INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

ANNUAL REPORT

1996

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 1996

Photograph on front cover:
Sea Empress incident - United Kingdom
(photograph: IOPC Funds)

Printed in Great Britain by:
Repro Workshop Ltd, Caker Stream Road, Alton, Hampshire
Telephone: (01420) 89449

FOREWORD

The Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) presents the Report of the activities of the Organisations during 1996. This is the eighteenth year of operation of the 1971 Fund and the first year of operation of the 1992 Fund.

The 1971 Fund was established in 1978 to administer the system of compensation for oil pollution damage established by the 1969 Civil Liability Convention and the 1971 Fund Convention.

In 1992 Protocols were adopted amending the 1969 Civil Liability Convention and the 1971 Fund Convention. They provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. These Protocols entered into force on 30 May 1996. A new organisation, known as the 1992 Fund, was established from that date. The entry into force of the Protocols has ensured the viability of the international system of compensation for oil pollution damage in the future. So far, 19 States have ratified the Protocol to the Fund Convention and it is expected that many other States will do so in the near future.

The 1971 Fund and the 1992 Fund are administered by a joint Secretariat, headed by one Director.

During 1996 there has been a significant increase in the number of Member States of the 1971 Fund. As at 31 December 1996, 70 States were Members of that Organisation.

In 1996 the 1971 Fund has been involved in the handling of claims for compensation arising from a number of oil pollution incidents, including five which occurred during the year (cf Section 8). The 1971 Fund's governing bodies made a number of important decisions of principle in respect of the admissibility of claims for compensation. During the year the 1971 Fund paid significant amounts in compensation to victims of oil pollution.

The 1992 Fund has concentrated on building up the administrative framework for its activities.

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 dealt with by the 1971 and 1992 Funds.

Måns Jacobsson
Director

TABLE OF CONTENTS

PREFACE

As the Director has mentioned in his foreword, 1996 has been marked by the entry into force of the 1992 Protocols and by the first Assembly of the 1992 Fund. This is an encouraging development, as it demonstrates that the international compensation system set up at the end of the 1960s has been able to adapt itself to the needs of society. This new situation nevertheless gives rise to certain questions for the future.

The simultaneous operation of two Funds during a transitional period will make the administration of the compensation system more complex for a short while, even though the Assemblies of the two Funds have taken steps to ensure close co-ordination between the two Organisations.

The disappearance on 20 February 1997 of the voluntary industry agreements TOVALOP and CRISTAL, which were kept in operation pending the entry into force of the 1992 Protocols, will no doubt encourage more States to join the 1992 Fund, as has been demonstrated by the numerous enquiries received by the Funds' Secretariat.

In 1996, a Diplomatic Conference adopted the Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). The Conference invited the 1992 Fund to carry out the preparatory work for the entry into force of this new international instrument, and these preparations will require a considerable amount of work by the Fund Secretariat.

The 1971 and 1992 Funds will have to adapt in order to administer the changing system in the best possible way - that is, ensuring the prompt payment of compensation to victims whilst running a tight ship.

In the framework of these developments, Member States know that they can rely on a highly competent and extremely dedicated Secretariat headed by a Director who enjoys their entire confidence. This is a guarantee for success.

Charles Coppolani
Chairman of the Assemblies

1 INTRODUCTION

The International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) are two intergovernmental organisations which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978. It operates within the framework of two international Conventions: the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This 'old' regime was amended in 1992 by two Protocols. The amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996. The International Oil Pollution Compensation Fund 1992 (1992 Fund) was set up under the 1992 Fund Convention, when the latter entered into force.

The 1969 and 1992 Civil Liability Conventions govern the liability of shipowners for oil pollution damage. These Conventions lay down the principle of strict liability for shipowners and create a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The 1971 and 1992 Fund Conventions are supplementary to the 1969 Civil Liability Convention and 1992 Civil Liability Convention, respectively.

The main function of the IOPC Funds is to provide supplementary compensation to victims of oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £51 million or US$86 million), including the sum actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund for any one incident is 135 million SDR (about £114 million or US$194 million), including the sum actually paid by the shipowner or his insurer and the sum paid by the 1971 Fund.

Each Fund has an Assembly which is composed of representatives of all Member States of the respective Organisation. The 1971 Fund also has an Executive Committee of 15 Member States elected by its Assembly. The main function of the 1971 Fund Executive Committee is to approve settlements of claims for compensation against that Organisation, to the extent that the Director of the 1971 Fund is not authorised to make such settlements. The 1992 Fund Assembly will establish a corresponding body in the near future.

2 COMPARISON OF THE 'OLD' AND 'NEW' REGIMES

The main differences between the 'old' regime of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 'new' regime of the 1992 Conventions are set out below.

The 1969 and 1971 Conventions apply to pollution damage suffered in the territory (including the territorial sea) of a State Party to the respective Convention. Under the 1992 Conventions, however, the geographical scope is wider, with the cover extended to pollution damage caused in the exclusive economic zone (EEZ) or equivalent area of a State Party.

The definition of pollution damage in the 1992 Conventions has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that, for environmental damage (other than loss of profit from impairment of the environment), compensation is limited to costs incurred for reasonable measures to reinstate the contaminated environment.

The 1969 Civil Liability Convention and the 1971 Fund Convention apply only to damage caused or measures taken after oil has escaped or been discharged. These Conventions do not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved. Under the 1992 Conventions, however, expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions, nor are spills of bunker oil from ships other than tankers. The 1992 Conventions apply to spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo, ie both laden and unladen tankers, including spills of bunker oil from such ships.

The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR) (£113 or US$191) per ton of the ship's tonnage or 14 million SDR (£11.9 million or US$20.1 million). Under the 1992 Civil Liability Convention, the limits are:

(a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (£2.5 million or US$4.3 million);

(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.5 million or US$4.3 million) plus 420 SDR (£356 or US$604) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£50.6 million or US$85.8 million).

There is a simplified procedure under the 1992 Civil Liability Convention for increasing these limits.

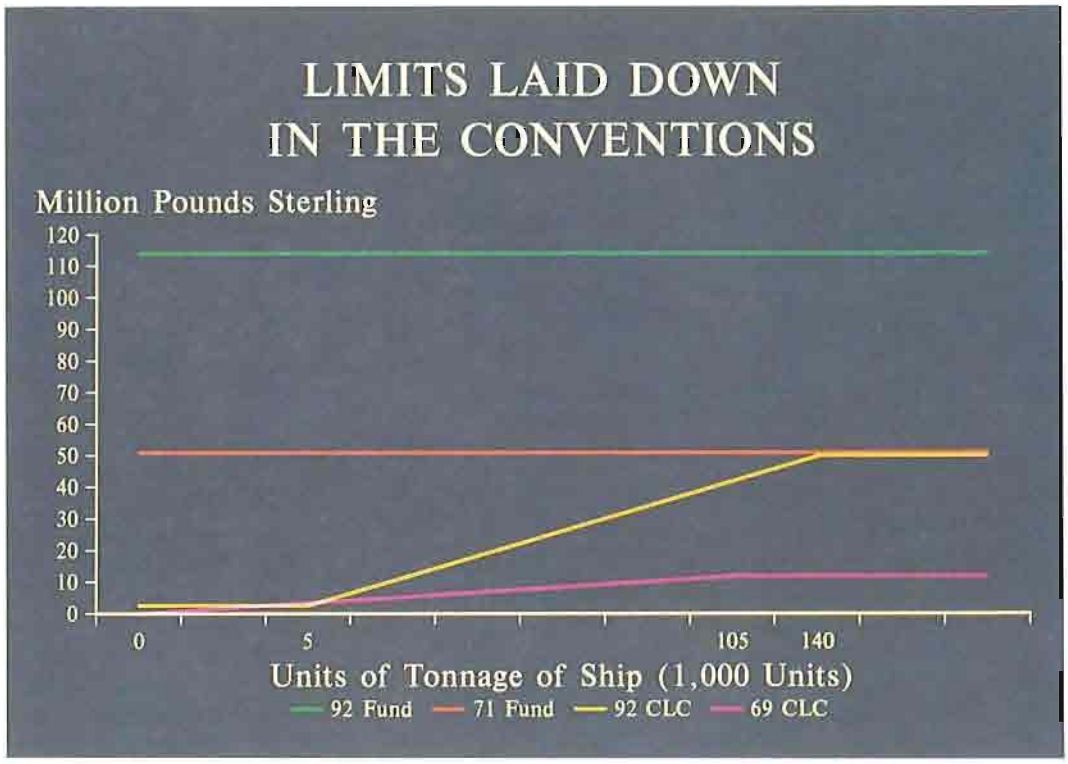
Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if a claimant proves that the incident occurred as a result of the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right if it is proved that the pollution damage resulted from the shipowner's personal act or

omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Claims for pollution damage under the Civil Liability Conventions can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside the Conventions from persons other than the owner. However, the 1969 Civil Liability Convention prohibits claims against the servants or agents of the owner. The 1992 Civil Liability Convention prohibits not only claims against the servants or agents of the owner, but also claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£51 million or US$86.3 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (£114 million or US$194 million), including the sum actually paid by the shipowner (or his insurer) under the applicable Civil Liability Convention and the sum paid by the 1971 Fund. The 1992 Fund Convention provides a simplified procedure for increasing the maximum amount payable by the 1992 Fund.

Under the 1971 Fund Convention, the 1971 Fund indemnifies, under certain conditions, the shipowner for part of his liability pursuant to the 1969 Civil Liability Convention. There are no corresponding provisions in the 1992 Fund Convention.



3 MEMBERSHIP OF THE IOPC FUNDS AND EXTERNAL RELATIONS

3.1 1971 Fund membership

At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the 1971 Fund. Since then, the number of Member States has grown steadily. At the end of 1995 there were 66 Member States.

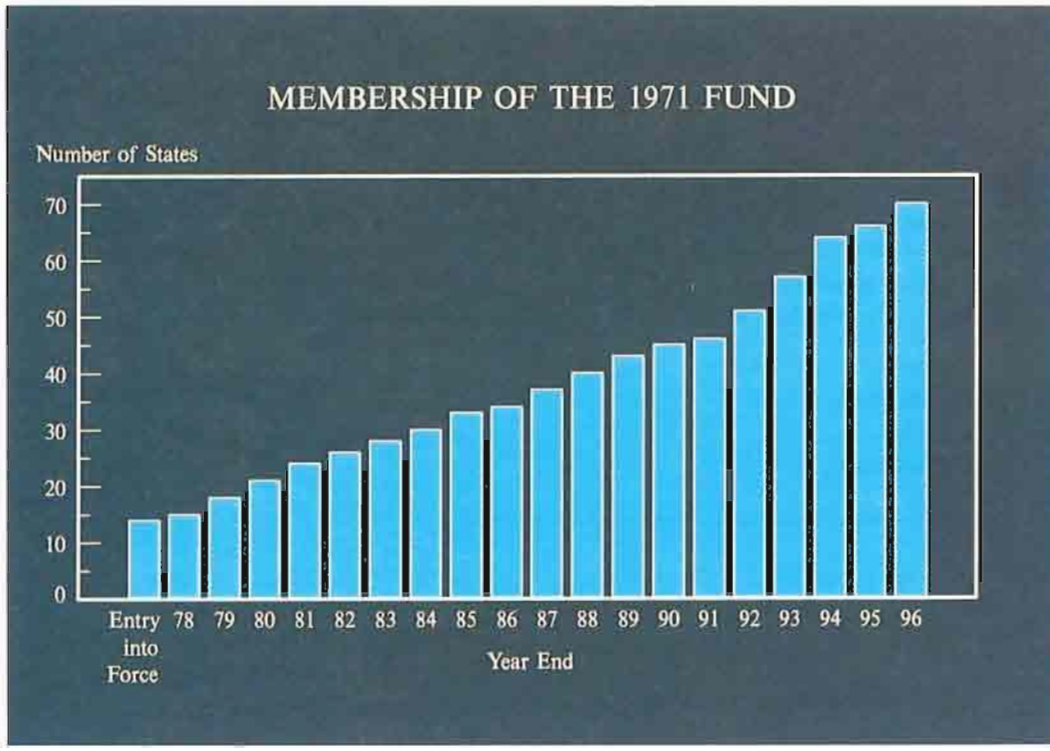
Six States acceded to the 1971 Fund Convention during 1996. The 1971 Fund Convention entered into force for Mauritania on 15 February 1996, for Tonga on 1 May 1996, for Bahrain on 1 August 1996 and for Switzerland on 2 October 1996. In addition, the Convention will enter into force for New Zealand and Mozambique early in 1997, bringing the number of 1971 Fund Member States to 72, as set out below.

1971 Fund Member States as at 31 December 1996

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

States which have deposited instruments of accession, but for which the 1971 Fund Convention does not enter into force until date indicated

New Zealand	20 February 1997
Mozambique	23 March 1997



As a result of the entry into force of the 1992 Fund Convention, it is expected that only a few more States will become Members of the 1971 Fund. It appears that many States which were preparing legislation implementing the 1971 Fund Convention will instead adopt legislation to implement the 1992 Fund Convention and become Members of the 1992 Fund.

A major reason for the smooth functioning of the system of compensation established by the 1969 and 1971 Conventions is the strong support extended by Governments of Member States to the 1971 Fund and its Secretariat. In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States each year. During 1996 the Director visited five States which are Members of the 1971 Fund for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

3.2 1992 Fund membership

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 1996, 14 States had become Members of the 1992 Fund. Five further States have acceded to the 1992 Fund Protocol.

It is expected that a number of 1971 Fund Member States will soon ratify the 1992 Fund Convention, eg Belgium, Canada, Ghana, Morocco, Poland, the Republic of Korea and Tunisia. It is likely that a number of other States will also become Members of the 1992 Fund in the near future.

1992 Fund Member States as at 31 December 1996

Australia	Greece	Norway
Denmark	Japan	Oman
Finland	Liberia	Sweden
France	Marshall Islands	United Kingdom
Germany	Mexico	

States which have deposited instruments of accession, but for which the 1992 Fund Protocol does not enter into force until date indicated

Bahrain	3 May 1997
Switzerland	4 July 1997
Monaco	8 November 1997
Netherlands	15 November 1997
Spain	16 May 1998

3.3 Compulsory denunciation of the 1971 Fund Convention

The 1992 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 States which are Parties to the 1992 Protocol to the Fund Convention, or which have deposited instruments of ratification of that Protocol, reaches 750 million tonnes.

When the Netherlands deposited an instrument of accession to the 1992 Fund Protocol on 15 November 1996, the requirements for compulsory denunciation were fulfilled. As a result, States which have deposited instruments of ratification, acceptance, approval or accession in respect of the 1992 Fund Protocol (whether or not the Protocol is in force for the State in question) are obliged to deposit instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by 15 May 1997. Such denunciations will take effect 12 months after that date. At present these States belong both to the 'old' regime of the 1969 and 1971 Conventions and to the 'new' regime of the 1992 Conventions. As from 16 May 1998, however, it will no longer be possible for a State to belong to both regimes.

3.4 Relations with non-Member States

The Assembly of the 1971 Fund has, over the years, granted observer status to a number of non-Member States. In June 1996 the 1992 Fund Assembly granted observer status to the same States, in order to encourage membership of the 1992 Fund. At the end of 1996 the following States had observer status with both Organisations.

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

The Secretariat has continued its efforts to increase the number of Member States. To this end, the Secretariat participated in regional seminars on maritime matters in Greece, Panama, the Philippines, South Africa and Thailand. The Director and other Officers have also participated in other seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operation of the IOPC Funds.

The Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Conventions.

3.5 Relations with international organisations and interested circles

The IOPC Funds benefit 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 been granted observer status with both the 1971 Fund and the 1992 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 Funds have particularly close links with the International Maritime Organization (IMO), and co-operation agreements have been concluded between each Fund and IMO. During 1996 the Secretariat represented the 1971 Fund at meetings of the IMO Council and various IMO Committees. The Secretariat also represented the 1971 Fund at the International Conference held in April 1996 which adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention).

The following international non-governmental organisations have observer status with both the 1971 Fund and the 1992 Fund:

Advisory Committee on Protection of the Sea (ACOPS)
Baltic and International Maritime Council (BIMCO)
Comité Maritime International (CMI)
Cristal Limited
Federation of European Tank Storage Associations (FETSA)
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 1971 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 'P & I Clubs'. The technical assistance required by the 1971 Fund with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). It is expected that the same arrangements will be applied in respect of the 1992 Fund.

The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

Assembly chaired by Mr Charles Coppolani
(photograph: John Ross)

4 1971 FUND AND 1992 FUND ASSEMBLIES AND 1971 FUND EXECUTIVE COMMITTEE

4.1 June 1996 Assembly sessions

1992 Fund Assembly: 1st session

Following the entry into force of the 1992 Fund Convention on 30 May 1996, the Secretary-General of the International Maritime Organization (IMO) convened the 1st session of the Assembly of the 1992 Fund from 24 to 28 June 1996.

Mr Charles Coppolani (France), Chairman of the 1971 Fund Assembly, was elected Chairman also of the 1992 Fund Assembly. Professor H Tanikawa (Japan) and Mr P Gómez-Flores (Mexico) were elected Vice-Chairmen.

The 1992 Fund Assembly decided that the headquarters of the 1992 Fund should be located in the United Kingdom, and approved the text of a Headquarters Agreement between the 1992 Fund and the United Kingdom Government.

It was decided that the 1992 Fund should have a claims subsidiary body to consider new issues of principle and general policy questions as they arose (and not in the abstract). It was also decided that the body would be established at the Assembly's first session after the number of 1992 Fund Member States had reached 25.

The Comptroller and Auditor General of the United Kingdom, who has been the External Auditor of the 1971 Fund since its establishment, was appointed External Auditor also of the 1992 Fund.

The 1992 Fund's budget appropriations for the period 30 May to 31 December 1996 were adopted, with an administrative expenditure totalling £338 508.

The Assembly noted that the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention) had been adopted on 3 May 1996 at an international conference convened under the auspices of IMO. Under the Convention, there will be established a system of compensation similar to that created by the Civil Liability Convention and the Fund Convention, and an International Hazardous and Noxious Substances Fund (HNS Fund) will be created to pay compensation. The Conference had invited the Assembly of the 1992 Fund to assign to the Director of the 1992 Fund the administrative tasks required to set up the HNS Fund. The Assembly instructed the Director to carry out the tasks requested by the HNS Conference.

1971 Fund Assembly: 2nd extraordinary session

The 1971 Fund Assembly held an extraordinary session from 24 to 28 June 1996, to coincide with the session of the 1992 Fund Assembly.

At the request of the 1992 Fund Assembly, the Assembly of the 1971 Fund authorised the Director to make the necessary funds available to the 1992 Fund, as required, to cover the 1992 Fund's administrative expenses and payments of compensation until contributions were received by the 1992 Fund in February 1997.

Decisions by the Assemblies affecting both the 1971 Fund and the 1992 Fund

The 1971 Fund and 1992 Fund Assemblies took the following major decisions affecting both Organisations.

- It was decided that the 1971 Fund and 1992 Fund should have a joint Secretariat and that the 1971 Fund Secretariat should, for the time being, administer also the 1992 Fund.

- The Assemblies decided that the Director of the 1971 Fund should also be the Director of the 1992 Fund.

- The Assemblies considered that it was essential to ensure consistency between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims, in particular because one incident might involve both Funds. The 1992 Fund Assembly adopted a Resolution to the effect that the report of the 7th Intersessional Working Group of the 1971 Fund should form the basis of the 1992 Fund's policy on the criteria for the admissibility of claims, that the criteria previously laid down by the Executive Committee of the 1971 Fund should be applied also by the 1992 Fund, and that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims. For its part, the 1971 Fund Assembly adopted a Resolution to the effect that the 1971 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims. For situations not covered by the criteria adopted so far within the 1971 Fund, the Assemblies considered that consistency of decisions between the two Organisations could be achieved through consultations between their competent bodies.

- A system of deferred invoicing of contributions was introduced for both Organisations (cf Section 6.1).

4.2 October 1996 Assembly sessions

1971 Fund Assembly: 19th session

The 1971 Fund Assembly held its 19th session from 22 to 25 October 1996. The following major decisions were taken at that session.

- The following States were elected members of the 1971 Fund Executive Committee to hold office until the end of the next regular session of the 1971 Fund Assembly:

Australia	Morocco
Belgium	Netherlands
Canada	Nigeria
Denmark	Republic of Korea
Finland	Russian Federation
Germany	Spain
Greece	United Kingdom
Malaysia	

- The Assembly noted the External Auditor's Report and his Opinion on the Financial Statements of the 1971 Fund and approved the accounts for the financial period 1 January to 31 December 1995 (cf Section 5.2).

- The budget appropriations for 1997 were adopted, with an administrative expenditure for the joint Secretariat totalling £1 821 720.

- The Assembly decided to reduce the working capital of the 1971 Fund from £15 million to £10 million, and to credit contributors accordingly. The Assembly further decided to levy 1996 annual contributions for a total amount of £85 million, of which £23 million was to be paid by 1 February 1997. It was decided that the balance of these levies should be deferred and invoiced, to the extent necessary, during the second half of 1997 (cf Section 6.3).

- The Assembly decided, in accordance with Article 5.4 of the 1971 Fund Convention, to include the May 1995 Amendments to SOLAS 74 covered by Resolution MSC.46(65) adopted by the Maritime Safety Committee of IMO in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, with effect from 1 May 1997.

- In the light of the developments in respect of the *Haven* incident, the Assembly authorised the 1971 Fund Executive Committee to approve a global settlement of all outstanding issues within certain limits (cf Section 8.2).

- The 1971 Fund Assembly decided to establish an informal working group to consider the question of how to enable the 1971 Fund to make emergency payments to victims in cases of financial hardship.

- The Assembly considered a request by the observer delegation of Egypt that the 1971 Fund should reconsider whether oil passing through the SUMED pipeline would be subject to contributions under the 1971 Fund Convention. It was recalled that the Assembly had in 1993 concluded that there was not a majority in favour of a request by the Government of Egypt that the oil passing through the SUMED pipeline should be considered as not having been 'received' for the purposes of Article 10.1 of the 1971 Fund Convention and that it should therefore not be subject to contributions. The Assembly decided that, since no new elements were presented, the matter should not be considered further at that session.

1992 Fund Assembly: 1st extraordinary session

An extraordinary session of the 1992 Fund Assembly was held from 23 to 25 October 1996, to coincide with the 19th session of the 1971 Fund. The 1992 Fund Assembly took the following major decisions at that session.

- The Assembly decided that the 1992 Fund's claims subsidiary body should be known as the Executive Committee. It was decided that the Committee should be composed of 15 Member States elected for one year and that no State should serve on the Committee for more than two consecutive terms.

- The 1992 Fund's budget appropriations for 1997 were adopted, with an administrative expenditure of £922 224.

- The Assembly set the 1992 Fund's working capital at £7 million.

- The Assembly decided to levy 1996 annual contributions to the General Fund for a total amount of £7 million, of which £4 million was to be paid by 1 February 1997. It was decided that the balance of this levy should be deferred and invoiced, to the extent necessary, during the second half of 1997 (cf Section 6.3).

- A Working Group was set up to study the possibilities of introducing alternative dispute settlement procedures (other than litigation before national courts) in the compensation system established by the 1992 Civil Liability Convention and the 1992 Fund Convention for cases where out-of-court settlements cannot be reached.

Decisions by the Assemblies affecting both the 1971 Fund and the 1992 Fund

The 1971 Fund and 1992 Fund Assemblies took the following major decisions affecting both Organisations.

- It was decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended (16 May 1998), ie when the compulsory denunciations of the 1969 Civil Liability Convention and the 1971 Fund take effect (cf Section 3.3). The Assemblies decided that the 1992 Fund Secretariat would thereafter administer also the 1971 Fund.

- The Assemblies considered the draft text of a revised Claims Manual to be issued jointly by the 1971 Fund and the 1992 Fund. The Director was authorised to publish the revised Claims Manual.

- It was decided that the scope of the Memorandum of Understanding governing co-operation between the 1971 Fund and P & I Clubs as regards the handling of incidents, which had been signed in 1980 by the International Group of P & I Clubs and the 1971 Fund, should be extended to cover also co-operation between the Clubs and the 1992 Fund.

4.3 1971 Fund Executive Committee

The 1971 Fund Executive Committee held five sessions during 1996, all under the chairmanship of Mr Willem Oosterveen (Netherlands). The 47th session was held on 26 and 27 February, the 48th session on 16 April, the 49th session from 26 to 28 June, the 50th session from 21 to 23 October and the 51st session on 25 October 1996.

The main decisions taken by the 1971 Fund Executive Committee at the five sessions held in 1996 are reflected in Section 8.2 in the context of the particular incidents.

47th session

The discussions at the 47th session of the Executive Committee concentrated on questions relating to the *Haven* (Italy, 1991), the *Aegean Sea* (Spain, 1992), the *Braer* (United Kingdom, 1993), the *Keumdong N°5* (Republic of Korea, 1993), the *Yuil N°1* (Republic of Korea, 1995) and the *Sea Empress* (United Kingdom, 1996) incidents.

48th session

The 48th session of the Executive Committee was convened to consider questions relating to the *Sea Empress* incident. In addition, the Committee continued its examination of the *Haven* incident, and considered also the *Seki* incident (United Arab Emirates, 1994).

Mr Willem Oosterveen

49th session

At its 49th session, the Executive Committee continued its consideration of the *Haven*, *Aegean Sea*, *Braer*, *Seki* and *Sea Empress* incidents. The Committee also examined certain aspects of the *Kihnu* incident (Estonia, 1993).

50th session

The Executive Committee at its 50th session continued its consideration of the *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5*, *Seki*, *Yuil N°1* and *Sea Empress* incidents. The Committee also discussed the *Sea Prince* and the *Yeo Myung* incidents (both Republic of Korea, 1995). The Committee was informed of the situation in respect of claims arising out of other incidents involving the 1971 Fund and took note of the settlements made by the Director.

51st session

At its 51st session, the Executive Committee examined the policy followed by the 1971 Fund in its use of experts and endorsed that policy.

5 ADMINISTRATION OF THE IOPC FUNDS

5.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat. Until 15 May 1998, the 1971 Fund Secretariat will administer also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat will be created, and it will thereafter administer both the 1971 Fund and the 1992 Fund.

At the end of 1996 the joint Secretariat of the IOPC Funds was composed of the Director and 14 other staff members.

The IOPC Funds use external consultants to provide legal or technical advice. In three cases (the *Aegean Sea*, *Braer* and *Sea Empress* incidents), the 1971 Fund and the P & I insurer involved have jointly set up local claims offices. The *Braer* office was closed in July 1995, whereas the *Aegean Sea* and *Sea Empress* offices are still in operation. These offices have enabled a more efficient handling of the great numbers of claims submitted.

In the light of the changing nature of the work of the Secretariat, the need to administer two Funds, and the workload on staff members, the 1971 Fund Assembly instructed the Director, in October 1996, to undertake a review of the working methods within the Secretariat, with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the IOPC Funds.

5.2 Financial statements

1971 Fund

The financial statements of the 1971 Fund for the period 1 January to 31 December 1995 were approved by the 1971 Fund Assembly in October 1996. Statements summarising the information contained in the 1971 Fund's audited financial statements for this period are given in Annexes II - XIII to this Report.

As in previous years, the 1971 Fund's 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 1995 are reproduced in full as Annexes XIV and XV.

