU

(Japan, 3 September 1995)

The incident

The Japanese tanker *Senyo Maru* (895 GRT), carrying 2 000 tonnes of heavy fuel oil, collided with the Panamanian bulk carrier *Batis* (23 277GRT) off Ube, Yamaguchi Prefecture (Japan). One of the tanker's cargo tanks was damaged, and some 94 tonnes of heavy fuel oil were spilled.

Both vessels were entered into the Japan Ship Owner's Mutual Protection & Indemnity Association (JPIA).

Clean-up operations

The clean-up operations at sea were carried out by the Japan Maritime Safety Agency (JMSA), the Japan Marine Disaster Prevention Center (JMDPC) and various contractors employed by the owner of the *Senyo Maru*. Some 360 vessels participated in these operations, including some 250 fishing boats. The oil spread over a very large area, at one time a single slick extending to some 300km^2. The operations mainly consisted of the spraying of solvents and the collection of oil using mats and oil-collecting vessels. Attempts were also made to deploy booms but without success because of strong winds.

A major part of the spilt oil reached the shore of Himeshima and polluted some four kilometres of beaches, some of which were heavily contaminated. Over 400 villagers and fishermen participated in the onshore clean-up. Some breakwaters consisting of tetrapods were polluted and were cleaned using chemicals and high pressure cleaning machines. Contractors were also employed, and they used heavy vehicles to remove oil-stained gravel and stones. The clean-up operations were completed on 28 September 1995. Considerable quantities (some 2 500m^3) of oily waste have been collected and disposed of.

The Himeshima Fisheries Co-operative Association, which has some 400 members, suspended fishing in the affected area from 4 to 12 September 1995.

The Himeshima Fisheries Co-operative Association inspected one heavily polluted beach from which the gravel and sand had been removed, which had allegedly resulted in the beach having become dangerously steep, and requested that measures should be taken to replace the sand. After discussion with the experts of the IOPC Fund, the Association accepted that no fishing was affected. The technical expert of the local government stated that the beach would recover naturally within approximately one year. For this reason, the request to restore this beach was not granted, and the Association accepted that decision.

Claims for compensation

Claims for clean-up costs have been submitted by JMSA, JMDPC and various contractors and fisheries co-operatives for a total of ¥375 million (£2.3 million). Claims for fishery damage have been submitted by four fisheries co-operatives for a total of ¥48 million (£301 300). These claims are being examined by the IOPC Fund's experts.

After consultation with the IOPC Fund, JPIA made an advance payment of ¥10 million (£62 400) to the Himeshima Fisheries Co-operative in respect of the costs incurred in connection with the clean-up operations.

Limitation proceedings and investigation into the cause of the incident

The owner of the *Senyo Maru* has not yet started limitation proceedings. The limitation amount applicable to the *Senyo Maru* is estimated at ¥18.6 million (£116 400).

The Japanese authorities are carrying out an investigation into the cause of the incident. The IOPC Fund is following this investigation through its Japanese lawyer.

YUIL N°1

(Republic of Korea, 21 September 1995)

The incident

The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated by a tug and a Navy vessel some six hours after the grounding. While being towed towards the port of Pusan, the tanker sank in 70 metres of water, 10 kilometres from the mainland.

Three cargo tanks were reported to have been breached as a result of the grounding. Apart from the initial release of oil following the grounding and sinking, small quantities of oil leaked from the wreck from time to time during October and minimal quantities have leaked from time to time since then.

Shorelines on the east and north coast of Koje island, on the west coast of Kadokto and immediately to the east and west of the mainland at Pusan, as well as a number of smaller islands were oiled as a result of the initial spill. Some re-oiling of shorelines west of Pusan also occurred following later small releases of oil from the wreck.

The *Yuil N°1* was entered with the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd (the "Standard Club").

The shipowner, the Standard Club and the IOPC Fund engaged Korea Marine & Oil Pollution Surveyors Co Ltd (KOMOS) and the International Tanker Owners Pollution Federation Ltd (ITOPF) to act as their surveyors.

Clean-up operations

Initially, the clean-up operations at sea were carried out by two skimmers and a number of fishing vessels deploying sorbent pads. The Marine Police also used ships for spraying dispersants. The operations at sea were reduced, however, when it became apparent that the oil leaking from the wreck did not constitute a serious threat to coastal resources. Booms were deployed in some coastal areas to protect laver seaweed farms and the booms were later removed when the perceived threat of further pollution had decreased.

The onshore clean-up was carried out by a number of contractors, with the assistance of some 1 750 villagers. The clean-up operations in many areas were completed by early November. In the more heavily polluted areas the onshore clean-up was terminated at the end of November, although some operations are not expected to be completed until mid January 1996.

Wreck removal and related issues

The shipowner employed a specialist British company to conduct a survey using a remotely operated submarine vehicle to establish the condition of the wreck.

The Marine Police ordered the shipowner to remove the oil or the wreck. On the basis of studies carried out by experts employed by the shipowner, the owner has maintained that it would be unnecessary and unwise to remove the oil or the wreck. The shipowner has argued that there was a minimal release of oil and that there was no risk of any significant release of oil if the wreck was left where it was since the wreck was slowly being covered by mud which would help to prevent further significant releases of oil. The owner has also stated that if an oil removal or wreck removal operation were to be carried out, there would be a significant risk that oil would escape causing further pollution. This issue is being considered by the Korean authorities, but no final decision has been taken.