In previous years, the Auditor had limited his examination in respect of claim settlements to seeing that the 1971 Fund had followed satisfactory procedures in reviewing the claims received and that properly stated accounts had been drawn up for each incident. As regards the 1995 financial year, the Auditor lifted this restriction since he undertook a detailed examination of the claims handling procedures, the 1971 Fund's use of experts and its accounting policies with respect to claims expenditure.

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 1971 Fund exceeds one million Special Drawing Rights (SDR), at present approximately £850 000.

The total income for the General Fund (Annex III) in 1995 was £7 496 524, of which £1 038 619 was derived from interest on the investment of the 1971 Fund's assets (cf Section 5.3). Initial contributions in respect of contributors in four Member States totalled £125 660. Annual contributions of £5 935 049 accounted for the major part of the General Fund's income. The

administrative expenditure in 1995 totalled £1 024 802, and expenditure on minor claims totalled £2 938 803, leaving a surplus of £3 563 333 at the end of 1995.

There were no transactions of significance during 1995 in respect of the *Kasuga Maru N°1* Major Claims Fund or the *Rio Orinoco* Major Claims Fund (Annexes IV and V). The balances on these Major Claims Funds as at 31 December 1995 were £389 734 and £1 363 008, respectively.

The *Haven* Major Claims Fund (Annex VI) had a yield of £1 618 858 on the investment of its assets. Payments of fees and expenses totalled £777 986, leaving a balance on this Major Claims Fund of £29 156 430 as at 31 December 1995.

The *Aegean Sea*, *Keumdong N°5* and *Toyotaka Maru* Major Claims Funds (Annexes VII, X and XI) received during the year contributions totalling £14 971 787, £9 926 332 and £8 907 469, respectively. Compensation payments were made from the *Aegean Sea* and *Toyotaka Maru* Major Claims Funds for £2 028 253 and £4 280 631, respectively, whereas no such payments were made from the *Keumdong N°5* Major Claims Fund. No contributions were received in 1995 in respect of the *Braer* and *Taiko Maru* Major Claims Funds (Annexes VIII and IX). However, compensation payments were made totalling £6 461 809 and £46 713, respectively. As at 31 December 1995 the balances on the *Aegean Sea*, *Taiko Maru*, *Keumdong N°5* and *Toyotaka Maru* Major Claims Funds were £33 842 451, £3 395 410, £11 957 808 and £4 651 365, respectively. The deficit on the *Braer* Major Claims Fund at the year end was £7 794 155.

The balance sheet of the 1971 Fund as at 31 December 1995 is reproduced in Annex XII. The net assets amounted to £15 388 781. Details of the contingent liabilities of the 1971 Fund are given in a schedule to the financial statements. As at 31 December 1995 the contingent liabilities were estimated at £368 097 764 in respect of claims for compensation arising from 20 incidents.

As regards the *Haven* incident (Italy, April 1991), claims had been submitted totalling approximately £670 million as at 31 December 1995. The estimated contingent liabilities for this incident were £37 385 610, based on the assumption that the maximum amount payable by the 1971 Fund under Article 4.4 of the 1971 Fund Convention, *viz* 900 million (gold) francs (including any amount paid by the shipowner under the 1969 Civil Liability Convention), should be converted into national currency on the basis of 15 (gold) francs equalling one SDR. In March 1996, the Court of Appeal confirmed a ruling by the Court of first instance in Genoa in charge of the limitation proceedings that the maximum amount payable by the 1971 Fund should be calculated by the application of the free market value of gold, which gives an amount of LIt 771 398 million (£296 million), instead of LIt 102 644 million (£39 million) as maintained by the 1971 Fund, calculated on the basis of the SDR. The 1971 Fund will appeal to the Supreme Court of Cassation against the Court of Appeal's decision. This issue is dealt with in more detail in Section 8.2.

The financial statements of the 1971 Fund for the period 1 January to 31 December 1996 will be submitted to the External Auditor in the spring of 1997, and will be presented to the 1971 Fund Assembly for approval at its session in October 1997. These accounts will then be reproduced in the IOPC Funds' 1997 Annual Report.

1992 Fund

The financial statements of the 1992 Fund for the period 30 May to 31 December 1996 will be submitted to the External Auditor in the spring of 1997, and will be presented to the 1992 Fund Assembly for approval at its session in October 1997. These statements will then be reproduced in the IOPC Funds' 1997 Annual Report.

5.3 Investment of funds

1971 Fund

In accordance with the 1971 Funds' Financial Regulations, the Director is responsible for the investment of any funds which are not required for the short-term operation of the 1971 Fund. In accordance with these Regulations, in making any investments all necessary steps are taken 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. Investments may be made with banks, discount houses and building societies which satisfy certain criteria as to their financial standing.

Investments were made by the 1971 Fund during 1996 with a number of banks, discount houses and building societies in the United Kingdom. As at 31 December 1996 the 1971 Fund's portfolio of investments totalled £115 million. This amount was made up of the assets of the 1971 Fund, the Staff Provident Fund and a credit balance of £539 000 on the contributors' account.

The base rate in London, which stood at 6½% at the end of 1995, was lowered in stages to 5¾% on 6 June 1996, and raised to 6% on 30 October 1996. Interest due in 1996 on the investments amounted to £6.5 million on an average capital of £114 million.

In October 1994 the 1971 Fund Assembly established an Investment Advisory Body, consisting of experts with specialist knowledge in investment matters, to advise the Director in general terms on such matters. During 1996 the Body *inter alia* reviewed the 1971 Fund's use of forward contracts and options and the internal procedures for investment and cash management controls, and assisted the Director in establishing internal foreign exchange transaction guidelines.

1992 Fund

During 1996 the 1992 Fund operated on the basis of funds made available by the 1971 Fund, to be repaid on 1 February 1997 when the 1992 Fund has received contributions. The 1992 Fund therefore made no investments during 1996.

An Investment Advisory Body for the 1992 Fund was established in October 1996. The 1992 Fund Assembly appointed the members of the 1971 Fund's Investment Advisory Body as members also of its own Body.

Investment limits

The 1971 Fund Assembly had previously decided that the 1971 Fund's investments in any one institution should not normally exceed 25% of its assets, subject to a maximum of £8 million for each institution. The Assemblies of the 1971 Fund and the 1992 Fund decided in June 1996 to increase the maximum amount to be placed with any one institution to £10 million, provided that this limit should apply to the aggregate of the investments by the two Funds in the institution in question, whereas the 25% limit should continue to apply to the assets of each Organisation.

6 CONTRIBUTIONS

6.1 The contribution system

Basis for levy of contributions

The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, 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 the Governments of Member States. Contributions are paid by the individual contributors directly to the IOPC Funds. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

At its session in October 1996 the 1971 Fund Assembly again 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 the 1971 Fund's 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 Fund's Internal Regulations.

As a result of the problems experienced by the 1971 Fund due to the non-submission of oil reports, the 1992 Fund Assembly instructed the Director to study possible mechanisms which could be adopted to impose sanctions on States in such cases. He was instructed to examine in particular whether, for contributors in States which had not submitted their reports, the assessment of contributions could be made on the basis of estimated quantities.

Initial and annual contributions

The 1971 Fund has initial and annual contributions. The 1992 Fund has only annual contributions.

Initial contributions are payable when a State becomes a Member of the 1971 Fund. Contributors pay a fixed amount per tonne of contributing oil received during the year preceding that in which the 1971 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 31 December 1996 corresponded to £0.0026633.

Annual contributions are levied by each Organisation to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year and, in the case of the 1971 Fund, payments of indemnification.

Capping of contributions to the 1992 Fund

The 1992 Fund Convention introduced a system for capping contributions for a certain period. If the total contributions in respect of a levy to the General Fund or a Major Claims Fund for all contributors in any one Member State of the 1992 Fund exceed 27.5% of the total amount of that particular levy, then the levies for contributors in that State are reduced pro rata so that they

together equal 27.5% of the total levy to that fund. The total amount deducted from contributors in the capped State is borne by all other contributors to the fund in question.

The capping of contributions to the 1992 Fund will cease to apply in respect of decisions to levy contributions taken by the 1992 Fund Assembly after the reports on contributing oil submitted by Member States indicate that the total quantity received in all Member States exceeds 750 million tonnes. This quantity will probably be reached in November 1997. The capping procedure was applied to the 1996 annual contributions levied by the Assembly in October 1996 and will also apply to the 1997 annual contributions to be levied by the Assembly in October 1997.

Deferred invoicing system

In June 1996 the Assemblies introduced a system of deferred invoicing for the two Organisations. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower total amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary. The system was applied by both the 1971 Fund and the 1992 Fund for their 1996 annual contributions (cf Sections 6.3 and 6.5).

6.2 1971 Fund: 1995 annual contributions

In October 1995 the Assembly had decided to levy 1995 annual contributions to the General Fund and three Major Claims Funds totalling £43 million, as indicated below.

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	0.0143352
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

As at 31 December 1996, 99.4% of the 1995 annual contributions, which were due on 1 February 1996, had been paid.

In October 1995 the Assembly had considered that the amounts remaining on the *Kasuga Maru N°1* and *Rio Orinoco* Major Claims Fund were substantial. It was therefore decided, pursuant to the Internal Regulations, to reimburse the contributors to each of those Major Claims Funds, on 1 February 1996, as indicated below, and to transfer the balance to the General Fund. These reimbursements were duly made on 1 February 1996.

Fund	Date of incident	Oil receipts: applicable year	Total reimburse-ment £	Reimburse-ment per tonne £
Kasuga Maru N°1 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

6.3 1971 Fund: 1996 annual contributions

In October 1996 the Assembly decided not to levy any 1996 annual contributions to the General Fund. It was decided that £5 million should be credited to contributors following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million.

The Assembly also decided to levy 1996 annual contributions to three Major Claims Funds for a total amount of £85 million.

It was decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds should be due for payment by 1 February 1997, and that the balance of these levies and the entire levy to the *Keumdong N°5* Major Claims Fund should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1997.

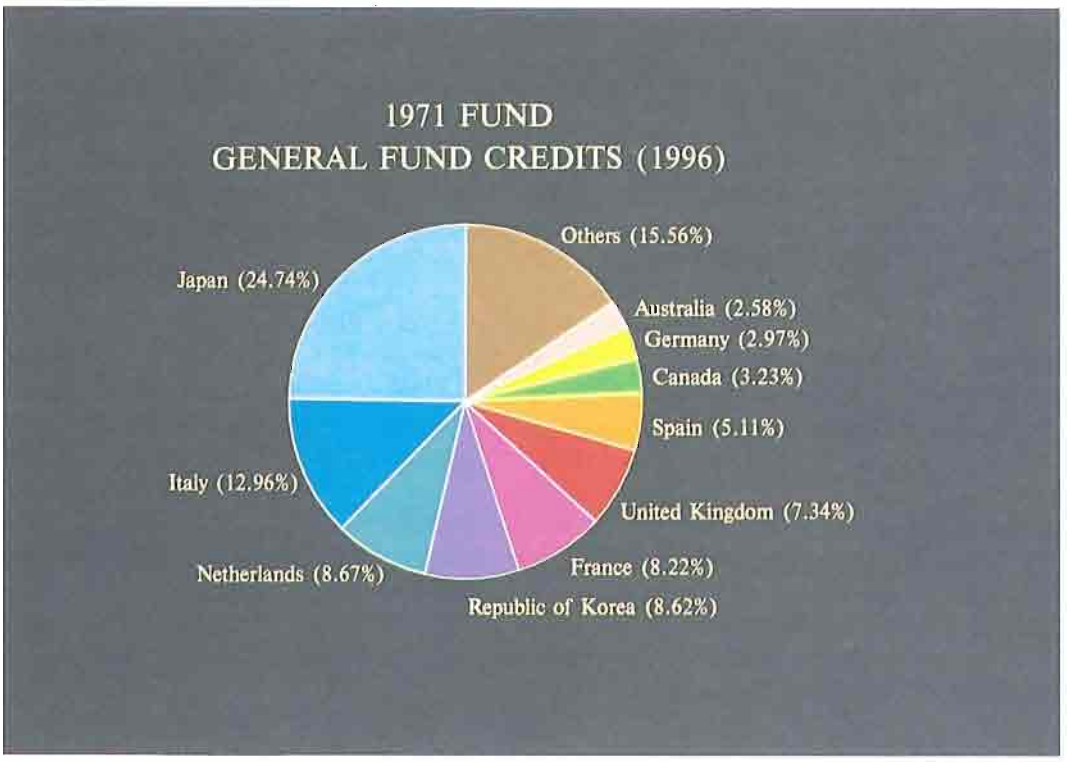
The Assembly considered that the amounts remaining on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds were substantial. The Assembly therefore decided, pursuant to the Financial Regulations, to reimburse the contributors to each of those Major Claims Funds, as indicated below, and to transfer the balance to the General Fund. It was also decided these reimbursements should be made on the date of payment of the deferred levy, if and to the extent that such a deferred levy is made later in 1997.

The Assembly's decisions are summarised in the table below, which also indicates the amount payable (or to be reimbursed) per tonne of contributing oil.

Fund	Oil year	Total levy £	Payment by 1 February 1997		Maximum deferred levy	
			Levy £	Levy per tonne £	Levy £	Estimated levy per tonne £
Keumdong N°5	1992	5 000 000	0	0.0000000	5 000 000	0.0046421
Sea Prince/Yeo Myung/Yuil N°1	1994	50 000 000	13 000 000	0.0108112	37 000 000	0.0307703
Sea Empress	1995	30 000 000	10 000 000	0.0084346	20 000 000	0.0168692
Total		85 000 000	23 000 000		62 000 000	

Fund	Oil year	Total reimburse-ment £	Credit on 1 February 1997		Deferred reimbursement	
			Reimbursement £	Reimbursement per tonne £	Reimbursement £	Estimated reimbursement per tonne £
General	1995	5 000 000	5 000 000	0.0042173	0	0.0000000
Taiko Maru	1992	3 500 000	0	0.0000000	3 500 000	0.0032494
Toyotaka Maru	1993	4 700 000	0	0.0000000	4 700 000	0.0042646
Total		13 200 000	5 000 000		8 200 000	
Grand total		71 800 000	18 000 000		53 800 000	

Of the 1996 annual contributions, £142 097 had been received as at 31 December 1996.



The 1996 General Fund credit is based on the quantities of contributing oil received in 1995 in States which are Members of the 1971 Fund (Annex XVI). The shares of the 1996 reimbursements from the General Fund in respect of Member States are illustrated by the chart above.

6.4 1971 Fund: Annual contributions over the years

The payments made by the 1971 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 has fluctuated from one year to another, as illustrated in the table opposite.

As for contributions levied by the 1971 Fund in respect of previous years, £1.1 million was outstanding as at 31 December 1996. Of the arrears, 36% was owed by contributors in the former Union of Soviet Socialist Republics and the former Yugoslavia.

In October 1996 the Assembly expressed its satisfaction with the situation regarding the payment of contributions.

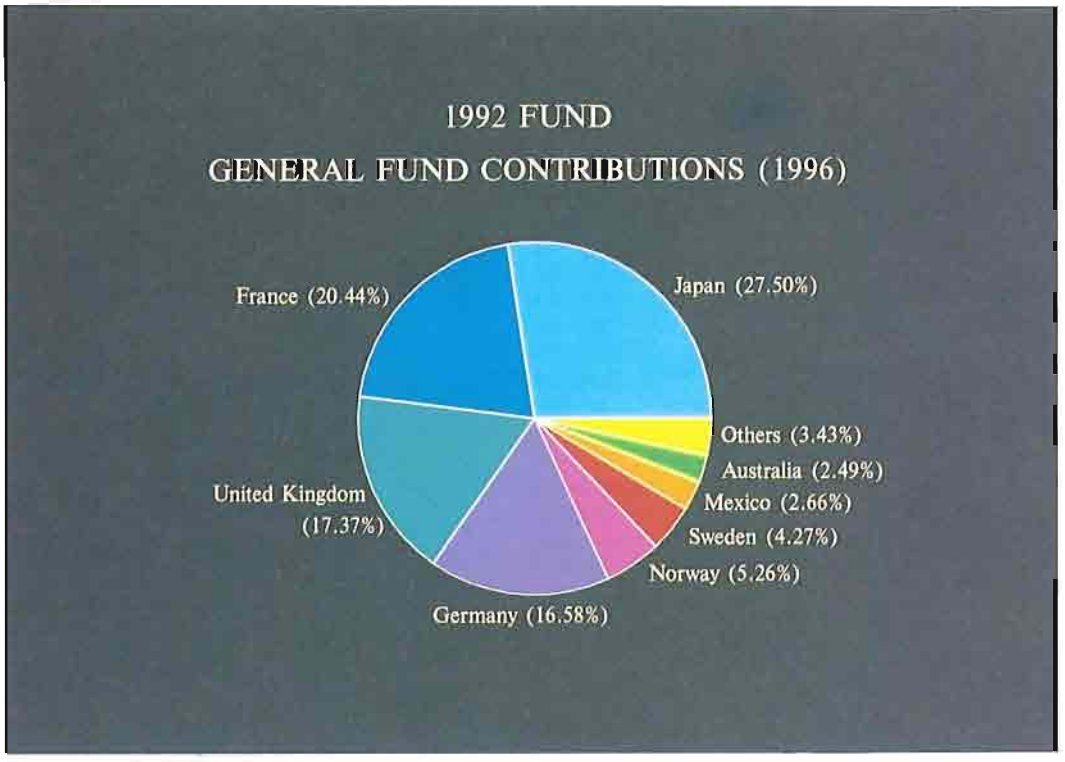
Year	General Fund £	Major Claims Funds £	Total Levy £
1979	750 000	0	750 000
1980	800 000	9 200 000	10 000 000
1981	500 000	0	500 000
1982	600 000	260 000	860 000
1983	1 000 000	23 106 000	24 106 000
1984	0	0	0
1985	1 500 000	0	1 500 000
1986	1 800 000	0	1 800 000
1987	800 000	400 000	1 200 000
1988	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

6.5 1992 Fund: 1996 annual contributions

In October 1996 the 1992 Fund Assembly decided to levy 1996 annual contributions to the General Fund for a total of £7 million, of which £4 million was to be paid by 1 February 1997. It was decided that the balance of this levy should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1997. The levy of £4 million corresponded to £0.0110440 per tonne of contributing oil. No levy was made to any Major Claims Fund.

Using the levy per tonne indicated above, the total contributions payable in respect of contributors in Japan would have exceeded 27.5% of the total levy of £4 million (£1 100 000). It was therefore necessary to reduce pro rata the contributions payable by contributors in that State so that they together equalled 27.5% of the total levy (cf Section 6.1). The total amount deducted from contributors in Japan had to be borne by all other contributors to the General Fund.

The 1996 General Fund levy is based on the quantities of contributing oil received in 1995 in States which are Members of the 1992 Fund (Annex XVII). The shares of the 1996 annual contributions to the General Fund in respect of 1992 Fund Member States are illustrated by the chart shown overleaf.


1992 FUND
GENERAL FUND CONTRIBUTIONS (1996)
France (20.44%)
Japan (27.50%)
Others (3.43%)
Australia (2.49%)
Mexico (2.66%)
Sweden (4.27%)
Norway (5.26%)
Germany (16.58%)
United Kingdom
(17.37%)

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 those 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 industries concerned decided that the voluntary agreements would not be renewed when their present terms ended on 20 February 1997. It was believed by these industries 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. The decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of the 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 industries considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet become Parties to the Protocols.

As a result, victims of oil pollution damage will no longer be able to receive any compensation from the voluntary industry schemes for incidents occurring after 20 February 1997.

8 SETTLEMENT OF CLAIMS

8.1 Overview

1971 Fund claims settlements 1978 – 1996

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 1996, been involved in the settlement of claims arising out of 77 incidents. The total compensation paid by the 1971 Fund to date amounts to some £132 million.

The 1971 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	1971 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 1971 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 *Honam Sapphire* and the *Sea Empress* incidents, so far payments have been made only by the shipowner or his insurer.

Ship	Place of Incident	Year	Payments
Haven	Italy	1991	£12 667 000
Aegean Sea	Spain	1992	£8 231 700
Braer	United Kingdom	1993	£46 228 584
Keumdong N°5	Republic of Korea	1993	£4 529 645
Sea Prince	Republic of Korea	1995	£11 588 788
Yuil N°1	Republic of Korea	1995	£1 354 805
Honam Sapphire	Republic of Korea	1995	£4 222 000
Sea Empress	United Kingdom	1996	£5 080 200

Annex XVIII to this Report contains a summary of all incidents for which the 1971 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 1971 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 1971 Fund following oil spills. In several recent cases the total amount of the claims submitted greatly exceeds the maximum amount payable under the 1971 Fund Convention. Claims have also been presented which in the 1971 Fund's view do not fall within the definition of pollution damage laid down in the Conventions. There have furthermore been claims which, although admissible in principle, are for amounts which the Fund considers greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings. In these circumstances, it is becoming increasingly difficult for the 1971 Fund to achieve its aim of providing prompt payment for admissible claims.

Incidents in 1996 involving the 1971 Fund

During 1996 five incidents occurred that have given or may give rise to claims against the 1971 Fund, namely the *Toko Maru* and *Kugenuma Maru* incidents which occurred in Japan, the *Sea Empress* which took place in the United Kingdom, the *N°1 Yung Jung* which occurred in the Republic of Korea, and the *Kriti Sea* which happened in Greece.

On 23 January 1996, while the *Toko Maru* was at anchor in Japan, a gravel carrier struck the port side of the ship, which was carrying 2 000 tonnes of heavy fuel oil. One of the *Toko Maru*'s tanks was damaged and four tonnes of oil spilled into the sea. Claims for the cost of clean-up operations and fishery damage have been paid by the shipowner's insurer for a total amount below the limitation amount applicable to the ship. It is probable that the 1971 Fund will not be called upon to pay any compensation.

The *Sea Empress* ran aground in the United Kingdom on 15 February 1996. The ship was carrying a cargo of approximately 130 000 tonnes of crude oil. As a result of the grounding several of the ship's tanks were severely damaged, and some 6 000 tonnes of its cargo spilled immediately. During unsuccessful attempts to refloat the tanker, further spills of substantial quantities of oil occurred. The *Sea Empress* was finally refloated on 21 February, and the remaining cargo transferred. It is estimated that a total of some 72 000 tonnes of oil escaped. Substantial claims have already been submitted, and over £5 million has been paid in compensation. Further claims for significant amounts are expected.

On 6 March 1996, while the *Kugenuma Maru* was loading heavy fuel oil at an oil terminal in Japan, a small quantity of oil overflowed from the cargo tank and spilled into the sea due to the mishandling of the valve used for loading. Clean-up operations were completed the same day. Claims for the cost of these operations have been settled.

The *Kriti Sea* spilled 20 - 50 tonnes of crude oil while discharging at an oil terminal in Greece on 9 August 1996. Claims totalling Drs 2 000 million (£4.7 million) have been presented. These claims relate to the cost of clean-up operations, damage to fishery equipment, and loss of income suffered by fishermen and the tourism industry.

While taking shelter from an approaching typhoon, the *N°1 Yung Jung* grounded on a submerged uncharted rock on 15 August 1996 in the Republic of Korea, spilling 28 tonnes of medium fuel oil. Claims for the cost of clean-up operations and for cleaning nearby vessels are being examined. Claims for fishery damage are expected.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 1996 there were outstanding third party claims in respect of 12 incidents involving the 1971 Fund which had occurred before 1996, namely the *Haven*, *Aegean Sea*, *Braer*, *Kihnu*, *Keumdong N°5*, *Iliad*, *Dae Woong*, *Sea Prince*, *Yeo Myung*, *Shinryu Maru N°8*, *Yuil N°1* and *Honam Sapphire* incidents, as well as claims following pollution from an unknown source in Morocco. The situation in respect of some 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 have been submitted to the Court of first instance in Genoa. The judge in the Court of first instance in Genoa, who is in charge of the limitation proceedings in the *Haven* case, determined the admissible claims for compensation ("stato passivo"). The claims admitted by the judge totalled approximately £78 million (plus interest and compensation for monetary devaluation), and included a claim by the Italian Government relating to environmental damage for an amount of £16.8 million. The 1971 Fund has lodged opposition in respect of a number of claims.

The aggregate amount of the claims greatly exceeds the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 900 million (gold) francs, which in the 1971 Fund's view corresponds to 60 million Special Drawing Rights (SDR) or LIt 102 644 million (£39 million). However, the Court of first instance in Genoa fixed the maximum amount payable by the 1971 Fund at LIt 771 398 million (£296 million), calculated on the basis of the free market value of gold. In a judgement rendered in March 1996, the Court of Appeal confirmed the position taken by the Court of first instance. The 1971 Fund will appeal against the Court of Appeal's judgement to the Supreme Court of Cassation.

The 1971 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 1971 Fund on or shortly after 11 April 1994.

In June 1995, the Executive Committee instructed the Director to continue negotiations with the claimants in the *Haven* case and authorised him to agree, on behalf of the 1971 Fund, to a global settlement within the framework of a total amount of LIt 137 643 800 000 (£53 million), on certain terms and conditions. That amount would include an *ex gratia* payment (LIt 25 000 million or £9.6 million) to be made by the shipowner's insurer. Agreements on the admissible quantum of the respective claims have been reached between the shipowner and his insurer and the great majority of the Italian claimants, and most of them have been paid in full by the insurer. Agreements have also been reached with all French claimants and with the Principality of Monaco. Agreements have not yet been reached with the Italian Government and a few Italian clean-up contractors.

Following the French Government's undertaking to use the agreed claim of the French State as security, the 1971 Fund paid compensation to 33 public bodies in France (other than the State) for a total of £1.4 million. Two Italian claimants whose claims were not considered to be time-barred were paid by the 1971 Fund, following the submission of a bank guarantee which gives the Fund adequate protection against overpayment.

Claims arising from the *Aegean Sea* incident (Spain, December 1992) have been submitted for a total amount of some £111 million. The 1971 Fund has paid approximately £4.2 million in compensation, and the shipowner's P & I insurer has paid some £4.0 million. In April 1996, the

Criminal Court in La Coruña rendered a judgement dealing with both the criminal liability of the master and pilot of the *Aegean Sea* and a number of claims for compensation. The Court accepted claims for a total of £3.8 million. In respect of most of the claims the Court considered that there was not sufficient evidence for it to assess the quantum of the damage suffered. For this reason, the Court referred these claims to the procedure of the execution of the judgement. The 1971 Fund has appealed against the judgement in respect of a number of claims, in particular because they did not, in the Fund's view, fall within the concepts of *pollution damage* and *preventive measures*. A number of other parties have also appealed against the judgement.

As regards the *Braer* incident (United Kingdom, January 1993), the 1971 Fund has paid approximately £41 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £1.9 million have been agreed. In addition, claims amounting to £80 million have been submitted to the Court of Session in Edinburgh. The total amount of the claims presented exceeds the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 60 million SDR. In view of the uncertainty as regards the outstanding claims, the Executive Committee decided in October 1995 to suspend any further payments of compensation. Little progress has been made in the court proceedings.

The *Keumdong N°5* incident (Republic of Korea, September 1993) has also given rise to a large number of claims which originally totalled some £127 million. All claims relating to the clean-up operations have been settled and paid for a total amount of £4.6 million. Certain claims by fishermen have been agreed for some £4.8 million. Further claims in this category, amounting to £15.9 million, are pending in court.