Claims for compensation

The Executive Committee expressed its concern in October 1995 that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims. The Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. However, the Director was instructed not to make any payments.

In December 1995, in the light of the information then available on the aggregate amount of the claims, the Executive Committee authorised the Director to make payments of claims which were settled. In view of the remaining uncertainty concerning the total amount of the claims, however, the Committee decided that the IOPC Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

Claims have been received from various contractors for the cost of clean-up operations. Agreement has been reached on the quantum of the claims with all these contractors for a total of Won 11 558 million (£9.6 million). During October and November 1995 the Standard Club made full or partial payments in respect of some of the agreed claims, totalling Won 627 million (£520 800), and further payments in respect of some of the agreed claims were made on behalf of the shipowner for Won 3 441 million (£2.9 million). Further clean-up claims are expected.

The oil affected areas where there is intensive fishing and acquaculture. KOMOS and ITOPF carried out surveys of some stretches of coastline and acquaculture facilities which had allegedly been affected by the oil. Further surveys were carried out in the Pusan area from 30 October to 4 November 1995 jointly by KOMOS, ITOPF and experts employed by the claimants.

Yuil N°1 incident - Oil-stained rocks at Koje island
(photograph: KOMOS)

A co-operative of owners of set nets on Koje island claimed compensation for its members for a total of Won 1 385 million (£1.1 million) for the costs of cleaning their nets and for loss of income during varying periods of up to 20 days when fishing was interrupted. The claims, which were accepted for Won 1 167 million (£969 000), were paid in full by the Standard Club in November 1995.

On 25 October 1995 agreement on the method for calculating the losses was reached with representatives of eleven local fisheries associations on Koje island. A final settlement of the claims presented by ten of these associations was reached on 25 November, for a total amount of Won 1 400 million (£1.2 million). These claims relate to cleaning costs and loss of earnings for fishing boat owners, loss of earnings for set net owners, loss of earnings of common fishery grounds and farms for cultivation of sea squirt and short necked clams. A major part of the settlement amount for these claims was paid by the Standard Club in December 1995 and the remaining amount will be paid in January 1996.

A laver cultivation farm in the Naktongp'o region claimed Won 62 million (£51 200) for the cost of cleaning and replacing contaminated equipment. This claim, which was accepted in full, was paid by the Standard Club in November 1995.

It is expected that further fishery related claims will be submitted by members of another four local fisheries co-operatives on Koje island and by fishermen in the Pusan area.

The shipowner and the Standard Club have indicated that they intend to claim compensation for the costs of any measures to remove the wreck, since in their view such operations should be considered as preventive measures.

Limitation proceedings and investigation into the cause of the incident

The shipowner has not yet started limitation proceedings. The limitation amount applicable to the *Yuil N°1* is estimated at Won 244 million (£202 600).

The Korean authorities are carrying out an investigation into the cause of the incident. The IOPC Fund is following this investigation through its Korean lawyers.

HONAM SAPPHIRE

(Republic of Korea, 17 November 1995)

The incident

During berthing manoeuvres at the crude oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing the N°2 port wing tank. An unknown quantity of Arabian heavy crude oil escaped from the damaged tank. The spilled oil drifted south and contaminated shorelines up to 30 kilometres away, and there was also a slight impact on an island 50 kilometres from the site of the incident.

The *Honam Sapphire* was entered in the United Kingdom Steam Ship Assurance Association Ltd ("UK Club").

Clean-up operations and impact on acquaculture and fisheries

The offshore clean-up operation was led by the Marine Police. Some 35 Marine Police vessels and several hundred fishing vessels and other craft were engaged in applying

dispersants and sorbent material. Two helicopters were also used for spraying dispersants. By 23 November 1995 no more oil remained at sea.

The shoreline impact was comparatively light. Onshore clean-up using manual methods started on 21 November and these operations have not been completed. Over 1 500 people worked at about 30 different sites under the co-ordination of four clean-up contractors. A fifth contractor was appointed to dispose of collected oily waste at an incineration plant and approved landfill site.

Several floating fish farms and onshore hatcheries, set nets and common intertidal fishing areas were affected by the oil.

Some of the areas affected by the oil from the *Honam Sapphire* were also oiled in connection with the *Keumdong N°5* and *Sea Prince* incidents.

Claims for compensation

Claims for clean-up costs have been presented by various local authorities and contractors for a total of Won 6 529 million (£5.4 million). The experts engaged by the UK Club and the IOPC Fund are examining these claims. Further claims for clean-up costs and claims for fishery damage are expected.

It is not yet possible to make any accurate estimate of the total amount of the pollution damage.

In December 1995 the Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims. The Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. However, the Director was not authorised to make any payments.

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£13.4 million). The shipowner has not yet commenced limitation proceedings.

The Korean authorities are carrying out an investigation into the cause of the incident. The IOPC Fund is following this investigation through its Korean lawyers.

9 LOOKING AHEAD

When the Fund Convention entered into force in October 1978, the IOPC Fund had 14 Member States. The number of Member States has grown to 67 as at 31 December 1995. The IOPC Fund has thus become a truly worldwide Organisation. It is anticipated that a number of States will ratify the Fund Convention in the near future. 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 compensation to victims of oil pollution damage.

In several recent cases the total amount claimed in compensation has greatly exceeded the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. Claims have also been submitted which in the IOPC Fund's view fall outside the concept of "pollution damage" as laid down in the Conventions. In these cases it has become increasingly difficult to arrive at out-of-court settlements, and the IOPC Fund has become involved in complex and protracted legal proceedings. This is a worrying development, since the legal proceedings in these cases have prevented the IOPC Fund from fulfilling its main task, namely to ensure that victims of oil pollution are compensated promptly. If these problems are not overcome, there is a risk that the international system established by the Conventions will not be operable, to the great detriment of the victims.

The 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention will enter into force on 30 May 1996. The 1992 Protocols will ensure the viability of the international system of compensation established by the Civil Liability Convention and the Fund Convention in the future.

After the entry into force of the 1992 Protocols, there will exist two Organisations, the 1971 Fund and the 1992 Fund, with different memberships. It is envisaged that the 1971 Fund and the 1992 Fund will be administered by a joint Secretariat headed by one Director while the 1971 Fund and the 1992 Fund are operating concurrently, at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention. If this solution were adopted, the Director and other members of the Secretariat of the 1971 Fund would be acting on behalf of the 1992 Fund as well as on behalf of the 1971 Fund.

It will be an essential task for the two Organisations and their joint Secretariat to develop further the international compensation system, so as to ensure that this system continues to meet the needs of society in respect of compensation for oil pollution damage. 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. It will be an important task of the two Organisations to promote a uniform application of the Conventions in the future. It is also crucial for the 1971 Fund and the 1992 Fund that they continue to enjoy strong support from governments and public bodies as well as from the various private interests involved in oil spills.

ANNEX I

Structure of the IOPC Fund

ASSEMBLY

Composed of all Member States

Chairman:	Mr C Coppolani	(France)
Vice-Chairmen:	Professor H Tanikawa	(Japan)
	Mr J Stewart	(Liberia)

EXECUTIVE COMMITTEE

42nd to 44th sessions		*45th to 46th sessions*	
Chairman:	Mr C Coppolani (France)	Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Mrs C Asseng-Nguele (Cameroon)	Vice-Chairman:	Miss A N Ogo (Nigeria)
Algeria	Mexico	Algeria	Mexico
Cameroon	Norway	Australia	Netherlands
France	Republic of Korea	Canada	Nigeria
Greece	Sri Lanka	Finland	Norway
India	Sweden	Germany	Russian Federation
Italy	United Arab Emirates	India	Spain
Japan	United Kingdom	Japan	United Arab Emirates
Liberia		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 XIV are a summary of information contained in the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1994, approved by the Assembly at its 18th session.

EXTERNAL AUDITOR'S STATEMENT

The summary financial statements set out in Annexes III to XIV are consistent with the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1994.

J Rickleton
Associate Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 1996

ANNEX III

General Fund

INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY – 31 DECEMBER 1994

	1994		*1993*	
INCOME	£	£	*£*	*£*
Contributions				
Initial Contributions		44 966		*327 300*
Annual Contributions		7 907 141		*-*
Adjustment to Prior Years' Assessments		5 156		*189 542*
		7 957 263		*516 842*
Miscellaneous				
Miscellaneous Income	1 324		*297*	
Transfer from MCF *Brady Maria/Thuntank 5*	5 907			
Transfer from MCF *Volgoneft 263*	60 115			
Interest on loan to MCF *Volgoneft 263*	-		*6 775*	
Interest on loan to MCF *Taiko Maru*	309		*7 646*	
Interest on loan to MCF *Keumdong N°5*	2 556		*273*	
Interest on loan to MCF *Vistabella*	8 590		*-*	
Interest on Overdue Contributions	5 131		*2 625*	
Interest on Investments	426 419		*599 078*	
	510 351	510 351	*616 694*	*616 694*
		8 467 614		*1 133 536*
EXPENDITURE				
Secretariat expenses				
Obligations incurred		863 053		*807 554*
Claims				
Compensation		1 008 716		*2 920 680*
Claims related expenses				
Fees	502 280		*377 443*	
Travel	9 316		*17 969*	
Miscellaneous	9 953		*7 671*	
	521 549	521 549	*403 083*	*403 083*
		2 393 318		*4 131 317*
Income less Expenditure		6 074 296		*(2 997 781)*
Exchange Adjustment		10 994		*(5 798)*
Excess/(Shortfall) of Income over Expenditure		6 085 290		*(3 003 579)*

ANNEX IV

Major Claims Fund – Brady Maria/Thuntank 5

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994		*1993*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	–		–	
Interest on Investments	–		*16 599*	
	–	–	*16 599*	*16 599*
EXPENDITURE				
Fees	–		–	
Miscellaneous	–		–	
	–	–	–	–
Excess of Income over Expenditure		–		*16 599*
Balance b/f: 1 January		205 865		*189 266*
Credit to Contributor's Account	199 958		–	
Transfer to General Fund	5 907		–	
	205 865	205 865	–	–
Balance as at 31 December		NIL		*205 865*

ANNEX V

Major Claims Fund – Kasuga Maru N°1

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994		*1993*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	–		–	
Interest on Investments	13 792		*28 185*	
	13 792	13 792	*28 185*	*28 185*
EXPENDITURE				
Compensation	–		–	
Fees	–		–	
Interest on Loans	–		–	
Miscellaneous	–		–	
	–	–	–	–
Excess of Income over Expenditure		13 792		*28 185*
Balance b/f: 1 January		349 557		*321 372*
Balance as at 31 December		363 349		*349 557*