The claims agreed so far in respect of the *Sea Prince* incident (Republic of Korea, July 1995) total approximately £13.6 million. Further claims which could amount to some £15.7 million are being examined, and most of these claims have been filed in court.

In respect of the *Yeo Myung* incident (Republic of Korea, August 1995), claims agreed so far amount to £456 000, and further claims totalling £22 million are pending in court.

As for the *Yuil N°1* incident (Republic of Korea, September 1995), claims for clean-up operations and fishery damage have been agreed for a total of some £10.7 million. Further claims for clean-up and fishery damage amounting to some £42 million are being examined, and these claims have been filed in court.

Concerning the *Honam Sapphire* incident (Republic of Korea, November 1995), claims have been agreed so far for a total of £4.2 million. Claims totalling £37 million are being examined.

Incidents in 1996 involving the 1992 Fund

In June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore. Chemical analysis of the samples of the oil washed ashore matched the results of an analysis of samples taken from a Russian tanker, the *Kuzbass*. It has not yet been proved that the oil originated from the *Kuzbass*.

The German authorities intend to claim compensation from the owner of the *Kuzbass*. The authorities have stated, however, that if these attempts were to be unsuccessful, they would claim against the 1992 Fund. In order to obtain compensation from the 1992 Fund, the German

authorities would then have to show that the damage resulted from an incident involving one or more ships, as defined in the 1992 Civil Liability Convention.

Criteria applied by the 1971 and 1992 Funds for the admissibility of claims

The 1971 and 1992 Funds can accept only those claims which fall within the definitions of *pollution damage* and *preventive measures* laid down in the applicable Conventions. Over the years the 1971 Fund has developed certain principles on the admissibility of claims. The 1971 Fund Assembly and 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 of the 1971 Fund. The Report of the Working Group was endorsed by the 1971 Fund Assembly in October 1994.

In June 1996 the 1992 Fund Assembly adopted a Resolution to the effect that the Report of the above-mentioned Working Group of the 1971 Fund should form the basis of the 1992 Fund's policy on the criteria for the admissibility of claims, and that the criteria previously laid down by the Executive Committee of the 1971 Fund should be applied also by the 1992 Fund. In the Resolution it was also stated that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims, and a corresponding statement was made in a Resolution adopted by the 1971 Fund Assembly. For situations not covered by the criteria adopted prior to June 1996 within the 1971 Fund, the Assemblies considered that consistency of decisions between the two Organisations could be achieved through consultations between their competent bodies.

8.2 Incidents dealt with by the 1971 Fund during 1996

The following section of this Report details incidents with which the 1971 Fund has been involved in 1996. The Report sets out the developments of the various cases during 1996 and the position taken by the 1971 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 31 December 1996, except for claims paid by the 1971 Fund for which conversions have been made at the rate of exchange on the date of payment.

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.

The *Vistabella* was not entered in any P & I Club. The vessel was covered by a third party liability insurance with a Trinidad insurance company. The insurer has argued that the insurance does not cover this incident. The limitation amount applicable to the ship is estimated at FFr2 354 000 (£265 000). No limitation fund has been established. It is unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

The 1971 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 1971 Fund are time-barred.

The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government has withdrawn from the proceedings.

In a judgement rendered in 1996, the Court of first instance held that the 1969 Civil Liability Convention was not applicable, since the *Vistabella* had been flying the flag of a State (Trinidad and Tobago) which was not Party to that Convention, and instead the Court applied French domestic law. The Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer. The Court held that it was not competent to consider the 1971 Fund's recourse claim for damage caused in the British Virgin Islands. The Court awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories.

In October 1996 the 1971 Fund Executive Committee took the view that the judgement was wrong on two points. Firstly, the 1969 Civil Liability Convention which formed part of French law applied to damage caused in a State Party to that Convention, and this was independent of the State of the ship's registry. Secondly, the French courts were competent under that Convention to consider claims for damage in any State Party.

The Executive Committee decided, however, that the 1971 Fund should not appeal against this judgement as regards the applicability of the 1969 Civil Liability Convention, as it would hardly have any value as a precedent in other cases. The Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and the amount paid by the Fund for damage outside these territories was, in the Committee's view, insignificant.

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. 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, and on 14 April, after a further series of explosions, it sank in 90 metres of water, some 1.5 miles off the coast.

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. Some oil spread as far west as Hyères near Toulon in France, affecting the coast in four French departments and the Principality of Monaco.

The Italian Government and a consortium of companies known as ATI concluded a contract for pollution monitoring and clean-up. The beach clean-up activities were completed by the end of August. Increased water temperatures and wave action resulted in droplets of sunken oil rising to the surface causing limited but regular re-contamination of some beaches during the summer of 1991. As regards France, the clean-up operations at sea were carried out by the French Government and the onshore clean-up by the local authorities.

Investigation into the cause of the incident

A Panel of Enquiry for the Ligurian area carried out a formal enquiry into the *Haven* incident. In its report, the Panel discussed three possible causes of the incident but 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.

Limitation proceedings

After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991. The Court fixed the limitation amount at LIt 23 950 220 000 (£9.2 million), which corresponds to 14 million SDR. The limitation fund was established by the shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (the UK Club), by means of a bank guarantee. The 1971 Fund intervened in the limitation proceedings, pursuant to Article 7.4 of the 1971 Fund Convention.

The 1971 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 have been filed in the limitation proceedings against the shipowner.

Question of time bar

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 1971 Fund. According to Article 6.1 of the 1971 Fund Convention, claims for compensation against the 1971 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. A claimant can avoid the time bar as regards the 1971 Fund by bringing legal action against the Fund or by making a notification to the Fund under Article 7.6 of the 1971 Fund Convention. Only a few claimants fulfilled the requirements of Article 6.1 by notifying the 1971 Fund under Article 7.6, namely the French State,

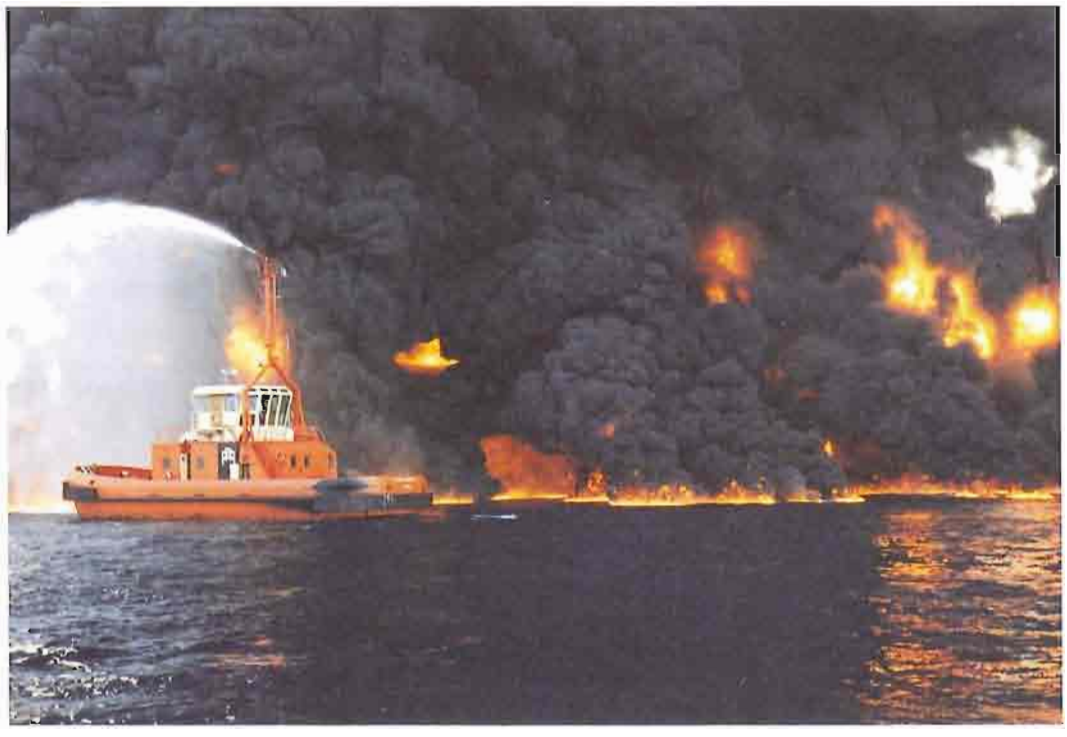
the French communes, the Principality of Monaco, a few Italian claimants, the shipowner and the UK Club.

The Executive Committee has taken the view that the claims in respect of which no formal notification was made to the 1971 Fund were time-barred, in the light of the provisions in Article 6.1 of the 1971 Fund Convention. The 1971 Fund has therefore taken the necessary steps to preserve its right to invoke the defence of time bar, although the claimants have not taken action against the Fund.

Claims for compensation

Some 1 350 Italian claimants presented claims relating to damage other than damage to the environment. These claims totalled approximately LIt 765 000 million (£294 million), including a claim by the Italian Government for LIt 261 000 million (£100 million). The Government's claim included *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. There were also claims by a number of other clean-up operators.

The Italian Government also presented a claim relating to damage to the marine environment. The items of this claim which have been quantified by the claimant total LIt 883 435 million (£340 million) and relate to restoration of phanerogams, wreck removal and damage restored by the natural recovery of the resources (sea and atmosphere). The claim contained in addition several important items where the quantification was left to the Court to decide on the basis of equity, namely the consequences of beach erosion caused by damage to phanerogams, and irreparable damage to the sea and the atmosphere.



Haven incident - tanker ablaze
(photograph: Murray Fenton & Associates)

Also, the Region of Liguria, two provinces and 14 municipalities 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. Some of the municipalities also claimed for loss of touristic image.

A number of yacht owners and fishermen claimed compensation for contamination of their property. Over 1 000 individuals and small businesses (fishermen, hotel operators, shopkeepers and restaurateurs) claimed compensation for loss of income. There were a large number of claims in this category which have not been supported by any documentation or only by insufficient documentation.

In 1995 and 1996 agreements on the quantum of the claims were reached between the shipowner/UK Club and most of the Italian claimants, for a total of LIt 21 500 million (£8.3 million). It was not possible to reach agreements with the Italian Government, some of the local authorities and four clean-up contractors.

The French Government, 31 French municipalities and two other public bodies in France presented claims for clean-up costs totalling FFr79 550 576 (£10.3 million). Agreements on the quantum were reached in respect of these claims at FFr23 240 193 (£3.0 million). The Principality of Monaco presented a claim for clean-up operations for FFr321 735 (£36 150), and agreement as to the quantum was reached at FFr270 035 (£30 300).

List of established claims ("stato passivo")

In April 1996, the judge in the Court of first instance in Genoa in charge of the limitation proceedings rendered a decision in which he determined the admissible claims for compensation ("stato passivo"). The list of admissible claims was established in the context of the limitation proceedings initiated by the shipowner and the UK Club.

In his decision the judge made an observation to the effect that the 1971 Fund's position in respect of the time bar issue was clearly groundless, since in his view the intervention of the 1971 Fund under Article 7.4 of the 1971 Fund Convention had the same effect as a notification under Article 7.6.

The claims in respect of which agreement on quantum had been reached between the claimants and the shipowner/UK Club were admitted for the agreed amounts, since these amounts had not been challenged.

The judge stated that the numerous claims which were not documented could not be admitted.

The judge held that the municipalities were not entitled to compensation for "damage to touristic image". In his view, only individual tourism operators could claim compensation for such loss of image to the extent that this resulted in a loss in the claimant's economic activity. He stated that the municipalities could be entitled to compensation for the cost of promoting tourism to the extent that it was proved that, as a consequence of the incident, such expenses were not effective, or that expenses were incurred after the incident to promote the touristic image.

As regards the claims for environmental damage, the 1971 Fund has maintained the position that claims relating to non-quantifiable elements of damage to the environment cannot be admitted. In its interpretation of the 1969 Civil Liability Convention and the 1971 Fund Convention, the 1971 Fund Assembly has rejected 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 can be granted only if a claimant has suffered quantifiable economic loss.

The judge held that the 1969 Civil Liability Convention and the 1971 Fund Convention did not exclude environmental damage. He stated that only the State of Italy was entitled to compensation for environmental damage and that consequently the local authorities had no right to such compensation. He took the view that the environmental damage could not be quantified according to a commercial or economic evaluation. He assessed this damage as a proportion (approximately ⅓) (Llt 40 000 million or £15.4 million) of the cost of the clean-up operations. The amount arrived at by this assessment would, in his view, represent the damage which was not repaired by these operations.

The list of admissible claims established by the judge is summarised in the following table:

	Summary	Llt	£
A	Fishermen	8 933 580 000	3 400 000
B	Yachts	71 740 000	27 600
C	Tourism and tourism related businesses	4 705 136 915	1 800 000
D	Contractors (other than ATI)	16 409 580 800	6 300 000
E	State of Italy	145 260 722 046	58 000 000
F	Regions, provinces and municipalities	1 457 371 664	560 000
G	Claimants in France and Monaco	7 345 324 036	2 800 000
H	Shipowner/UK Club	2 271 977 367	873 000
	Total	186 455 432 828	73 760 600

The judge's decision was rendered after proceedings of a summary nature. The judge remarked that the amounts included in the stato passivo which had not been agreed by the parties should be considered as an indication to the parties of a balanced solution which could form the basis of an agreement to avoid lengthy and costly proceedings.

Oppositions to the stato passivo

Oppositions to the judge's decision have been lodged by the 1971 Fund, the Italian Government, one Italian contractor, the shipowner and the UK Club. The oppositions will be considered by the Court of first instance, composed of three judges. It may take several years until the Court renders its judgement.

In its opposition the 1971 Fund has referred to the question of time bar. The 1971 Fund has maintained that the judge was wrong in rejecting the defence of time bar. The Fund has pointed out that no defence of time bar was raised by the Fund in the limitation proceedings, because no action against the Fund had been started or could have been started in those proceedings. The Fund has stated that the action against it must be brought separately from the actions against the shipowner and the UK Club, and that this follows from Article 8 of the 1971 Fund Convention,

which refers only to Articles 7.1 and 7.3 and not to Articles 7.4 and 7.6. For these reasons the 1971 Fund, which intervened in the limitation proceedings under Article 7.4, has reiterated in the opposition that the Fund's intervention in the limitation proceedings was without prejudice to the defence of time bar which the Fund had intended to raise at the appropriate time, ie when an action was brought against the Fund.

The 1971 Fund has lodged opposition in respect of *inter alia* the following issues.

The 1971 Fund has requested that the Italian Government's claim for environmental damage should be rejected. The judge based his decision on certain provisions in an Act of 1986 which created the Ministry of the Environment. The 1971 Fund has maintained that the liability for environmental damage laid down in these provisions is not applicable in relation to the Fund, because that liability is based on negligence and the compensation, according to these provisions, must be assessed by the judge on the basis of the degree of the fault of the wrongdoer, the profit achieved by him and the cost necessary for the restoration of the environment. The Fund has stated that according to Italian case law and legal doctrine, the compensation awarded under this Act has the nature of a sanction and the damage thus assessed is punitive. In the Fund's view, these criteria for assessment are inconsistent with the strict liability of the owner and the Club under the 1969 Civil Liability Convention as well as with the position of the Fund under the 1971 Fund Convention. The Fund has stated that the judge has in this way reached the absurd conclusion that compensation for environmental damage increases with the increase of the cost of the clean-up operations.

The major part of the clean-up operations was carried out by a consortium of companies (ATI) under a contract with the Italian Government. Without prejudice to the defence of time bar, the 1971 Fund has contested the claim of the State in respect of the payments under the ATI contract on the ground that this contract is null and void. In any case, the Fund considers that the tariffs which were laid down in the ATI contract were too high and that, in addition, some of the measures undertaken were unreasonable.

The judge held that the amounts determined by him should be increased by interest at the legal rate (10% per annum) from the date when the respective damage was sustained to the date of payment. He also held that these amounts should be increased to compensate for devaluation, on the basis of an official index relating to the cost of living, which for the period April 1991 - February 1996 (the latest date for which figures are available) would correspond to an increase of some 25% or, on average, 5% per annum. The 1971 Fund has argued that a total increase of 15% per annum is too high. In the Fund's view, an appropriate increase for interest and devaluation would be approximately the rate of interest on Italian treasury bonds, at present 8% per annum.

The 1971 Fund has lodged opposition in respect of claims presented by a number of local authorities relating to the cost of tourism promotion. The 1971 Fund has requested that these claims should be rejected, since the costs covered by these claims were not costs of preventive measures as defined in Article I.7 of the 1969 Civil Liability Convention.

The State of Italy has made opposition in respect of a number of items which were not accepted in full by the judge. In particular, the State has requested that compensation for environmental damage should be increased from the amount awarded by the judge, LIt 40 000 million (£15.4 million), to LIt 883 435 million (£340 million).

Method of converting (gold) francs

The amounts in the 1969 Civil Liability Convention and the 1971 Fund Convention in their original versions were expressed in (gold) francs (Poincaré francs). Under the 1969 Civil Liability Convention, the amounts expressed in (gold) francs should be converted into the national currency of the State in which the shipowner establishes 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 1969 Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the 1971 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 1971 Fund (900 million (gold) francs) into Italian Lire. The 1971 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 1971 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 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 1971 Fund Convention is defined by a reference to the 1969 Civil Liability Convention, and in the 1971 Fund's view this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto. The 1971 Fund has pointed out that the application of different units of account in the 1969 Civil Liability Convention and the 1971 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 1971 Fund, respectively, on the basis of Article 5.1 of the Fund Convention.

The judge in charge of the limitation proceedings held that the maximum amount payable by the 1971 Fund should be calculated by the application of the free market value of gold, which gives an amount of LIt 771 397 947 400 (£296 million) (including the amount paid by the shipowner under the 1969 Civil Liability Convention), instead of LIt 102 643 800 000 (£39 million), as maintained by the 1971 Fund, calculated on the basis of the SDR. After the 1971 Fund had lodged opposition, the Court of first instance (which was composed of three judges) upheld that decision.

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 1971 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 1971 Fund appealed against this judgement. In a judgement rendered in April 1996, the Court of Appeal in Genoa confirmed that the maximum amount payable under the 1971 Fund Convention should be calculated by the application of the free market value of gold. The main reasons given by the Court of Appeal were as follows:

> The 1971 Fund had maintained that, since most of the claims were time-barred *vis-à-vis* the Fund, the total amount of the claims against the Fund did not exceed 60 million SDR and that for this reason it was not necessary for the Court to take any position as to the method of conversion. The defence of time bar was rejected by the Court which held that the intervention of the 1971 Fund under Article 7.4 of the Fund Convention had the same effect as a notification under Article 7.6.
>
> The Court of Appeal took the view that the demise of the official value of gold did not allow national courts, when calculating the maximum amount payable under the 1971 Fund Convention, to substitute the SDR for the (gold) franc before the entry into force of the 1976 Protocol to that Convention. The Court also held that the entry into force of that Protocol did not apply retroactively. For this reason the Court of Appeal stated that the gold unit could be converted only at its market value.

The 1971 Fund is entitled to appeal to the Supreme Court of Cassation against the Court of Appeal's judgement within 60 days of having been formally notified of the judgement by a party to the proceedings, or within one year from the date of the judgement. So far no such notification has been received. In April 1996, the Executive Committee instructed the Director to take the necessary steps to appeal to the Supreme Court of Cassation. An appeal will be lodged early in 1997.

Search for a solution

Being convinced of the legal validity of the 1971 Fund's position in respect of the time bar issue, the Executive Committee, nevertheless, recognised in October 1994 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 such a solution must respect *inter alia* the following conditions:

- the maximum payable under the 1969 Civil Liability Convention and the 1971 Fund Convention was 60 million SDR;

- claims could be admissible only if a claimant had suffered a quantifiable economic loss, and claims for damage to the marine environment *per se* were not admissible.

Settlement proposal

In June 1995 the shipowner/UK Club offered to make available an additional amount of LIt 25 000 million (£9.6 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 1971 Fund, to a global settlement within the framework of the

amount of some LIt 137 000 million (£52 million) being made available to victims, calculated as follows:

	LIt
60 million SDR	102 643 800 000
Interest on the shipowner's limitation fund (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 would be subject to *inter alia* the following conditions:

- Except as regards the shipowner's/UK Club's *ex gratia* payment of LIt 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 have been based, and irrespective of the identity of the defendant.
- The 1971 Fund, the State of Italy and other claimants would terminate all proceedings.

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 LIt 25 000 million was entirely without prejudice and without any admission of liability of any parties in any proceedings, and was subject to certain conditions being satisfied, thereby bringing an end to all litigation in this case.

The 1971 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 1971 Fund Convention. The Club stated that the shipowner/UK Club would waive the right to indemnification provided that all the conditions of the proposed settlement were fulfilled.

Consideration by the Assembly in October 1995

At its session held in October 1995, the Assembly expressed its regret that there had been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the 1971 Fund. The Assembly stated that this was interpreted to mean that the offer had not been accepted by the Italian Government. The Assembly therefore considered that any future initiative towards a global settlement had to be taken by the claimants, including the Italian Government.

Settlements made by the shipowner/UK Club

Following the publication of the stato passivo in April 1996, the UK Club had agreed to pay directly to the Region of Liguria, the Provinces of Genoa and Savona and the 20 municipalities in Italy the whole of the *ex gratia* payment of LIt 25 000 million (£9.6 million). As a consequence, the UK Club withdrew its previous offer of the *ex gratia* payment to the Italian State. The UK Club had further offered to pay the claims of the fishermen, yacht owners and small businesses in the tourism industry in the amounts awarded in the stato passivo. The Club indicated that, with the co-operation of the 1971 Fund in respect of the claims submitted by the clean-up contractors which in the Fund's view were not time-barred, the Club would be prepared to pay all claims in accordance with the figures allowed by the stato passivo other than the claim of the State of Italy.

By the end of 1996, the UK Club had settled and paid almost all claims arising from individuals and small businesses and most of the claims from the clean-up contractors, leaving as the main outstanding claim that of the State of Italy.

Payments made by the 1971 Fund to certain claimants

The French Government had requested that the French public bodies other than the French State should be paid in full. The French Government gave an undertaking that the amount payable by the 1971 Fund to the French State for the State's accepted claim in the amount of FFr12 580 724 (£1 623 000) would form a security against overpayment by the Fund to these French claimants, whose claims had been accepted for an amount of FFr10 659 469 (£1 375 200).

When the French Government's request was considered by the Executive Committee, a number of delegations stated that the 1971 Fund should exercise great caution in agreeing to make payments against guarantees of any kind, and that this should be done only in very special cases and provided that the guarantees offered gave the 1971 Fund security against overpayment. In view of the very special situation which had arisen in the *Haven* case and the protection against overpayment which the undertaking made by the French Government would give the 1971 Fund, the Executive Committee decided, in February 1996, to instruct the Director to pay in full the claims presented by the French public bodies other than the French State for the amounts agreed. These claims were paid in April 1996.

Two Italian claimants whose claims are not time-barred offered to provide a bank guarantee to protect the 1971 Fund against overpayment, if their claims were paid. The Executive Committee authorised the Director to pay in full these two claims on condition that the claimants provided a bank guarantee which would give the 1971 Fund adequate protection against overpayment if claims were later reduced pro rata. After a bank guarantee had been provided, these claims, totalling LIt 1 582 million (£666 000), were paid in full in October 1996.

Consideration by the Assembly in October 1996

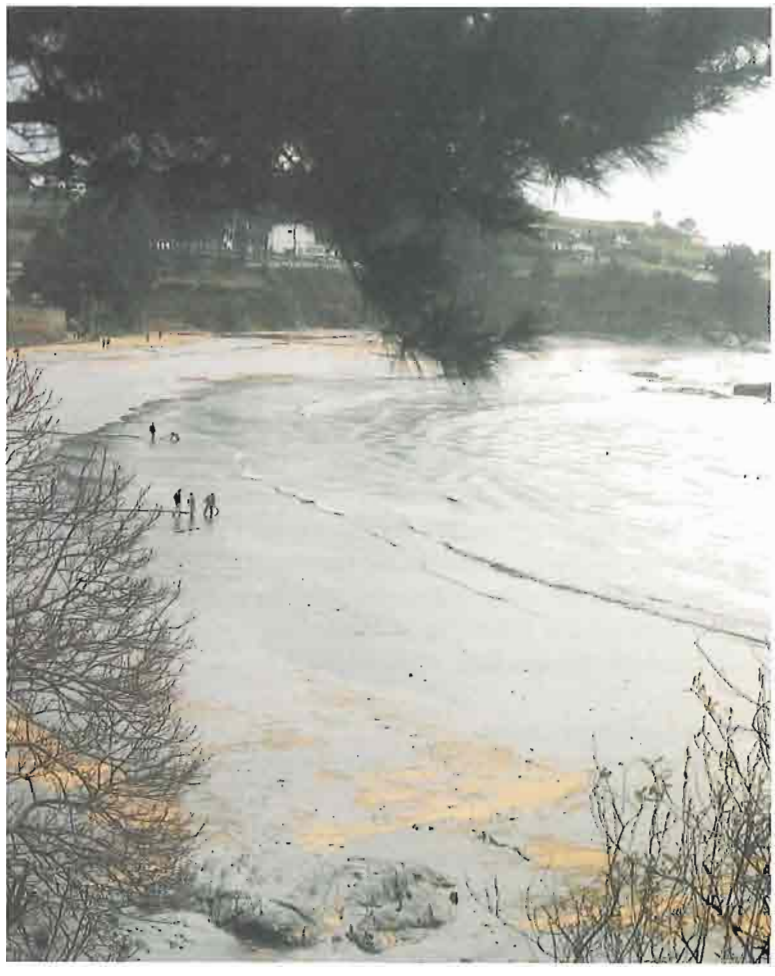
At the session of the Assembly in October 1996, the Italian delegation stressed the importance of a balanced solution to the *Haven* case which could be beneficial to all concerned. The delegation made the point that in the legal proceedings pending before the Italian court the Government had not presented any claims in excess of the limits laid down in the 1976 Protocol. It was also stated that the Protocol in this context remained the term of reference for the definition in a global settlement in the *Haven* case.

In view of the statement made by the Italian delegation, the Assembly instructed the Director to explore, with the Italian Government and the UK Club, the possibility of arriving at a global settlement which, as regards the 1971 Fund, fell within the maximum amount of compensation available, ie the difference between 60 million SDR and 14 million SDR, minus the

amounts which the 1971 Fund had paid or might have to pay to other claimants. The Assembly emphasised that such discussions were without prejudice to the 1971 Fund's position in respect of the time bar issue.

The Assembly authorised the Executive Committee to approve any global settlement within the limits set out above.

The Director has pursued his efforts to reach a global settlement, together with the UK Club. So far, no global settlement has been reached since no agreement has been concluded with the Italian Government.



Aegean Sea incident - heavily oiled beach
(photograph: Foto Blanco)

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. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained to a large extent intact. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil remained 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 either was 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. Efforts were made to remove floating oil, using vacuum trucks, skimmers and pumps.

Several stretches of coastline east and north-east of La Coruña were contaminated. The more sheltered Ría de Ferrol, which contains mudflats and saltmarshes, was also polluted. Work in the estuary involved the manual removal of oily beach material and debris, and the washing of rocks and manmade surfaces.

Claims handling

The Spanish authorities set up a public office in La Coruña to give information to potential claimants on the procedure for presenting claims and to distribute claim forms provided by the 1971 Fund. The 1971 Fund, the shipowner and the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited, UK Club) established a joint office in La Coruña to receive claims for compensation and to make preliminary technical assessments 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.