ANNEX VI

Major Claims Fund – Rio Orinoco

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994		*1993*	
INCOME	£	£	£	£
Contributions				
Adjustment to Prior Years' Assessments		–		*240 815*
Annual Contributions		–		–
		–		*240 815*
Miscellaneous				
Interest on Overdue Contributions	1 254		*4 006*	
Interest on Investments	49 808		*96 377*	
	51 062	51 062	*100 383*	*100 383*
		51 062		*341 198*
EXPENDITURE				
Compensation	–		–	
Fees	31 188		*19 155*	
Travel	–		–	
Interest on Loans	–		–	
Miscellaneous	420		*233*	
	31 608	31 608	*19 388*	*19 388*
Excess of Income over Expenditure		19 454		*321 810*
Balance b/f: 1 January		1 268 753		*946 943*
Balance as at 31 December		1 288 207		*1 268 753*

ANNEX VII

Major Claims Fund – Haven

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994		1993	
INCOME	£	£	£	£
Contributions				
Annual Contributions (second levy)	–		9 922 253	
Annual Contributions (first levy)	–		555 999	
Adjustment to Prior Years' Assessments	25 674		–	
	25 674	25 674	10 478 252	10 478 252
Miscellaneous				
Interest on Overdue Contributions	4 928		5 845	
Interest on Investments	1 516 751		1 897 121	
Interest on loan to MCF *Braer*	63 825		236 608	
	1 585 504	1 585 504	2 139 574	2 139 574
		1 611 178		12 617 826
EXPENDITURE				
Fees	656 932		726 190	
Travel	5 351		4 296	
Miscellaneous	1 918		34 768	
	664 201	664 201	765 254	765 254
Excess of Income over Expenditure		946 977		11 852 572
Balance b/f: 1 January		27 071 670		15 219 098
Balance as at 31 December		28 018 647		27 071 670

ANNEX VIII

Major Claims Fund – Volgoneft 263

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994		*1993*	
INCOME	£	£	£	£
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*
Balance b/f: 1 January		60 115		–
Amount due to General Fund		–		*875 481*
Transfer to General Fund		60 115		–
Balance as at 31 December		NIL		60 115

ANNEX IX

Major Claims Fund – Aegean Sea

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994	
INCOME	£	£
Contributions		
Annual Contributions		19 970 504
Miscellaneous		
Interest on Overdue Contributions	8 000	
Interest on Investments	693 418	
	701 418	701 418
		20 671 922
EXPENDITURE		
Compensation	1 479 880	
	1 479 880	1 479 880
Excess of Income over Expenditure		19 192 042
Less Amount due to General Fund		-
Balance as at 31 December		19 192 042

ANNEX X

Major Claims Fund – Braer

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994	
INCOME	£	£
Contributions		
Annual Contributions		34 812 145
Miscellaneous		
Interest on Overdue Contributions	15 882	
Interest on Investments	238 019	
	253 901	253 901
		35 066 046
EXPENDITURE		
Compensation	20 451 175	
Fees	1 119 505	
Travel	6 608	
Interest on loan from MCF *Haven*	63 825	
Miscellaneous	2 912	
	21 644 025	21 644 025
Excess of Income over Expenditure		13 422 021
Less Amount due to MCF Haven		13 738 119
Balance as at 31 December		(316 098)

ANNEX XI

Major Claims Fund – Taiko Maru

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994	
INCOME	£	£
Contributions		
Annual Contributions		9 853 301
Miscellaneous		
Interest on Overdue Contributions	4 212	
Interest on Investments	139 823	
	144 035	144 035
		9 997 336
EXPENDITURE		
Compensation	5 920 364	
Fees	526 114	
Interest on loan from General Fund	309	
Miscellaneous	265	
	6 447 052	6 447 052
Excess of Income over Expenditure		3 550 284
Less Amount due to General Fund		362 126
Balance as at 31 December		3 188 158

ANNEX XII

Major Claims Fund – Keumdong N°5

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1994

	1994	
INCOME	£	£
Contributions		
Annual Contributions		4 926 650
Miscellaneous		
Interest on Overdue Contributions	2 104	
Interest on Investments	68 134	
	70 238	70 238
		4 996 888
EXPENDITURE		
Compensation	3 016 459	
Fees	435 779	
Travel	6 168	
Interest on loan from General Fund	2 556	
Miscellaneous	7 971	
	3 468 933	3 468 933
Excess of Income over Expenditure		1 527 955
Less Amount due to General Fund		76 319
Balance as at 31 December		1 451 636