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 decided in 1993 to limit 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 partial payments could be increased to 40% of the damage suffered by the respective claimants as assessed by the 1971 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.

Claims for compensation

General situation

As at 31 December 1996, 1 277 claims had been received by the Joint Claims Office, totalling Pts 24 809 million (£111 million). Compensation had been paid in respect of 835 claims for a total amount of Pts 1 617 million (£8.2 million). Out of this amount, the UK Club had paid Pts 782 million (£4.0 million) and the 1971 Fund Pts 835 million (£4.2 million). It should be noted

that many of the claims presented to the Joint Claims Office which have not been settled have, in the 1971 Fund's view, become time-barred.

Claims had also been submitted to the Criminal Court in La Coruña, totalling some Pts 24 730 million (£110 million). These claims correspond to a great extent to those presented to the Joint Claims Office.

Some claimants have indicated that they will present their claims at a later stage in civil proceedings against the shipowner, his insurer and the 1971 Fund. These claims total Pts 26 855 million (£120 million).

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 and have claimed compensation for the costs incurred.

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. Nearly all claims for the cleaning of houses and boats have been settled.

Fishery claims

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 by August 1993. The restrictions affected both fishermen and shellfish harvesters.

Claims submitted by some 4 100 fishermen and shellfish harvesters amounted to Pts 10 364 million (£46 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).

There is an important aquaculture industry in the area affected by the spill, 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. 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.

Claims totalling Pts 4 584 million (£21 million) were submitted for losses relating to oyster, scallop, 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 1971 Fund and the UK Club made a provisional assessment of the losses sustained. As a result, partial payments were made in respect of such claims, totalling Pts 381 million (£2 million).

Claims totalling Pts 139 million (£623 000) have been submitted from three intertidal farms producing various species of clams and cockles. On the basis of the information available, the experts of the 1971 Fund and the UK Club made a provisional assessment, and one claimant received a partial payment of Pts 760 000 (£4 100).

Claims were submitted in respect of nine depuration plants, totalling Pts 2 112 million (£9.5 million). On the basis of the limited information provided, the experts of the 1971 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 138 million (£697 000).

Three onshore fish farms in the affected area have presented claims totalling Pts 2 041 million (£9.2 million) for alleged loss of stock caused by pollution. Partial payments amounting to Pts 68 million (£325 400) were made to these claimants.

Criminal proceedings in La Coruña

Criminal proceedings

Criminal proceedings were initiated in the 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 hearing took place from 9 January to 1 February 1996. At this hearing the Court considered not only the criminal aspects but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the UK Club, the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

The judgement

The Criminal Court rendered its judgement on 30 April 1996. The judgement gave a summary of the requests made by the public prosecutor and all other accusing parties. It analysed the technical and nautical aspects of the incident as well as the actions of the master and the pilot, and determined the criminal liability of the master and the pilot. The judgement finally dealt with all claims for compensation presented by the accusing parties, except the claims of those parties who had reserved their right to pursue their claims in civil proceedings at a later stage and five other claims which were not referred to in the judgement and in respect of which no evidence had been submitted.

Criminal liability of the master and the pilot

The Criminal Court found that the master had acted in an imprudent manner, without the diligence required of the captain of a vessel such as the *Aegean Sea*, as he had not carried out the manoeuvre cautiously enough in view of the place and time in which the events took place. The master was held liable for criminal negligence and sentenced to pay a fine of Pts 300 000 (£1 350). The pilot was also found to have acted in an imprudent manner. In accordance with the Regulations issued by the Port authority of La Coruña, the pilot should not have allowed the *Aegean Sea* to enter the port of La Coruña by night unless the weather was good. It was noted that the pilot knew that he was not able to board the *Aegean Sea* in the designated area, as shortly beforehand, due to bad weather, he had disembarked another vessel under his pilotage. The Court held that the pilot was guilty of criminal negligence as he was under an obligation to provide pilotage services from the exterior limits of the port but had not done so. The pilot was sentenced to pay a fine of Pts 300 000 (£1 350).

The master and the pilot have appealed against the judgement and requested that they should be acquitted.

The Spanish State has appealed against the judgement in respect of the pilot and requested that he should be acquitted since he was not, in the State's view, guilty of any criminal negligence.

Criminal Court's decision in respect of the civil liabilities

The Criminal Court held that the master of the *Aegean Sea* and the pilot were directly liable for the incident. It was also held that the UK Club and the 1971 Fund were directly liable

for the damage caused by the incident and that this liability was joint and several. In addition, the Court held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

As stated above, the master and the pilot were found criminally liable on an equal level. In the view of the 1971 Fund's Spanish lawyer, this means that the master/UK Club/1971 Fund would ultimately pay 50% of the compensation and the pilot/the Spanish State would pay the other 50%. At the Executive Committee's session in June 1996, the Spanish delegation took the view that the judgement would result in the UK Club and the 1971 Fund having to pay the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, and the Spanish State would pay compensation only in excess of that amount.

In its appeal, the Spanish State has maintained that there was no negligence on the part of the pilot and that the incident was therefore caused entirely by the negligence of the master. The State has argued that in any case the State is not subsidiarily liable for the acts of pilots, since pilots are not civil servants but belong to a separate body, the Corporation of Pilots. In addition, the State has maintained that, although ships are obliged to use a pilot in order to be allowed to enter the Port of La Coruña, this does not mean that the State is liable for the acts of the pilot.

The 1971 Fund has stated that once the criminal liability of the pilot is established, it follows that the State is subsidiarily liable. The Fund has argued that, under Spanish law, pilotage is a public service of a compulsory nature supervised by the State, which can be exercised only by those who have been approved by the State after an examination, ie pilotage is a State monopoly. The Fund has pointed out that sanctions may be imposed if a ship enters a port without a pilot.

The Executive Committee has taken the view that the policy of the 1971 Fund should be to take recourse action whenever appropriate and that the Fund should in each case consider whether it would be possible to recover any amounts paid by it to victims from the shipowner or from other parties on the basis of the applicable national law. The Committee has also stated that the 1971 Fund's decision of whether or not to take such action should be made on a case by case basis, in the light of the prospect of success within the legal system in question. The Committee decided to revert to the issue of whether the 1971 Fund should pursue a recourse action against the Spanish State after the Court of Appeal has rendered its judgement.

Criminal Court's decision in respect of claims for compensation

General observations

Under Spanish law, the claimant must prove the quantum of the damage suffered. However, if the claimant has not quantified the damage, the quantification may be deferred to the procedure for the execution of the judgement. In such a case, the court is obliged to determine the criteria to be applied for the assessment of the quantum of the damage suffered. The execution of the judgement is dealt with by the same judge who rendered the first instance judgement.

In the *Aegean Sea* case, the Criminal Court considered that in respect of most of the claims there was not sufficient evidence for it to assess the quantum of the damage suffered and for this reason referred most of the claims to the procedure for the execution of the judgement. For a number of other claims the amount awarded by the Court was only a fraction of the amount claimed. The Court did not accept the conclusions of a study carried out by the University of Santiago de Compostela as regards the global quantification of the losses allegedly suffered by fishermen, shellfish harvesters and mussel farmers, and the Court shared the 1971 Fund's view concerning the necessity for the claimants to submit supporting documentation to substantiate their losses.

The total of the claims which the Court found substantiated by acceptable evidence was about Pts 840 million (£3.8 million). In the judgement the claimants were awarded compensation as set out in the table below.

	Claimant	Claimed Amount Pts	£	Awarded Amount Pts	£
1	Spanish Government	1 154 500 000	5 200 000	Execution of judgement	
2	Xunta de Galicia	246 212 672	1 100 000	245 336 962	1 100 000
3	Council of La Coruña	690 000 000	3 100 000	24 281 515	110 000
4	Council of Culleredo	50 000 000	225 000	3 000 000	13 000
5	Council of Oleiros	1 303 158 734	5 800 000	30 644 784	140 000
6	Alponpor (clam park)	81 037 735	360 000	20 000 000	90 000
7	Fishermen	95 400 000	430 000	Execution of judgement	
8	Fish sellers and transporters	58 347 694	260 000	Execution of judgement	
9	Mussel farm, depuration plant and marketing company	579 565 938	2 600 000	Execution of judgement	
10	Mussel farm	416 842 506	1 900 000	307 027 638	1 400 000
11	Association of fishermen and shellfish harvesters	9 713 398 652	43 500 000	Execution of judgement	
12	Shellfish harvesters	420 000 000	1 900 000	Execution of judgement	
13	Association of fishermen and shellfish harvesters	2 492 422 000	11 200 000	Execution of judgement	
14	Shellfish harvesters	1 418 209 000	6 400 000	Execution of judgement	
15	Fishermen	79 085 600	350 000	Execution of judgement	
16	Shellfish harvesters	99 057 200	450 000	Execution of judgement	
17	Repsol Petroleo (owner of the cargo on board the *Aegean Sea*)	1 534 986 180	6 900 000	25 000 000	112 000
	Repsol Petroleo (recovery of oil)	249 042 393	1 100 000	Court did not take any position	
	Repsol Petroleo (clean-up operations)	184 216 423	830 000	184 216 423	830 000
	Total	20 865 482 727	94 105 000	839 507 322	3 795 000

Appeals lodged

Appeals were lodged by the 1971 Fund, the shipowner, the UK Club, the master, the pilot, the Spanish State and eight other parties. The parties have submitted responses to the appeals lodged by the other parties.

In its appeal in the *Aegean Sea* case, the 1971 Fund stated that it could be obliged to pay compensation only for damage which fell within the definitions of *pollution damage* and *preventive measures* as laid down in Articles I.6 and I.7 of the Civil Liability Convention which formed part of Spanish law. The 1971 Fund maintained that the decisions taken by the competent bodies of the Fund as regards the criteria for the admissibility of claims for compensation should be taken into account. The 1971 Fund stated in the appeal that the Criminal Court had admitted a number of claims which could not be considered as *damage caused by contamination* or as *preventive measures*. The 1971 Fund also appealed against the judgement on points where, in the Fund's view, the claim was admissible in principle but where the claimant had not substantiated his loss or the Court's assessment of the damage was incorrect.

It is expected that the Court of Appeal will render its judgement in the spring of 1997.

Some of the appeals which deal with points of principle are set out below.

Spanish State's claim

The Spanish State had presented a claim for Pts 1 154 500 000 (£5.2 million). The Court held that the quantum of the losses claimed had not been proved and for that reason referred the quantification to the procedure for the execution of the judgement.

The greater part of this claim, Pts 740 million (£3.3 million), related to the cost of placing some 286 000m^3 of sand on certain recreational beaches. During the court hearing the 1971 Fund maintained that a programme for the regeneration of beaches had been established by the State before the *Aegean Sea* incident had occurred, and that the regeneration had started prior to the incident. The 1971 Fund has drawn attention to the fact that only some 1 230m^3 of oily sand had been removed from these beaches after the *Aegean Sea* incident. For these reasons, the 1971 Fund has taken the view that the part of this claim concerning the replacement of sand was not admissible, except as regards the replacement of 1 230m^3. The Spanish State has also claimed compensation for Pts 100 million (£450 000) for certain investigations into the long-term effects of the pollution. In the 1971 Fund's view, studies of this kind are admissible only if they relate to clean-up operations or preventive measures. The 1971 Fund has appealed against the judgement in respect of these items.

Claim by the Government of the Region of Galicia (the Xunta)

The Xunta of Galicia had claimed compensation for a total amount of Pts 246 million (£1.1 million) and was awarded Pts 245 million. The 1971 Fund has appealed *inter alia* in respect of the following items.

- The cost of certain measures to monitor the quality of the air following the incident. This item was accepted by the Criminal Court. In the 1971 Fund's view, these costs do not relate to damage caused by contamination, nor to preventive measures.

- Costs of Pts 42 million (£188 000) for work carried out by 70 biologists during a period of 30 days immediately after the incident. No evidence was presented as to what these biologists did to prevent or minimise pollution damage. In the Fund's view, on the basis of the evidence available, these costs are not admissible.

- Costs of Pts 1.3 million (£5 800), relating to materials used or damaged during certain helicopter operations for the purpose of rescuing the crew of the *Aegean Sea*. The 1971 Fund takes the view that these operations do not fall within the definitions of *pollution damage* or *preventive measures*.

- Costs of Pts 57.3 million (£257 000) for scientific studies of the contamination in mussels and barnacles. In the 1971 Fund's view this item is not admissible in its entirety, since a large part of the scientific studies did not relate to clean-up operations or preventive measures.

The 1971 Fund has requested that the foregoing items should be considered in the procedure for the execution of the judgement, to give the claimant the opportunity to present evidence to show which parts of the operations related to clean-up operations or preventive measures.

In addition, the Court awarded compensation of Pts 30 million (£135 000) relating to the cost of a campaign for the promotion of Galician fish products. The Executive Committee had rejected this claim at its 42nd session, since the promotional activities were considered of too general a nature. The judgement has been appealed against by the 1971 Fund on this point also.

Claim by the local councils of La Coruña, Culleredo and Oleiros

The Councils have not appealed against the judgement, whereas the 1971 Fund has appealed in respect of the points set out below.

With respect to the Council of La Coruña, the 1971 Fund has appealed on two points. Firstly, the Criminal Court admitted certain costs for restoration of damage allegedly caused in a zone which has been totally redeveloped for reasons other than the *Aegean Sea* incident. While accepting that the claimed restoration work had not been carried out, the Court nevertheless awarded compensation in the claimed amount of Pts 12.9 million (£58 000). Secondly, the claim submitted by the Council includes certain costs incurred by the police, the fire brigade and other public services totalling Pts 11.5 million (£52 000). In the 1971 Fund's view, these items do not relate to pollution damage or preventive measures.

With regard to the Council of Culleredo, the Criminal Court accepted, *inter alia*, an item for the cost of cleaning beaches within the Ría de El Burgo. In the 1971 Fund's view, it is well established that the contamination caused by the *Aegean Sea* did not reach this area, and that for this reason the claim should be rejected.

The claim by the Council of Oleiros included the cost of a 90-day programme for an environmental assessment for Pts 25.3 million (£113 000). This claim was accepted by the Court, although no evidence was presented to show that this work fell within the definitions of *pollution damage* or *preventive measures*. The fact that the activities in question were actually carried out is not, in the 1971 Fund's view, sufficient to make the cost thereof admissible under the Conventions.

Claims by fishermen and shellfish harvesters

The only evidence submitted to support the majority of claims submitted by fishermen and shellfish harvesters was a study prepared by the University of Santiago de Compostela. This study considered the global losses for the affected zone and covered not only the periods in which fishing was banned but also the time after these bans had been lifted. No account was taken of

compensation already received or of aid payments made by the Commission of the European Union.

The 1971 Fund had disputed the validity of the Santiago University report, and in particular in respect of its conclusion that there were long term losses. The Fund had also disputed that the report contained sufficient information to allow the equitable distribution of compensation between the individuals and groups claiming through and outside the Criminal Court.

The Court did not accept the conclusions of this study and held that each claimant had to prove that he had suffered an economic loss. It stated that in the case of fishing boat owners the loss should be proved by tax reports and/or catch records. For shellfish harvesters, the Court held that compensation should be determined on the basis of exploitation plans approved by the Fisheries Council of the Xunta of Galicia prior to the incident, while members of fishing boat crews were to be compensated according to recognised minimum salary levels. The Court also held that compensation was payable only for the period during which fishing and shellfish harvesting were prohibited due to the fishing bans imposed by the Xunta of Galicia, and that aid payments received from the European Union should be deducted. All these claims were referred for quantification to the procedure for the execution of the judgement.

In this respect, the Court stated that compensation was to be calculated on the following basis:

Fishing boat crew members:	number of fishing days lost x minimum salary laid down in collective agreement
Fishing boat owners:	income lost in periods during which fishing was prevented, based on income obtained in same periods in 1990, 1991 and 1992, as shown by tax returns and/or catch records
Shellfish harvesters:	number of allowed harvesting days which had been lost during fishing bans x maximum daily catch quota.

In setting out these criteria, the Criminal Court accepted to a large extent the position of principle taken by the 1971 Fund in respect of the requirement of evidence relating to the claims submitted by the fishermen and shellfish harvesters. Nevertheless, the 1971 Fund has appealed against the method adopted by the Court for calculating the shellfish harvesters' losses, namely using the maximum allowable harvest days and quantities. The 1971 Fund has stated that it is unlikely that these maximum days and quantities could ever be realised and has pointed out that the approved exploitation plans anticipated far lower total catches.

A number of claimants have appealed in respect of the quantification of the damages on the grounds that the report prepared by the University of Santiago proves the amount of the losses suffered. The claimants have requested that the compensation should be assessed on the basis of that report. One claimant has requested a further Pts 4 500 million (£20.2 million) for long term losses subsequent to the period covered by the University report (ie up to the end of 1995) and for moral damage. The claimants have criticised the approach adopted by the Criminal Court that claims should be quantified on an individual rather than on a group basis, insisting that the University of Santiago report is indisputable and deals adequately with the distribution of the losses

between those concerned. No evidence is provided to support the amount claimed for the period beyond that considered in the University report.

Determination of the maximum amount payable by the 1971 Fund

During the hearing in the Criminal Court, a number of claimants raised the issue of the method to be applied to convert into Spanish Pesetas the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention which was expressed in (gold) francs (Poincaré francs). These claimants maintained that the amount should be converted using the free market value of gold, instead of on the basis of the Special Drawing Right (SDR), since the 1976 Protocol to the Fund Convention which replaced the franc as the unit of account by the Special Drawing Right of the International Monetary Fund had not entered into force at the time of the *Aegean Sea* incident. In support of their request, the claimants presented an opinion prepared by a Spanish law professor, but this opinion was not accepted as evidence by the Criminal Court.

In the hearing the 1971 Fund maintained that the conversion should be made on the basis of the SDR, and invoked mainly the same reasons as it had used in the court proceedings in the *Haven* case (page 45 above). The 1971 Fund drew the Criminal Court's attention to the fact that in connection with the discussion of the *Haven* incident in the Executive Committee, the Spanish delegation had mentioned that the Spanish Government had notified the Court in Genoa that it supported the Fund's position as to the method of conversion.

In the judgement, the Criminal Court stated that as regards the 1971 Fund the applicable limit was the one laid down in Article 4 of the 1971 Fund Convention.

In their appeals, the claimants referred to above requested that the Court of Appeal should fix the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention by reference to the free market value of gold.

In its response, the 1971 Fund has requested that the Court of Appeal should hold that the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention corresponded to 60 million SDR. The Fund drew the Court of Appeal's attention to the fact that, at the Executive Committee's session in February 1996 (ie after the hearing in the Criminal Court), the Spanish delegation stated that the Spanish Government had always supported the 1971 Fund's position as regards the method to be applied for the conversion.

Negotiations with claimants

At its June 1996 session, the Executive Committee instructed the Director to investigate the possibility of reaching out-of-court settlements with claimants covered by this judgement on the basis of the requirements of evidence laid down by the Court in the judgement.

In July 1996 a meeting was held between representatives of the Spanish Government and of the Xunta of Galicia and the Director, at which it was agreed that further efforts should be made to reach out-of-court settlements. To this end, it was also agreed that a meeting should be held between the experts of the parties involved to assess the evidence presented by the claimants as required by the judge.

This meeting was held in October 1996. However, only the Xunta presented further documentation, comprising additional information concerning shellfish harvesting exploitation plans. The claimants stated that the boat fishermen were unable to provide the documents requested by the Court, namely catch landing receipts and tax returns. As a result, the experts of the

1971 Fund and the Club have not been able to assess the losses of the boat fishermen in accordance with the judgement.

The lawyer representing certain fishery and shellfish harvesting claimants stated at that meeting that he would be prepared to recommend to his clients (both boat fishermen and shellfish harvesters) that they should agree to a full and final settlement at an amount calculated on the basis laid down by the Court in respect of the shellfish harvesters alone. According to the representative of the Xunta, this method gave a figure for the shellfish harvesters in the order of Pts 3 200 million (£14.3 million), whereas it appeared that the claimants arrived at a figure of Pts 3 800 million (£17.1 million). The highest estimate made by the experts engaged by the Club and the 1971 Fund of the real losses suffered by these shellfish harvesters, using the information available to them, was Pts 800 million (£3.6 million). In its calculation the Xunta used the value of the maximum allowed catch per man per day of all species named in the exploitation plans, multiplied by the number of allowed harvesting days lost as a result of the ban. It was assumed in this calculation that each shellfish harvester obtained the maximum allowed catch both from the banks authorised by the Fisheries Council for his own Cofradía's sole use and the so-called free harvesting zone available for the use of any licenced shellfish harvester. The claimants did not provide details of how they had reached the figure of Pts 3 800 million (£17.1 million).

The Executive Committee noted that in the view of the Club/Fund experts, however, the approach taken by the claimants was entirely artificial and assumed that stocks were unlimited, that meteorological conditions were always favourable and that the shellfish harvesters were physically capable of using all their harvest allowance of all the authorised species every authorised day, changing equipment and site as necessary to achieve this.

As mentioned above the 1971 Fund and the Club do not accept that the calculation of the shellfish harvesters' losses should be made using the maximum allowable harvest days and the maximum allowed quantities, and the 1971 Fund has appealed on this point. The Executive Committee reiterated the view that under the 1969 Civil Liability Convention and the 1971 Fund Convention compensation was payable only for losses actually suffered and that the claimants had to prove the amount of their loss. For these reasons, the Committee decided that the 1971 Fund could not accept the proposal for a settlement made by the claimants' lawyer.

Question of time bar

Claims for compensation against the 1971 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 1971 Fund before the expiry of the three-year period, or must notify the 1971 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 1971 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 1971 Fund.

A number of claimants in the *Aegean Sea* case had claimed compensation from the shipowner and the insurer in the criminal proceedings, as permitted under Spanish procedural law. The 1971 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 1971 Fund in these proceedings. The Committee took the view that these claims were not time-barred *vis-à-vis* the 1971 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 had 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 1971 Fund within the prescribed time period, nor notified the 1971 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 1969 Civil Liability Convention and the 1971 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 1971 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 1971 Fund.

The Executive Committee instructed the Director to study further the issue of time bar. It has been agreed with the Spanish Government that this matter should be discussed between the Government and the Director before his study is presented to the Executive Committee.

Criticism by the Spanish delegation in respect of the 1971 Fund's handling of the *Aegean Sea* incident

At the Executive Committee's sessions in June and October 1996, the Spanish delegation made statements containing criticisms of the 1971 Fund's handling of the *Aegean Sea* incident. The Spanish delegation expressed the disappointment of the Spanish administration at the insufficient payments made to the Spanish claimants. The delegation stated that the assessments made by the 1971 Fund's experts in the *Aegean Sea* case were excessively low and that the requests for evidence to substantiate the claimants' losses had been out of proportion. In particular, the Spanish delegation expressed the fear that the Spanish victims had been treated in a discriminatory manner.

The Executive Committee concluded that there was no indication that the 1971 Fund, the Director, the Secretariat or the Fund's experts had discriminated against Spain or Spanish claimants nor that they had dealt with the incident in an unfair or biased manner. The Committee stated that the Director had acted in conformity with the policy laid down by the Assembly and the Executive Committee as regards the procedures to be followed and the requirements with respect to the presentation of evidence. The Committee expressed its confidence in the Director's handling of this case. The Committee also emphasised the importance of States ensuring that the provisions of the Conventions were respected in their national law and that the rules and criteria laid down by the governing bodies of the 1971 Fund were also respected.

Assembly in session
(photograph: John Ross)

BRAER

(United Kingdom, 5 January 1993)

The incident

On 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.

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.

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 ban was lifted in stages for various species, with the exception of mussels and Norway lobsters, for which the ban remains in force.

Claims settled out of court

As at 31 December 1996, some 2 000 claims for compensation had been paid, wholly or partly, for a total amount of approximately £46 million. Out of this amount the 1971 Fund has paid

some £41 million and the shipowner's P & I insurer (Assuranceföreningen Skuld, Skuld Club) some £4.8 million. In addition, claims amounting to £1.9 million have been accepted as admissible but not yet paid.

Court proceedings

General situation

Claims against the 1971 Fund became 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 1971 Fund. The total amount claimed was approximately £80 million. During 1996 11 claims amounting to £2 291 863 were withdrawn from the legal proceedings. Twelve of the claims pending in court, totalling £3 797 129, were settled for a total amount of £878 229.

The court actions relate mainly to the following heads of damage: damage to asbestos cement roofs, reduction in the price of salmon, loss of income in the fishing and fish processing sector, loss of fishing quotas and personal injury. The majority of these claims had however been rejected by the 1971 Fund on the basis of decisions taken by the Executive Committee, or because the claimants had not presented sufficient supporting evidence. Claims were also presented in court 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 out-of-court settlements.

Most of the claimants did not include in their original court action sufficient details of the alleged losses to enable the 1971 Fund to assess the validity of their claims. As at 31 December 1996 most claimants had still not produced sufficient documents to substantiate their claims.

During 1996 little progress has been made in the court proceedings.

The main groups of claims in the court proceedings are set out below.

Property damage

Claims 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 1971 Fund and the Skuld Club, 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 1971 Fund rejected the claims relating to the asbestos roofs. Eighty-four claims in this category for an amount of £8 million have, however, become the subject of legal proceedings. No technical evidence has been presented in support of these claims. Many of these claims also include other elements, such as losses associated with farming.

Salmon farms: 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 a period of at least 30 months as a result of the incident. Claims for losses resulting from such price depression were submitted.

The experts of the 1971 Fund and the Skuld Club concluded that there was a fall in the relative price of Shetland salmon following the *Braer* incident during the months to June 1993, and compensation totalling £311 600 was paid to a number of claimants on this basis. The claimants argued that the depression in prices lasted until mid-1995 or later. In view of its experts' opinion, the 1971 Fund rejected the claims for further compensation.

Forty claims in this category for a total of £11.3 million have become the subject of legal proceedings. Three claims in this category, totalling £598 113, were withdrawn during 1996.

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 catch fish or shellfish. Payments totalling £7 million were made in respect of such claims for the period from January 1993 to October 1995.

A number of fishermen have claimed further compensation for reduced catches of fish and various types of shellfish, and have taken legal action to this effect, maintaining that stocks will not recover until the year 2000.

A particular question arose in respect of four small whitefish vessels which normally fished in an area to the west of the island of Burra (known as the Burra Haaf). Compensation for loss of income sustained until the end of June 1995 due to reduced catches was paid to the owners of these vessels which, by virtue of their small size, had very limited opportunities to mitigate their losses by fishing on more distant fishing grounds or by using alternative fishing methods. The normal annual income of these four vessels totals approximately £350 000.

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 1971 Fund has acknowledged that the fishery may not return to normal for some years.

The question arose as to whether the 1971 Fund should be prepared to settle the claims from the owners of these four vessels for on-going losses by way of lump sums. The Executive Committee decided that the 1971 Fund should retain its policy that compensation should be paid only for losses which had already been suffered. It was also decided that claims for future losses which became the subject of legal proceedings should be opposed by the 1971 Fund on the basis that the 1969 Civil Liability Convention and the 1971 Fund Convention did not allow such claims. The Committee recognised that there was no certainty that the 1971 Fund's position would be accepted by the courts of all Member States. The Committee took the view that when considering claims for future losses, the courts should take into account the importance of a uniform application of the Conventions.

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 totalling £10.5 million are pending in court. These claims 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.

The 1971 Fund has been unable to take a position on these claims, as the evidence submitted by the claimants is insufficient to make any assessment of the alleged losses.

Smolt supplier

A claim for £2 million was submitted by a company supplying smolt to salmon farmers on Shetland from its installation on mainland Scotland approximately 500 kilometres from Shetland. The 1971 Fund rejected this claim, since in its view the company's activity did not form an integral part of the economic activity of the area affected by the spill.

This claim has been pursued in court.

P & O Scottish Ferries Ltd

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

The Executive Committee took the view that the criterion of reasonable proximity laid down by the 1971 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.

The company has pursued its claim in court.

Personal injury

In October 1995 the Executive Committee noted that a number of unquantified claims had been submitted to the shipowner, the Skuld Club and the 1971 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 emphasised 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.

Five claims in this category for a total amount of £500 000 have become the subject of legal proceedings.

United Kingdom Government

The United Kingdom Government submitted a claim for compensation for costs incurred for clean-up operations at sea and on shore, for disposal of oily waste, for monitoring the operations

carried out for the purpose of salving ship and cargo, and for the cost of carrying out tests on water to establish the extent of hydrocarbon content. The claim is for a total amount of £3.6 million. An amount of £1.3 million has been approved, and further information has been requested in respect of a number of outstanding items of the claim.

This claim is pending in court.

Shetland Islands Council

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 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 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, the studies did not contribute to the submission of admissible claims for compensation and that the claim for the costs associated with these studies should be rejected. The Committee considered that the items relating to the handling of the media and other visitors were not admissible, since the costs incurred could not be considered as damage caused by contamination. In the Committee's view, the legal fees for advice given by an American law firm on United States legislation were not admissible. The Committee further decided that fees incurred by two United Kingdom law firms were not admissible, since the advice given related mostly to matters other than the preparation and presentation of claims under the Civil Liability Convention and the Fund Convention.

Discussions are being pursued in an effort to reach an out-of-court settlement in respect of those parts of this claim which in the 1971 Fund's view are admissible in principle.

Suspension of payments

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 1971 Fund. The Committee decided to suspend any further payments of compensation until the Committee had re-examined the question of whether the total amount of the established claims would exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 60 million SDR. 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. The suspension of payments is still in operation.

Shipowner's right of limitation

The limitation amount applicable to the *Braer* is 5 790 052 SDR (approximately £4 948 700).

The owner of the *Braer* requested that the Court of Session should issue an order that he should be entitled to limit his liability.

After careful consideration of the legal and technical issues involved and in view of the fact that a successful recovery by the Fund of any significant amounts was unlikely, the Executive

Committee decided in December 1995 that the 1971 Fund should not challenge the shipowner's right of limitation or take legal action against him or any other person to recover the amounts paid by the 1971 Fund in compensation. This issue was re-examined in February 1996, and the Committee decided to maintain this position.

The smolt supplier referred to on page 64 has challenged the right of the shipowner and the Skuld Club to limit their liability.

KIHNU

(Estonia, 16 January 1993)

The Estonian tanker *Kihnu* (949 GRT) grounded close to the port of Tallinn (Estonia). The ship was carrying approximately 1 000 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. The Finnish Environment Agency despatched two oil combatting vessels and a helicopter to Estonia to assist in dealing with the spill.

The owner of the *Kihnu* at the time of the incident was the Tallinn Port Authority. The vessel had P & I insurance with Ocean Marine Mutual Protection and Insurance Association Ltd.

In December 1995 the Finnish Government submitted a claim to the 1971 Fund for FM713 055 (£90 000).

The Finnish Government took legal action against the 1971 Fund in the Helsinki District Court in January 1996, on the last day of the three-year time bar period provided in the 1969 Civil Liability Convention and the 1971 Fund Convention. The Government took legal action in the same Court also against the shipowner's insurer.

The limitation amount applicable to the *Kihnu* calculated in accordance with the 1969 Civil Liability Convention is estimated at 113 000 Special Drawing Rights (£95 000).

The 1969 Civil Liability Convention and the 1971 Fund Convention entered into force for Estonia on 1 March 1993, ie after the *Kihnu* incident. In June 1996 the Executive Committee considered that, although the claim of the Finnish authorities related to activities undertaken within the territorial waters of a non-Member State, the measures were taken to prevent or minimise pollution damage within the territory or territorial sea of Finland, a 1971 Fund Member State. The Committee decided, therefore, that the measures taken by the Finnish authorities in principle fell within the scope of application of the 1969 Civil Liability Convention and 1971 Fund Convention.

The Executive Committee instructed the Director to investigate whether, and if so, to what extent the Finnish authorities had taken the necessary steps to recover the costs which they had incurred from the shipowner and his insurer or from the Estonian authorities, and to examine the reasonableness of the amount claimed. The Director was also instructed to examine the relationship between applicable regional agreements relating to co-operation in respect of oil spills and the compensation regime established by the 1969 Civil Liability Convention and the 1971 Fund Convention. These issues are being investigated.

Negotiations between the Finnish Government and the 1971 Fund will take place early in 1997.

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, the *Pacific Explorer*, off Shimoda, Izu peninsula, Shizuoka (Japan). Two tanks of the *Ryoyo Maru* were damaged, and approximately 500 tonnes of oil escaped. The *Ryoyo Maru* was towed to a shipyard after the remaining oil had been transferred to another ship.

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 1969 Civil Liability Convention.

The entities which took part in the clean-up operations presented claims totalling ¥68 million (£340 000). These claims were settled at ¥37 million (£238 000). In September 1994, the 1971 Fund paid ¥8.4 million (£54 000), representing the total amount of the agreed claims minus the shipowner's limitation amount of ¥28 million (£180 000).

The competent marine court held that the collision was caused by improper navigation on the part of both vessels.

The 1971 Fund carried out an investigation, through a Japanese lawyer, into whether the incident was caused by 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 1971 Fund paid indemnification of ¥7 million (£52 000) to the shipowner in July 1995.

The 1971 Fund entered into negotiations with the owner of the *Pacific Explorer* with a view to recovering part of the amount paid by the Fund. As a result of these negotiations, the 1971 Fund recovered ¥10 million (£61 000) in July 1996.

KEUMDONG N°5

(Republic of Korea, 27 September 1993)

The incident

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

Clean-up operations

The Korean Marine Police carried out clean-up operations at sea, using its own vessels as well as ships belonging to a Port Authority and fishing boats. Clean-up contractors were engaged for the onshore clean-up operations and a labour force of over 4 000 villagers, policemen and army personnel were employed.

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£3.9 million) and were paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd, Standard Club) by September 1994. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund has made advance payments to the Standard Club totalling US$6 million (£4 million) in respect of these subrogated claims.

The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£64 million). The Federation indicated that it would present further claims in the region of Won 90 000 million.

In July 1995 agreements were reached on the admissible amount in respect of a number of items of the claims presented by the 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 (£771 000), compared with the claimed amount of Won 6 463 million.

In December 1995 agreement was reached with the Namhae fishery co-operative which had presented the largest group of claims (Won 17 795 million or £12.3 million). These claims were settled at Won 4 360 million (£3 million). The agreed amounts related to damage to facilities, loss of income due to the interruption of fishing, and damage to marine products in the intertidal zones. The claims relating to alleged mass mortality of aquaculture products (such as cockle, abalone, oyster and crab) in the sub-tidal zones were rejected, because there was no evidence that any such damage had actually been caused by oil pollution. The 1971 Fund paid Won 2 150 million (£1.5 million) in February 1996 and the balance (Won 2 180 million or £1.5 million) in July 1996.

The claims of two other fishery co-operatives, which totalled Won 6 238 million and Won 959 million, were settled at Won 2 054 million (£1.4 million) and Won 240 million (£166 000), respectively. These claims were similar to those of the Namhae fishery co-operative and were assessed in the same way. In particular, major parts of these claims relating to alleged mortality were rejected, since no such damage was proved. The settlement amounts were paid by the 1971 Fund in July 1996.

Agreements were reached in September 1996 with another four fishery co-operatives for a total amount of Won 355 million (£245 000), compared with the amount claimed of Won 16 545 million. One of these claims, totalling Won 13 879 million (£9.6 million), had been presented by an oyster fishery co-operative. This claim was agreed at Won 200 million (£138 000). The major part of this claim (Won 13 674 million or £9.4 million), which related to loss of income caused by loss of seed, increased mortality, growth retardation and loss of consignment sales, was not accepted, since the alleged losses had not been substantiated. Most of the claims presented by two diving fishery co-operatives were rejected, since they related to an area unaffected by oil. One fishery co-operative presented claims for a total amount of Won 604 million (£400 000). Some of these claims, relating to locations unaffected by the oil, were rejected and the remaining claims were settled at Won 83 million (£57 000). The 1971 Fund paid the agreed amounts in October 1996.

The Yosu fishery co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims have been filed in court totalling Won 17 162 million (£11.9 million) for damage to the common fishery grounds. These claims relate to types of damage similar to those of the claims of the Namhae co-operative. In addition, claims have been submitted by over 900 individual fishermen belonging to this co-operative, who are fishing boat owners, set net fishing licence holders or onshore fish culture facility operators. These claims total Won 1 643 million (£1.1 million).

The experts engaged by the 1971 Fund and the Standard Club have assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£560 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities have not provided evidence that the alleged losses were caused by the oil spill.

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£2.9 million). This claim relates to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. The co-operative has reserved its right to increase the amount later for damage not yet quantified which would allegedly be suffered after 1994. This claim has been rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

Claims by two other co-operatives, for Won 6 053 million (£4.2 million) and Won 411 million (£284 000), respectively, were rejected by the 1971 Fund, since it had not been shown that the alleged losses occurred as a result of oil pollution. These claims have not been pursued in court.

Since the total amount of the claims submitted exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the 1971 Fund decided in 1994 that the Fund's payments would, at least for the time being, be limited to 50% of the established damage suffered by each claimant.

In order to make it possible for the 1971 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 11 fishery co-operatives forming part of the Federation would not exceed a specified amount determined to give the 1971 Fund a safety margin against overpayment. In October 1995 the Executive Committee shared the Director's view that, once the agreement was properly signed to the satisfaction of the 1971 Fund's Korean lawyer, the Fund would be in a position to pay any established claims in full. The agreement was signed by the co-operative chairmen in July 1996, on the basis of powers of attorney issued by all the individual members.

A table showing the present situation in respect of the claims is set out overleaf.

	Amount claimed (million)		Amount agreed (million)	
	Won	£	Won	£
Claims settled out of court	97 351	67	12 611	9
Claims rejected by 1971 Fund and not pursued in court	6 464	5	-	-
Claims pending in court	22 965	16	-	-
	126 780	88	12 611	9

Several court hearings have been held, and the claimants have submitted some documentation in support of their claims, including a survey report relating to the Yosu co-operative's claim. The Court is expected to render its judgement in 1997.

Limitation proceedings

The shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus interest, corresponding to Won 77 million (£53 000), 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 in August 1995.

The 1971 Fund had intended to intervene in the legal proceedings brought against the shipowner and his insurer, in accordance with Article 7.4 of the 1971 Fund Convention. Under this Article, Member States should ensure that the 1971 Fund has the right to intervene in such proceedings. Under the Korean Statute implementing the 1969 Civil Liability Convention and the 1971 Fund Convention, the 1971 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 and the Fund was therefore not entitled to intervene in the limitation proceedings. The Supreme Court issued the appropriate Regulations in October 1995.

The 1971 Fund was not formally notified of the limitation proceedings. Any decision made by the Court in these proceedings is therefore not binding on the 1971 Fund (cf Article 7.5 of the 1971 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 Agency's conclusion was that the incident was caused by navigational errors on the part of both vessels.

The 1971 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.

Sea Empress incident - clean-up operations
(photograph: IOPC Funds)

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.

By 22 October 1993 only sheens and traces of oil residues remained on the water surface, and the recovery at sea was concluded. The removal of oil from sandy beaches was completed by 29 October 1993. The final cleaning of seawalls and selected areas of rocky shoreline was completed by the middle of January 1994.

Floating oil interrupted the fishing activities in Pylos Bay and along the coast for about two weeks. A 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 (Newcastle Club) established a limitation fund amounting to Drs 1 497 million

(£3.5 million) with the competent court by the deposit of a bank guarantee. The operator of the above-mentioned fish farm has challenged the shipowner's right to limit his liability. The Court decided, however, that the shipowner was indeed entitled to limit his liability. It is not known whether the fish farmer will appeal against this decision.

The Court decided that the claims had to be lodged by 20 January 1995. By that date 526 claims had been presented, totalling Drs 3 061 million (£7.3 million) plus amounts for compensation for 'moral damage'.

The Ministry of Merchant Marine presented a claim for the cost of the clean-up operations for Drs 17.4 million (£41 000), which was settled and paid in full by the Newcastle Club. The shipowner submitted a claim for Drs 277 million (£656 000) for costs incurred during the clean-up operations, which was also paid by the Newcastle Club.

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.

A claim for Drs 993 million (£2.4 million) has been submitted by the owner of a fish farm who has alleged that he has lost both production and his fish cages as a result of the incident. It has been established, however, that the fish farmer's cages are still in the water, and there is circumstantial evidence that fish continued to be produced from the farm. The farmer has also maintained that he has suffered a loss of income as a result of reduced prices, although this has not been documented.

The claims are being examined by the experts engaged by the Newcastle Club and the 1971 Fund.

The Court has appointed a liquidator to examine the claims. It is expected that this examination will start in early 1997.

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 some 30 kilometres of shoreline in the Emirates of Fujairah and Sharjah. The coast of Oman was also contaminated.

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. A desalination plant immediately south of Khorfakkan was temporarily shut down at night as a precautionary measure.

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

Claims for compensation

The Government of Fujairah notified the Court of Fujairah of 30 claims amounting to Dhr 163 million (£26 million). However, the Government submitted only 19 claims totalling Dhr 98.3 million (£16 million) to the Britannia P & I Club, plus a claim for environmental damage for US$15 983 610 (£9 million). These claims included one submitted by the Government of Fujairah on behalf of 743 fishermen for Dhr 36.9 million (£5.9 million). The Britannia P & I Club and the 1971 Fund were given notice of a further 16 claims (ie 36 claims in all), although some of these claims were not quantified.

The Britannia P & I Club made payments to the Government of Fujairah totalling Dhr 36.4 million (£5.8 million), including payments of Dhr 13.7 million (£2.2 million) in respect of the fishery claims. Most of these payments were made after consultation with the 1971 Fund.

The claim for environmental damage was considered by the Executive Committee in April 1996. The Committee referred to the 1971 Fund Resolution N°3 and to the policy of the 1971 Fund 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. The Committee took the view that the claim for environmental damage presented by the Government of Fujairah to the Britannia P & I Club was not admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention, since it was calculated on the basis of a theoretical model.

The Government of Oman submitted a claim for OR100 564 (£153 000) for the cost of surveillance activities, and for 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 (£40 000) for fishery damage. This claim was settled and paid by the Britannia P & I Club in November 1994 at OR92 279 (£140 000), after consultation with the 1971 Fund.

Limitation proceedings

The limitation amount applicable to the *Seki* is 14 million SDR (approximately £12 million). The Britannia P & I Club established a limitation fund in the Court of Fujairah by means of a letter of undertaking.

Special deposit made by the shipowner

Through its agent (World-Wide Shipping Agency Limited), the owner of the *Seki* entered into a Memorandum of Agreement with the Government of Fujairah in 1994. Pursuant to this Memorandum, the owner deposited US$19.6 million (£11.5 million) with a bank in the United Arab Emirates. Claims presented by the Government could be paid from this deposit even if they had been rejected by the Britannia P & I Club or the 1971 Fund. If such a payment were to be made for a rejected claim, the shipowner could take legal action in respect of that claim against the Club and the 1971 Fund in the competent court in the United Arab Emirates. Under the Memorandum, the Government of Fujairah was obliged to refund to the shipowner the amount received towards any part of a claim not upheld by the court.

Having learned of the on-going discussions concerning the conclusion of such a Memorandum, the 1971 Fund informed the shipowner of its concern, since the Memorandum would create a system of payments at variance with the 1969 Civil Liability Convention and the 1971 Fund Convention and would in fact result in the establishment of two limitation funds. The 1971 Fund also pointed out that under Article III.4 of the 1969 Civil Liability Convention no claims for compensation should be made against the shipowner otherwise than in accordance with the Convention, and that the intention of the international legislator had been to channel all claims against the shipowner within the Convention.

In a letter to the authorities of the United Arab Emirates, the 1971 Fund made it clear that this Memorandum constituted a private arrangement and would not affect the legal position of the 1971 Fund. The 1971 Fund also stated in the letter that the Fund was not bound by any agreement in respect of a claim unless that claim had been approved explicitly by the Fund or had been established by a final judgement rendered by a competent court in legal proceedings brought under Article IX of the 1969 Civil Liability Convention or Article 7.1 of the 1971 Fund Convention.

The 1971 Fund was informed in March 1996 that the Government of Fujairah had drawn upon the deposit made by World-Wide Shipping Agency Ltd in respect of the claim relating to environmental damage for a total of US$15 983 610 (£9.3 million), which corresponded to the amount claimed. In view of this development, the Fund reminded the Government of Fujairah of the 1971 Fund's position in respect of claims for environmental damage.

Settlement between the Government of Fujairah and the shipowner

In July 1996 the 1971 Fund was informed that a global settlement had been reached between the shipowner and the Government of Fujairah covering all the claims for compensation arising out of the *Seki* incident. The 1971 Fund has no knowledge of the terms of this settlement, nor of the amounts involved, since the settlement agreement contained a confidentiality clause.

At the 1971 Fund's request, the Government of Fujairah confirmed that a settlement agreement had been reached in respect of the *Seki*'s share of the liabilities arising out of the incident and that the Government had agreed to withdraw all legal proceedings against the owner of the *Seki*, his insurer and the Fund. The Government added that it was not in a position to give any guarantee to indemnify the 1971 Fund if claims were to be made against the Fund, since the 1971 Fund had refused to be party to any global settlement.

The 1971 Fund informed the Government of Fujairah that the above-mentioned settlement was without any effect as regards the Fund's position in respect of the admissibility of the various claims or of the acceptability of the quantum of these claims.

In October 1996, the Executive Committee noted that, in view of this development, the *Seki* case was closed as regards the 1971 Fund. Concerning the statement by the Government of Fujairah that the 1971 Fund had refused to be party to a global settlement, the Committee emphasised that the 1971 Fund had not been able to agree to settlements in respect of a number of claims due to the fact that the claimants had not submitted evidence to substantiate their losses.

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 , the Japan Maritime Disaster Prevention Center under contract with the shipowner and various contractors. Fishery co-operative associations provided a large number of boats.

Most of the spilt oil was contained in Wakaura Bay, and the major part 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, and beaches and rocky headlands on the southern coast of the bay became polluted. The Self Defence Force, fishermen, fire brigades and contractors undertook beach clean-up and the collecting of oily waste for subsequent incineration or burial.

Claims for compensation

The claims for clean-up operations totalled ¥749 million. These claims were settled and paid for a total amount of ¥704 million (£5.1 million) by 7 July 1995.

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

All claims were settled and paid by July 1995 for a total of ¥778 million (£5.2 million), ie within ten months of the incident.

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Toyotaka Maru* is ¥82 million (£411 900). The limitation proceedings were completed in March 1996.

The competent marine court held that the collision was caused by the lack of action on the part of the *Teruho Maru N°5* to avoid the collision. There was, therefore, no fault or privity on the part of the owner of *Toyotaka Maru*.

The indemnification of the shipowner of ¥20 million (£125 020) was paid in April 1996.

The 1971 Fund initiated recourse negotiations with the *Teruho Maru N°5* interests with a view to recovering part of the amount paid by the Fund. In August 1996, agreement was reached between the parties involved that the liability should fall entirely on the *Teruho Maru N°5*.

The 1971 Fund and JPIA recovered ¥34 million (£199 000) from the owner of the *Teruho Maru N°5*, out of which the Fund received ¥31 million (£177 000).

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.

Clean-up operations were carried out by the Marine Police, the shipowner and private contractors. Some four kilometres of coastline were affected by the oil.

Claims for clean-up costs by the public authorities involved, totalling Won 9.7 million, were settled in December 1994 at a total of Won 9.2 million (£6 300) and paid by the shipowner. Three contractors presented claims for clean-up operations and preventive measures in the amount of Won 62 million. These claims were settled for Won 23 million (£16 000) and were paid partly by the shipowner, partly by the 1971 Fund.

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 (£329 000). These claims were settled and paid by the 1971 Fund for a total of Won 28 million (£19 000).

The total amount of the settlements is Won 61 million (£42 000).

Under Korean legislation, in order to be entitled to limit his liability a shipowner is required to commence limitation proceedings within six months of the date on which he has received claims which together exceed the limitation amount. The period for commencing limitation proceedings expired in May 1995. The owner of *Sung Il N°1* did not commence such proceedings, and therefore lost the right to limit his liability under Korean law. The limitation amount applicable to the *Sung Il N°1* would have been approximately Won 23 million (£16 000).

In June 1996 the Executive Committee considered whether the 1971 Fund should take recourse action against the shipowner to recover the amount which the Fund had paid in compensation, *viz* Won 37.8 million (£29 520). The Committee noted that an investigation carried out by the 1971 Fund's lawyer in Korea had revealed that the shipowner had no assets against which the Fund could make a recovery. The Committee therefore decided that it would not be meaningful for the 1971 Fund to take recourse action against the shipowner.

Pursuant to Article 5 of the 1971 Fund Convention, the 1971 Fund shall indemnify the shipowner or his insurer for a portion of his liability under the 1969 Civil Liability Convention, in the present case approximately 25% of the limitation amount applicable to the ship. The question arose as to whether the 1971 Fund was under an obligation to pay indemnification if the shipowner did not take the necessary steps to limit his liability.

The Executive Committee took the view that, although the 1971 Fund Convention did not contain any provision making the shipowner's right to indemnification conditional on his being entitled to limit his liability, it would be inappropriate for the 1971 Fund to indemnify the owner of the *Sung Il N°1* for a portion of the amount he had paid in compensation.

Sea Empress incident - boom across Tenby harbour
(photograph: ITOPF)

SPILL FROM UNKNOWN SOURCE IN MOROCCO

(Morocco, 30 November 1994)

In March 1995 the 1971 Fund was informed of an oil spill which had occurred on 30 November 1994 in the port of Mohammédia (Morocco). The Moroccan authorities claimed compensation for clean-up costs totalling Dhr 2.6 million (£174 000). 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 1971 Fund drew the attention of the Moroccan authorities to Article 4.1 of the 1971 Fund Convention. Under that Article the 1971 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 1969 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 1971 Fund Convention provides that in such cases the 1971 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 1971 Fund's experts 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 1971 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 1971 Fund Convention (ie a laden tanker) and that for this reason the 1971 Fund could not accept the claim for compensation.

The Moroccan Government has set up a committee to investigate the oil spill in order to try to establish the source of the oil. On the Government's request, the Executive Committee decided in June 1996 to postpone its further consideration of this case.

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 some 150 kilometres south-west of Seoul, 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.

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. Some mariculture facilities were also affected by the oil spill.

The Marine Police and a private clean-up contractor presented claims relating to the clean-up operations for Won 31 million (£21 400) and Won 14 million (£9 700), respectively. In May 1996, the claim of the clean-up contractor was settled at Won 12 million (£8 300). The Marine Police's claim was settled for the amount claimed. 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 (£65 000). The ship was not entered in any P & I Club but had financial security issued by a Korean bank corresponding to the limitation amount.

It came to light that the shipowner had revoked the bank guarantee by returning the original thereof to the bank two days after he had received the certificate of insurance cover. It is understood that the bank guarantee did not contain any provisions about cancellation. In this situation, the shipowner and the bank were entitled under Korean law to terminate the guarantee by agreement. As a consequence, the ship was not covered by any insurance or other guarantee at the time of the incident.

Although the aggregate amount of the claims so far settled is below the limit of the shipowner's liability, the shipowner has not paid these claims. The shipowner has not commenced limitation proceedings.

The 1971 Fund investigated the financial situation of the shipowner through its Korean lawyer. The investigation showed that the shipowner had no substantial assets. Based on the findings of this investigation, the 1971 Fund paid the settled claims in June 1996, pursuant to Article 4.1(b) of the 1971 Fund Convention.

Article VII.5 of the 1969 Civil Liability Convention provides that the insurance or other financial security shall not satisfy the requirements of Article VII if it can cease, for reasons other than the expiry of the validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authority which issued the certificate, unless the certificate has been surrendered to this authority or a new certificate has been issued within this period.

The Pusan District Maritime and Port Administration issued a certificate, dated 28 February 1995, on a form worded in accordance with the model set out in the Annex to the 1969 Civil Liability Convention. In the certificate it is stated: "This is to certify that there is in force in respect of this ship a policy of insurance or other financial security satisfying the requirements of Article VII of the Civil Liability Convention.". According to the certificate, the duration of the security and the validity of the certificate was for the period 27 February 1995 to 27 February 1996.

Under Article VII.1 of the 1969 Civil Liability Convention, the requirement to have insurance or other financial security applies only to ships carrying more than 2 000 tonnes of oil in bulk as cargo. However, the Korean legislation implementing the 1969 Civil Liability Convention requires that a Korean ship shall have insurance if it carries more than 200 tonnes of oil in bulk as cargo. The ship was therefore required under Korean law to have a certificate of insurance for the voyage in question, whereas there was no such obligation under the 1969 Civil Liability Convention.

In June 1996, the Executive Committee considered this issue and took the view that the Korean authorities were not in breach of the 1969 Civil Liability Convention as regards the voyage in question for having issued a certificate without ensuring that the guarantee could not be revoked before the expiry of the three-month period laid down in the Convention.

SEA PRINCE

(Republic of Korea, 23 July 1995)

The incident

The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with some 85 000 tonnes of Arabian crude oil, grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area.

Some 5 000 tonnes of oil were spilled as a result of the 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 some oil eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Oki.

The *Sea Prince* was entered in the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (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, under a salvage contract (Lloyds Open Form 95).

The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column should the oil be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship could break up during refloating. In view of this the salvage contract under Lloyds Open Form 95 was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters.

Clean-up operations and impact on aquaculture and fisheries

Small areas of rocky coasts, sea wall defences and isolated pebble beaches were affected. Clean-up operations were completed in all but one area of Sorido Island by the end of October 1995. The clean-up operations in the remaining area, closest to the vessel's grounding site where the oil had penetrated deep into the pebble beach, were completed in July 1996. Buried oil was found at one location, and removal of this oil was carried out in October 1996.

In addition to traditional fishery, intensive aquaculture 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.

Joint surveys to record the oil pollution of aquaculture facilities in the affected area were carried out with the involvement of various local fishing representatives, experts engaged by the shipowner/Club and the 1971 Fund, and local surveyors. 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 which were 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 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 1971 Fund. However, the claimants have refused to allow these tests to be carried out.

Claims for compensation

In view of the fact that the aggregate amount of the claims presented or indicated greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided in December 1995 that the 1971 Fund's payments should for the time being be limited to 25% of the established damage suffered by each claimant.

Sea Prince incident - shoreline clean-up
(photograph: KOMOS)

A number of claims relating to clean-up operations have been settled at Won 19 700 million (£13.6 million). These claims have been paid by the shipowner and the UK Club. A number of claims in this category, totalling Won 1 040 million (£719 000), are being examined.