ANNEX XIII

Balance Sheet of the IOPC Fund as at 31 December 1994

	1994	*1993*
	£	*£*
ASSETS		
Cash at Banks and in Hand	64 606 834	*21 882 868*
Contributions Outstanding	1 216 815	*880 416*
Due from MCF *Braer* to MCF *Haven*	316 098	*13 738 119*
Due from MCF *Vistabella*	302 480	–
Due from MCF *Taiko Maru*	–	*362 126*
Due from MCF *Keumdong N°5*	–	*76 319*
VAT Recoverable	14 284	*24 800*
Miscellaneous Receivable	13 446	*14 352*
Interest on Overdue Contributions	13 685	*2 726*
TOTAL ASSETS	66 483 642	*36 981 726*
LIABILITIES		
Staff Provident Fund	662 945	*541 175*
Accounts Payable	18 524	*13 188*
Unliquidated Obligations	51 614	*98 372*
Prepaid Contributions	283 826	*1 506 276*
Contributors' Account	139 246	*126 598*
Due to MCF *Brady Maria & Thuntank 5*	–	*205 865*
Due to MCF *Kasuga Maru N°1*	363 349	*349 557*
Due to MCF *Rio Orinoco*	1 288 207	*1 268 753*
Due to MCF *Haven*	28 018 647	*27 071 670*
Due to MCF *Volgoneft 263*	–	*60 115*
Due to MCF *Aegean Sea*	19 192 042	–
Due to MCF *Taiko Maru*	3 188 158	–
Due to MCF *Keumdong N°5*	1 451 636	–
Total Liabilities	54 658 194	*31 241 569*
General Fund Balance	11 825 448	*5 740 157*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	66 483 642	*36 981 726*

ANNEX XIV

Cash Flow Statement of the IOPC Fund for the Period ended 31 December 1994

	£	£
Cash as at 1 January 1994		21 882 868
OPERATING ACTIVITIES		
1993 Contributions Received	77 132 214	
Prior Years' Contributions Received	76 923	
1994 Contributions Prepaid	283 826	
Interest Received on Overdue Contributions	30 634	
Other sources of Income	162 691	
Exchange Gain	10 994	
Administrative Expenditure	(863 053)	
Claims Expenditure	(35 493 164)	
Repayment to Contributors	(194 630)	
Other Cash Payments	(66 856)	
Net Cash from Operating Activities before Net Current Asset Changes	41 079 579	
Increase/(Decrease) in Net Current Liabilities	(1 547 698)	
Net Cash Inflow from Operating Activities	39 531 881	39 531 881
RETURNS ON INVESTMENTS		
Interest Received on Investments	3 192 085	
Net Cash Inflow from Returns on Investments	3 192 085	3 192 085
Cash as at 31 December 1994		64 606 834

ANNEX XV

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 1994

INTRODUCTION

Scope of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund ("the Fund") for the sixteenth financial period ended 31 December 1994. 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 1994 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 1994.

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 makes 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. The Fund pays compensation to a claimant only where the Fund, 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 requires all claimants to substantiate their claims by producing explanatory notes, invoices, receipts and other supporting evidence.

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's staff negotiate settlements with the claimants.

7 As in previous years, my examination of the settlements negotiated in 1994 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 annually to the Fund reports on the quantities of contributing oil received in their respective countries during the preceding calendar year. The Director estimates the contributions he believes will be required over the next twelve months to finance the General Fund and any Major Claims Funds. The Director 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 state fairly 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 24 to 32 below), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1994.

12 The detailed findings of my audit are set out in paragraphs 17 to 38 below.

SUMMARY OF MAIN FINDINGS

On Budgetary Outturn

13 Obligations incurred in 1994 were £309 677 within the approved budget (paragraph 17).

On Cash Management

14 The Fund held a total of £64 606 834 in cash and on deposit as at 31 December 1994 (paragraph 19).

On Contributions

15 The Fund received assessed contributions for the General Fund and Major Claims Funds of £77 132 214. Some £1 169 234 remains outstanding for 1994 and previous financial periods. The Fund was unable to calculate 45 annual assessments for the General Fund and relevant Major Claims Funds due to the non-submission of reports on contributing oil receipts (paragraphs 21 and 22).

Contingent Liabilities

16 The Fund's financial statements show contingent liabilities of £178 601 159 as at 31 December 1994. Some £36 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 could reach some £304 million for this incident. The Fund has 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 24 to 32).

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 1994 totalled £863 053 this being £309 677 within the budget of £1 172 730.

18 During 1994, the Director made transfers of appropriations within Chapters of the budget in accordance with Financial Regulation 4.3. The Director has reported on these transfers in his comments which accompany the audited financial statements.

Cash Management

19 As at 31 December 1994, the Fund held a total of £64 606 834 in cash and on deposit. Of this, the Fund, based on information provided by the Investment Advisory Body, invested £2 million with Barings Brothers and Co Ltd for a fixed period of six months. On 26 February 1995, substantially all of the Barings entities ceased trading.

20 The Fund took all the necessary steps in the circumstances to ensure the security of its deposit and the Director kept me informed throughout the period of the Fund's actions. I am pleased to note that the Fund has been able to recover the total amount of the principal of the deposit together with interest.

Contributions

21 The Fund received a total of £77 132 214 in assessed contributions for the General Fund and Major Claims Funds in 1994, representing an average collection rate of 99 per cent. In 1994 the Fund also received £76 923 of amounts due from previous periods and £283 826 in contributions for the 1995 period. Outstanding contributions for 1994 and previous financial periods, excluding initial contributions, amount to £1 169 234. Of this, some £544 943 or 47 per cent, relates to amounts outstanding from the former USSR and Yugoslavia. In addition, one contributor has gone bankrupt owing £159 320 or 14 per cent. The Fund has registered a claim in the bankruptcy proceedings for the amount due.

22 In my 1993 Report, I noted the Assembly's concerns on the timely submission of reports on contribution oil receipts to ensure the system of levying contribution functions in an equitable manner. As at 31 December 1994, a total of 8 Member States had not submitted the relevant reports on contributing oil receipts for the relevant year. As a result, the Fund was unable to calculate a total of 45 annual assessments for the General Fund and relevant Major Claims Funds.

CONTINGENT LIABILITIES

General

23 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

24 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. At 31 December 1994, claims submitted to the Fund for compensation for oil pollution damage from this incident were approximately £662 million. In addition, there were non-quantified claims relating to damage to the marine environment. 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.

25 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 £304 million as at 31 December 1994. This contrasted with the Fund's assessment of £41 million, prepared in accordance with the Fund Convention. After reviewing the judge's decision at its 31st session on 28 May 1992, the Executive Committee endorsed the Fund's assessment and instructed the Director to pursue the Fund's opposition to the decision.

26 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.

27 On 26 July 1993, the Italian Court of first instance 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 has appealed against this judgement. The Fund told me that it expects the Court of Appeal to render its judgement on this appeal in 1995.

28 Because of the uncertainty surrounding the outcome of these legal proceedings, I explained in my Report on the Fund's Financial Statements for 1992 and 1993 that I had qualified my audit opinion on the 1992 and 1993 financial statements in respect of the contingent liability for the Haven incident.

29 At its 40th session, the Executive Committee instructed the Director to enter into negotiations with all the parties involved in the Haven incident with the purpose of arriving at a global solution of all outstanding claims and issues. The Executive Committee emphasised that any solution reached should respect the position of the IOPC Fund to date, in accordance with the principles of the Fund Convention.

30 In Schedule III to the financial statements the Fund has assessed contingent liabilities of £178 601 159 as at 31 December 1994, compared with £200 686 171 in 1993. Within this total, £36 325 600 relates to the Haven incident, representing the Fund's view of the maximum compensation of £40 442 630 payable under the Fund Convention, less the shipowners' limitation amount of £9 436 610 plus indemnification of £3 819 580 and fees of £1 500 000. However, based on the Court's judgement of 26 July 1993, the Fund could face a potential maximum liability equivalent to £304 million, at 31 December 1994.

31 At its 43rd session in June 1995, the Executive Committee instructed the Director to continue negotiations with claimants and authorised the Director to agree, on behalf of the IOPC Fund, a global settlement within prescribed conditions. The Executive Committee has re-iterated its position that the negotiations with the claimants should be without prejudice to the IOPC Fund's position. Further, it has emphasised that neither the decision to enter into negotiations nor to agree to a global solution in the Haven case constitutes a precedent and should be seen in the context of the very special circumstances of this case.

32 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 to date. I have also taken note of the Executive Committee's instructions to the Director to pursue a possible out-of-court settlement. Nevertheless, because of the continuing uncertainty of the outcome of the current legal action and no negotiated settlement having yet been reached, I have again qualified my opinion in respect of this contingent liability.

FINANCIAL CONTROL MATTERS

The Accounting Systems

33 During the 1994 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 1994 financial statements.

Control of Supplies and Equipment

34 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 1994 amounted to £123 068.

35 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 1994 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

Common Accounting Standards

36 In 1993, I reported that 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.

37 In consultation with my staff, the Fund has reviewed its financial statements to identify the changes necessary to ensure conformity with these standards. I am pleased to note that as a result, the Fund has included a consolidated statement of cash flow in the 1994 financial statements (Statement XIV). Any further changes which may be necessary will be finalised in the 1995 financial statements.

OTHER MATTERS

Amounts Written Off and Fraud

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

ACKNOWLEDGEMENT

39 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 1995

ANNEX XVI

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE YEAR ENDED 31 DECEMBER 1994

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 XIV, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund for the year ended 31 December 1994 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 32 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 1994 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 1995

ANNEX XVII

Contributing Oil Received in the Territories of Member States in the Calendar Year 1994

As reported by 31 December 1995

Member State	Contributing Oil (tonnes)	% of Total
Japan	290 437 444	26.45
Italy	147 490 036	13.43
Netherlands	97 091 681	8.84
France	95 115 831	8.66
Republic of Korea	92 227 680	8.40
United Kingdom	84 911 344	7.73
Spain	54 513 866	4.96
Germany	34 433 580	3.13
Canada	33 072 837	3.01
Norway	30 137 458	2.74
Australia	28 511 626	2.60
Sweden	20 295 423	1.85
Greece	17 348 438	1.58
Portugal	15 553 460	1.42
Finland	11 336 930	1.03
Indonesia	9 903 802	0.90
Belgium	7 538 803	0.69
Poland	5 996 336	0.55
Denmark	5 737 815	0.52
Ireland	3 193 213	0.29
Tunisia	2 909 412	0.27
Croatia	2 842 395	0.26
Côte d'Ivoire	2 652 724	0.24
Sri Lanka	1 912 844	0.17
Cyprus	1 620 761	0.15
Ghana	1 091 299	0.10
Mauritius	178 692	0.02
Slovenia	166 379	0.01
Djibouti	0	0.00
Estonia	0	0.00
Iceland	0	0.00
Kuwait	0	0.00
Marshall Islands	0	0.00
Monaco	0	0.00
Oman	0	0.00
Papua New Guinea	0	0.00
Saint Kitts and Nevis	0	0.00
Seychelles	0	0.00
Vanuatu	0	0.00
	1 098 222 109	100.00

<Note> No report from Albania, Algeria, Bahamas, Barbados, Benin, Brunei Darussalam, Cameroon, Fiji, Gabon, Gambia, India, Kenya, Liberia, Malaysia, Maldives, Malta, Mexico, Morocco, Nigeria, Qatar, Russian Federation, Sierra Leone, Syrian Arab Republic, Tuvalu, United Arab Emirates, Venezuela and Yugoslavia.