The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands in a total amount of ¥360 000 (£1 800). This claim was accepted by the 1971 Fund at the amount claimed.

In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment is less than 25% of the amounts for which the Club had presented supporting documentation.

Some areas were contaminated by both the *Sea Prince* and the *Yeo Myung* incident which occurred on 3 August 1995. The 1971 Fund and the two P & I Clubs involved agreed to split the clean-up expenses relating to these areas equally between the *Sea Prince* and the *Yeo Myung* incidents, based on the recommendation of the technical experts. The clean-up operations in these areas were carried out by two contractors engaged by the owner of the *Yeo Myung*. The claims presented by these contractors were settled at Won 715 million (£494 000). The settlement amounts were paid by the owner of the *Yeo Myung* and his insurer (the North of England P & I Club). The UK Club reimbursed the amount attributed to the *Sea Prince*, Won 358 million (£247 000), to the North of England Club in August 1996.

In September 1995 there was a red tide in the area affected by the oil from the *Sea Prince* and the *Yeo Myung*. The fishery co-operative associations have maintained that this red tide, which caused considerable 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 1971 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.

The members of seven fishery co-operatives affected by the spill formed a 'Countermeasure Committee' to co-ordinate the submission of their claims and to negotiate with the shipowner, the UK Club and the 1971 Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishery grounds and other fisheries, but without supporting documentation. The damage suffered was provisionally indicated at Won 75 278 million (£52 million), with an additional Won 145 396 million (£100 million) for anticipated future losses.

The fishery experts engaged by the Countermeasure Committee submitted a report containing revised claims which were assessed by these experts at a total amount of Won 70 600 million (£49 million). However, the report was not accompanied by supporting documentary evidence. After discussions with the experts engaged by the UK Club and the 1971 Fund, the chairman of the Countermeasure Committee provided sales consignment data in November 1996 for most of the fishing sectors allegedly affected by the oil

Pusan Fishery Co-operative Association, which does not form part of the Countermeasure Committee, submitted claims for Won 345 million (£238 000).

Claims have been submitted for Won 46 million (£32 000) for alleged damage to a variety of crops and plants on Sorido, caused by wind-blown oil.

Claims totalling Won 4 772 million (£3.3 million) have been presented by the owners of guest houses and other tourism-related businesses on Namhae island, on Yokji island, on Koje Island and in Yeochon county. Supporting documentation has not yet been provided. It appears that there is an overlap between these claims in respect of Koje Island 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.

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Sea Prince* is 14 million SDR (£12 million).

The competent district court issued an order for the commencement of limitation proceedings and decided that all claims should be filed by 28 August 1996. By that date, clean-up claims totalling Won 44 500 million (£31 million), fishery claims totalling Won 70 700 million (£49 million) and non-fishery claims totalling Won 4 600 million (£3.1 million) had been presented to the Court.

The shipowner and the UK Club have filed subrogated claims for clean-up operations and claims for the shipowner's own clean-up costs, for a total amount of Won 20 800 million (£14.4 million). The 1971 Fund has submitted claims subrogated from the UK Club in the amount

of £2 million. The shipowner has also filed a claim for the cost of the measures associated with the work carried out under contract for the removal of the oil and the vessel and related operations for US$24.8 million (£14.5 million).

Several court hearings have been held. The UK Club and the 1971 Fund have made objections to the fishery claims.

It is expected that the Court will render its preliminary decision on the quantum of the claims in March 1997. If the parties involved were to make objections to the preliminary decision of the Court, it is likely that the opposition proceedings in the Court of first instance would take several years.

Investigation into the cause of the incident

The 1971 Fund has, through its Korean lawyer, followed the investigation of the Korean Marine Inquiry Agency into the cause of the incident. The Fund has also examined the judgement by the Court of first instance in the criminal proceedings against the master of the *Sea Prince*.

The *Sea Prince* grounded off Sorido Island during a typhoon, having lost control under heavy swell and wind while on her way from the anchorage in Yosu Bay to take refuge in the open sea. It appears that the incident was caused by a navigational error on the part of the master of the *Sea Prince* and the unusual movement of the typhoon contributed to the incident. In June 1996 the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right of limitation.

The 1971 Fund has investigated, through its Korean lawyer, the possibility of taking recourse action against any person who contributed to the incident. In the light of the results of this investigation, the Committee decided that there were no grounds on which the 1971 Fund could take recourse action against any third party to recover the amounts paid by the Fund in this case.

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 1995. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July 1995, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koje Island were not affected by the spill.

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

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

The Marine Police initiated clean-up at sea. Shoreline clean-up was initially organised by the local authorities. After a week the clean-up was taken over by 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 were collected and disposed of.

In addition to traditional fishing, aquaculture 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 totalling Won 1 140 million (£788 000) have been received from 12 entities for the cost of clean-up operations and waste disposal.

The claims of two contractors which had carried out operations relating to both the *Sea Prince* and the *Yeo Myung* incidents were settled at a total amount of Won 715 million (£494 000).

As mentioned above in relation to the *Sea Prince* incident, the 1971 Fund and the two P & I Clubs involved agreed in respect of the areas contaminated by both incidents to split the clean-up expenses equally between the two incidents. These claims were paid by the North of England Club in December 1995 and January 1996. The insurer of the *Sea Prince*, the UK Club, reimbursed 50% of the expenses which were attributed to the *Sea Prince* incident to the North of England Club in August 1996.

Claims for clean-up operations totalling Won 757 million (£523 000) have been settled at Won 661 million (£457 000). The claims have been paid partly by the North of England Club, partly by the 1971 Fund. Further claims totalling Won 3 350 000 (£2 300) are being examined.

The Koje fishery co-operative has stated that it will present claims for losses in the fishery and mariculture sector caused by the *Yeo Myung* incident for an amount which has provisionally been indicated in the region of Won 4 500 million (£3 million). This co-operative has also indicated that it will claim for anticipated future losses amounting to about Won 15 300 million (£11 million).

In May 1996, the members of the Koje fishery co-operative presented a report prepared by its surveyor containing revised claims for damage to facilities, business interruption and mortality of fish, totalling Won 3 323 million (£2.3 million), including future losses. However, that report does not contain sufficient evidence to substantiate the alleged losses. The surveyors of the Club and the Fund are investigating these claims.

In addition, the owners of set nets and fish farms presented claims separately for Won 644 million (£445 000) for losses already suffered and for an additional Won 1 618 million (£1.1 million) for anticipated future losses. The claimed amounts were later reduced to Won 429 million (£296 000) for set nets and Won 669 million (£462 000) for fish farms, excluding future losses. These claims are being investigated by the surveyors of the Club and the 1971 Fund.

Local businesses in the tourism sector along the affected beaches on Koje island have presented claims for some Won 3 080 million (£2.1 million) relating to loss of income. It appears

that there is an overlap between these claims and the corresponding claims arising from 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*. The fishery 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 1971 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.

Limitation proceedings and investigation into the cause of the incident

The shipowner commenced limitation proceedings at the competent district court. The limitation fund was established by the North of England P & I Club by payment of the limitation amount of Won 21 million (£15 000) to the Court.

In August 1996, 13 groups of claimants, including the shipowner, lodged claims in the Court relating to clean-up operations, fishery activities and businesses in the tourism sector for a total amount of Won 6 994 million (£4.8 million). The first court hearing is scheduled for March 1997.

The investigation of the Marine Accident Inquiry Agency into the cause of the incident revealed that the incident was caused by a navigational error on the part of the masters of both vessels involved in the collision. The investigation did not give any indication that the incident was caused by the actual fault or privity of the owner of the *Yeo Myung*.

In October 1996 the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right to limit his liability.

The 1971 Fund is taking the necessary steps to initiate recourse action against the owner of the colliding ship with a view to recovering part of the amounts paid by the 1971 Fund.

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 on to the decks of three vessels, contaminated the decks and hulls and spilled into the sea.

Eight contractors engaged in the clean-up operations submitted claims totalling ¥9.5 million. These claims were settled for a total amount of ¥8.6 million (£51 000) and were paid in June 1996 by the shipowner's P & I insurer, Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA). The 1971 Fund reimbursed ¥4.9 million (£31 130) to JPIA in December 1996.

The charterer of the bulk carrier presented a claim for $2 560 (£1 500) for the damage caused by the delay in returning the ship to its owner while the hull of the vessel was cleaned. The owner of the bulk carrier presented a claim for this cleaning operation. The charterer of the

Shinryu Maru N°8 paid these claims in full and presented a subrogated claim in an amount of $3 103 (£1 800). These claims have been settled at the amounts claimed but have not yet been paid.

The limitation amount applicable to *Shinryu Maru N°8* is ¥4 million (£20 000).

JPIA requested that the 1971 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 1969 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 1971 Fund could, exceptionally, pay compensation and indemnification without the limitation fund's being established.

Indemnification of the shipowner (¥980 000) was paid in December 1996.

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* (23 277 GRT) 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 in the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA).

Clean-up operations

The clean-up operations at sea were carried out by the Japan Maritime Safety Agency , the Japan Marine Disaster Prevention Center 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. A major part of the spilt oil polluted some four kilometres of beaches, some of which were heavily contaminated. Over 400 villagers and fishermen participated in the onshore clean-up. Some 2 500m^3 of oily waste were collected and disposed of.

A fishery co-operative association, which has some 400 members, suspended fishing in the affected area from 4 to 12 September 1995.

The above-mentioned Association inspected one heavily polluted beach from which gravel and sand had been removed, which 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 1971 Fund, the Association accepted that no fishing was affected. The technical expert of the local authorities stated that the beach would recover naturally within approximately one year. For this reason, the request to restore the beach was not granted, and the Association accepted that decision.

Senyo Maru incident - manual clean-up
(photograph: Pegasus)

Claims for compensation

Claims for clean-up totalling ¥365 million (£1.8 million) were submitted by the Japanese authorities and a number of contractors. These claims were settled for ¥340 million (£1.7 million).

The claim of one fishery co-operative, amounting to ¥30 000 (£150), was rejected, because its activities were considered not to have contributed to the clean-up of the oil pollution.

Four fishery co-operative associations submitted claims for the partial replacement of contaminated fishing gear, for loss of income incurred by the individual fishermen and for lost sales commission for the fishery co-operative associations resulting from the suspension of fishing while the clean-up operations were carried out. These claims, totalling ¥48 million, were settled at ¥47 million (£294 000) and were paid in March 1996 by the 1971 Fund.

All claims arising out of this incident were settled and paid by May 1996, ie within eight months of the incident, for a total amount of ¥388 million (£1.9 million).

Limitation proceedings and investigation into the cause of the incident

The owner of the *Senyo Maru* commenced limitation proceedings in September 1996. The limitation amount applicable to the *Senyo Maru* is estimated at ¥19.9 million (£100 000).

The 1971 Fund will take the necessary steps to initiate recourse action against the *Batis*.

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 naval 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 1995 and minimal quantities have leaked from time to time thereafter.

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 in the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club).

Clean-up operations

Initially, the clean-up operations at sea were carried out by using two oil recovery vessels and a number of fishing vessels. The Marine Police also used ships for spraying dispersants. Booms were deployed in some coastal areas to protect laver seaweed farms.

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 were not completed until mid January 1996.

Level of payments

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 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee decided, in December 1995, that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

At the Executive Committee's session in February 1996, the delegation of the Republic of Korea requested that the level of compensation payable by the 1971 Fund be increased from 60% to 100%. The delegation stated that, if this request were accepted, the Korean Government was prepared to provide a guarantee to protect the 1971 Fund against overpayment. A number of delegations expressed the view that the 1971 Fund should be very cautious in accepting a guarantee of the type proposed by the Korean delegation. The Executive Committee decided not to accept such a guarantee. The Committee decided to maintain the limit of the 1971 Fund's payments at 60% of the established damage suffered by each claimant

At the Committee's sessions in June and October 1996, the Korean delegation expressed its concern regarding the delay in the payment of the expenses incurred during clean-up operations.

This delegation mentioned that, although the claims for the clean-up operations had been settled, only 60% of the settled amounts had been paid. It was stated by this delegation that this delay in payment might lead to a mistrust of the Korean Government by those who participated in the clean-up operations. This delegation feared that in the event of a future oil spill, clean-up operations might therefore not be carried out as efficiently as they had been in the past. In the view of this delegation a possible solution would be to give priority to claims for clean-up costs. The Executive Committee took the view, however, that no claims could be given priority since under the 1971 Fund Convention all claimants had to be treated equally and that therefore the percentage fixed by the Committee had to be applied to all claims.

The Korean delegation emphasised that solutions should be found within the compensation system to solve this problem since it was not acceptable that Governments should feel obliged to intervene to mitigate financial hardship. The delegation stated that the Korean Government was considering paying the balance of 40% to claimants in the *Yuil N°1* case who were suffering financial hardship. For this reason, this delegation requested confirmation that, if the Government made such payments, the Government would subrogate their claims against the Fund.

The Executive Committee stated that if the Korean Government were to pay claimants the balance of 40% of the amounts accepted by the 1971 Fund, the Government would acquire by subrogation the claimants' rights against the Fund.

Claims for compensation

Claims relating to clean-up operations have been received from various contractors, a fishery co-operative, Pusan Marine Police and Koje City. Agreement has been reached on the quantum of the claims with most of the contractors and the other entities for a total of Won 12 284 million (£8.5 million). The Standard Club paid some of these claims in full, and the 1971 Fund reimbursed the Club 60% of these payments. The balance of the Club's payments for the clean-up claims totals Won 314 million (£245 000). The Fund's payments for these claims total Won 7 142 million (£5.6 million), including the reimbursements.

The oil affected areas where there is intensive fishing and mariculture.

A co-operative of owners of set nets on Koje island claimed compensation for its members for a total of Won 1 385 million for the cost 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 (£911 370), were paid in full by the Standard Club in November 1995.

Agreement on the method for calculating the losses was reached with representatives of 11 local fishery associations on Koje island. In November 1995, a final settlement was concluded in respect of the claims presented by ten of these associations whose claims totalled Won 1 643 million (£1.1 million) for a total amount of Won 1 400 million (£970 000). These claims related to cleaning costs and loss of earnings for fishing boat owners, loss of earnings for set net owners, loss of earnings in respect of common fishery grounds and in respect of farms for the cultivation of sea squirt and short-necked clams. An agreement was reached in August 1996 with the remaining local fishery association in this area for an amount of Won 290 million (£200 000). These claims were paid in full by the Standard Club. A laver cultivation farm in the Naktongp'o region claimed Won 62 million (£42 000) for the cost of cleaning and replacing contaminated equipment. This claim was accepted in full.

The claims in the fishery sector referred to above were paid in full by the Standard Club for the amounts agreed. The 1971 Fund reimbursed the Standard Club an amount of

Won 1 577 million (£1.2 million) in respect of most of these claims, corresponding to 60% of the established amount of each claim.

Claims for the cleaning of facilities by the owners of oyster and mussel farms on the north-west coast of Koje island were agreed for Won 73 million (£50 500). The 1971 Fund paid 60% of this amount (Won 44 million or £37 100) to the claimants.

So far, claims have been agreed for a total of Won 15 523 million (£10.7 million), out of which Won 12 284 million (£8.5 million) relates to clean-up operations and Won 3 239 million (£2.2 million) to fishery claims. Payments made total Won 10 417 million (£8.7 million), out of which the 1971 Fund's payments total Won 8 763 million (£7.3 million).

Clean-up claims for a total amount of Won 280 million (£194 000) and fishery related claims for a total amount of Won 60 740 million (£42 million) have not yet been settled.

Wreck removal and related issues

In November 1995 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 maintained that it would be unnecessary and unwise to remove the oil or the wreck. The shipowner argued that there was a minimal release of oil and that there was no risk of any significant release of oil if the wreck were 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 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.

In a letter to the 1971 Fund, the Korean Government stated that there was growing concern about the possibility of an oil spill from the wreck which could cause pollution in the nearby coastal area and which could severely affect the livelihood of the local people. The Government mentioned that Korean experts were of the opinion that there was a need to carry out further investigation of the wreck using deep sea divers in order to acquire more accurate and detailed information on the condition of the wreck for removal. The Government therefore asked whether the 1971 Fund was prepared to carry out further investigation of the condition of the wreck and also asked whether, in the event that the 1971 Fund was not prepared to carry out such an investigation, the Fund would compensate the Korean Government for the cost of carrying out this investigation as a preventive measure against possible oil pollution. Finally, the Government asked whether the 1971 Fund would fund the costs incurred by the Government for removing the sunken tanker and its cargo.

In February 1996 the Executive Committee discussed this issue and took the view that it was not the task of the 1971 Fund itself to carry out clean-up operations or preventive measures, nor to undertake studies in these fields, and that the 1971 Fund should therefore not undertake the investigation requested. The Committee took the view that it would be for the Committee to decide, on an objective basis and in the light of all the circumstances of the case, whether the cost of any investigation or of any operation carried out by the Korean Government in respect of the removal of the oil or the wreck would be admissible for compensation.

The Korean delegation stated that the Korean Government wished to find a solution to the wreck removal issue. The delegation mentioned that an *ad hoc* committee composed of several interested Government authorities had been set up to take anti-pollution measures and that a final decision would be taken after all aspects had been duly considered, including the position taken by the Executive Committee. The delegation stated that the Korean Government would like to have

a more detailed discussion with the 1971 Fund after the Government's decision had been taken. The 1971 Fund has not yet been informed that such a decision has been taken by the Korean Government.

During October and November 1996, the Marine Police carried out an underwater survey of the wreck to assess whether there was any risk of further release of oil. No leakage of oil was observed during the period of the survey. The 1971 Fund has not yet been informed of the results of this survey.

Limitation proceedings and investigation into the cause of the incident

The shipowner commenced limitation proceedings at the Pusan District Court in April 1996.

The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£173 000).

By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£41 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fishery and clean-up claims to the Court for a total amount of Won 10 000 million (£6.9 million). The clean-up contractors and fishery associations who have so far received only 60% of the agreed amounts filed claims for the balance, totalling Won 4 700 million (£3.2 million) and Won 29 million (£2 000), respectively.

At the court hearings the Club and the 1971 Fund filed objections to the fishery claims and the fishermen submitted objections to all the clean-up claims.

In the limitation proceedings, the Korean Court does not fully review the merits of the claims. Instead, it renders a decision based on the documents submitted by the claimants and the opinion of an administrator appointed by the Court. A party who is dissatisfied with the Court's decision may bring an action challenging it, and this action will be heard by the same Court.

At a court hearing held in October 1996, the administrator presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable.

The Fund's Korean lawyer has expressed the view that it is likely that the Court will follow the administrator's proposal. The Executive Committee has instructed the Director to challenge any court decision, if the Court's assessment of the claims is not based on appropriate evidence.

Investigation into the cause of the incident and recourse action

The Korean Maritime Accident Inquiry Agency (MAIA) carried out an investigation into the cause of the incident.

MAIA's report on the investigation was made available to the 1971 Fund in September 1996. The 1971 Fund is studying this report with the assistance of the Fund's lawyers and technical experts.

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 spilt 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 Mutual Steamship Assurance Association (Bermuda) Limited (UK Club).

Clean-up operations and impact on aquaculture and fisheries

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

The onshore clean-up was completed in many areas by early January 1996, whereas in the most heavily polluted areas these operations continued until March 1996. Over 1 500 people worked at about 30 different sites. A 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* had also been oiled following the *Keumdong N°5* and *Sea Prince* incidents.

Level of payments

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 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee decided in February 1996 that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

Claims for compensation

Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 700 million (£6.7 million). Some claims belonging to this category have been agreed for a total amount of Won 5 800 million (£4 million) and paid by the shipowner and the UK Club in full. The other claims in this category are being examined, and further claims are expected.

Claims for fishery damage have been submitted by several fishery co-operatives in the area affected by the spill, totalling Won 49 039 million (£34 million).

Nine set net fishery operators in the Dolsan island area presented claims for damage to their nets and loss of income during the period when fishing was interrupted as a result of the incident, totalling Won 173 million. These claims were settled at Won 106 million (£73 000) and were paid by the shipowner in April 1996.

Claims presented by the Namhae fishery co-operative, totalling Won 635 million (£439 000), related to five types of fishing carried out by the members of the co-operative. Claims were thus submitted by operators of gape nets for loss of income during the clean-up operations, by operators of fyke nets for damage to facilities and loss of income, by 123 fishing boat operators for loss of income and boat cleaning costs, by licence holders of common fishery grounds for loss of income during the period when fishing was interrupted, and by a cage culture farmer for mortality of caged fish, damage to the facility and additional costs incurred.

The assessment made by the experts engaged by the UK Club and the 1971 Fund of these claims was based on the actual interruption of business while the clean-up operations were carried out. The claim relating to the alleged mortality of caged fish was not accepted, since there was no evidence that such mortality had occurred as a result of the oil pollution or the clean-up operations. The claims presented by the Namhae co-operative were settled at an aggregate amount of Won 203 million (£140 000) and were paid by the shipowner in July 1996.

The settlements reached so far total Won 6 100 million (£4.2 million). Claims totalling Won 53 360 million (£37 million) are being examined.

The 1971 Fund has not yet made payments for compensation, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire*.

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£12 million).

The shipowner commenced limitation proceedings in September 1996.

Investigation into the cause of the incident

The Korean Marine Accident Inquiry Agency carried out an investigation into the cause of the incident. The investigation concluded that the incident was caused by an error on the part of the pilot during berthing manoeuvres. The investigation showed that the pilot was not sufficiently experienced in manoeuvres of this type and that he, at the time of the berthing, was very tired due to his having worked for very long hours. It also showed that the master's error in navigation and his failure to carry out emergency anchoring contributed to the incident. According to the investigation, the *Honam Sapphire* was well maintained and in good condition. The investigation also showed that the *Honam Sapphire* was manned with competent officers and crew.

In October 1996 the Executive Committee noted the Director's view that the investigation did not give any indication that the incident had occurred as a result of the actual fault or privity of the owner of the *Honam Sapphire*. The Committee therefore decided that the 1971 Fund should not challenge the shipowner's right to limit his liability.

TOKO MARU

(Japan, 23 January 1996)

While the Japanese tanker *Toko Maru* (699 GRT) was at anchor off Anegasaki, in Tokyo Bay (Japan), a gravel carrier struck the port side of the ship which was carrying 2 000 tonnes of heavy fuel oil. One of the *Toko Maru'* s port side tanks was damaged and four tonnes of oil spilled into the sea.

Both vessels were entered in the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA).

The clean-up operations at sea were carried out by contractors engaged by the shipowner. Fourteen vessels were deployed.

The biggest concentration of seaweed farms in Tokyo Bay is situated near the site of the collision, and the spilt oil affected some of these seaweed farms. Some 290 fishing boats and some 600 fishermen were engaged in the clean-up of these farms.

Clean-up claims were presented by three contractors and two fishery co-operative associations for ¥15.1 million and ¥4.6 million, respectively. These claims were settled at ¥13.5 million (£68 000) and ¥4.1 million (£21 000), respectively.

A claim of ¥43 828 (£220) for damage caused to the seaweed was presented by one fishery co-operative association. This claim was settled in full.

All the settled claims were paid by JPIA in June 1996. The total amount of the settled claims, ¥17.6 million (£88 000), is below the shipowner's limitation amount of ¥18.8 million (£94 500).

In September 1996, JPIA informed the 1971 Fund that the shipowner would not request payment of indemnification in respect of this incident. It is unlikely that there will be any further claims arising out of this incident. The 1971 Fund will therefore most probably not be called upon to make any payment in this case.

SEA EMPRESS

(United Kingdom, 15 February 1996)

The incident

On 15 February 1996, the Liberian registered tanker *Sea Empress* (77 356 GRT), laden with more than 130 000 tonnes of crude oil, ran aground in the entrance to Milford Haven in south-west Wales (United Kingdom). There was a pilot on board who had joined the tanker outside the harbour entrance.

It was established immediately after the grounding that four cargo tanks and several ballast tanks had been ruptured and an initial loss of around 6 000 tonnes of crude oil was reported. Although quickly refloated, the tanker listed badly and was anchored to allow the remaining oil to be transhipped.

On 16 February the shipowner entered into a salvage contract under Lloyds Open Form 1995. Harbour tugs were on site almost immediately after the grounding, and larger tugs arrived on 16 February.

During strong winds in the night of 16 February, the *Sea Empress* grounded again with further leakage of oil. The ship was refloated at high tide on 17 February but grounded that evening off St Ann's Head, causing another release of oil. In continuing strong winds, the tanker grounded again in the morning of 18 February, but with no reported loss of oil at that time. Oil was lost at each subsequent low tide, with the largest releases thought to have occurred around midday and midnight on 19 February (the latter being estimated at 30 000 tonnes).

Sea Empress incident - tugs in attendance
(photograph: ITOPF)

The *Sea Empress* was finally refloated on the high tide in the evening of 21 February and was towed to a jetty in Milford Haven. A significant release of heavy fuel oil occurred that evening while the ship was alongside the jetty. Steps were taken to remove fuel oil from ruptured tanks, and 500 tonnes of bunkers were transhipped at the jetty. Between 24 February and 3 March the remaining cargo, some 58 000 tonnes, was discharged. An underwater survey showed that the *Sea Empress* had suffered extensive structural damage.

The *Sea Empress* was towed out of Milford Haven on 27 March. A further small quantity of fuel oil was spilled at the start of and during the voyage.

It is estimated that in all approximately 72 000 tonnes of crude oil and 360 tonnes of heavy fuel oil were released as a result of the incident.

The *Sea Empress* is entered in Assuranceföreningen Skuld (Skuld Club).

Impact of the spill

South-west Wales has a coastline of great scenic interest and scientific importance. About 200 kilometres of coastline were affected by the spill. A large part of the affected coast falls within the Pembrokeshire Coast National Park. The area includes one of the United Kingdom's three Marine Nature Reserves.

The coastline within Milford Haven was heavily oiled, and outside the Haven much of the oil drifted south and then eastwards parallel to the south coast of Pembrokeshire, affecting this

coastline as far as Pendine Sands in Carmarthen Bay. Some oil reached Skomer Island north-west of the Haven, but no oil was observed north of St David's Head. Lundy Island in the Bristol Channel received light oiling, and some pellets of oil reached the Irish coast. No oiling of the coast of mainland Devon and Cornwall was reported.

Clean-up operations

Salvage operations were co-ordinated jointly by the Milford Haven Port Authority and the Marine Pollution Control Unit (MPCU) of the Department of Transport. MPCU was also responsible for directing offshore pollution response operations. A Joint Response Centre (JRC) was opened in Milford Haven on 16 February 1996 for the purpose of co-ordinating the onshore clean-up. The JRC was managed by a team consisting of representatives of central and local authorities, conservation agencies and the oil industry.

The response to oil pollution at sea included the aerial application of dispersants as well as oil containment and recovery operations using booms and skimmers deployed from various vessels. Two vessels from France and two from the Netherlands also took part in offshore recovery operations. Close to the shore fishing boats assisted in the oil recovery operations.

The oil affected an area consisting of a wide variety of coastal features including rocks and cliffs, sand, shingle and cobble beaches. Clean-up of the contaminated beaches involved the collection of liquid oil using vacuum trucks and the manual removal of oiled beach material. Dispersants were used to remove weathered oil from rocks next to selected amenity beaches.