ANNEX XVIII

SUMMARY OF INCIDENTS

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	*Tanio*	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

XVIII

INCIDENTS

1995)

- 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 961 recovered by way of recourse.	8
270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥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	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
11	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
12	*Globe Asuni*	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	*Fukutoko 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	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision
19	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660	Collision
20	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥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 Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Dinl 175 064	Discharge
29	*Thuntank 5*	21.12.86	Gävle, 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 Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 *(estimate)*	Grounding
33	*Akari*	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	Yuwatahama, 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	*Taiyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
38	*Czantoria*	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
53	*Rio Orinoco*	16.10.90	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding

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 ¥8 717 721		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
185	Clean-up	Can$12 831 892		53

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
54	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141	Sinking
55	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	US$100 000 *(estimate)*	Sinking
56	*Hokunan 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 21 800 000 000 *(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	*Kumi 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	
110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 £276 664		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	Indemnification	Lit 1 666 031 931	Total damage less than shipowner's liability.	57
(unknown)	Clean-up: ◦ Italian Government *(claimed)* ◦ Other Italian Authorities *(claimed)* ◦ Private claimants *(claimed)* ◦ French Government *(agreed)* ◦ Other French Authorities *(agreed)* ◦ Authorities of Monaco *(agreed)* Tourism-related: ◦ Italian private claimants *(claimed)* Fishery-related: ◦ Italian private claimants *(claimed)* Environmental damage: ◦ Italian Government *(claimed)* ◦ 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 FFr10 659 469 FFr270 035 FFr23 510 228 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	¥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	*Kihnu*	16.1.93	Tallin, Estonia	Estonia	949	113 000 SDR *(estimate)*	Grounding
65	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 *(estimate)*	Grounding
66	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
67	*Ryoyo Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision

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 782 209 889 paid by shipowner's insurer.	62
	◦ Spanish Government *(paid)*	Pts 93 411		
	◦ Spanish Government *(claimed)*	Pts 1 215 065 196		
	◦ Other Spanish Authorities *(paid)*	Pts 976 942		
	◦ Other Spanish Authorities *(claimed)*	Pts 594 631 297		
	◦ Private claimants *(paid)*	Pts 126 580 580		
	◦ Private claimants *(claimed)*	Pts 2 990 286 988		
		Pts 4 927 634 414		
	Fishery-related:			
	◦ Private claimants *(paid)*	Pts 1 240 444 932		
	◦ Private claimants *(claimed)*	Pts 15 847 055 482		
		Pts 17 087 500 414		
	Tourism-related:			
	◦ Other Spanish Authorities *(claimed)*	Pts 3 927 480		
	◦ Private claimants *(paid)*	Pts 3 723 513		
	◦ Private claimants *(claimed)*	Pts 5 585 270		
		Pts 13 236 263		
	Other loss of income:			
	◦ Spanish Government *(paid)*	Pts 18 400		
	◦ Spanish Government *(claimed)*	Pts 95 422 600		
	◦ Private claimants *(paid)*	Pts 136 913 020		
	◦ Private claimants *(claimed)*	Pts 2 133 991 803		
		Pts 2 366 345 823		
	Other damage to property:			
	◦ Spanish Government *(claimed)*	Pts 8 131 180		
	◦ Private claimants *(paid)*	Pts 38 811 242		
	◦ Private claimants *(claimed)*	Pts 9 248 124		
		Pts 56 190 546		
	Total	Pts 24 450 907 460		
84 000	Clean-up:		Claims approved for £1 018 995 but not yet paid. £4 807 323 paid by shipowner's insurer. Claims for some £80 million pursued in court.	63
	◦ Private claimants *(paid)*	£200 285		
	◦ UK Government *(claimed)*	£3 571 181		
	◦ Local Authorities *(claimed)*	£1 508 317		
		£5 279 783		
	Fishery-related *(paid)*	£32 895 738		
	Tourism-related *(paid)*	£77 375		
	Farming-related *(paid)*	£3 434 858		
	Other damage to property *(paid)*	£8 097 208		
	Other loss of income *(paid)*	£125 000		
	Total	£49 909 962		
140	Clean-up *(claimed)*	FM713 055		64
4	Clean-up	Won 176 866 632	US$22 504 recovered from shipowner's insurer.	65
	Fishery-related	Won 42 848 123		
		Won 219 714 755		
520	Clean-up	¥756 780 796	¥49 104 248 recovered by way of recourse.	66
	Fishery-related	¥336 404 259		
	Indemnification	¥7 301 280		
		¥1 100 486 335		
500	Clean-up	¥8 433 001		67
	Indemnification	¥7 026 480		
		¥15 459 481		