The work on beaches and accessible rocky coastlines to remove major accumulations of oil was completed by the middle of March 1996. The main recreational beaches were cleaned by early April, although minor re-oiling occurred throughout the summer, and some cleaning operations were continued through the winter. At the height of the clean-up activity about 600 people were employed.

Small teams of clean-up workers were held in readiness throughout the holiday season of 1996 to ensure that amenity beaches were kept thoroughly clean and that any re-oiling was dealt with promptly. Operations to clean rocky and cobble coastlines required a greater effort. These operations were made difficult by the natural movement of sand alternately exposing and obscuring oiled rocks.

Severe storms occurred in the region at the end of October 1996 which resulted in oil being re-exposed at a number of sites and released from others. Clean-up work was initiated immediately. There were a substantial number of boats moored in Tenby Harbour at that time and almost all of these were re-oiled. Flushing the harbour at low tide was carried out to remove the oil which had accumulated in the sediment.

Approximately 18 000 tonnes of oil/water mixture and 13 200 tonnes of oily beach material and other waste were collected during the clean-up operations.

A survey of the affected coastline will be conducted during February 1997 to establish whether any further clean-up work is required on amenity beaches and to establish where any remaining oil may threaten sensitive environmental resources.

On 1 April 1996 the responsibility for shoreline clean-up was transferred from Dyfed County Council and the district councils affected to the newly formed local authorities of

Pembrokeshire County Council and Carmarthenshire County Council, following a re-organisation of local government.

It is estimated that the clean-up costs incurred by MPCU, the local authorities, Texaco and various contractors had reached £22 million by the end of 1996.

On 14 and 15 March 1996 reports were received from the Republic of Ireland of tar balls stranding on many beaches along 100 kilometres of the south-east coast. Results of chemical analysis, together with other evidence, established that the source of the tar balls was the *Sea Empress* spill. Clean-up of the contaminated beaches was completed during April 1996.

Effects on the fishing industry

There is diverse inshore fishing activity carried out from several ports in Milford Haven and the surrounding area by small vessels of up to 15 metres in length. Many fishermen operating these vessels were affected by the incident. There is also hand-gathering of shellfish in the intertidal zone. The total value of annual landings from inshore fishing and shellfish gathering in south-west Wales in 1995 has been estimated at £6 million.

There are also offshore fishing activities based in Milford Haven, involving much larger vessels. Since the majority of these vessels operate in areas remote from the oil spill and sell their catches in distant European markets, it is unlikely that they were affected by the spill.

Inshore fishermen in the affected area decided to impose a voluntary ban on fishing between St David's Head and West Helwick Buoy from 21 February 1996.

On 28 February 1996, the Welsh Office imposed an Order under the Food Environment Protection Act prohibiting the landing of fishery and aquaculture products taken from a designated zone from St David's Head to the Gower Peninsula, and extending 10 - 30 kilometres offshore. On 20 March a statutory ban was also imposed by the Welsh Office on salmon and migratory trout in all freshwater rivers and streams which flow into the sea between the Gower Peninsula and St David's Head. The Ministry of Agriculture, Fisheries and Food continuously monitored the levels of oil contamination in coastal waters and in animal tissues within the designated zone.

Fin fish were found to have little or no contamination, and the ban on salmon and migratory trout was lifted on 3 May 1996 and on other fin fish species on 21 May. Shellfish living on the sea bottom, notably crustaceans (such as lobsters and crabs) and whelks, showed only slightly elevated hydrocarbon levels shortly after the spill. These hydrocarbon levels then declined leading to the ban on the exploitation of these particular shellfish being gradually lifted for most of the designated zone mentioned above during the period 3 July - 17 October 1996. Certain other shellfish, notably bivalve molluscs (such as cockles and mussels) and seaweed which live in the intertidal zone and were directly oiled in some locations, were more heavily contaminated and recovered more slowly. Whilst virtually all commercial fishing activity had returned to normal by the end of the year, restrictions remained in place for intertidal shellfish and seaweed in most areas of the designated zone, and for whelks within Milford Haven itself.

Effects on the tourism industry

Tourism is an important industry in Pembrokeshire, with the total tourism expenditure estimated at between £150 and £175 million in 1995. The industry in Pembrokeshire consists of a range of small hotels, guest houses, caravan parks and cottages, as well as restaurants, shops, visitor attractions and activities such as boat trips.

The Pembrokeshire Coast National Park includes some 400 kilometres of coastline. Many of the tourist resorts and villages are linked by the Pembrokeshire Coastal Path.

Many tourism operators reported a sharp drop in the number of accommodation enquiries and in the level of bookings for the period immediately following the incident. It appears, however, that the impact of the incident was less marked during the peak tourism season of July and August 1996.

Effects on wildlife

More than 6 900 oiled birds were recovered, but a little over half of these were dead. The Royal Society for the Prevention of Cruelty to Animals set up an emergency facility for live oiled birds. This facility handled more than 3 100 birds, and more than 2 000 were cleaned and released.

Claims handling

The Skuld Club and the 1971 Fund have together established a Claims Handling Office in Milford Haven. The purpose of that office is to receive and assess claims and forward them to the Skuld Club and the Fund for examination and approval. That office also assists claimants in the presentation of their claims.

A number of experts have assisted the 1971 Fund and the Skuld Club to examine various groups of claims, *viz* those relating to clean-up operations, salvage, fishing, tourism and property damage. This work has been co-ordinated by the Claims Handling Office.

Level of compensation payments

In February 1996, the Executive Committee authorised the Director to make final agreements as to the admissible amounts 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. The 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 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee considered it necessary for the 1971 Fund to exercise caution in the payment of claims. In view of the uncertainty as to the total amount of the claims, the Committee decided that the Director was not authorised at that stage to make any payments.

In April 1996, the Executive Committee maintained its position that it was necessary to exercise caution in the payment of claims, since under Article 4.5 of the 1971 Fund Convention all claimants had to be given equal treatment. In the Committee's view it was necessary to strike a balance between the need to avoid an overpayment situation and the importance of the Fund's paying compensation as promptly as possible to victims of oil pollution damage. In view of these considerations, the Committee decided to authorise the Director to make payments of 75% of the quantum of the damage actually suffered by the respective claimants on the basis of the advice of the 1971 Fund's experts at the time when a payment was made.

At its sessions in June and October 1996, the Executive Committee decided that the level of the 1971 Fund's payments should remain at 75% of the damage actually suffered by the respective claimants.

Claims for compensation

General situation

As at 31 December 1996, 607 claimants had presented claims for compensation to the Claims Handling Office.

Claims had been approved for a total of £7.4 million. The Skuld Club had made payments to 314 claimants, totalling £5 million. Cheques for a further £400 000 were awaiting collection by the claimants. Most of these payments corresponded to 75% of the amounts approved by the Club and the Fund. However, payments of up to 100% of the approved amounts were made by the Club in a number of cases where the amount of compensation was small or where the claimant has been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

Claims for clean-up operations

Pembrokeshire County Council has submitted an interim claim for £1.1 million in respect of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council for expenses prior to local authority re-organisation on 1 April 1996. On the basis of the documentation submitted so far, this claim has been assessed by the experts engaged by the Skuld Club and the 1971 Fund at £918 000 for the substantiated items, of which 75% (£677 000) has been paid. Responses to some queries are still outstanding, and a further assessment will be made in the light of any additional information provided by the claimant. A further claim has been submitted by Pembrokeshire County Council for the period April - June 1996 for £2.7 million. Documentation presented in support of this new claim is being examined by the experts of the Skuld Club and the 1971 Fund.

Devon County Council and two Devon District Councils have submitted claims for £8 900, £2 200 and £1 500, respectively. The Devon County Council claim has been assessed at £4 900, and an interim payment of 75% of the assessed amount has been made. This claim will be re-examined in the light of further information requested from the claimant. The two District Council claims have been assessed at £1 900 and £1 500, respectively, and 75% of the assessed amounts have been paid.

Carmarthen County Council has claimed £900 000 in respect of costs incurred by five local authorities for clean-up operations carried out up to 31 March 1996 (ie before the local government re-organisation). No documents have yet been submitted in support of this claim. A further claim of about £250 000 is anticipated for clean-up operations conducted by that County Council after 1 April 1996.

The Environment Agency has submitted a claim for £400 000 for costs incurred by the National Rivers Authority in respect of staff costs, transport and equipment hire. This claim is being examined by the experts engaged by the Skuld Club and the 1971 Fund.

The Milford Haven Standing Conference on Anti-Oil Pollution, which was set up for the purpose of providing a spill response capability within Milford Haven, has presented a claim for £1.2 million in respect of costs incurred for the provision of booms, skimmers and spill response craft in the clean-up operations. Queries raised by the experts engaged by the Skuld Club and the 1971 Fund have been forwarded to the claimant, and a response to those questions is awaited.

Two charities, Care for the Wild and the South Devon Seabird Trust, have claimed compensation of £4 900 and £700, respectively for cleaning birds. While the latter claim has been approved for the amount claimed, the former claim is still being examined.

Four County Councils in Ireland have indicated their intention to submit claims totalling approximately Irish Pounds 73 000 (£72 000).

Property claims

As a result of the incident, boats and moorings in the Milford Haven area became contaminated. Seventy-five claimants have submitted claims for compensation for cleaning costs. These claims have been approved for £126 000, and most of them have been paid in full by the Skuld Club.

A number of buildings located close to the affected beaches were contaminated by wind-blown oil. Thirty-one claims relating to such damage have been approved for a total of £20 000. The Skuld Club has paid a total of £15 000 in compensation in respect of these claims.

Claims have been received for damage to the carpets of shops and homes located on the seafront of the most severely polluted areas, for damage to clothing worn and equipment used by personnel involved in the clean-up operations and for the replacement of trees and shrubs damaged by wind-blown oil. In addition, claims have been submitted by the owners of private roads which have been damaged by the passage of heavy vehicles and equipment involved in the clean-up operations. Thirty-nine claims in these categories have been approved for a total of £39 000. The Skuld Club has paid a total of £34 000 in respect of these claims.

Fishery claims

Claims have been presented by 148 fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority catch whelks and crustaceans. Some of the claims relate also to damage to nets and the loss of pots. In this category claims from 112 fishermen have been approved for a total of £4.8 million. The Skuld Club has paid a total of £3.4 million in respect of these claims.

Claims from nine fishermen for lost fishing gear have been approved at £39 000. The Skuld Club has paid a total of £28 000 in respect of these claims. A number of claims related to fishing gear allegedly lost as a result of the clean-up operations have been rejected. Some of these claimants did not show that they had any fishing gear in the water immediately before the spill because they had not been fishing at that time. Others alleged to have lost pots in areas where no clean-up operations or other activities relating to the oil spill were carried out.

A claim has been presented by one oyster farmer whose stock was contaminated as a result of the spill and who has been prevented from selling oysters due to the fishing ban. Payments totalling £66 700 have been made by the Skuld Club to this claimant corresponding to 75% of the losses resulting from the destruction of the part of the stock that would normally have been harvested and sold every month since the incident.

Fourteen fish and shellfish processing companies and merchants have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. Of these, two companies trade in white fish, three in whelks, five in crustaceans and four companies trade in cockles, whelks and mussels. So far interim payments totalling £707 000 have been made to ten of these companies.

In June 1996, the Executive Committee considered three claims which had been received from fish processing and sales companies located outside the area covered by the fishing bans which had maintained that they had been deprived of their supply of shellfish as a result of the incident.

One of these claims had been submitted by a shellfish processor based in New Quay (Wales) some 80 kilometres by road to the north of the area covered by the fishing ban.

The Committee considered that, as this processing plant was located close to the area covered by the fishing ban, the claimant was highly dependent on the supplies from the area and had limited possibilities of obtaining supplies elsewhere. The Committee took the view that the claimant's business should be considered as forming an integral part of the economic activity of the area. For these reasons, the Committee was of the opinion that there was a reasonable degree of proximity between the contamination and the alleged loss, and decided that this claim was admissible in principle.

Another claim had been presented by a fish sales company located in Saltash in Cornwall, some 400 kilometres by road from Milford Haven. The Committee considered that this claim did not fulfil the criterion of geographic proximity between the claimant's activity and the contamination. The Committee considered that the claimant's business did not form an integral part of the economic activity of the area affected by the spill. For these reasons, the Committee took the view that there was not a reasonable degree of proximity between the contamination and the loss suffered by the claimant. The Committee therefore rejected this claim.

The third claim had been submitted by a fish sales company located in Newport (Wales) some 160 kilometres by road from Saundersfoot. The Committee noted that this claimant's business operated some distance from the area affected by the contamination. It was considered, however, that the company was highly dependent on products from the area covered by the fishing ban and that this company had made a significant contribution to the development of the infrastructure of whelk fishery in the area. The Committee considered therefore that there was a reasonable degree of proximity between the contamination and the alleged loss, and decided that this claim was admissible in principle.

Claims from the tourism industry

Claims have been received from 226 operators in the tourism industry, such as hotels, bed and breakfast businesses, caravan parks, shops and restaurants, as well as from a sailing school, a water sports centre, a diving school and angling shops. Claims in this category have been approved for a total of £542 000 and payments for a total of £410 000 have been made to 85 claimants. The remaining claims are being examined.

In October 1996, the Executive Committee decided that the criteria for the admissibility of claims adopted in the *Haven* case were applicable to the tourism claims from the directly affected area between the Gower peninsula and St David's. According to these criteria, it would not be reasonable to make a distinction dependent on the type of goods sold, except in respect of shops selling goods which were not normally bought by tourists (such as furniture and cars). Furthermore, each claim should be considered on its own merits, and the decisive criterion should be whether there was a link of causation (a reasonable degree of proximity) between the loss or damage and the contamination resulting from the *Sea Empress* incident.

As regards businesses in the tourism sector which were not located close to the affected coast but some distance inland, the Committee considered that special attention should be given to the degree of dependency of the business on the affected resource, ie the polluted coast, when assessing whether the criterion of proximity was fulfilled. In the Committee's view, one important element was the distance between the location of the business and the coast, as well as the time required by tourists to reach the coast, and the outcome of this assessment might vary depending on the type of business being considered.

With respect to claims from businesses located outside the area directly affected by the oil, ie north of St David's to Newport and Cardigan and east of the fishing exclusion zone on the Gower

peninsula, the Committee noted that many potential visitors would not distinguish between the area south of St David's and the area to the north when deciding whether to refrain from taking a holiday in Pembrokeshire due to the oil spill. For this reason, the Committee took the view that businesses in the tourism sector north of St David's could also qualify for compensation, provided that there was a reasonable degree of proximity between the oil spill and the reduction in tourism revenue. It was stated that the further away from the contaminated coast the business was conducted, the greater the likelihood that the criterion of a reasonable degree of proximity would not be fulfilled.

At its October 1996 session the Executive Committee considered a claim by Wales Tourist Board for £30 000 relating to the cost of certain promotional activities designed to reduce the impact of negative publicity generated in the aftermath of the *Sea Empress* incident and to rebuild the image of the area prior to the beginning of the 1996 tourist season. The Committee considered that some of the items of Wales Tourist Board's claim fulfilled the criteria for the admissibility of claims for the cost of measures to prevent or minimise pure economic loss and decided that these items were therefore admissible in principle.

KUGENUMA MARU

(Japan, 6 March 1996)

While the Japanese tanker *Kugenuma Maru* (57 GRT) was loading some 120 tonnes of heavy fuel oil at an oil terminal in Kawasaki, Kanagawa (Japan), 0.3 tonnes of oil overflowed from the cargo tank and spilled into the sea due to the mishandling of the valve used for loading.

Clean-up operations were completed the same day. Claims for the cost of clean-up operations were submitted by the oil terminal and its clean-up contractors for a total of ¥2 million (£10 200). These claims were settled in full in November 1996, but have not yet been paid.

It is unlikely that there will be any further claims arising out of this incident.

The limitation amount of the *Kugenuma Maru* is estimated at ¥1.2 million (£6 000).

The shipowner's P & I insurer, the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA), requested that the 1971 Fund should waive the requirement to establish the limitation fund. For the reasons set out above in respect of the *Shinryu Maru N°8* incident, the Executive Committee decided in June 1996 that the requirement to establish the limitation fund should be waived in the *Kugenuma Maru* case, so that the Fund could, as an exception, pay compensation and indemnification without the limitation fund being established.

KRITI SEA

(Greece, 9 August 1996)

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodoroi (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach to the west, south and east of this terminal were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

The ship is entered in the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

Clean-up operations were undertaken by the staff of the terminal, the Ministry of Merchant Marine, the local authorities and a number of contractors. The clean-up operations at sea were completed by 17 August, and the shoreline clean-up was largely completed by the end of the month.

Claims totalling Drs 2 000 million (£4.7 million) have been notified to the shipowner and the UK Club. These include claims from fishermen for damage to their equipment and loss of income, from fish farmers and operators in the tourism industry and for the cost of clean-up operations.

Further claims are expected to be submitted in the near future.

The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£5.3 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

N°1 YUNG JUNG

(Republic of Korea, 15 August 1996)

The incident

While the Korean sea-going bunkering barge *N°1 Yung Jung* (GRT 560), laden with 200 tonnes of marine diesel oil and 1 600 tonnes of medium fuel oil, took shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea), the barge grounded on a submerged rock which did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled into the sea. A dozen ships which were in the vicinity of the grounding site and various port facilities such as piers and embankments were contaminated. Nearby rocky shores were also polluted.

Clean-up operations were carried out by contractors engaged by the shipowner. The clean-up operations were completed by 14 September 1996.

The wreck of *N°1 Yung Jung* was removed and the remaining oil was transferred to another vessel.

The *N°1 Yung Jung* was not entered in any P & I Club, but was insured by a marine insurer in Hong Kong for protection and indemnity up to a limit of US$1 million (£584 000) per incident, with a deductible of US$10 000 (£5 800).

Claims situation

Claims for the cost of the clean-up operations totalling Won 856 million (£590 000) have been presented by the above-mentioned contractors and by the Pusan Marine Police and the Pusan Maritime and Port Authority.

The owners of the contaminated vessels have submitted claims totalling Won 510 000 (£352 000).

N°1 Yung Jung incident - booms in harbour
(photograph: KOMOS)

Claims totalling Won 175 million (£121 000) in respect of the operations to salve the wreck of the *N°1 Yung Jung* and remove the remaining cargo have been presented by the contractors and by the owner of the *N°1 Yung Jung*.

It is expected that this incident will give rise to fishery claims, but no such claims have so far been received.

Limitation of liability

The limitation amount applicable to the *N°1 Yung Jung* is estimated at Won 88 million (£61 000).

The shipowner has not yet commenced limitation proceedings.

Investigation into the cause of the incident

The Korean authorities are carrying out an investigation into the cause of the incident. The 1971 Fund is following this investigation through its Korean lawyer.

8.3 Incident dealt with by the 1992 Fund during 1996

As in Section 8.2 of this Report, claim amounts have been rounded. The conversion of foreign currencies into Pounds Sterling is as at 31 December 1996.

INCIDENT IN GERMANY

(Germany, 20 June 1996)

The incident

On 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. According to the German authorities, computer simulations of currents and wind movements indicated that the oil had been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the Isle of Sylt. The German authorities started clean-up operations at sea and on shore on 21 June 1996. Some 2 130 tonnes of oil and sand mixture were removed from the beaches. The cost of these operations has been indicated at some DM5 million (£1.9 million).

The 1992 Fund was notified of this incident by telephone on 3 July 1996, by which time the clean-up operations were almost completed, and on 17 July 1996 by letter from the Federal Ministry of Transport.

The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. Chemical analysis indicated that the oil was Libyan crude.

The German authorities have informed the 1992 Fund that the incident may have resulted in losses for the fishing and tourism industries in the affected area.

Claims for compensation

Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. Analysis of oil samples taken from the ship matched the results of the analysis of samples taken from the polluted coastline. Comparisons with chemical analytical data on North Sea crude oils have shown that the pollution was not caused by crude oil from North Sea platforms.

The German authorities have approached the owner of the *Kuzbass* and requested that he accept responsibility for the oil pollution. They have stated that, failing this, the authorities would take legal action against him.

The *Kuzbass* is entered in The West of England Ship Owners' Mutual Insurance Association (Luxembourg).

The German authorities' notification of 17 July 1996 was addressed to the 1992 Fund. It appears that the authorities maintain that the ship from which the oil originated was an unladen tanker. The definition of "ship" in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers, and so does by reference the definition of ship in the 1992 Fund Convention. Article I.1 of the 1992 Civil Liability Convention reads:

> 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

As stated above, the German authorities intend to claim compensation from the owner of the *Kuzbass* for the cost of the clean-up operations. The limitation amount applicable to the *Kuzbass*

is estimated at approximately 38 million Special Drawing Rights (SDR) (£32 million). The German authorities have stated, however, that if these attempts were to be unsuccessful, they would claim against the 1992 Fund.

If the German authorities were to pursue a claim against the 1992 Fund, the question arises of whether they have proved that the damage resulted from an incident involving one or more ships. This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of 'ship' contained in the 1992 Civil Liability Convention.

9 LOOKING AHEAD

The year of 1996 was a milestone in the development of the international system for compensation of oil pollution damage.

On 30 May the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention (the 1992 Conventions) entered into force, less than four years after they were adopted. As a result of the entry into force of the Protocols, two Organisations now exist, the 1971 Fund and the 1992 Fund, with different membership but administered by the same Secretariat.

During 1996 the 1971 Fund's membership continued to grow, and the 1971 Fund has now 70 Member States. So far, only 19 States have ratified the 1992 Protocol to the Fund Convention. At present all States which are Members of the 1992 Fund are also Members of the 1971 Fund.

On 15 November 1996 the conditions for the compulsory denunciation of the 1969 and 1971 Conventions were fulfilled, so that the transitional period for the 1992 Conventions will cease on 15 May 1998. At present, during the transitional period, States may belong both to the 'old' regime governed by the 1969 and 1971 Conventions and to the 'new' regime governed by the 1969/1971 Conventions as amended by the 1992 Protocols. On 16 May 1998, a new phase in the international system of liability and compensation will begin. From then, it will no longer be possible for a State to belong to both the 1971 Fund and the 1992 Fund and thus to both the 'old' regime and the 'new' regime. It is expected that many Members of the 1971 Fund will leave that Organisation in the near future and become Members of only the 1992 Fund. It is also expected that a number of other States will ratify the 1992 Protocols during 1997 and thereby become Members of the 1992 Fund.

As more States become Parties to the 1992 Convention and therefore leave the old regime, the 1992 Fund will become the more important of the two Organisations. As a result, the Conventions as amended by the 1992 Protocols will ensure the viability of the international system of compensation for oil pollution damage in the future.

It is an essential task for the Secretariat of the two Organisations to meet the challenges resulting from this new situation.

ANNEX I

Structure of the IOPC Funds

1971 FUND AND 1992 FUND ASSEMBLIES

Composed of all Member States of the respective Organisation

Chairman:	Mr C Coppolani	(France)
Vice-Chairmen:	Professor H Tanikawa	(Japan)
	Mr P Gómez-Flores	(Mexico)

1971 FUND EXECUTIVE COMMITTEE

47th to 50th sessions

Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Miss A N Ogo (Nigeria)
Algeria	Mexico
Australia	Netherlands
Canada	Nigeria
Finland	Norway
Germany	Russian Federation
India	Spain
Japan	United Arab Emirates
Liberia	

51st session

Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Miss A N Ogo (Nigeria)
Australia	Morocco
Belgium	Netherlands
Canada	Nigeria
Denmark	Republic of Korea
Finland	Russian Federation
Germany	Spain
Greece	United Kingdom
Malaysia	

SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr H Osuga	Legal Officer
Mr S O Nte	Finance/Personnel Officer
Mr R Pillai	Finance Officer
Mrs S Broadley	Claims Officer
Mr J Maura	Claims Officer
Ms H Warson	Administrative Officer

AUDITORS

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on 1971 Fund's Published Financial Statements

The financial statements reproduced in Annexes III to XIII are a summary of information contained in the audited financial statements of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1995, approved by the Assembly at its 19th session.

EXTERNAL AUDITOR'S STATEMENT

The summary financial statements set out in Annexes III to XIII are consistent with the audited financial statements of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1995.