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
68	*Keumdong N°5*	27.9.93	Yosu, Republic of Korea	Republic of Korea	481	Won 77 417 210	Collision
69	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
70	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR	Collision
71	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
72	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	496	¥81 823 680 *(estimate)*	Collision
73	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply
74	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 *(estimate)*	Grounding
75	*Spill from unknown source*	30.11.94	Mohammedia, Morocco	-	-	-	*(Unknown)*
76	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 *(estimate)*	Grounding
77	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	14 million SDR	Grounding
78	*Yeo Myung*	3.8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 000 000 *(estimate)*	Collision
79	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥2 907 000 *(estimate)*	Mishandling of oil supply

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
1 280	Clean-up *(paid)*	Won 5 587 815 812	Amounts indicated as *agreed* include partial payments. *Claimed* amounts represent the remainder of agreed amounts, where partial payments have been made, plus outstanding claimed amounts. Won 5 587 815 812 paid by shipowner's insurer, of which US$6 000 000 reimbursed by IOPC Fund. Further claims for significant amounts will be submitted.	68
	Fishery-related *(agreed)*	Won 3 844 882 527		
	Fishery-related *(claimed)*	Won 73 245 482 985		
		Won 82 678 181 324		
	Other damage to property *(claimed)*	US$25 970		
200	Clean-up *(claimed)*	Drs 294 499 820		69
	Other loss of income *(claimed)*	Drs 3 061 285 997		
		Drs 3 355 785 817		
16 000	Clean-up *(claimed)*	UAE Dhr42 400 000	UAE Dhr35.4 million and OR 92 279 paid by shipowner's insurer. Further claims will be submitted.	70
	Fishery-related *(claimed)*	UAE Dhr36 900 000		
	Other loss of income *(claimed)*	UAE Dhr19 000 000		
		UAE Dhr98 300 000		
	Clean-up *(agreed)*	OR 92 279		
	Clean-up *(claimed)*	US$6 000 000		
0.5	Clean-up	¥1 187 304		71
	Indemnification	¥846 640		
		¥2 033 944		
560	Clean-up	¥629 584 240		72
	Fishery-related	¥50 662 547		
	Other loss of income	¥15 490 030		
		¥695 736 817		
(unknown)	Other damage to property	¥3 954 861		73
	Clean-up	¥202 854		
		¥4 157 715		
18	Clean-up	Won 9 401 293		74
	Fishery-related	Won 28 378 819		
		Won 37 780 112		
(unknown)	Clean-up *(claimed)*	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.	75
1	Clean-up *(claimed)*	Won 45 066 402	Further claims will be submitted.	76
	Other damage to property *(claimed)*	Won 30 331 270		
		Won 75 397 672		
700	Clean-up *(agreed)*	Won 18 060 204 438	Won 14 007 million paid by shipowner's insurer. Further claims will be submitted.	77
	Fishery-related *(claimed)*	Won 218 959 000 000		
	Farming-related *(claimed)*	Won 35 100 000		
	Tourism-related *(claimed)*	Won 4 244 000 000		
		Won 241 298 304 438		
40	Clean-up *(claimed)*	Won 798 200 000	Won 302 million paid by shipowner's insurer, of which US$135 000 reimbursed by IOPC Fund. Further claims will be submitted.	78
	Fishery-related *(claimed)*	Won 19 796 000 000		
	Other loss of income *(claimed)*	Won 3 084 000 000		
		Won 23 678 200 000		
0.5			Claims not yet submitted.	79

	Ship	Date of Incident	Place of Incident	Flag State of Ship	Gross Tonnage (GRT)	Limit of Shipowner's Liability under CLC	Cause of Incident
80	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥18 634 560 *(estimate)*	Collision
81	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 244 000 000 *(estimate)*	Sinking
82	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 29 December 1995 are as follows:

£1 =			
	Algerian Dinar	Din	81.0069
	Canadian Dollar	Can$	2.1175
	Danish Krone	DKr	8.6042
	Finnish Markka	FM	6.7414
	French Franc	FFr	7.5928
	German Mark	DM	2.2222
	Greek Drachma	Drs	367.302
	Italian Lira	Lit	2463.04
	Japanese Yen	¥	160.153
	Moroccan Dirham	Mor Dhr	13.1488
	Omani Rial	OR	0.5978
	Republic of Korea Won	Won	1204.39
	Russian Rouble	Rbls	0.9921
	Spanish Peseta	Pts	188.355
	Swedish Krona	SKr	10.2894
	UAE Dirham	UAE Dhr	5.7023
	United States Dollar	US$	1.5526

£1 = 1.04270 Special Drawing Rights (SDR) or 1 SDR = £0.959049

Quantity of Oil Spilled (Tonnes)	Compensation (Amounts paid by IOPC Fund, unless indicated to the contrary)		Notes	
94			Claims not yet submitted. Provisional payments of ¥10 000 000 made by shipowner's insurer.	80
(unknown)	Clean-up *(agreed)* Fishery-related *(agreed)*	Won 15 386 985 065 Won 2 628 164 816 Won 18 015 149 881	Won 6 120 431 484 (Won 4 067 985 065 for clean-up and Won 2 052 446 419 for fishery-related claims) paid on behalf of shipowner and by shipowner's insurer.	81
1 800	Clean-up *(claimed)*	Won 6 529 000 000	Further claims (clean-up and fishery-related) will be submitted.	82

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).