J Rickleton
Associate Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 1997

ANNEX III

General Fund

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Contributions				
Initial contributions		125 660		*44 966*
Annual contributions		5 935 049		*7 907 141*
Adjustment to prior years' assessment		14 223		*5 156*
		6 074 932		*7 957 263*
Miscellaneous				
Miscellaneous income	347 871		*1 324*	
Transfer from MCF *Brady Maria/Thuntank 5*	-		*5 907*	
Transfer from MCF *Volgoneft 263*	-		*60 115*	
Interest on loan to MCF *Taiko Maru*	-		*309*	
Interest on loan to MCF *Keumdong N°5*	-		*2 556*	
Interest on loan to MCF *Vistabella*	20 247		*8 590*	
Interest on loan to MCF *Agip Abruzzo*	4 605		-	
Interest on loan to MCF *Yuil N°1*	642		-	
Interest on overdue contributions	9 608		*5 131*	
Interest on investments	1 038 619		*426 419*	
		1 421 592		*510 351*
		7 496 524		*8 467 614*
EXPENDITURE				
Secretariat expenses				
Obligations incurred		1 024 802		*863 053*
Claims				
Compensation		2 487 962		*1 008 716*
Claims related expenses				
Fees	443 741		*502 280*	
Travel	6 585		*9 316*	
Miscellaneous	515		*9 953*	
		450 841		*521 549*
		3 963 605		*2 393 318*
Income less expenditure		3 532 919		*6 074 296*
Exchange adjustment		30 414		*10 994*
Excess/(Shortfall) of income over expenditure		3 563 333		*6 085 290*

ANNEX IV

Major Claims Fund - *Kasuga Maru N°1*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Interest on overdue contributions	-		-	
Interest on investments	26 385		*13 792*	
		26 385		*13 792*
EXPENDITURE				
Compensation	-		-	
Fees	-		-	
Travel	-		-	
Miscellaneous	-		-	
		0		*0*
Excess of income over expenditure		26 385		*13 792*
Balance b/f: 1 January		363 349		*349 557*
Balance as at 31 December		389 734		*363 349*

ANNEX V

Major Claims Fund - *Rio Orinoco*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	£	£
Contributions				
Adjustment to prior years' assessment	(11 266)		-	
		(11 266)	-	-
Miscellaneous				
Interest on overdue contributions	7 566		*1 254*	
Interest on investments	94 180		*49 808*	
		101 746		*51 062*
		90 480		*51 062*
EXPENDITURE				
Compensation	-		-	
Fees	15 554		*31 188*	
Travel	-		-	
Miscellaneous	125		*420*	
		15 679		*31 608*
Excess of income over expenditure		74 801		*19 454*
Balance b/f: 1 January		1 288 207		*1 268 753*
Balance as at 31 December		1 363 008		*1 288 207*

ANNEX VI

Major Claims Fund - *Haven*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Contributions				
Annual contributions (second levy)	-		-	
Annual contributions (first levy)	-		-	
Adjustment to prior years' assessment	(49 156)		*25 674*	
		(49 156)		*25 674*
Miscellaneous				
Interest on overdue contributions	18 651		*4 928*	
Interest on investments	1 618 858		*1 516 751*	
Interest on loan to MCF *Braer*	327 416		*63 825*	
		1 964 925		*1 585 504*
		1 915 769		*1 611 178*
EXPENDITURE				
Fees	766 379		*656 932*	
Travel	11 358		*5 351*	
Miscellaneous	249		*1 918*	
		777 986		*664 201*
Excess of income over expenditure		1 137 783		*946 977*
Balance b/f: 1 January		28 018 647		*27 071 670*
Balance as at 31 December		29 156 430		*28 018 647*

ANNEX VII

Major Claims Fund - *Aegean Sea*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	£	£
Contributions				
Annual contributions (second levy)	14 971 787		-	
Annual contributions (first levy)	-		*19 970 504*	
Adjustment to prior years' assessment	534		-	
		14 972 321		*19 970 504*
Miscellaneous				
Interest on overdue contributions	3 692		*8 000*	
Interest on investments	2 244 463		*693 418*	
		2 248 155		*701 418*
		17 220 476		*20 671 922*
EXPENDITURE				
Compensation	2 028 253		*1 479 880*	
Fees	524 630		-	
Travel	3 994		-	
Miscellaneous	13 190		-	
		2 570 067		*1 479 880*
Excess of income over expenditure		14 650 409		*19 192 042*
Balance b/f: 1 January		19 192 042		-
Balance as at 31 December		33 842 451		*19 192 042*

ANNEX VIII

Major Claims Fund - *Braer*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Contributions				
Annual contributions (second levy)	-		-	
Annual contributions (first levy)	-		*34 812 145*	
Adjustment to prior years' assessment	(56 888)		-	
		(56 888)		*34 812 145*
Miscellaneous				
Interest on overdue contributions	1 539		*15 882*	
Interest on investments	-		*238 019*	
		1 539		*253 901*
		(55 349)		*35 066 046*
EXPENDITURE				
Compensation	6 461 809		*20 451 175*	
Fees	625 796		*1 119 505*	
Travel	5 022		*6 608*	
Interest on loan from MCF *Haven*	327 416		*63 825*	
Miscellaneous	2 665		*2 912*	
		7 422 708		*21 644 025*
Excess/(Shortfall) of income over expenditure		(7 478 057)		*13 422 021*
Amount due to MCF *Haven*		(316 098)		*(13 738 119)*
Balance as at 31 December		(7 794 155)		*(316 098)*

ANNEX IX

Major Claims Fund - *Taiko Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Contributions				
Annual contributions	-		*9 853 301*	
Adjustment to prior years' assessment	45 285		*-*	
		45 285		*9 853 301*
Miscellaneous				
Interest on overdue contributions	1 751		*4 212*	
Interest on investments	230 120		*139 823*	
		231 871		*144 035*
		277 156		*9 997 336*
EXPENDITURE				
Compensation	46 713		*5 920 364*	
Fees	21 425		*526 114*	
Travel	-		-	
Interest on loan from General Fund	-		*309*	
Miscellaneous	1 766		*265*	
		69 904		*6 447 052*
Excess of income over expenditure		207 252		*3 550 284*
Amount due to General Fund		-		*(362 126)*
Balance b/f: 1 January		3 188 158		*-*
Balance as at 31 December		3 395 410		*3 188 158*

ANNEX X

Major Claims Fund - *Keumdong N°5*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995		*1994*	
INCOME	£	£	*£*	*£*
Contributions				
Annual contributions (second levy)	9 926 332		-	
Annual contributions (first levy)	-		*4 926 650*	
Adjustment to prior years' assessment	22 642		-	
		9 948 974		*4 926 650*
Miscellaneous				
Interest on overdue contributions	4 346		*2 104*	
Interest on investments	761 991		*68 134*	
		766 337		*70 238*
		10 715 311		*4 996 888*
EXPENDITURE				
Compensation	-		*3 016 459*	
Fees	208 789		*435 779*	
Travel	-		*6 168*	
Interest on loan from the General Fund	-		*2 556*	
Miscellaneous	350		*7 971*	
		209 139		*3 468 933*
Excess of income over expenditure		10 506 172		*1 527 955*
Amount due to General Fund		-		*(76 319)*
Balance b/f: 1 January		1 451 636		-
Balance as at 31 December		11 957 808		*1 451 636*

ANNEX XI

Major Claims Fund - *Toyotaka Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1995

	1995	
INCOME	£	£
Contributions		
Annual contributions	8 907 469	
Adjustment to prior years' assessment	-	
		8 907 469
Miscellaneous		
Interest on overdue contributions	3 021	
Interest on investments	385 941	
		388 962
		9 296 431
EXPENDITURE		
Compensation	4 280 631	
Fees	354 363	
Travel	7 260	
Miscellaneous	2 812	
		4 645 066
Balance as at 31 December		4 651 365

ANNEX XII

1971 FUND: BALANCE SHEET AS AT 31 DECEMBER 1995

	1995	*1994*
ASSETS	£	*£*
Cash at banks and in hand	91 016 695	*64 606 834*
Contributions outstanding	1 631 848	*1 216 815*
Due from MCF *Braer* to MCF *Haven*	7 794 155	*316 098*
Due from MCF *Vistabella*	328 039	*302 480*
Due from MCF *Agip Abruzzo*	176 662	-
Due from MCF *Yuil N°1*	402 929	-
Tax recoverable	25 977	*14 284*
Miscellaneous receivable	20 619	*13 446*
Interest on overdue contributions	4 386	*13 685*
TOTAL ASSETS	101 401 310	*66 483 642*
LIABILITIES		
Staff Provident Fund	805 746	*662 945*
Accounts payable	19 612	*18 524*
Unliquidated obligations	68 718	*51 614*
Prepaid contributions	179 561	*283 826*
Contributors' account	182 686	*139 246*
Due to MCF *Kasuga Maru N°1*	389 734	*363 349*
Due to MCF *Rio Orinoco*	1 363 008	*1 288 207*
Due to MCF *Haven*	29 156 430	*28 018 647*
Due to MCF *Aegean Sea*	33 842 451	*19 192 042*
Due to MCF *Taiko Maru*	3 395 410	*3 188 158*
Due to MCF *Keumdong N°5*	11 957 808	*1 451 636*
Due to MCF *Toyotaka Maru*	4 651 365	-
Total Liabilities	86 012 529	*54 658 194*
General Fund Balance	15 388 781	*11 825 448*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	101 401 310	*66 483 642*

ANNEX XIII

1971 FUND: CASH FLOW STATEMENT FOR THE PERIOD ENDED 31 DECEMBER 1995

	£	£
Cash as at 1 January 1995		64 606 834
OPERATING ACTIVITIES		
Initial contributions	112 742	
Previous year's contributions received	39 093 318	
Prior years' contributions received	219 368	
Contributions prepaid	179 561	
Interest received on overdue contributions	59 593	
Other sources of income	510 043	
Receipts by contributors	286 277	
Exchange gain	30 414	
Administrative expenditure	(1 024 802)	
Claims expenditure	(18 901 591)	
Repayment to contributors	(242 836)	
Other cash payments	(103 937)	
Net cash from operating activities before net current asset changes	20 218 150	
Increase (Decrease) in net current liabilities	(265 634)	
Net cash flow from operating activities		19 952 516
RETURNS ON INVESTMENTS		
Interest on investments	6 457 345	
Net cash inflow from returns on investments		6 457 345
Cash as at 31 December 1995		91 016 695

ANNEX XIV

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 1995

INTRODUCTION

Scope of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund ("the Fund") for the seventeenth financial period ended 31 December 1995. 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 1995 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 1995.

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 was 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 detailed review of the claims and contributions procedures as set out in paragraphs 5 to 11 below.

Claims

5 The Fund makes compensation payments to meet claims for oil pollution damage arising from incidents involving laden tankers and also meets 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 expert reports the Fund's staff negotiate settlements with the claimants.

7 In previous years, my examination of settlements 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.

8 This year, I have undertaken a detailed investigation into the claims handling procedures, use of experts, and accounting policies with respect to claims expenditure. Accordingly, I have no longer restricted my examination of settlements and I am able to include this area of the Fund's transactions and Financial Statements within the scope of my audit opinion.

Contributions

9 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.

10 In previous years, I have accepted these reports for the purpose of my audit. Consequently, 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.

11 This year, I have undertaken a detailed review of the contributions procedures. Accordingly, I have no longer restricted my examination of contributions and I am able to include this area of the Fund's transactions and Financial Statements within the scope of my audit opinion.

Reporting

12 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

13 My examination revealed no weaknesses or errors considered material to the accuracy, completeness and validity of the financial statements as a whole. Subject to continuing uncertainty surrounding the outcome of the court action on the Haven incident (paragraphs 20 to 30 below), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1995.

14 The findings of my audit are set out in paragraphs 15 to 38 below.

FINDINGS

FINANCIAL MATTERS

Budgetary Outturn and Transfers

15 Statement I to the financial statements shows that obligations incurred in the period ended 31 December 1995 totalled £1 024 802 this being £188 078 within the budget of £1 212 880.

16 During 1995, the Director made transfers of appropriations within and between 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.

Contributions

17 The Fund received a total of £39 093 318 in assessed annual contributions for the General Fund and Major Claims Funds in 1995, representing an average collection rate of 98 per cent. In 1995, the Fund also received £219 368 of amounts due from previous periods and £179 561 in contributions for the 1996 period. Outstanding contributions for 1995 and previous financial periods, excluding initial contributions, amount to £1 616 313. Of this, some £990 940 or 61 per cent, relates to amounts outstanding from three Member States, including the former USSR and the former Yugoslavia. In addition, £159 320 or 10 per cent is owed by one Italian contributor who went bankrupt in 1993; the Fund has registered a claim in the bankruptcy proceedings for the amount due.

18 In my previous Reports, I have mentioned the Assembly's concerns on the timely submission of reports on contributing oil receipts to ensure the system of levying contributions functions in an equitable manner. For this year, I note that the situation has worsened. As at 31 December 1995, a total of 20 (1994: 8) Member States had not submitted reports on contributing oil receipts for the years 1992 and earlier (1994: for 1991 and earlier). As a result, the Fund was unable to calculate a total of 124 (1994: 45) annual assessments for the General Fund and relevant Major Claims Funds. However, it should be noted that, in respect of many of these Member States, the reports would indicate that no contributing oil - or only a small quantity - had been received in that State.

CONTINGENT LIABILITIES

General

19 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

20 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 1995, claims submitted to the Fund for compensation for oil pollution damage resulting from this incident were approximately £683 million. In addition, there were non-quantified claims relating to damage to the marine environment. The Italian Courts in Genoa dealing with the claims have been called upon to rule on the extent of the Fund's liability under the Fund Convention.

21 On 14 March 1992, the judge in the Court of first instance in Genoa, who is in charge of the limitation proceedings rendered a decision which indicated that the IOPC Fund would face a potential maximum liability of LIt 771 397 947 400 (approximately £313 million). This compared with the Fund's assessment of LIt 102 643 800 000 (60 million Special Drawing Rights, approximately £42 million, being the maximum amount available under the Civil Liability and Fund Conventions), made 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.

22 The Fund lodged opposition to the judge's decision of 14 March 1992 and, at its 15th session in October 1992, this course of action was subsequently endorsed by the Assembly.

23 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 appealed against this judgement.

24 In a judgement rendered on 30 March 1996, the Court of Appeal in Genoa confirmed the judgement of the Court of the first instance. At its 48th session, the Executive Committee instructed the Director to take the necessary steps to appeal against the Court of Appeal's judgement to the Supreme Court of Cassation.

25 Because of the uncertainty surrounding the outcome of these legal proceedings, I explained in my Reports on the Fund's Financial Statements for 1992,1993 and 1994 that I had qualified my audit opinion on the financial statements in respect of the contingent liability for the Haven incident.

26 At its 34th and 40th Sessions, the Executive Committee instructed the Director to enter into negotiations with all major parties involved in the Haven incident with the purpose of arriving at a global solution of all outstanding claims and issues and exploring the possibilities of an out-of-court settlement. 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.

27 At its 43rd session, held 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 a framework of the amount of some LIt 137 000 million (£56 million) being made available to victims, subject to certain terms and conditions. This amount corresponds to the maximum amount available under the Civil Liability Convention and the Fund Convention (60 million Special Drawing Rights) plus interest on the shipowner's limitation fund of LIt 10 000 million and an ex gratia payment of LIt 25 000 million from the shipowner/UK Club.

28 On 5 April 1996, the judge in charge of the limitation proceedings rendered a decision in which he determined the admissible claims for compensation. The judge has admitted claims totalling approximately LIt 186 000 million (£78 million) plus interest and compensation for devaluation. At its 48th session, held in April 1996, the Executive Committee instructed the Director to lodge opposition in respect of those claims admitted by the judge which, in view of the criteria for admissibility laid down by the Assembly and the Committee, were not admissible in principle, as well as any other admitted claims if the Director considered this appropriate. It is probable that other parties will also lodge oppositions.

29 In Schedule III to the financial statements the Fund has assessed contingent liabilities of £368 097 764 as at 31 December 1995, compared with £178 601 159 in 1994. Within this total, £37 385 610 relates to the Haven incident, representing the Fund's view of the maximum compensation of £41 673 620 (60 million Special Drawing Rights) payable under the Fund Convention, less the shipowners' limitation amount of £9 723 850 plus indemnification of £3 935 840 and fees of £1 500 000. However based on the judgement of 5 April 1996, the Fund could face a potential maximum liability in excess of £78 million.

30 I have noted the Fund's estimate of the contingent liability in the Haven case; the Courts' judgements 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

31 During the 1995 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 1995 financial statements.

Control of Supplies and Equipment

32 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 1995 amounted to £143 382.

33 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 1995 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

Common Accounting Standards

34 In 1994, I reported that the Fund had reviewed its financial statements to identify the changes necessary to ensure conformity with the set of common accounting standards, developed by the Consultative Committee on Administrative Questions (Finance and Budgetary Questions), for application in the United Nations System. As a result, the Fund included, for the first time, in the 1994 financial statements a consolidated cash flow statement.

35 During 1995, the Consultative Committee approved revised accounting standards which incorporate common formats and guidelines for financial statements subject to audit. Compliance with these standards is a requirement for 1996 onwards.

36 In consultation with my staff, the Fund will review what further changes could be appropriately introduced into the 1996 financial statements.

OTHER MATTERS

Recovery of VAT

37 Since 1991, a number of invoices received from Italian law firms have been paid inclusive of Italian value added tax. In August 1995, the Italian authorities agreed in principle that some £368 000 of value added tax should be repaid to the Fund. Although the financial statements do not record the amount due for repayment, and to date no money has been repaid, the Fund expects to receive a full refund.

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

19 July 1996

ANNEX XV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE YEAR ENDED 31 DECEMBER 1995

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 XIII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund for the year ended 31 December 1995 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 uncertainty of the contingent liability referred to in paragraphs 20 to 30 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 1995 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

19 July 1996

ANNEX XVI

1971 Fund: Contributing oil received in the territories of Member States in the calendar year 1995

As reported by 31 December 1996

Member State	Contributing Oil (tonnes)	% of Total
Japan	280 933 626	24.73
Italy	147 130 496	12.95
Netherlands	98 648 509	8.69
Republic of Korea	97 931 477	8.62
France	93 349 995	8.22
United Kingdom	83 306 441	7.33
Spain	58 011 893	5.11
Canada	36 668 232	3.23
Germany	33 694 330	2.97
Australia	29 293 967	2.58
Norway	24 019 234	2.12
Sweden	19 493 011	1.72
Greece	18 082 743	1.59
Portugal	15 731 376	1.39
Malaysia	14 009 623	1.23
Mexico	12 165 722	1.07
Finland	11 378 019	1.00
Indonesia	9 966 115	0.88
Venezuela	8 105 141	0.71
Belgium	6 698 245	0.59
Denmark	6 597 134	0.58
Morocco	6 377 581	0.56
Poland	5 038 165	0.44
Bahamas	3 544 036	0.31
Ireland	3 166 174	0.28
Côte d'Ivoire	2 768 775	0.24
Tunisia	2 692 690	0.24
Sri Lanka	1 871 602	0.17
Cyprus	1 493 194	0.13
Cameroon	1 440 494	0.13
Ghana	948 863	0.08
Malta	908 052	0.08
Barbados	178 762	0.02
Mauritius	161 705	0.01
Brunei Darussalam	0	0.00
Djibouti	0	0.00
Estonia	0	0.00
Iceland	0	0.00
Maldives	0	0.00
Marshall Islands	0	0.00
Monaco	0	0.00
Oman	0	0.00
Papua New Guinea	0	0.00
Slovenia	0	0.00
Vanuatu	0	0.00
Yugoslavia	0	0.00
	1 135 850 422	100.00

Note: No report from Albania, Algeria, Bahrain, Benin, Croatia, Fiji, Gabon, Gambia, India, Kenya, Kuwait, Liberia, Mauritania, Nigeria, Qatar, Russian Federation, Saint Kitts and Nevis, Seychelles, Sierra Leone, Switzerland, Syrian Arab Republic, Tonga, Tuvalu and United Arab Emirates.

ANNEX XVII

1992 Fund: Contributing oil received in the territories of Member States in the calendar year 1995

As reported by 31 December 1996

Member State	Contributing Oil (tonnes)	% of Total
Japan	280 933 626	42.93
France	93 349 995	14.27
United Kingdom	83 306 441	12.73
Germany	75 707 307	11.57
Australia	29 293 967	4.48
Norway	24 019 234	3.67
Sweden	19 493 011	2.98
Greece	18 082 743	2.76
Mexico	12 165 722	1.86
Finland	11 378 019	1.74
Denmark	6 597 134	1.01
Marshall Islands	0	0.00
Oman	0	0.00
	654 327 199	100.00

Note: No report from Liberia.

ANNEX XVIII

SUMMARY OF INCIDENTS: 1971 FUND

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 1969 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
10	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding

1996)

- 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 1971 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, 1971 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 1971 Fund Convention; payments by 1971 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
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

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
11	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
12	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324	Grounding
13	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM 10 080 383	Discharge
14	*Shiota Maru N°2*	31.3.82	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding
15	*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	Llt 13 263 703 650	Collision
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

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 ¥8 275 942		11
>16 000	Indemnification	US$467 953	No damage in 1971 Fund 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
300	Clean-up Indemnification	DKr9 455 661 DKr394 043 DKr9 849 704		24
(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.	25
200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.	26

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
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*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
30	*Antonio Gramsci*	6.2.87	Borgâ, 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 0000 *(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 °l*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
36	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
37	*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
39	*Kasuga Maru N °l*	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

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
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 1971 Fund since USSR not Member of 1971 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 1971 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)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claim (Can$1 787 771) not pursued.	38
1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 ¥429 618 927		39
(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of 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

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
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
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	Llt 21 800 000 000 *(estimate)*	Collision

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
7	Other damage to property Indemnification	¥19 159 905 ¥742 880 ¥19 902 785		42
(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 ¥676 860		43
(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 ¥8 717 720		44
250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).	45
0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 ¥3 210 530		46
3	Clean-up Indemnification	¥5 490 570 ¥623 840 ¥6 114 410		47
30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 ¥50 312 666	¥45 038 833 recovered by way of recourse.	48
(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 ¥1 434 431	¥430 329 recovered by way of recourse.	49
800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 SKr16 849 328		50
(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 ¥1 288 500		51
20			Total damage less than shipowner's liability (clean-up £130 000 agreed).	52
185	Clean-up	Can$12 831 892		53
110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 £276 663		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	Llt 1 666 031 931	Total damage less than shipowner's liability.	57

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
58	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	Llt 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
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	44 989	£5 500 000 *(estimate)*	Grounding
64	*Kihnu*	16.1.93	Tallinn, 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

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)	*Figures as awarded in 'stato passivo':* Clean-up: ∘ Italian Government ∘ Other Italian Authorities ∘ Private claimants ∘ French Government ∘ Other French Authorities ∘ Principality of Monaco ∘ Shipowner/UK Club Tourism-related: ∘ Italian private claimants ∘ French private claimants Fishery-related: ∘ Italian private claimants Environmental damage: ∘ Italian Government Total	 Llt 105 260 722 046 Llt 1 457 371 664 Llt 16 481 320 800 Llt 3 891 304 156 Llt 3 297 046 817 Llt 83 525 676 Llt 2 271 977 367 Llt 132 743 268 526 Llt 4 705 136 915 Llt 73 447 387 Llt 4 778 584 302 Llt 8 933 580 000 Llt 40 000 000 000 LIT 186 455 432 828	Opposition lodged by 1971 Fund in respect of a number of claims, including environmental damage claim. Italian Government and two other claimants have also lodged opposition. Question of time-bar vis-à-vis 1971 Fund has arisen in respect of majority of claims. FFr10 659 469 and LIT 1 582 341 690 paid by 1971 Fund. LIT 27 630 million paid by shipowner's insurer.	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	¥650 522 recovered by way of recourse.	60
(unknown)	Other damage to property Indemnification	¥4 243 997 ¥549 600 ¥4 793 597		61
73 500	*Figures as in court judgement:* ∘ Spanish Government *(claimed)* ∘ Other Spanish Authorities *(awarded)* ∘ Private claimant *(awarded)* ∘ Private claimant *(claimed)* Fishery-related: ∘ Private claimants *(awarded)* ∘ Private claimants *(claimed)*	 Pts 1 154 500 000 Pts 303 263 261 Pts 209 216 423 Pts 249 042 393 Pts 327 027 638 Pts 14 955 486 084 Pts 18 198 535 799	Amounts indicated as *claimed* relate to claims referred to the execution of judgement. Appeals lodged by 1971 Fund in respect of a number of claims and by many claimants. Question of time-bar vis-à-vis 1971 Fund has arisen in respect of further claims totalling Pts 17 000 million. Pts 834 906 954 paid by 1971 Fund and Pts 782 209 889 paid by shipowner's insurer.	62
84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£200 285 £33 269 350 £77 375 £3 533 504 £8 259 156 £186 985 £45 526 655	Further claims amounting to £1.96 million agreed. Claims amounting to £72 183 481 subject of court proceedings. £4 807 323 paid by shipowner's insurer.	63
140	Clean-up *(claimed)*	FM713 055		64
4	Clean-up Fishery-related	Won 176 866 632 Won 42 848 123 Won 219 714 755	US$22 504 recovered from shipowner's insurer.	65
520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 ¥1 100 486 335	¥49 104 248 recovered by way of recourse.	66

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
67	*Ryoyo Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision
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	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	Mohammédia, 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 21 465 434	Collision

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 ¥15 459 481	¥10 455 440 recovered by way of recourse.	67
1 280	Clean-up *(paid)* Fishery-related *(paid)* Fishery-related *(claimed)* Other damage to property *(paid)*	Won 5 587 815 812 Won 7 009 067 134 Won 22 964 791 254 Won 35 561 674 200 Won 14 206 046	Won 5 587 815 812 paid by shipowner's insurer, of which US$6 000 000 reimbursed by 1971 Fund.	68
200	Clean-up *(claimed)* Other loss of income *(claimed)* Fishery related *(claimed)*	Drs 451 000 000 Drs 3 061 285 997 Drs 993 000 000 Drs 4 505 285 997		69
16 000	Clean-up and environmental damage *(claimed)* Fishery-related *(claimed)* Clean-up *(paid by P & I insurer)*	Dhr61 400 000 Dhr36 900 000 Dhr98 300 000 OR 92 279	Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.	70
0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 ¥2 033 944		71
560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 ¥716 192 738	¥31 021 717 recovered by way of recourse.	72
(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 ¥4 430 035		73
18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 Won 37 780 112	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.	74
(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	Won 43 517 127	Further claims may be submitted.	76
5 035	Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(claimed)* Farming-related *(claimed)* Tourism-related *(claimed)*	Won 19 700 000 000 Won 1 040 000 000 Won 70 945 000 000 Won 46 000 000 Won 4 772 000 000 Won 96 503 000 000	Further claims will be submitted. Clean-up: provisional payments of Won 17.7 million made by shipowner's insurer, of which £2 million reimbursed by 1971 Fund.	77
40	Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(claimed)* Other loss of income *(claimed)*	Won 660 726 381 Won 3 350 000 Won 4 421 000 000 Won 3 080 000 000 Won 8 165 076 381	Further claims will be submitted. Provisional payments of Won 119 275 200 made by shipowner's insurer, of which Won 560 345 437 reimbursed by 1971 Fund.	78

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
79	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
80	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥19 900 000 *(estimate)*	Collision
81	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million *(estimate)*	Sinking
82	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender
83	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 *(estimate)*	Collision
84	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£8 million *(estimate)*	Grounding
85	*Kugenuma Maru*	6.1.96	Kawasaki, Japan	Japan	57	¥1 175 055 *(estimate)*	Mishandling of oil supply
86	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million *(estimate)*	Mishandling of oil supply
87	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 88 365 090 *(estimate)*	Grounding

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 1996 are as follows:

£ =							
	Algerian Dinar	Din	95.8486	Moroccan Dirham	Mor Dhr	14.9825
	Canadian Dollar	Can$	2.3456	Omani Rial	OR	0.6589
	Danish Krone	DKr	10.0948	Republic of Korea Won	Won	1446.90
	Finnish Markka	FM	7.8874	Russian Rouble	Rbls	0.9806
	French Franc	FFr	8.8966	Spanish Peseta	Pts	222.597
	German Mark	DM	2.6373	Swedish Krona	SKr	11.6848
	Greek Drachma	Drs	422.195	UAE Dirham	UAE Dhr	6.2844
	Italian Lira	Llt	2602.03	United States Dollar	US$	1.7113
	Japanese Yen	¥	198.631			

£ = 1.18084 SDR or 1 SDR = £0.846859

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
0.5	Clean-up *(paid)* Indemnification *(paid)*	¥8 650 249 ¥984 327 ¥9 634 576	¥3 718 455 paid by shipowner's insurer.	79
	Other damage to property *(agreed)* Other loss of income *(agreed)*	US$3 103 US$2 560 US$5 663		
94	Clean-up Fishery-related	¥340 225 093 ¥47 501 107 ¥387 726 200	¥19 900 000 paid by shipowner's insurer.	80
(unknown)	Clean-up *(paid)* Clean-up *(agreed)* Clean-up *(claimed)* Fishery-related *(paid)* Fishery-related *(agreed)* Fishery-related *(claimed)*	Won 7 456 000 000 Won 4 828 000 000 Won 280 000 000 Won 2 963 000 000 Won 29 000 000 Won 60 740 000 000 Won 76 296 000 000	Won 1 654 million paid by shipowner's insurer.	81
1 800	Clean-up *(paid)* Fishery-related *(paid)* Clean-up } Fishery-related } *(claimed)*	Won 5 800 000 000 Won 309 000 000 Won 53 360 000 000 Won 59 469 000 000	Further claims are expected. Won 6 109 million paid by shipowner's insurer.	82
4			Total damage less than owner's liability. Indemnification not requested.	83
72 360	Clean-up *(paid)* Fishery-related *(paid)* Tourism-related *(paid)* Other damage to property *(paid)*	£665 937 £4 284 543 £361 340 £171 622 £5 483 442	Further claims for significant amounts being examined. £5 483 442 paid by shipowner's insurer.	84
0.3	Clean-up *(paid)* Indemnification *(paid)*	¥1 981 403 ¥297 066	¥1 197 267 paid by shipowner's insurer.	85
20-50	Clean-up *(claimed)* Loss of income *(claimed)*	Drs 1 861 100 000 Drs 140 330 000 Drs 2 001 430 000		86
28	Clean-up *(claimed)*	Won 1 031 510 000	Further claims (fishery-related) are expected.	87

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1971 Fund (ie excluding the shipowner's liability).